

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

DATE: OCTOBER 17, 2012

CASE NOS.: 10/17/2012-2, 3, AND 4

APPLICANT: ALFRED WALLACE, HENRY WALLACE, AND HAROLD WALLACE
62 PERKINS ROAD
LONDONDERRY, NH 03053-2416

VAN STEENSBURG ONE FAMILY TRUST,
LEO AND MELANIE VAN STEENSBURG, TRUSTEES
48 PERKINS ROAD
LONDONDERRY, NH 03053-2416

LOCATION: 62 PERKINS ROAD; 16-3; AR-I (WALLACE) AND
48 PERKINS ROAD; 16-1; AR-I (VAN STEENSBURG)

BOARD MEMBERS PRESENT: MATT NEUMAN, CHAIR
JIM SMITH, VOTING MEMBER
LARRY O'SULLIVAN, VOTING MEMBER
JAY HOOLEY, VOTING MEMBER
JAMES TOTTEN, NON-VOTING ALTERNATE
NEIL DUNN, CLERK

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/ZONING OFFICER
JIM BUTLER, TOWN COUNCIL LIAISON

REQUESTS: CASE NO. 10/17/2012-2: VARIANCE TO ALLOW PROJECT PHASING TO
EXCEED THE MAXIMUM NUMBER OF DWELLING UNITS LIMITED BY
SECTION 1.3.3.3, AND TO PROVIDE RELIEF FROM BUILDING PERMIT
RESTRICTIONS UNDER SECTION 1.4.7.2.

CASE NO. 10/17/2012-3: VARIANCE TO ALLOW A REDUCTION IN THE
NUMBER OF WORKFORCE HOUSING UNITS FROM 75% AS REQUIRED BY
SECTION 2.3.3.7.1.1.4 TO 50%.

CASE NO. 10/17/2012-4: VARIANCE TO ALLOW 24 DWELLING UNITS IN A
MULTI-FAMILY BUILDING WHERE A MAXIMUM OF 16 UNITS IS
PERMITTED BY SECTION 2.3.3.7.3.1.2, AND A VARIANCE FROM THE
DIMENSIONAL RELIEF CRITERIA OF SECTION 2.3.3.7.4.5 AND THE
ADDITIONAL CRITERIA OF SECTION 2.3.3.7.4.6.

46 PRESENTATION: Case No. 10/17/2012-2 was read into the record with no previous cases listed.

47

48 LARRY O'SULLIVAN: Are you gonna take them one at a time?

49

50 NEIL DUNN: I don't know. I was asking for direction.

51

52 MATT NEUMAN: If I can...

53

54 JAY LEONARD: Yes...

55

56 MATT NEUMAN: State your name and...

57

58 JAY LEONARD: Good evening, my name is Thomas J. Leonard. I go by Jay. I'm a lawyer in Nashua, New
59 Hampshire with the firm of Welts, White and Fontaine, 29 Factory Street, and I'm here representing the
60 applicants. The applicants are the two owners, as well as Mr. Tom Monahan who has an agreement to buy
61 the two lots that are the subject of these three variance requests. If it makes sense from the Board's
62 standpoint, I'd like to consider all three of the variances at once. And the reason for that is there's a lot of
63 common information. Information that is appropriate to all applications. Rather than repeat it in each one, if
64 we could take them all together, I think it would be more efficient. Probably more understandable for the
65 Board.

66

67 MATT NEUMAN: Everyone on board with that? I think that that would make the most sense.

68

69 LARRY O'SULLIVAN: Mm-hmm.

70

71 MATT NEUMAN: Yeah, that'd be great. Proceed that way.

72

73 NEIL DUNN: So I'll continue reading in the rest of it.

74

75 MATT NEUMAN: Yeah, we should read the other two in as well.

76

77 [Case Nos. 10/17/2012-3 and 4 were read into the record with no previous cases listed].

78

79 LARRY O'SULLIVAN: Okay, so there really are six different items that are asked for variances for then. Is that
80 correct?

81

82 JAY LEONARD: There are really three different variances and I think it'll be more clear as I give you first an
83 introduction and then I will go through them one by one with some explanation, but essentially, this is a
84 workforce housing project. And it involves a project that...and we're proceeding under two paths of possible
85 approval. The more traditional path of a variance and then a, what I'm probably guessing is the first time
86 you've reviewed a workforce housing project under the State statute and your local regulations. So the
87 request is...the three specific requests that we have that we need relief and as I say, that's three variances or
88 three options for relief under the workforce housing scheme. Basically, we are proposing a use that is allowed
89 by right. It is a permitted use. The density is permitted. But what our proposal is is that we have ten (10)
90 twenty four (24) unit buildings where there is a restriction that limits the number of residential units within a

91 building to sixteen (16), perhaps can be increased to twenty (20). We're asking for twenty four (24). So that's
92 one variance. The other variance is there are phasing rules that apply. They're a little bit confusing when
93 they're applied to a building such as this, but it looks like a maximum of two (2) buildings would be allowed
94 per year. That would be a five (5) year phasing. We're asking for a three (3) year phasing. Right now you have
95 growth restriction ordinance that is not in place. It has not become effective for the last few years because, of
96 course, there's no growth and there are no permits. You will hear from us tonight about some of the
97 economic and the uncertainties that that causes and the economic impact that it causes, so we are asking for
98 relief from that regulation, from that restriction, should it become imposed over the next three years. So, in
99 other words, we're really not asking for a variance unless growth gets so that the growth restriction starts to
100 kick in and only on this three year period of time. And then the last variance that we're asking for is under the
101 workforce housing rules as passed by the Town of Londonderry, there is a requirement that when you have a
102 workforce housing rental situation, which is what we are proposing. Ours is a rental project. All these are
103 units that will be for rent. The rules require that seventy five (75) percent of the units that are built be
104 restricted as to the rent and the occupants. In other words, they can only be rented to those households who
105 meet that definition that we'll talk about. We are suggesting that that doesn't work. It's not economically
106 viable. I mean, we're asking for a relief of that seventy five (75) percent requirement to allow for fifty (50)
107 percent. I will go through these all carefully, but in a general sense, that's what we're talking about. Does that
108 answer the question?

109
110 LARRY O'SULLIVAN: Well, about the...

111
112 JAY LEONARD: So...

113
114 LARRY O'SULLIVAN: On the first one, we have a "variance to allow project phasing to exceed the maximum
115 number and to provide relief from building permit restrictions. What was the building permit restrictions? Is
116 that the number...?"

117
118 JAY LEONARD: No, that's the growth ordinance.

119
120 LARRY O'SULLIVAN: The growth ordinance.

121
122 JAY LEONARD: Yes. And they're actually not in place, but when you're financing a project such as this, the
123 uncertainty of that raises a problem and that's why we asked for it. Even though it's not really in place and we
124 actually discussed that. Some would say we don't need a variance yet. We just wanna be clear and put the,
125 you know, have the Town understand that we need to know what the real phasing is and that it can't change
126 after we start for financial reasons. That's the purpose of asking in advance. So....well, let me kind of back up
127 if I may. Does that satisfy your questions right off the bat here?

128
129 LARRY O'SULLIVAN: Yeah, I guess. How about the dimensional relief criteria? And additional criteria of
130 Section 2.3.3.7.4.6?

131
132 JAY LEONARD: So the ordinance is very complicated and what we had to do was go through each section of
133 the ordinance and I believe what you're referring to is the section that governs the number of units within a
134 building.

136 LARRY O'SULLIVAN: Okay.

137
138 JAY LEONARD: So what happens is the workforce housing regulation as developed by the Town of
139 Londonderry starts out with the proposition that you cannot have more than sixteen (16) units in a building. It
140 then goes on to offer some relief for that under very specific circumstances and the relief allows a maximum
141 of twenty (20) units per building. So technically speaking, I need to ask for relief from the sixteen (16) units,
142 and then also from that regulation that only allows up to twenty (20). The regulation that allows up to twenty
143 (20) doesn't really meet our circumstances, nor does it meet the circumstances of the land which it depends
144 on, so we need relief from both of those, but it's really the same question. What we're seeking is a building
145 that has twenty four (24) residential units in it. So it's the same request, it's just because of the way the
146 ordinance is written that we have to include several sections. And really, the same thing is true of the sections
147 that I listed in the phasing and the growth. There are, again, a couple sections that refer to the same
148 restriction. But there really are only three restrictions that we're gonna focus on. The phasing, which is
149 presently...well, it's hard to know how many years is. What we're asking for is three (3) years. The number of
150 units in a building, we're asking for twenty four (24), and the percentage of restricted units is listed as seventy
151 five (75) percent. We're asking for fifty (50). So those are the only three requests. There are just many
152 sections.

153
154 LARRY O'SULLIVAN: And have you spoken, Jay, with the Planning Board about this or Town staff about this?

155
156 JAY LEONARD: Yes, we're gonna go through that. We've had an extensive discussion, both with staff and with
157 Planning Board, and that'll all be part of what this is and I appreciate that this is, I think anyway, probably the
158 first time you've heard about a workforce housing and the New Hampshire statutory scheme. So any
159 questions I'm gonna try to answer as best I can. I certainly want you to interrupt me and thank you for the
160 dialogue. So let me kind of back up if I may, just to kind of get us started in a slow fashion. Let me regroup
161 here, make sure I got my notes too. So first off, my name is Thomas Leonard. I go by Jay. I have with me Tom
162 Monahan and we have Karl Dubay and then in the rear, I have Mr....Karl Dubay, by the way, is an engineer who
163 studied the land and he can answer questions should they...and then in the rear, we have Mr. Russell
164 Thibeault. His group is applied economics research. He's an economist and he's gonna give us some help on
165 what becomes an important part of this discussion and that is the economic viability of a multi-family rental
166 project that meets the requirements and the demands of workforce housing. So we have him here. We also
167 have...and let me pass out some information. I have given...Jaye Trottier has helped me out quite a bit here in
168 understanding what I'm supposed to do. I gave her electronically this information. And I understand this is all
169 today, so this is a lot of stuff and we appreciate your patience on that. This is one for everybody. It's basically
170 a hard copy of what you have electronically and I know some people prefer to have a hard copy, so that's why
171 you have both [see Exhibits "A" through "F"]. In addition, Karl is offering a nice, neat plan...

172
173 NEIL DUNN: A ream of paper.

174
175 JAY LEONARD: And for the...Okay. So, let me start by giving a little bit more of an introduction to the very, in
176 a simple fashion, what the project is. And then what I'd like to do is talk about the two paths of approval and
177 make a distinction between the path of the variances, which I think you're probably...I mean, you're obviously
178 very familiar with, and then the path of workforce housing in the New Hampshire statutory scheme and how
179 that all relates and then I will take you step by step through the variance requirements, the five that we
180 typically have to do, and then I will take you step by step through the alternative path of workforce housing.

181 But I'm gonna start with a little bit of an overview and start there. So, as I said, the project is a project of two
182 hundred forty (240) units, ten (10) buildings, twenty four (24) units in each building. It's a multi-family
183 workforce housing rental project. A lot of different terms. They all have very specific meanings. And what I'd
184 like to do is have Karl just go to the first of the...next slides, yeah [see Exhibit "D"]. And you'll see an aerial and
185 this will show you where it is. It's on Perkins Road. So right there is Exit 5 heading...if the top of the page is
186 north and you see the intersection, the road that is parallel with Interstate 93 is Perkins Road. You see the
187 aerial of the hotel. The site that we're talking about is immediately south of the hotel site. And it
188 involves...we actually have two (2) tracts of land and I'll explain how we got to that, but let me simply leave it
189 that we have two (2) tracts of land now, the Wallace and the Van Steensburg, that are involved in this
190 particular project. The project, as I say, is a rental project and we're asking for three (3) year phasing, no
191 growth regulations, should they become in place, and fifty (50) percent of the units will be restricted. What
192 I've given you is a number of reports. I've given you a report and we will go through these going forward here.
193 I've given you a report from Mr. Thibeault. It's an economic report about the viability of the project as
194 proposed. I've given you a report from Mr. Mark Fougere [see Exhibit "E"], who is a planner and he's been
195 working with the Town and he did some work with the Planning Board. His report is a research on primarily
196 the growth ordinance and the effect of these different restrictions on a workforce housing project. He's an
197 expert in workforce housing. You'll also see a report from Mr. Karl Dubay [see Exhibit "C"]. His report is on
198 the efficiency and viability of this particular site for workforce housing. And you will see a letter from some
199 bankers who can talk a little bit about the financial concerns in a project such as this. And then I have
200 presented a memo which summarizes the overall argument that you're gonna hear today. And it gives you
201 some foundation for some of the path to approval as I would suggest. So there are two paths to approval.
202 The very first is obviously a variance and under a variance, we have the five criteria. I think the Board is very
203 familiar with those. But this particular scheme of things is very interesting because there is a State statute
204 that requires towns to provide reasonable and realistic opportunities for workforce housing. And workforce
205 housing in the context of rental properties is a residential rental unit that is affordable to a family of three (3)
206 with sixty (60) percent of the median income for the county, and the county considered here is west
207 Rockingham. So you will see that discussion in both the report of Mr. Thibeault and in the report of Mr.
208 Fougere. But I think the most important thing I'd like to...and I rely...or I leave it up to you to examine those
209 reports and the memo for further support of that, but the most important thing, I think, right here is that this
210 project is workforce housing. It's designed to provide rental housing to the middle and lower income people,
211 but it is not a subsidized housing in any way. The mechanism that the State law, or the goal of the State law is
212 to require towns to make...to look at their zoning ordinances and their planning regulations and make sure
213 that it is possible. It is reasonably viable, and they use the terms "economically viable," that workforce
214 housing projects can be developed in a way that actually works financially. So that's the context that we have
215 to look at some of these variance requests and the reason I bring that up is I know that this Board had a little
216 bit of history with the cell tower, probably what Mr. O'Sullivan was talking about, but basically, a couple years
217 ago, there was the cell tower project. The Board ended up approving the cell tower and it went to the
218 Supreme Court and the Supreme Court for New Hampshire confirmed the Board's action as being thoughtful
219 and exactly the right way to proceed when you have what I'll call this umbrella over you. And basically, that
220 cell tower case was very similar to what we're gonna talk about here today. To remind some who weren't a
221 part of the Board then, basically what happened was there was a Federal law that said it's up to towns to
222 regulate cell towers so long as your regulations don't actually prohibit it in effect. Well, there's a very similar
223 State law about affordable housing and in particular, affordable rental housing. So that State law is kind of the
224 context for a lot of our discussion. As in the case of the cell tower, it was appropriate, for instance, to, when
225 you examine the unnecessary hardship requirement under a variance, it was appropriate to consider the

226 Federal statute that should you run afoul of the Federal statute, it would invalidate your action and override
227 the decision. So this Board granted a variance under very specific terms because it was clear that if you didn't,
228 then the Federal law would kick in and they'd get a cell tower anyway and you would not have the opportunity
229 to regulate as you do as part of this process.

230
231 LARRY O'SULLIVAN: Potentially.

232
233 JAY LEONARD: Potentially. That's right. So we're basically in that same kind of thing. The statutory scheme
234 for workforce housing is sort of an umbrella and you, as a Board, get to look at that umbrella and the purposes
235 and objective of that umbrella in making your decision in particular about whether this piece of property is
236 appropriate for relief under the zoning variances. So...and let me also say, I appreciate that there's a lot of
237 information here and as I say, the variance requests are more typical and probably more common to you, but
238 we expect that you may want more information and we're happy to work with you on that. We consider this a
239 joint effort in a lot of regards. The bottom line is that our goal is very much consistent with workforce housing
240 goals and the Town of Londonderry has also adopted those same goals. So let me take a look at the workforce
241 housing, if I may. What I'm gonna do is ask Karl...at the end, there's actually the workforce housing statute
242 and you will find in your packet there is a workforce housing statute. And the reason I point that out is it's
243 helpful in understanding this whole thing. First off, the workforce housing State law and it should be at...no, it
244 should be that Wallace Farms...

245
246 KARL DUBAY: PowerPoint?

247
248 JAY LEONARD: ...PowerPoint and it'll be the second to the last.

249
250 KARL DUBAY: Just photos here.

251
252 JAY LEONARD: Okay. It should be further down.

253
254 KARL DUBAY: That's the last one.

255
256 JAY LEONARD: That's the last one? So our electronics didn't work, but luckily, you should have it...if you run
257 through the PowerPoint, you should see...it's Chapter 299:1 was the State law that was adopted and it is now
258 RSA 674:58 through 61. And I think you'll find in the packets that were presented to you, in that hard copy
259 and the electronic copy, you should be able to find it in there. But basically, what the workforce housing State
260 law does is it requires...it starts out with a finding that New Hampshire is suffering from a housing shortage
261 that, and I'm gonna quote, "that poses a threat to the State's economic growth, presents a barrier to
262 expansion of the State's labor force, undermines the State's efforts to foster a productive and self reliant
263 workforce, and adversely affects the ability of many communities to host new businesses. And as a result of
264 that finding, the New Hampshire Legislature went onto adopt a scheme where the State could be assured that
265 municipalities are given the power to waive certain restrictions on the event they interfere with a reasonable
266 workforce housing project. And what the State law says is that a town has an obligation to provide, and I'm
267 gonna quote here because this is really the bottom line, "reasonable and realistic opportunities for the
268 development of workforce housing, including rental multi-family housing." And that you'll find in the
269 handout. That's RSA 674:59, I. That's the primary obligation. Now that's a term that is new. We haven't
270 heard that. What does it mean to be reasonable and realistic opportunities? Well, later on you'll see that it's

271 defined. And reasonable realistic opportunities require that the opportunities, as presented by local
272 regulations, or by the Town in any fashion, the opportunities have to be economically viable. And those are
273 the, kind of the buzz words. "Economically viable." And that is what Mr. Russell Thibeault studied. The
274 economic viability. And when you study the economic viability of a workforce housing project, you have
275 to...the statute directs that you consider, and again I'm gonna quote, "the collective impact of all such
276 ordinances and regulations." So it's really common sense in a lot ways. What we have to do is we have to
277 take a look at how the regulations in the zoning and planning, and it actually applies to both zoning and to
278 planning, but the task is to take a look at those regulations and measure the impact as compared to the goals
279 of workforce housing. Sometimes regulations have indirect consequences. They perhaps cause costs to be
280 much higher than we would first guess or they may actually have consequences that you don't expect. This
281 gives the Town, and through you, a land use board, to take a look at that and make sure that we're actually
282 accomplishing the goals of the statute and that the regulations are effective in accomplishing those goals. If
283 the adversely affect the economic viability of a project, this Board needs to waive them because the State has
284 said, and actually the Town of Londonderry has also said that it is a primary goal to provide rental housing,
285 multi-family rental housing, to workforce families. So that's kind of the umbrella that we're talking about. The
286 procedure is set up in statute. We can talk a little bit more about that as we go forward. But let me get back,
287 if I may, get back to the actual program that we're talking about. And we have up on the screen right now the
288 colored site plan [see Exhibit "B"], and you should also have one of these in the electronic version that I have.
289 But basically, the site is on Perkins Road. It's in the AR-I zone. The two properties...the Wallace property is
290 immediately south...could I ask you, Karl, to go back to the aerial again? The aerial shows this a little bit
291 better. It should be the first one. Yeah. Okay. So you can see the interchange and...yeah, there you go.
292 Thank you. You can see the interchange. That building between Perkins Road and Interstate 93 is the hotel.
293 Just south of that, toward the bottom of the page are the two lots that we're talking about. The first lot is the
294 Wallace lot, which is approximately twenty four (24) or five (i.e. 25) acres. And then further south, the next lot
295 is the Van Steensburg lot. That's approximately seventeen (17) acres. There is, as I say, the hotel, then
296 directly across Perkins Road, access through Vista Drive is Vista Ridge which is now a condominium project.
297 Actually, I'm sure many of you are familiar with it, but it is a project of about two hundred forty (240) units.
298 There are ten (10) buildings and they have twenty four (24) units in a building. Now, I understand it is now
299 condominiumized. Our project is for rental project. That is a commitment. It cannot be condominiumized
300 until after the thirty or forty (40) years of commitment that is required by the workforce housing. So we're
301 not similar to that project for many reasons, but I just wanna be sure that...I want everybody to understand
302 where we are in relationship to that. Going back to our site, so it is between Perkins Road and I-93. It has
303 substantial common boundary with I-93 and is basically just...as you take the exit ramp from...I believe that's
304 Route 28?

305
306 TOM MONAHAN: Mm-hmm.

307
308 JAY LEONARD: Yeah, 28 heading south on 93. As you're on the exit ramp, you start to see the property and it
309 goes for a substantial distance south. Now, Londonderry has spent some time with this concept project
310 already. We've worked closely with the Planner. Mr. Monahan, Mr. Fougere, and Mr. Dubay all worked with
311 the Planner and we actually...I was not involved, but you will find in your packet some minutes of Planning
312 Board meeting from, I believe it was May of 2012. Just this past May. And what they did was, they went to
313 the Planning Board for a conceptual discussion and the proposed...at that time, they were proposing larger
314 buildings. Forty eight (48) units per building. And they discussed a particular layout of the plan. And they
315 received some serious comments. So what they did is took the input from the Planning Board, from some of

316 the neighbors, and Mr. Monahan actually went and made an agreement with the Van Steensburg to acquire
317 that second lot, which is now a part of this application, because it made it easier for him to accomplish some
318 of the goals and some of the suggestions that the Planning Board had made. So I encourage you to take a look
319 at the minutes in there, but basically, what the Planning Board said was they recognized that this is a use
320 that's permitted by zoning, they recognized that the concept of workforce housing is important, both from
321 State law and local law, but they also recognize it's a big project and they asked Mr. Monahan to move the
322 buildings back toward the rear of the lot, which actually means closer to the highway, and they asked him to
323 consider leaving some space open in front. They asked him to consider smaller buildings that forty eight (48).
324 They asked him to consider a number of other things that we'll go through and the primary reason he made an
325 agreement with the other property to the south is to accomplish those things. So let's talk a little bit about
326 the site itself. You can see in this plan, in this aerial, and then we're gonna go to the actual site plan in a
327 moment here, but I'd just like to have to take a look that there is a tree line. You can see it in the aerial here.
328 It's about halfway back through the depth of the property. That's an important thing to recognize. If you can
329 go to the...actually, go to your plan before we get to these pictures. What the Planning Board asked was...in
330 the earlier plan there were more buildings in front of that tree line. In other words, along Perkins Road. What
331 Mr. Monahan is proposing here today is that there are eight (8) buildings that are actually to the rear of that
332 tree line. So they are in the presently forested area. The forest, obviously, allows for some screening. But we
333 recognize you gotta cut the trees to build the buildings as well. But it does afford an opportunity for more
334 screening and it is a specific response to the Planning Board. You'll also see that as you look at this particular
335 plan now, the two buildings to the right, those are actually on the Van Steensburg property and part of this
336 application...by the way, let me...I didn't say yet, and I don't want to assume that everybody understands,
337 workforce housing is permitted but you have to get a conditional use permit. We fully intend to go through
338 that entire process. This request here today is not to avoid any of that process. So should you grant us relief
339 from these three restrictions, we would then have to go through the conditional use process, conditional
340 permit, and then at the same time, we would be doing the subdivision and the site plan process, so all of that
341 review by the Planning Board is ahead of us and we want you to know that we understand that.

342
343 JAY HOOLEY: Can we just get one clarification on that?

344
345 JAY LEONARD: Sure.

346
347 MATT NEUMAN: Go ahead.

348
349 JAY HOOLEY: So you're not looking to bypass the conditional use permit portion of increasing from sixteen
350 (16)?

351
352 JAY LEONARD: We're not looking to bypass it but that does not give us the twenty four (24) that we actually
353 need to make this economically viable. So that's why we've asked for the variance. And it only allows the
354 maximum for the Planning Board to give up to twenty (20). So does that answer your question?

355
356 JAY HOOLEY: Yes. So in other words, you're not looking for us...

357
358 JAY LEONARD: So we do need relief from that because the Planning Board doesn't have authority to do
359 beyond twenty (20) units.

361 JAY HOOLEY: Which you may or may not get.
362
363 JAY LEONARD: Right.
364
365 JAY HOOLEY: Okay.
366
367 JAY LEONARD: So those...
368
369 JIM SMITH: Just...to clarify that just one more. The twenty four (24) would be the...replace the twenty (20)?
370 Is that what you're trying to...?
371
372 JAY LEONARD: Twenty four (24)...yes. So right now, you start out with a requirement that no more than
373 sixteen (16) in a building.
374
375 JIM SMITH: Right.
376
377 JAY LEONARD: Under the conditional permit process, if you're land has certain conditions, which ours does
378 not, but the way, but if it does, you can ask the Planning Board for relief from that sixteen (16) limit rule and
379 they might be able to grant up to twenty (20).
380
381 JIM SMITH: Right.
382
383 JAY LEONARD: But that's not good enough for us. We can't...ours is not economically viable even at twenty
384 (20). So, and the Planning Board doesn't have authority to go beyond twenty (20). So we have to ask the
385 Zoning Board for the twenty four (24).
386
387 JIM SMITH: So then you would not have to get the conditional approval....
388
389 NEIL DUNN: Correct.
390
391 JAY LEONARD: No, that's correct. We will not be asking them for...what we would do is then go to the
392 Planning Board and say, and this is an example, should you grant us the right to have twenty four (24) unit
393 buildings, we will then take that zoning variance and go to the Planning Board and we would propose a plan
394 such as this that shows twenty four (24) unit buildings. And they would review it as a conditional permit with
395 all the review that is typically done, but that one issue of twenty four (24) unit building would be resolved. I
396 see some question.
397
398 JAY HOOLEY: I apologize, I think I just heard a different answer than what I heard the first time.
399
400 LARRY O'SULLIVAN: Yeah, me too.
401
402 NEIL DUNN: Mm-hmm.
403
404 JAY LEONARD: Well, I must have misunderstood the question.
405

406 JIM SMITH: That's why I asked the question.
407
408 JAY HOOLEY: I know you're allowed sixteen (16).
409
410 JIM SMITH: Right.
411
412 JAY LEONARD: Right.
413
414 JAY HOOLEY: Are you looking to bypass the conditional use permit process completely to go from sixteen (16)
415 to twenty four (24)?
416
417 JAY LEONARD: Yes. Well, yeah, we're looking for a decision on...to go to twenty four (24).
418
419 JAY HOOLEY: Without having to go through...
420
421 JAY LEONARD: Without having to ask the Planning Board. But we are going to go through the conditional use
422 process, which is, you know, several pages in the regulations. So I think that...does that...?
423
424 LARRY O'SULLIVAN: Did they...did the Planning...I haven't been through the minutes here that you kindly
425 included in the sixty six (66) pages of notes that we're gonna be reading...sometime, but I guess the issue is
426 really that the Planning Board is limited to twenty (20) and...did they mention at that meeting that we talked
427 for years, meeting after meeting after meeting with abutters, with people all over town, with builders and
428 developers, and that was our compromise is sixteen (16). Because originally, it was gonna be ten (10) I
429 believe. I mean in 2002, I think it was, maybe 2004 we were talking about this and it was ten (10).
430
431 JAY LEONARD: So I appreciate your question. I think it's a fair question. I think I'm gonna answer it.
432
433 LARRY O'SULLIVAN: Okay.
434
435 JAY LEONARD: I understand what you're saying. Basically, the zoning says sixteen (16). And that's why we're
436 asking for a variance.
437
438 LARRY O'SULLIVAN: Now it's the sixteen (16).
439
440 JAY LEONARD: That's why we're asking for a variance, so I have to demonstrate to you that I'm entitled to a
441 variance on that issue. And I think I can. The other path of approval is I have to demonstrate to you that that
442 particular restriction means that this project is not economically viable. In other words, if you make me go by
443 that restriction, limit my buildings to sixteen (16) units a building, the additional cost on this project will make
444 it economically unviable and we will not be able to provide rental housing at rates affordable to that
445 designated population that the State statute says we must. Okay, so that...
446
447 LARRY O'SULLIVAN: On this lot, or these lots or, or this piece...
448
449 JAY LEONARD: That's correct.
450

451 LARRY O'SULLIVAN: ...or this land, or...
452
453 JAY LEONARD: That's correct.
454
455 LARRY O'SULLIVAN: Okay, so you're starting with a cost...
456
457 JAY LEONARD: Well, I'm gonna take you th...
458
459 NEIL DUNN: Not...well, go ahead. We'll get there, but what you just said is not what is required. These lots
460 don't have to be at workforce housing.
461
462 LARRY O'SULLIVAN: Right.
463
464 JAY LEONARD: No. So, let's just go...I hear your question. It's fair and I hope I answer it. We'll come back if I
465 didn't, okay?
466
467 JIM SMITH: Just to clarify one point.
468
469 JAY LEONARD: Yes.
470
471 JIM SMITH: Okay, I think when you're talking about conditional approval and all...you're talking about two
472 different processes. One for the whole project, which you're not trying to get a variance from, and the second
473 one is the limit of sixteen (16) that you're trying to get a variance from. Is that what you're saying?
474
475 JAY LEONARD: Yes.
476
477 JIM SMITH: Okay.
478
479 JAY LEONARD: I'm gonna go through the process. I'm only asking for relief on the number of units in the
480 building.
481
482 JIM SMITH: Right.
483
484 JAY LEONARD: So, you know, it may help if I...if you look in the handout...
485
486 JIM SMITH: Which handout?
487
488 JAY LEONARD: Attached...yeah. That's a good question.
489
490 [Overlapping comments]
491
492 LARRY O'SULLIVAN: Do you have a page number or an index or Dewey decimal or something?
493
494

495 JAY LEONARD: Okay. So in the...I presented a memo under my letterhead and it's then a summary of the
496 facts, the lot, et cetera, and attached to that are some exhibits and I included in those exhibits the workforce
497 housing...it's called inclusionary housing, and then there's workforce housing section of that, and then in that,
498 it talks about the series of requirements for a conditional permit. The sixteen (16) units per building is only
499 one of those many requirements. We're gonna deal with all those other requirements in a typical fashion.
500 The only one requirement that I'm asking you to deal with is the sixteen (16) and the reason is that the
501 Planning Board doesn't have authority to waive that. So I'm looking for you to give relief on what amounts to
502 a zoning restriction. And that, as I say, the process is variance or relief under the workforce housing statute.
503 So let's talk a little bit about what Londonderry has done with regard to housing and workforce housing in
504 particular. Londonderry actually has a Housing Taskforce. They spent a, as you mentioned, Mr. O'Sullivan,
505 they spent a substantial amount of time studying the existing housing, studying the housing needs. The short
506 story is that they decided to adopt some inclusionary housing with a goal toward meeting the obligations that
507 relate and that are mandated under the State statute for workforce housing. And I applaud their efforts. I
508 think they did a great job. Workforce housing has many different faces or components. You know, you can
509 have single family housing that's workforce, you can have multi-family, and you have of course ownership and
510 you have rental. The biggest problem that Londonderry has is there are no rental units and I think you'll see in
511 one of the exhibits that I attached to my memo, Mr. Fougere did a report and there were actually, and I'm
512 gonna get the number wrong, but it's in the vicinity of nine hundred fifty (950) rental units in 2000 and he
513 thinks that right now there are no more than that. And the Londonderry Housing Task Force found that
514 we're...you do not meet the needs and the demands for rental property. This project is specifically directed at
515 that need and at that demand. What the Housing Task Force also did was look at sites and you will see...and I
516 attached their report and actually, they have a map and you will see as one of the exhibits, I believe it's on
517 page twenty one of the Housing Task Force report, they identify tenor eleven sites across the Town of
518 Londonderry that are the best sites in town for multi-family workforce housing at high densities. And the
519 reason they do that...it was specifically in response to that identified need. And, of course, of the ten sites,
520 one of them is the site you're looking at today. That is the Wallace site and the Van Steensburg site. It's right
521 there and that's why we're here. This site has.

522
523 NEIL DUNN: Would...

524
525 JAY LEONARD: Yes.

526
527 NEIL DUNN: Would that have been two sites because they are separate lots or would it have been one site?

528
529 JAY LEONARD: Well, it was an area. So what the Housing Taskforce...I don't even know if they knew who
530 owned it. What they did is the identified the site and the reason they did is because there's very good access,
531 both Perkins, Route 28 is very good access, of course excellent access along Route 93, right at the interchange,
532 very good soils, the zoning is right on a zoning line. The hotel is, I believe, C-II. So we're on a zoning line. And
533 all infrastructure is in place. There's sewer, there's water, and it's appropriate for a dense project. Well, Mr.
534 Dubay took that a step further and you'll see...I handed out, both electronically and in paper, Mr. Dubay did a
535 study [see Exhibit "C"] where he actually looked at each of the...each of the sites that were identified by the
536 Housing Task Force. And on the rear, this is what his study looks like. It's in your packet as well. And what he
537 did was he examined the qualities of the site in an effort to determine which of those identified sites were
538 actually reasonably possible for a cost effective and therefore affordable multi-family rental project. Now
539 keep in mind, the zoning ordinance is now in place. It allows multi-family workforce housing. It has identified

540 most, if not all, of these lots. These areas. It's basically an overlay on a couple districts. Ours is one of those
541 that it is permitted. But then you have to look at, well, is it even possible to accomplish what the housing
542 ...inclusionary housing is trying to accomplish. And if you look specifically at each site, our site is number one.
543 It's the only site that has all of the characteristics that are important to an efficient multi-family rental project.
544 It is...in essence, it's been identified by the Londonderry Taskforce as one of ten and it has been identified by
545 Mr. Dubai as the very best and perhaps the only one that could actually accomplish multi-family workforce
546 housing under the local zoning scheme in any kind of efficient and affordable way. And that's what this study
547 does. It's in your packet. You can take a look at it when you have some time. So that's kind of the facts of the
548 matter on Londonderry's efforts regarding housing. Now as we go in this process, both in the zoning variance
549 process and in the workforce housing process, it's very important to keep in mind the purposes of all these
550 ordinances because of course, when you're considering a variance, the most...the biggest focus is always what
551 are the purposes, what are the objectives of zoning? And when talking about an unnecessary hardship, of
552 course, we talk about the fair and substantial relationship of a particular restriction and how it affects a
553 reasonable use. So zoning and the purposes are very important. General purposes of workforce housing and
554 the local inclusionary housing are very clear. And that is to provide affordable housing to low and moderate
555 income people. Again, this is not subsidized in any sense. All the State does is it requires municipalities to
556 make is possible to have an economically viable project that will deliver affordable rental units. That's all. It's
557 not subsidized. The specific buzzwords again are to provide reasonable and realistic opportunities for the
558 development of workforce housing, including rental multi-family housing. Londonderry re-states that. They
559 actually adopt the State purposes. They come right out and say that they, the Londonderry inclusionary
560 housing purposes, are to ensure continued availability of diverse supply of home ownership and rental
561 opportunities for median and lower income citizens. So those are stated goals of both the State statute and
562 the local ordinance.

563
564 NEIL DUNN: What ordinance number would that be?

565
566 JAY LEONARD: Okay, so the Londonderry ordinance is Section 2.3.3 and the purpose clause in that is .1. So,
567 and that is also in the exhibits that I've attached. So it should be 2.3.3.1 is the purpose of inclusionary zoning.

568
569 NEIL DUNN: Thank you.

570
571 JAY LEONARD: Now, we're asking for relief from three restrictions. The number of units in a building, the
572 phasing and the growth restrictions, and the percentage of restricted units. And each of those restrictions, of
573 course, has a secondary, I'll call it a secondary or...call it any kind of purpose you want, but it is a purpose. It's
574 not the primary goal, obviously, and it is a restriction that the Board has the right to waive if it interferes with
575 economic viability. It is also a restriction that the Board has the right to grant a variance from if it does not
576 have that fair and substantial relationship to a reasonable use. So, those purposes...the number of units is
577 particularly interesting because generally speaking, and actually the State statute allows for towns to regulate
578 the height, the number of stories, or the size of buildings. And the purpose of those kind of regulations, of
579 course, is to manage the scale that a building has. Keep the scale of a building within the context of its
580 surrounding community. But it does not say that you can regulate the number of units in the building because
581 regulating the number of units doesn't have anything to do with the scale of the building. It's more associated
582 with the internal configuration of the building. So it's not...it doesn't correlate to the size necessarily. So
583 that...the purpose of that is very diff...it's not as clear. The purpose of phasing and growth is probably very
584 clear. There's two parts of phasing and growth controls. Phasing, in part, is how do you phase the

585 construction of a particular site. So you wanna make sure that if, in this example, we're building two hundred
586 and forty residential units, you wanna make sure that all the infrastructure is in place before you deliver any of
587 those residential units. You don't wanna have somebody occupying the home where the septic isn't...the
588 sewer isn't connected. That's one part of phasing. That, I wanna tell you right now, is...we're not asking for
589 any waiver on the discussion of how that occurs. In other words, we will go to the Planning Board. They're
590 gonna say "you can build some units, but in order to get an occupancy permit, you're gonna have to be
591 connected and we know that. So that's not the kind of phasing we're talking about. We're really talking about
592 the growth restriction type phasing. And New Hampshire state law is very clear that the towns can manage
593 growth if they're not...if they do not have the capacity to deal with anticipated growth. Of course, ten, fifteen
594 years ago, that was a problem. Right now not so much. We'll talk a little bit about that, but that's the purpose
595 of a growth ordinance, to manage the town's infrastructure, the delivery of those services, and make sure that
596 the town is not overburdened by demands caused by a particular project. And then the third restriction that
597 we're seeking waiver from is the percentage of units that are restricted. I think probably it's not a stated goal,
598 the ordinance does not say what that purpose is, but probably the purpose is to generate as many workforce
599 housing units as is possible. But again, that has to be in the context of "economically viable," and you're
600 gonna hear from Mr....you will see in Mr. Thibeault's report that to require seventy five (75) percent of these
601 units as restricted units makes it economic...it's not economically viable. And actually, that...well, we'll talk
602 about that some more. So those are the purposes that you have to keep in mind as we go through this thing.
603 What I'd like to do is kinda go step by step through the site. I'd like to just show you a little bit more about the
604 site and then I'm gonna take you step by step through the variance requirements. But if I may, I'm gonna call
605 on Karl here to bring up some slides and you can just go one by one through them [see Exhibit "D"], Karl, and
606 I'll take a minute and explain. So basically, this is the site. You can probably see it better from...in your packet,
607 but that's Perkins Road that you're looking at. You're looking across a field there and the rear is the treed area
608 that I pointed out earlier. You can go to the next one Karl. That is the farm. That's the Wallace farm. One of
609 the requests that the Planning Board made was that Mr. Monahan, in the development of this project, protect
610 the farmhouse and he has agreed to do that. So part of the reason that the buildings that we are proposing
611 are all to the rear is to accommodate protection of this and in response to the Planning Board. Both requests
612 of the Planning Board. Okay, this is the rear portion of the land. The treed area of the land. Basically, just to
613 the west of Route 93. That is the entrance ramp of Route 93 looking from the land and the next slide gives
614 you...

615
616 JIM SMITH: Can I interrupt at that?

617
618 JAY LEONARD: Yes.

619
620 JIM SMITH: How recently was that picture taken?

621
622 JAY LEONARD: A couple of days ago?

623
624 JIM SMITH: Okay.

625
626 UNIDENTIFIED MEMBER OF THE PUBLIC: No.

627
628 UNIDENTIFIED MEMBER OF THE PUBLIC: No.

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TOM MONA HAN: Yesterday.

NEIL DUNN: This one or the wood one?

LARRY O'SULLIVAN: That's the new...that's the new ramp? That's the new ramp? There you go.

JAY LEONARD: All these pictures were taken yesterday.

LARRY O'SULLIVAN: Mm-hmm.

JAY LEONARD: So that's the existing 93 south ramp. To put it in perspective, at the beginning of that ramp is the area of the hotel. The hotel, by the way...well...Okay. This right here is still on that same ramp, looking to your right as you would be traveling and that's the subject property. That's the Wallace property right there from the ramp. The next one is actually on the Wallace property, looking to the highway. Again, you can see that it's treed. The next...this is the front of the Wallace property as you go up the hill, which would be south and the reason I...we show this is through the discussion with the Planning Board, the Planning Board asked that Mr. Monahan maintain those trees and the present vegetation that is along Perkins Road and he agreed to do that as much as is reasonably possible, so our goal is to maintain that screen right there. The next is an intersection that is the, presently the access to Vista...to the Vista Ridge project. Right now, the Planning Board asked Mr. Monahan to investigate the possibility of access directly across the street, creating a four way intersection. It's a safer...Mr. Monahan is in that process. He has a verbal agreement with the present owner of that property. That property, by the way, is the hotel property. You know, probably a hundred (100) feet south or not even of...a hundred (100) feet north, I'm sorry, of the Wallace border. So short story is Mr. Monahan has an agreement to gain an easement to allow for a four way intersection as requested by the Planning Board. Next one is another view from the property through to the highway. The next one is actually the same thing, only looking all the way across the highway. That building is actually on the other side of the highway. That's the new building at the same ramp, but on the other side, the north side. Northbound side. This is a picture of the Vista Ridge property. These are, as I say, there are ten (10) buildings. These are all three (3) story buildings and the footprint is roughly nine thousand (9,000) or nine thousand five hundred (9,500) square feet. The footprint of the buildings that we propose is in that same range. I believe the footprint is nine thousand four hundred (9,400) square feet for the buildings that we propose. Each of these have twenty four (24) residential units in them and each is three (3) stories. The same is true for the ones that we propose. These are not the design that we propose. One of the things that happens in the planning process, and we've already started that discussion at the Planning Board level, is that we talk about design and that's still an open discussion. But just to give you a little bit of sense of what our neighbors are and things. We're within the scale of those buildings around us. By the way, the hotel is actually a three (3) story building with a little bit of a peak and it is a fifteen thousand (15,000) plus square foot footprint. So it's substantially bigger than any of the buildings that are proposed in this plan. The reason I point that out is, of course, under the State zoning scheme, there's an obligation to...when considering variances, there's an obligation to consider some of the properties in the immediately surrounding areas and these are those properties. Okay, the next...

LARRY O'SULLIVAN: That isn't a residence, by the way, that's a commercial business.

JAY LEONARD: Pardon me?

675
676 LARRY O'SULLIVAN: This is a commercial building.
677

678 JAY LEONARD: That's correct. But it's immediately abutting. It is the very next building and property. So let
679 me take a minute and kinda look at the requirements for a variance. And what I'd like to do is...each of these
680 restrictions is generally similar for purposes of discussion of the public interest, substantial justice, and the
681 intent of the ordinances. So, if I may, what I'm gonna do is take each one by one for purposes of hardship
682 discussion and then we will talk in a more general sense for the other requirements. But I know the hardship
683 discussion is always the one that seems to cause the most difficulty, so I'd like to speak about that first, if I
684 may. The number of units in a building. We've talked about the standard that we're looking at, and the
685 standard for unnecessary hardship is owing to special conditions of the property, how does this particular
686 restriction relate to its purposes? And we have to find a fair and substantial relationship and that has to be
687 justified in its restriction on a use. On a reasonable use. This use that we have here is workforce multi-family
688 housing. It is, by definition and by law, a reasonable use because the Town of Londonderry has said that they
689 want multi-family workforce housing rental units. And they've designated this zone as the zone to handle that
690 kind of use. And they've also said that the density that we're proposing is okay. So we're not asking for any
691 density change, we're not asking for any use change. This is a permitted use which is, by law, a reasonable
692 use. So the question is is this restriction accomplishing a...does it have a fair and substantial relationship to
693 the goals of the statute? And the goals of the statute are very clear. They're all those workforce housing
694 goals. They're clearly stated and that's both at a State and a local level. So when you look at the number of
695 residential units in a building, it's in that context. How does the number of residential units relate to the
696 purpose of providing affordable rental housing? Now, the secondary purpose may be scale of a building, but
697 as I mentioned a little bit earlier, the internal configuration of a building does not determine its scale. We're
698 committed to three (3) stories. We're committed to a footprint of nine thousand, four or five hundred (9,400-
699 9,500) square feet, similar to the scale of buildings around us. We're committed to a design process with the
700 Planning Board. We're just saying we'd like to have those buildings include twenty four (24) units. You asked
701 a little bit about the...or you made comment about the history of that requirement and that's a very important
702 part of this discussion. I've attached as part of the exhibits to my memo, you will see Planning Board minutes
703 from March, May, and I believe September of 2010. And that was the primary part of those public hearings.
704 And there was discussion about sixteen (16), twenty (20), twenty four (24), and even larger. I think there was
705 actually discussion of thirty six (36) at one point. One of the goals of the Planning Board in making the
706 regulation was consistency because that rule, that restriction of sixteen (16) units per building, applies across
707 town, so it applies to multi-family buildings that are market driven and it applies to workforce housing because
708 they wanted consistency. But you'll see in the minutes that a number of people recognized that when applied
709 to multi-family rental properties, it may pose a significant problem and you'll actually see that Mr. Thompson,
710 the Planner for the Town back when they were considering this, put a memo together and you'll see his memo
711 in the exhibit that I've attached. He put a memo together that says you have to be careful in multi-family
712 rental situations because by increasing...by reducing the number of units in a building, you affect the cost of
713 that project substantially. He estimated that it was ten (10) percent. Mr. Thibeault has gone through the
714 exercise and his report actually concludes that it's closer to thirteen plus percent. So that's a cost that I'm
715 gonna suggest to you is an indirect cost. It's not a cost that helps anybody. It doesn't help the town
716 accomplish their goals, it doesn't help manage the scale of the building, it doesn't help any of the stated or
717 even implied purposes of zoning or planning. But it's a cost that prevents this project from being economically
718 viable and that's what Mr. Thibeault's conclusion was. He said flat out that you cannot do this project with
719 sixteen (16) units in a building. It does not work from a financial standpoint. Now, you will see also there's

720 some...the next slide...and I...go to...the next, very next one...that's it again? Okay. So in your packet...in your
721 packet you will see some information from Rick Schutter. Rick Schutter is from Schutter Construction, Inc. and
722 he put together costs associated with a sixteen (16) unit building as compared to a twenty four (24) unit
723 building. And he's in the business of constructing these buildings and I should also say this is probably a good
724 point to bring up Mr. Schutter and Mr. Monahan's relationship to workforce housing. Mr. Monahan has done
725 workforce housing projects before. He's presently in the middle of one in Bedford. Mr. Schutter is building it
726 for him. And they're very familiar with the numbers. Mr. Monahan is actually a public housing manager. He
727 has a certificate. He's on the Housing Commission in Nashua. Has been for many, many years. They know
728 what they're talking about and this sheet of paper that you have is an analysis by Mr. Monahan, with Mr.
729 Schutter's particular expertise in construction costs and you'll see the differences in the cost. And the short
730 story is that for a project like this, two hundred forty (240) units, if it's done in sixteen (16) unit buildings,
731 which would be fifteen (15) buildings instead of ten (10), it's thirty seven million, three hundred thousand
732 (37,300,000) dollars. If it's done in ten (10) twenty four (24) units buildings, it's thirty three million
733 (33,000,000) dollars. So that's a substantial difference. The difference, Mr. Thibeault will tell you, makes it
734 economically unviable. It does not work and you will not be able to get it financed or investors to do it. Now,
735 one of the other things that I'd like to point out about this requirement of sixteen (16) versus permission to do
736 twenty four (24) is actually also contrary to the Planning Board's request that we leave open space,
737 particularly in front. Keep in mind that if you do a sixteen (16) unit building, it's fifteen (15) buildings. If you
738 do a twenty four (24) unit building, it's ten (10) buildings. And that has an immediate impact on the site and
739 what is open space. So Mr. Schutter points out that it has a serious adverse impact on site costs and
740 construction costs of the building, but it also has a planning impact that I think is in direct conflict with
741 Londonderry's zoning purposes and certainly planning purposes. It takes away open space. Now, let me say
742 that all of this...earlier we talked about this tower case. And the reason I brought the tower case up is it's very
743 important because the same rules apply here. In considering an application like this, and focusing on the
744 unnecessary hardship, that case, and I encourage you to read it, because it's really pretty straight forward in a
745 lot of senses, and I think you'll find it helpful, it says that in a case such as the one we're talking about here,
746 when you have that umbrella type statute, in that case it was a Federal law mandating that you have to be
747 able to connect cell towers to effectively provide cell service, here you have to be able to provide workforce
748 rental housing. So that's the umbrella. Yes, sir.

749
750 NEIL DUNN: We don't have to provide all rental housing. Or rental housing totally. We could do that with
751 individual ownership housing, is my understanding, so it sounds like you're skewing it.

752
753 JAY LEONARD: No. You absolutely, and I'm gonna read it again, you absolutely must...let me get the statute
754 and...'cause it's a good point and I think...so what State statute says is, and this is RSA 674:58...I'm sorry,
755 674:59, it says "Every municipality that exercises the power to adopt land use ordinances and regulations,
756 such ordinances and regulations shall provide reasonable and realistic opportunities for the development of
757 workforce housing, including rental multi-family housing." So it's a must. It's a mandate. It is...this State law
758 requires the Town of Londonderry to do that. Now, the Town of Londonderry acknowledged that mandate
759 and actually adopted inclusionary housing. And in the inclusionary housing, they permit multi-family rental.
760 The only problem is that as applied to this particular site, which is a site that is the best in town for high
761 density affordable housing, that one restriction makes it economically unviable and that's the problem we
762 have here. These three restrictions, that being a major one. But that's what we're talking about. We have an
763 umbrella of a mandate that says we have to provide affordable housing and I'm asking you to consider that as
764 you consider unnecessary hardship. And if you look at that case, it's *Daniels vs. Town of Londonderry*, the

765 Supreme Court of New Hampshire specifically said, and there's a couple of key phrases here that I think are
766 helpful, it said that it was appropriate. This Board acted properly in that particular case and the court noted
767 that it was very appropriate for you to consider it an umbrella. It was very appropriate for the Board to
768 consider the mandates of the Federal statute because your action is reviewed in that context. It then went on
769 to say in terms of...in terms of a hardship, the suitability of the specific parcel of land should be considered for
770 purposes of determining a hardship. So, in other words, the fact that this piece has been identified by the
771 Londonderry Housing Taskforce and has been furthered demonstrated to be perhaps the very best piece of
772 land for multi-family high density rental property in the town, that makes this unique because this piece can
773 accomplish the goals that the Town of Londonderry has said they want to accomplish. That is providing
774 affordable rental housing. So I encourage you to take a look at that when you have some time, obviously.
775 But...

776
777 LARRY O'SULLIVAN: You just...you just hit a couple of buttons for me that you said "unique." What made it
778 unique? Because it's the only one that fit your criteria?

779
780 JAY LEONARD: No, that's your criteria.

781
782 LARRY O'SULLIVAN: No. The criteria where you had twelve (12) different, eleven (11) different lots.

783
784 NEIL DUNN: It was a [indistinct].

785
786 LARRY O'SULLIVAN: You said that...

787
788 JAY LEONARD: Well now...now keep in mind, though, that what the task is, and again, this is not...I'm not
789 making this up...Your task...your task is to take a look at the collective impact of all ordinances and regulations
790 and determine whether there are opportunities for development. And those have to be realistic opportunities
791 and that means economically viable. So you gotta look at all these, the impact of these restrictions and
792 basically the sixteen (16), the phasing, and the seventy five (75). You look at those and if they make it so that
793 it's not economically viable, if they...and actually, the words are if they make it...if those conditions or
794 restrictions have a substantial adverse affect on the viability of the proposed workforce housing
795 development, then they need to be waived. And they need to be waived because those restrictions are
796 interfering with delivery of an affordable rental home. That's what we're trying to accomplish here. That's
797 what the Town of Londonderry says we want to accomplish and that's what the State law says we wanna
798 accomplish. The reason I...the reason I have said to you that this is an appropriate property is because the
799 Town identified it as one (1) of ten (10) and in further examination of those ten (10) parcels or twelve (12)
800 parcels, many of those don't have water and sewer, don't have good access, don't have good soils, have steep
801 slopes. This does not. This has good slope...no slopes of substantially...

802
803 LARRY O'SULLIVAN: What suits your purposes best, of those twelve (12) lots, this one suits your purposes
804 best. We didn't say it was the best. You're saying it's the best.

805
806 JAY LEONARD: But that's...

807
808 LARRY O'SULLIVAN: Granted.

810 JAY LEONARD: ...okay. Fine.
811
812 LARRY O'SULLIVAN: Granted.
813
814 JAY LEONARD: Okay. Okay...
815
816 LARRY O'SULLIVAN: So what makes it unique?
817
818 JAY LEONARD: That makes it unique. That's what the State Supreme Court said in *Daniels vs. Town of Londonderry*. The fact that this is particularly suitable for high density multi-family rental property makes it
819 unique. Especially in view of the fact that the Town is obligated to deliver high density affordable housing.
820
821
822 LARRY O'SULLIVAN: You just gave me eleven (11) other places and you said that this one's unique.
823
824 JAY LEONARD: But I...
825
826 LARRY O'SULLIVAN: Pratic...
827
828 JAY LEONARD: Well...
829
830 LARRY O'SULLIVAN: Particularly suitable for multi-family. I don't mean to be argumentative...
831
832 JAY LEONARD: No, no, I appreciate that.
833
834 LARRY O'SULLIVAN: I'm trying to get to what you were calling "unique."
835
836 JAY LEONARD: Okay and I think I can answer that and...
837
838 LARRY O'SULLIVAN: Please.
839
840 JAY LEONARD: Because, again...so now we have these ten (10) parcels and they all look like they handle the
841 task. The problem is that when you apply the Town of Londonderry regulations to each of those site, they
842 can't support...they will not be appropriate and they cannot be efficiently used for high density rental housing
843 and there are reasons for it. And you'll see the checklist here. So for example, one of those
844 properties...there's a couple of them, you'll see in the topography section, there's a column of...where it says
845 "topography." Well, what that means is those sites which do not have a check, that means that the
846 topography is not appropriate for high density. So, while...
847
848 LARRY O'SULLIVAN: Of this size or of any type?
849
850 JAY LEONARD: Well...for high density, because of the steep slopes.
851
852 LARRY O'SULLIVAN: Okay. I'm trying to get to...
853
854 JAY LEONARD: Yeah.

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LARRY O'SULLIVAN: ...to an equals to equals, apples to apples...

JAY LEONARD: Yeah.

LARRY O'SULLIVAN: There's eleven (11) sites up there that can handle forty five (45) or more acres, or forty (40) acres or more...

JAY LEONARD: Well, you have to have twenty (20) acres to be permitted to do workforce housing.

LARRY O'SULLIVAN: Okay.

JAY LEONARD: So, that's one of the conditions that the Town has...

LARRY O'SULLIVAN: Forgive me.

JAY LEONARD: And we're, of course, not asking for a waiver.

LARRY O'SULLIVAN: I'm trying to get to the point where you're saying it's unique for the size of the project that you have...is this the only one that's forty (40) acres that's on that list? Is that what's gonna make it unique?

JAY LEONARD: To be honest with you, I'm not following you.

LARRY O'SULLIVAN: Okay.

JAY LEONARD: I think the uniqueness is that it's a high quality piece of land that can handle high density residential property in an efficient way. Don't forget, the other part about this is that it has to be done in a way that remains affordable. You know, some of those places may have excessive ledge, steep slopes; that's gonna put the cost out of reach. So that is a consideration because you have to look at the impact of the overall zoning scheme and the regulations as they apply to a particular property.

LARRY O'SULLIVAN: Last question about this.

JAY LEONARD: Sure.

LARRY O'SULLIVAN: Your parcels here, one (1) through eleven (100), are identified by our town and your...

JAY LEONARD: Mr. Dubay.

LARRY O'SULLIVAN: Mr. Dubay...

JAY LEONARD: Did further analysis.

LARRY O'SULLIVAN: Analyzed these eleven (11).

900
901 JAY LEONARD: Yes.

902
903 LARRY O'SULLIVAN: Okay. So there's only eleven (11) sites in Londonderry...

904
905 JAY LEONARD: Well...

906
907 LARRY O'SULLIVAN: ...that are in this category.

908
909 JAY LEONARD: That's correct.

910
911 LARRY O'SULLIVAN: Okay. Alright.

912
913 JAY LEONARD: Those are the ones that are identified by the Housing Taskforce. Yup. So...but the real point of
914 all this is that *Daniels vs. Londonderry* says that that's what you look to. If this is particularly suitable to your
915 goals, providing affordable renting housing, that is support for a variance. And that's the reason I point that
916 out. It's, you know, that's an important consideration. I think...well, let me also say in kind of a summary
917 fashion, you have a report from Colliers International, which is a group that finances institutional projects such
918 as this. And you'll see in there that a discussion of the effects of some of these restrictions on financing and
919 all. That and Mr. Thibeault's study will help support the discussion that we have here. Let me talk a little bit
920 about the...so that is the support for unnecessary hardship as it relates to the number of units in the building.
921 Don't forget, the way you support a restriction is to demonstrate a fair and substantial relationship to the
922 purpose. I understand your concerns, but we still haven't any suggestion whatsoever that by requiring sixteen
923 (16) units, you will get more affordable housing. It doesn't make sense. It doesn't...there's no relationship
924 there. That relationship, sixteen (16) units as a maximum, does not provide more housing. That's the bottom
925 line. And that's really the question before you because under the State statute, there must be a fair and
926 substantial relationship to the goal. So let's go back to phasing and growth, or let's take on phasing and
927 growth. Phasing and growth, the purposes, I've outlined them in my memo, it's basically to manage when the
928 town does not have the capacity to meet the demands and you can see that in the stated purpose of the local
929 ordinances and you can see it in the State law and in my memo, I cited both. You know, I know this is getting
930 long and I don't wanna go through that. But please take a look at that. Also, please take a look at Mr.
931 Fougere's report, because what I asked...Mr. Fougere is a planner. He does a lot of plan...he actually
932 represents a number of different towns and he does private planning and he has taken and worked with the
933 planners here in town and looked at your Master Plan, he's looked at your Capital Improvements Plan, he's
934 looked at your Sewer Master Plan, he's looked at the existing circumstances, both in terms of infrastructure
935 and in terms of planned infrastructure. He's also looked at your schools. You'll see that the demand on your
936 schools is way down. Enrollment is off twenty (20) percent or whatever, and he actually gives you the specific
937 numbers in there. You'll see that over the last several years, and I believe all the way back to 2007, there has
938 been no growth restriction because there is no growth. So there is no demand on the town. The town has the
939 capacity to deliver the services and infrastructure that it needs to deliver with the anticipated growth. Growth
940 isn't there. So the purposes of these restrictions, the phasing and the growth restrictions, there is no purpose
941 and in the State law, it actually says that if you have to review this annually, and I know your ordinance does,
942 your growth ordinance reviews annually, you can't have a continuing restriction. If there's no need for it, you
943 cannot impose it. The only way you can impose it is if the town does not have the capacity to meet the
944 demand. We are not in those circumstances. I think everyone in this room wishes we were because that

945 would mean everybody was selling their home and having a job. We are not there now. So the request that
946 I'm making here today is relief from a restriction that certainly is not accomplishing a purpose that is a
947 legitimate purpose. That is, managing the capacity to deal with demand. There is no problem with that. And
948 taking it a step further...

949
950 NEIL DUNN: No, go head, I'm sorry, I'll let you finish [indistinct].

951
952 JAY LEONARD: Well, let me just take it a step further, as the Planning staff...each year they review...

953
954 NEIL DUNN: Mm-hmm.

955
956 JAY LEONARD: There has been no restriction since 2007.

957
958 NEIL DUNN: Mm-hmm.

959
960 LARRY O'SULLIVAN: Since Granite Ridge [indistinct].

961
962 JAY LEONARD: Pardon me?

963
964 LARRY O'SULLIVAN: Since the Granite thing came up, right?

965
966 JAY LEONARD: I'm not sure. I'm not sure when it was...

967
968 LARRY O'SULLIVAN: That was the reason [indistinct].

969
970 JAY LEONARD: ...but my point is, certainly for five years, there's been no restriction because there is no
971 problem with the Town's capacity to meet demand for services.

972
973 NEIL DUNN: So at this point, the restriction is not a restriction on you. What you're after.

974
975 JAY LEONARD: That's...well that...

976
977 NEIL DUNN: And then you additionally...

978
979 JAY LEONARD: That's partially correct.

980
981 NEIL DUNN: ...additionally, you get points for workforce housing that would put you ahead of anybody else
982 who was not doing workforce housing. So there are provisions to give you bonus points or favorable
983 treatment in the process.

984
985 JAY LEONARD: Okay, so...and that's the problem. And if you look at the letter from the Colliers, which is part
986 of the exhibit, you'll see that...of course, phasing does have immediate restrictions. It doesn't make sense at
987 this point in time, nor does it make sense with this project. But it does have immediate restrictions. The
988 growth restrictions are not in place yet. The worry is that, let's just say for example that you agreed with us
989 that three year phasing is appropriate. You know, it minimizes the interference with constr...with the

990 construction process and it's actually to everybody's advantage. It accomplishes the goals of some financial
991 viability, economic viability, because it shortens construction time, it saves on site, and it allows for economies
992 of scale to actually...So let's say that you agree with the three years but don't give us a waiver on the growth
993 restriction and two years from now, the growth restriction is put in place. We're not gonna be able to get
994 financing because a bank is not gonna allow a project like this to be construct...this is a thirty plus million
995 dollar project. The way it starts out is you have construction financing and then you go into a permanent
996 financing. Banks need certainty. Financial institutions rely on certainty. The more you go out in time, the
997 bigger the problem. There's a problem of potential construction costs going up. There's a problem with
998 interest rate changes and all those have a very significant impact on the cost of the project and therefore, the
999 economic viability of the project from the standpoint of delivering an affordable rental unit within the rules.
000 An affordable rental unit, we have to...to meet that requirement here in Londonderry, that means that Mr.
001 Monahan had to deliver for rent a rental unit at eleven hundred (1,100) dollars a month because you're not
002 allowed to include utilities or anything like that. So the effective price is eleven hundred (1,100) dollars a
003 month. Now, as you see these numbers, and they're in your packet, it doesn't work unless you can do it in a
004 compressed time, we can do it in three years, with twenty four (24) units instead of sixteen (16), and with fifty
005 (50) percent restricted instead of seventy five (75). So let me...well, I'm not sure if that answered your
006 question, sir.

007
008 NEIL DUNN: Well, I guess I'm just...

009
010 LARRY O'SULLIVAN: I didn't think you asked it yet.

011
012 NEIL DUNN: Well, no, my point was that he really doesn't fall into the...but you're referring more to the
013 phasing in 1.3.3.3...

014
015 JAY LEONARD: Yeah, that is a restriction right now.

016
017 NEIL DUNN: That's the current restriction you're after.

018
019 JAY LEONARD: Yes.

020
021 NEIL DUNN: And in...so, you want two hundred...

022
023 JAY LEONARD: We need both, though, because I need to get that certainty.

024
025 NEIL DUNN: And we're talking to point five on -2 case right now, correct? The phasing one.

026
027 JAY LEONARD: Yes.

028
029 NEIL DUNN: Okay, that's why I'm just trying to...

030
031 JAY LEONARD: Okay, no. Appreciate it.

032
033 NEIL DUNN: You're right, the hardship is the hardest one for all of these.
034

035 JAY LEONARD: Yes.
036
037 NEIL DUNN: A lot of the other stuff's gonna fall. So you would be allowed technically forty eight (48) units a
038 year and you want...
039
040 JAY LEONARD: It's no relief. We would be allowed forty eight (48) units a year...
041
042 NEIL DUNN: And that's why it would take five years...
043
044 JAY LEONARD: Right.
045
046 NEIL DUNN: ...to get your two forty (240).
047
048 JAY LEONARD: Right. And we need to be able to compress this in three years. So let's just talk a minute about
049 what that really does, though, and you'll see the economics in there, both Mr. Thibeault, Colliers Bank
050 and...talk about the economics, but I think there's also some other associated benefits with compressing the
051 construction. The site won't be disturbed for as long. And that's an important thing. Economies of scale;
052 you're able to take advantage of economies of scale when construction occurs together. The idea of having
053 twenty four (24) units in a building as opposed to sixteen (16) also takes advantage of economies of scale and
054 also minimizes the site construction costs. So those are two very important factors in this consideration. I
055 mentioned that the schools are fine. Mr. Fougere, as an expert in town planning and also as an expert in
056 workforce housing, actually came out and concluded that the town has no worries, their present
057 circumstances with municipal services. They are in good shape. You have planned appropriately. This
058 particular project will not alter your demands for infrastructure. It won't cause any new fire, police, school
059 demands. The school demands on a project like this are very minimal. Actually, municipal services are very
060 minimal. But the developer will put all utilities on site, so there's no real cost to the town in any sense and all
061 of the infrastructure is already in place. No demand for services. Let's take a just a minute here and talk
062 about the seventy five (75) percent restriction. Again, the primary consequence of that restriction is economic
063 and Mr. Thibeault will talk about it. He came to the conclusion that there is no way that this can happen with
064 seventy five (75) percent restricted units. He came to the conclusion that fifty (50) percent would work. It's
065 tight, but it'll work and that's what we're asking for. So we're not asking for great relief. Mr. Fougere did a
066 study...or looked into some of the other towns in the area, what do they typically require? I think I can
067 generally say that they're...almost every town is fifty (50) percent or less. Most towns are twenty five (25) or
068 thirty (30) percent on what they require their mix to be, workforce housing versus market units. The reason
069 for that is sometimes workforce units are not profitable. Sometimes it costs you more to build it than you can
070 make while you rent it, so the theory in all of this is that you can make enough in the market rates to cover
071 whatever it might cost to provide the affordable ones. But I think there's some other things to consider.
072 Again, please look at the purpose because the purpose of this...the overriding purpose, both locally and state
073 wide, is to provide housing, and here we are talking about a restriction that actually prevents it. If you require
074 seventy five (75) percent, it's not gonna happen. So I understand that the goal is to get as many as you can,
075 but here we have a situation where Mr. Monahan is talking about delivering one hundred twenty (120)
076 affordable rental units. If you require him to deliver whatever seventy five (75) percent is...a hundred eighty
077 (180), then he can't do it in an economically viable way. It doesn't work without subsidies and we're not
078 looking for subsidies. So that's the primary comment. The other comment that I'd like to make on this is keep
079 in mind that workforce housing is restrictive in two fashions. It restricts the rent so that the rent can only

080 be...and there's a mathematical calculation. Right now it's about eleven hundred (1,100) dollars a month. It's
081 thirty (30) percent of the median income of households. Actually, thirty (30) percent of sixty (60) percent of
082 the median income of three (3) family households in the county. So there's a little bit of a calculation but the
083 short story is it's eleven hundred (1,100) dollars a month. That's the rent restriction. But the other thing that
084 workforce housing does and one of the things that the local ordinance does to assure that a developer who
085 represents, is gonna do workforce housing is actually doing it, is they require the owner, once this thing is
086 built, the regulations in the Town of Londonderry require that we deliver to you, to the town, demonstration
087 that the people who occupy these are those people with moderate incomes; sixty (60) percent of the median.
088 Well, that's fine, but think about the impact of that. Basically, what that means is all those renters out there,
089 we don't get to just rent these units at a low price to whomever might need or want. We have to make sure
090 that the population is less than half the population. Now, I understand that goal and we're not asking for a
091 waiver on that. I just want you to understand and think about what an impact that has when you say "restrict
092 seventy five (75) percent. Now, all of a sudden, all these...seventy five (75) percent of the units in these
093 buildings can only be rented to a very...basically, sixty (60) percent of half. So it's thirty (30) or forty (40)
094 percent of the population. So that is what Mr. Thibeault studied when he talked about the economic viability
095 and the impact of this particular restriction on this project. Again, I ask you to think about the Daniels case
096 because I think that supports the whole notion of unnecessary hardship in the context of workforce housing
097 because none of these regulations, none of these restrictions have a fair and substantial relationship to their
098 purpose and they all prevent a reasonable use, which this town has designated multi-family rental housing.
099

100 NEIL DUNN: I haven't read the economic analysis, but these are all two (2) bedroom, three (3) bedroom?
101 What are your units?
102

103 JAY LEONARD: That...it's...right now we're talking about two (2) bedrooms. I would say that the mix may
104 come up at the planning process...
105

106 NEIL DUNN: Right, but in order...part of the qualification process, it has to be a minimum of two (2)
107 bedrooms...
108

109 JAY LEONARD: Yes.
110

111 NEIL DUNN: ...for the workforce, or you can have one (1) bedrooms...
112

113 JAY LEONARD: No.
114

115 NEIL DUNN: ...or you can have three (3) bedrooms?
116

117 JAY LEONARD: Yeah...
118

119 NEIL DUNN: Again, we haven't had a chance to read through all this, so...
120

121 JAY LEONARD: No, no I understand and I appreciate the question.
122

123 NEIL DUNN: ...I'm just trying to get some background.

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JAY LEONARD: So the statutory requirement is that in order to qualify as workforce housing, you must have a minimum of fifty (50) percent or more with two (2) bedrooms. And we will definitely meet that. The mix is usually seventy (70) to thirty (30) percent, thirty (30) percent being one (1) bedroom. That final determination has not been made because we're still designing buildings. It'll depend a little bit on the design of the building and things like that. There will be a mix. It'll be learning toward the two (2) bedroom.

NEIL DUNN: So if you had seventy five (75) percent requirement, then seventy five (75) percent of the units would have to be two (2) bedrooms?

JAY LEONARD: Well, the mix of...

NEIL DUNN: I mean, based on our seventy five (75) percent. Is that correct?

JAY LEONARD: No. No.

RICHARD CANUEL: No, Neil, that's fifty one (51) percent of all the units in development have to be at least two (2) bedrooms.

JAY LEONARD: And then...

RICHARD CANUEL: [indistinct].

NEIL DUNN: Okay, so some of the one (1) bedrooms could qualify for that thirty (30) percent of sixty (60) percent...

JAY LEONARD: Workforce housing.

NEIL DUNN: ...which would be a lower rent, I would imagine.

RICHARD CANUEL: Sure. Right.

JAY LEONARD: Well, it's still the same formula, actually.

NEIL DUNN: Right, that'd be eleven hundred (1,100) dollars...

JAY LEONARD: Yeah.

NEIL DUNN: But one (1) bedroom is usually cheaper than a two (2) bedroom?

JAY LEONARD: To build, yes.

NEIL DUNN: Well, to rent. I mean to rent.

JAY LEONARD: Yeah. Yeah.

169

170 NEIL DUNN: If I was renting it.

171

172 JAY LEONARD: Well, yes, but don't forget that it may very well be that the market rate for one (1) is over
173 eleven hundred (1,100) dollars.

174

175 NEIL DUNN: I know...

176

177 JAY LEONARD: Yeah.

178

179 NEIL DUNN: ...and we haven't seen that...

180

181 JAY LEONARD: No.

182

183 NEIL DUNN: ...and I'm sure we'll go there, believe me.

184

185 JAY LEONARD: And...Right. And you...there is information for you on that.

186

187 LARRY O'SULLIVAN: Did you find it, by the way?

188

189 JAY LEONARD: I think the other...

190

191 LARRY O'SULLIVAN: [indistinct].

192

193 JAY LEONARD: The other thing I wanna make clear as part of your question. The way it works is, let's just
194 assume some numbers for discussion here.

195

196 NEIL DUNN: Sure, yeah. [Indistinct].

197

198 JAY LEONARD: If there were seventy (70) percent two (2) bedrooms and thirty (30) percent one (1) bedrooms
199 and the requirement is that we have fifty (50) percent workforce housing, then the mix of workforce housing
200 units will be that same seventy (70)/thirty (30). You see what I'm saying? So seventy (70) percent of the
201 whole is also gonna be the same mix for workforce housing. So the workforce housing half would still be
202 seventy (70) percent two's and...it has to be the same mix. Thirty (30) percent singles. Okay? So that's the
203 discussion on hardship. The bottom line is that Daniels case makes it very clear that hardship is appropriate in
204 this case because of the nature of this particular property and the particular problem that the Town of
205 Londonderry has identified. I'll take just a minute, I think the public interest, spirit of the ordinance, the not
206 being contrary to public interest, and the substantial justice, those are all similar issues. The bottom line is it's
207 a stated purpose to accomplish affordable housing. Certainly, if you grant this relief and it accomplishes
208 affordable housing, then we will have accomplished the spirit of the ordinance. We will certainly not be in
209 contrary...we will not be contrary to the public interest and we will have demonstrated substantial justice
210 because all of those are what the goals are. That's what we're trying to do. The difficulty is in applying all
211 these detailed restrictions to particular pieces of property and particular projects. Similarly, there's no threat
212 to health, safety, and welfare in any of these circumstances. If you waive the phasing, there's no threat to
213 health, safety, or welfare. In fact, it might support a better construction effort. The same thing is true...and

214 the only other thing I'd like to point out, generally speaking, the substantial justice discussion usually asks the
215 Board to balance the harm imposed by a particular restriction as compared to the benefit gained by the
216 general public. Here we're talking about phasing over three (3) years. We're talking about a building of
217 twenty four (24) units instead of sixteen (16) and we're talking about reducing seventy five (75) percent to
218 fifty (50) percent, all in an effort to make this economically viable. That...to require those restrictions and to
219 eliminate this project is a huge loss. So the benefit of requiring those things really doesn't...it doesn't get you
220 any place. It doesn't help the town in any way, but there's a huge loss if you lose the project. There is also
221 this last requirement about you can't...no diminution of value in surrounding properties. I think that's
222 probably pretty straight forward. These, of course, are not variances for use. They're not variances that allow
223 new density. The multi-family workforce rental housing is permitted. So that's not the question. That's
224 not...the project...it's not a question of whether this project will have an impact. It's a question of whether the
225 variances will have an impact. Will it be harmful to surrounding values if you phase over three (3) years
226 instead of five (5). I think probably the opposite. It'll help surrounding values because it gets it over with. The
227 same thing is true on the other restrictions as well. They're not harmful to surrounding values, especially in
228 view of we're gonna go through the planning process and actually do what the Planning Board has asked in
229 terms of screening, in terms of location of buildings back in the forested area, open fields, maintaining
230 buffers, et cetera. So we are going to go through that process. So we've talked a lot about workforce housing.
231 It's all been in the context of it being that umbrella that I call it, only because that's what the Supreme Court
232 called it. But workforce housing also has its own scheme for towns to provide relief from restrictions. And
233 that's RSA 674:58 through 61. And I've talked in a general sense what that is. It's a little...it's different than
234 the variance scheme. So if you want, you could grant the variance and we don't have to talk about workforce
235 housing anymore. But if you want to...if you feel uncomfortable with the variance or need more information,
236 the workforce housing scheme is more about an exchange of information and basically what it allows you to
237 do is ask us for information, primarily focusing on the impact of these restrictions on the economic viability of
238 them. And we are asking for relief. You may decide that it's not appropriate that we can do it economically
239 viable way [sic] and then deny us. Our remedy would be to go to court and there is a specific court process
240 that we could go to. And the only reason I bring that up is that's kind of what this...the mandate means. If we
241 did not agree on what was appropriate and what was necessary for economically viable, a court would review
242 it and they basically look at exactly what I've been telling you. The test for a court is "does the condition or
243 restriction have a substantial adverse effect on the viability of the project?" So that's kind of the overriding
244 principle. We have to make sure that there's a way to generate affordable housing in an economically viable
245 way. And that's what the workforce housing statute says. That's what the Town of Londonderry has
246 acknowledged. And that's really where we are. There are two (2) separate paths to get there. One is the
247 variance path and one is the court path. Of course, we're not interested in the court path. We would like to
248 work with you. Let me also say I know you got a lot of information. We expect there to be an exchange. I'm
249 not asking for you to decide tonight. I'm assuming that that wasn't...

250
251 MATT NEUMAN: Yeah, no, I mean at this point...

252
253 JAY LEONARD: No, no.

254
255 MATT NEUMAN: ...and the amount of information that you've thrown at us...

256
257 JAY LEONARD: No, and I want you to know that we don't expect that. We know this is a process.
258

259 MATT NEUMAN: Mm-hmm.
260
261 JAY LEONARD: I want to work with you and I think we can answer your questions and I think we can end up
262 with a workforce housing rental project that is one that the town is happy with and proud of on a site that's
263 very appropriate.
264
265 MATT NEUMAN: And at this point, I think it is probably...
266
267 NEIL DUNN: One question...
268
269 MATT NEUMAN: Okay.
270
271 NEIL DUNN: I know you wanna take a break, but the step from sixteen (16) to twenty (20) was a conditional
272 use thing?
273
274 JAY LEONARD: Yes.
275
276 NEIL DUNN: And in our workforce housing, Inclusionary Housing Section 2.3.3, and then if you go to 2.3.3.3.2,
277 it talks about the Planning Board and conditional use permit and you're only recourse is Superior Court and
278 the ZBA cannot go above that. Should we be hearing that one? 'Cause we're really stepping right through
279 that.
280
281 RICHARD CANUEL: I was waiting for somebody to bring up that question. In my take on looking at the
282 ordinance, there's a two step process. Number one, when you talk about the density allowed for multi-family
283 dwellings and workforce housing, you start off with sixteen (16) which is permitted by right by the ordinance.
284 The Planning Board is granted authority to an increase to twenty (20) by issuance of a conditional use permit.
285 However, as our ordinance is drafted to comply with the provisions of the statute, the statute says that the
286 ordinance cannot be drafted in such a way that makes workforce housing, and we've heard this a number of
287 times, economically unviable. So there've been provisions drafted in our ordinance which allows the Planning
288 Board to grant relief of the dimensional requirement. Part of those dimensional requirements is the density.
289 So my take on this is the purview to increase the density for workforce housing lies with the Planning Board
290 and that the applicant needs to demonstrate to the Planning Board the economic viability on how that works
291 to allow the increase in the number of units. So I don't think the Zoning Board even has jurisdiction to grant a
292 variance for any of those provisions because those provision are granted to the Planning Board.
293
294 NEIL DUNN: Well, I mean, that's basically...
295
296 LARRY O'SULLIVAN: Why are we here then?
297
298 JAY LEONARD: So let me respond to that if I may.
299
300 NEIL DUNN: So...before you go there, if I may, Jay, do you feel we have jurisdiction on any of the cases or just
301 the one that's dealing with the conditional use and the...excuse me a minute...the dimensional or whatever we
302 wanna call that. So we would have...well, the phasing, would we have jurisdiction?
303

304 RICHARD CANUEL: Okay, I believe you do.
305
306 NEIL DUNN: Okay. And then so the...reduction in the number...
307
308 RICHARD CANUEL: Then the other issue of the seventy five (75) percent requirement.
309
310 MATT NEUMAN: Mmm.
311
312 LARRY O'SULLIVAN: What was that? We have the authority?
313
314 RICHARD CANUEL: I believe you do. Because you look at those provisions that state that workforce housing
315 has to include those number of units, seventy five (75) percent of those have to be workforce housing. And
316 that's under the provisions, the criteria for the Planning Board to grant a conditional use permit. It doesn't
317 give the Board, the Planning Board now, the authority to waive those requirements, so I think in that
318 particular instance, the Board does have purview to increase that from seventy five (75) percent to the fifty
319 (50) percent. Or decrease that, I should say.
320
321 NEIL DUNN: After a ruling by the Planning Board or prior to?
322
323 RICHARD CANUEL: Prior to. Because you look at those provisions of the ordinance, Section 2.3.3.7, the
324 standards for the requirements for multi-family workforce housing, and it says the criteria for the Planning
325 Board to grant a conditional use permit, the seventy five (75) percent is one of those criteria.
326
327 NEIL DUNN: So we just implemented this whole thing with the workforce and this section of our ordinance
328 when?
329
330 RICHARD CANUEL: When did this go into effect? Goodness...
331
332 JAY LEONARD: Two thousand ten (2010).
333
334 LARRY O'SULLIVAN: Two thousand and ten (2010).
335
336 RICHARD CANUEL: Yeah. Yeah, it was very recent.
337
338 NEIL DUNN: Two years ago?
339
340 RICHARD CANUEL: Yeah.
341
342 NEIL DUNN: And we're that far off, if we're basing it on what we're hearing?
343
344 LARRY O'SULLIVAN: No.
345
346 RICHARD CANUEL: No.
347

348 NEIL DUNN: Well, no, if we set it up to comply with the RSA and with the seventy five (75) percent and all
349 that...

350
351 RICHARD CANUEL: Mm-hmm.

352
353 NEIL DUNN: ...and it's not gonna work economically anywhere in Londonderry because of the nature of
354 Londonderry perhaps...I don't know, I'm just saying it seems like we're questioning this whole ordinance that
355 was put in two years ago, which....Okay, I'm just trying to get a better read on it. It's a fairly new addition and
356 we're looking...we're being attacked on all sides on it is all my concern is.

357
358 LARRY O'SULLIVAN: But we had another one, 2008...

359
360 NEIL DUNN: Yup.

361
362 LARRY O'SULLIVAN: ...I think there was one in 2004. I think there was another one. All about workforce
363 housing. I mean, I have a lot of the hard copies still.

364
365 NEIL DUNN: Right, but this was where...

366
367 LARRY O'SULLIVAN: But this is...

368
369 NEIL DUNN: ...the meat of it, using the State...

370
371 LARRY O'SULLIVAN: It's not significantly different, except for the RSAs. The RSAs are two years old.

372
373 NEIL DUNN: Right, well the RSAs give it a little bit more strength. So then we implement it referencing RSAs
374 and it seems not to be appropriate or strong enough is, I guess, my point.

375
376 JAY LEONARD: Well, if I may...

377
378 NEIL DUNN: I mean, it has me wondering that maybe we obviously need to...

379
380 JAY LEONARD: If I could just respond to that.

381
382 NEIL DUNN: ...get updated.

383
384 JAY LEONARD: The restrictions that we're asking for relief from are minor. These are...you have a very
385 organized process for Planning Board review and I would very much say that it's a thoughtful planning
386 exercise. The relief that we're asking for is so...is just completely inconsequential to the process. We're
387 only...we're not asking about density and I have to disagree, it's not a density issue. It's in one building. And
388 then the other two are just phasing, discussion on how long a construction period is appropriate, and the
389 percentage of the mix. But those are not the essence of your workforce housing rules. The essence are very
390 organized and thoughtful. You have...I mean, there's a whole series of requirements that we're not asking for
391 relief on. We will meet those in the planning process. The other thing that I would say, on this...the question
392 of the number of residential units in a building, under 2.3.3.9, that's where you get your requirements, and

393 later on, you will see that there is a process for the Planning Board to review density...let's see where that is
394 here...There's a...the ordinance itself allows...okay, there it is, 2.3.3.7.4.5 is the process...no, I'm sorry. Let me
395 retract that and get back to...so 2.3.3.7.4 is where dimensional relief is afforded by the Planning Board. But
396 the dimensional relief...it talks about setback, we're not asking for that; density, we're not asking for that;
397 green space, we're not asking for that; frontage and parking. So then as you go further through the ordinance,
398 it says under 2.3.3.7.4.6 on page forty four (44) of your ordinance, it says "additional criteria to increase the
399 number of units." So that's within the context of that initial statement. This is the only way that the Planning
400 Board has authority to increase the number. They do not have the authority to waive...to get to twenty four
401 (24) units and that's why we're here today. It's a zoning regulation that says sixteen (16), perhaps waived to
402 twenty four (24), but in no case beyond that, at least until you go to the Zoning Board. So that's why we're
403 here.

404
405 MATT NEUMAN: No more than twenty (20).

406
407 JAY HOOLEY: Twenty (20) [indistinct].

408
409 JAY LEONARD: I'm sorry, no more than twenty (20). Yeah. It's a long night and I know everybody ought
410 to...But...

411
412 NEIL DUNN: Okay. Well, I...

413
414 JAY LEONARD: But that's why we're here. We, you know, we're happy to...we intend to go through the
415 process that is required.

416
417 MATT NEUMAN: I'm just wondering if it would be appropriate to get guidance from the Town's attorney...

418
419 NEIL DUNN: Absolutely. Absolutely

420
421 MATT NEUMAN: ...on this matter before we...

422
423 JAY LEONARD: Yes, absolutely.

424
425 LARRY O'SULLIVAN: And staff.

426
427 JAY LEONARD: I don't have a problem with that and we would be happy to work with them. If I may, just by
428 way of a suggestion, and I don't...I just want you to understand how much we are willing and wanna work with
429 you on this, I'd be happy...or I would ask you to consider perhaps post...or...

430
431 LARRY O'SULLIVAN: Continuing?

432
433 JAY LEONARD: Continuing this discussion at a next meeting where we have some time and I understand that
434 you meet the first Thursday of the month for sometimes. Now, I don't know if this is an appropriate time for
435 that. But I can...

436
437 LARRY O'SULLIVAN: [indistinct] Wednesday.

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JAY LEONARD: That'd be November one or two. The reason I ask that is I would schedule whatever experts you would like to talk to. You would have a chance to see some of those reports. I think we can answer your questions and so anyway, I toss that our just for discussion.

MATT NEUMAN: Yeah, I mean, at this point of the evening, and again, with all the information that has been given to us, I think a continuance is a...

JIM SMITH: Could I ask a question before...? Do you have a dimension in mind on what the size of these buildings would be?

JAY LEONARD: About nine thousand four hundred (9,400) square foot footprint. So...and three (3) stories.

JIM SMITH: So if we could give a variance on the number of units, would a restriction of that dimension be appropriate and...?

JAY LEONARD: Yes, now let me qualify that a little bit. We have not actually specifically designed the building and we haven't on purpose for a whole bunch of reasons, not the least of which is there is some...the Planning Board's gonna want like to see elevations and things like that, so you need to have a little bit flexibility, but if you said "under ten thousand (10,000) feet, that would work. We can represent to you that right now, we have a footprint that is nine thousand four hundred some odd feet. That's where we're headed. So certainly you could limit it, yes. And I would also say that we're happy to limit...the Planning Board did not want buildings more than three (3) stories, so that's why we're not doing more than three (3) stories. We're happy to accept that.

MATT NEUMAN: Alright, so I think at this point, we need to talk about the continuance.

JIM SMITH: Is there any specific information we want?

NEIL DUNN: Well, I don't know because we haven't looked in the economic report or the analysis, but I believe...what number, is there a number somewhere that says "Londonderry, you have this population and this is how much workforce housing you need?"

JAY LEONARD: Actually, your Housing Taskforce talked about those kinds of things. That report is attached to my memo. I think that the...well, the two numbers that I'm remembering here are that basically, what the Taskforce found was that through the last economic boom, we'll say, high end housing and ownership...there was a very strong demand and it was very profitable. So the direct result of that strong demand and profitability was that most housing efforts were toward that end.

NEIL DUNN: Mm-hmm.

JAY LEONARD: At the same time, some formerly rental properties became condominiums and were sold. So that the demand for the lower and moderate rental units did not occur, so...and actually went unmet for years. There were nine hundred some odd rental units in 2000. I think there are the same number now. The

482 Housing Taskforce put in a number and said that the target is thirty four (34) percent of new units. You're
483 nowhere near that. The biggest shortfall is rental.

484
485 NEIL DUNN: But the Taskforce is not an RSA. The RSA says "reasonable," and a component has to be rental
486 and a component can be single family and we cannot exclude single family but we don't have to let rental
487 everywhere, so I'm looking for 'what is the mix?' Is there...what is reasonable? Did you try to define
488 "reasonable"?

489
490 JAY LEONARD: The...

491
492 NEIL DUNN: What the price points were so that we could get a base of what we do have. I mean, for all we
493 know, you could be overselling the need for...

494
495 JAY LEONARD: Yeah, I'm not because your Taskforce said that I'm not but I encourage you to read and...

496
497 NEIL DUNN: But the workforce has died in...probably in the last two...well, not died, I mean it has dropped...

498
499 JAY LEONARD: One of the biggest problems of New Hampshire is workforce housing. United Way has
500 identified it, the State has identified, towns have identified it and the reason is that we can't...the people who
501 live here now and have children, their children can't have a home because there's no rental and there's no
502 ownership in that thing.

503
504 NEIL DUNN: I guess the reason I'm going there is because if next month or whenever the next meeting is...

505
506 JAY LEONARD: Yeah.

507
508 NEIL DUNN: ...to Mr. Smith's point, we're gonna be looking for more data and I'm just asking. I don't know if
509 it's in that package...

510
511 JAY LEONARD: Yeah it is, but I hear your point.

512
513 NEIL DUNN: If it's not supplied in that package, then that's something I'm probably gonna want better
514 clarification on, not that the rest of the Board will. I don't know.

515
516 JAY LEONARD: Both Mr. Fougere and....

517
518 NEIL DUNN: But...so instead of making it go like the cell tower for about eight months, two in the morning...

519
520 JAY LEONARD: I hear you. So, we're gonna try to be...

521
522 NEIL DUNN: ...can we try to be a little proactive with data.

523
524 JAY LEONARD: We will get you some...we will get you some more information on that. Mark Fougere
525 is...actually has a lot of information on that. New Hampshire Housing has a lot of information. There's a guide

526 book out by New Hampshire Housing that actually is a guide for municipalities. I will provide that to you. It's
527 very helpful. It'll help you look at...pardon me?
528
529 JIM SMITH: Could we get any of that information before the next meeting?
530
531 JAY LEONARD: Absolutely. I will...well, if you...so with the guide book, I can get you that tomorrow. The
532 information on...to answer your question, Mr. Dunn, the...what the State talks about is each community
533 providing their fair share of a diversity of housing. So it's a fair share.
534
535 NEIL DUNN: Mm-hmm.
536
537 JAY LEONARD: And what that means is different to everybody but in a general sense, every town has to have
538 all of these different kinds of housing, rental housing being the most difficult right now. So I'll give you some
539 information on fair share. That will take a little longer to develop because I need to rely on others and I will
540 get you the guide book for municipalities on workforce housing.
541
542 NEIL DUNN: And do we have to supply the workforce housing for Boston workers>
543
544 JAY LEONARD: No, no. No.
545
546 NEIL DUNN: Well, no, I mean, you know, it's a very cloudy subject...
547
548 JAY LEONARD: No, actually what it is is you as a part of the...
549
550 NEIL DUNN: Sothern New Hampshire region...
551
552 JAY LEONARD: Southern New Hampshire area and Rockingham County in particular have to provide some.
553
554 NEIL DUNN: So it's a bigger picture. So if...
555
556 JAY LEONARD: It's a community...
557
558 NEIL DUNN: ...Derry was heavy in it right now and we were light, it's still like the region, the RHMA or
559 whatever the heck their talking...
560
561 JAY LEONARD: Yeah, but it's the community that has to provide and the way it...the conceptual sense is that
562 communities who rely on State authority for zoning...
563
564 NEIL DUNN: Mm-hmm.
565
566 JAY LEONARD: ...that State authority says that it must be for the benefit, health, safety, and welfare, of the
567 community.
568
569 NEIL DUNN: Okay.
570

571 JAY LEONARD: And so the State has taken that a step further and interpreted that to mean that in order to
572 use zoning for the general welfare of the community, that includes making it possible for affordable housing.
573
574 NEIL DUNN: Well, no...
575
576 JAY LEONARD: And that's all I...
577
578 NEIL DUNN: Yeah, and I'm just trying to get my handle on what the community is.
579
580 JAY LEONARD: Yeah.
581
582 NEIL DUNN: Is it the southern New Hampshire, is it...?
583
584 JAY LEONARD: Yeah. So you have to be part of the whole community effort in your housing diversity. So I'm
585 gonna deliver a guide and I'm gonna get information on fair share...
586
587 LARRY O'SULLIVAN: Will you do that electronically to Jaye so she can distribute it? 'Cause, I mean, we don't
588 have enough to read right now...
589
590 JAY LEONARD: Yeah, I will...we'll get that electronically. I will work with Jaye. She's been very helpful and I
591 appreciate it. She's terrific.
592
593 LARRY O'SULLIVAN: Are they gonna need a backpack to go with...?
594
595 JAY LEONARD: Well, keep in mind that the...I gave you two copies, basically, of everything. You have it
596 electronically and physically. So...don't read it twice. Although it is good.
597
598 MATT NEUMAN: Now as far as the date for the...what would be the date for the...?
599
600 LARRY O'SULLIVAN: [indistinct] meeting? That special meeting.
601
602 JAYE TROTTIER: November fifteenth is the November meeting.
603
604 MATT NEUMAN: Would we meet before then, though, if we're continuing this?
605
606 JAYE TROTTIER: That's up to you. [Indistinct].
607
608 NEIL DUNN: Well, how quickly are you gonna hear back from the attorney on our authority...?
609
610 JAYE TROTTIER: I think it would be better to wait.
611
612 MATT NEUMAN: Yeah, to the fifteenth? How is the fifteenth?
613
614 JAYE TROTTIER: Only one that I know of so far.
615

616 MATT NEUMAN: Okay. Alright, so is there a motion to continue?
617

618 LARRY O'SULLIVAN: No, I didn't hear anything from anybody but Jaye, so I just wanted to hear the gentlemen
619 over there. Would you mind introducing yourself, sir?
620

621 TOM MONAHAN: Hi. I'm Tom Monahan. I live in Nashua. I've lived in Nashua for a good chunk of my life.
622 I've developed hundreds, maybe thousands of units in the southern New Hampshire area. I was the
623 landowner and the co-developer for the Merrimack Premium Outlets. I own some industrial land in Exeter
624 that we're presently developing. I'm a Commissioner for the Nashua Housing Authority, have been for some
625 thirty (30) years. Am doing the first workforce housing development ever in Bedford. It's a eighty three (83)
626 unit development on four (4) buildable acres. One (1) building of which we went to the town...where
627 residential wasn't even allowed, and they...Planning Board waived everything in the first night. They waived
628 building a residential unit in a...actually, it was in the performance zone, which, again, residential wasn't
629 allowed. They waived...their restriction on workforce housing was thirty three (33) percent. They waived it
630 down to thirty (30) percent. And they waived a substantial amount of impact fees. And this was all done in
631 one night, which, I've owned Hawthorne Drive, I don't know if you familiar with it, the spine clinic and the
632 hotel and the church and JP...Jefferson on the Merrimack, those were all my developments. And this was the
633 last lot that we owned down there. When we developed the two hundred and forty (240) apartments,
634 ironically, ten (10) unit buildings, twenty four (24) unit buildings, ten (10) twenty four (24) unit buildings, but
635 this was the last parcel that we had and they came to me and said "we'd like you to do some workforce
636 housing." So this is the first one that's been proposed, really, in southern New Hampshire and we expect to
637 have...to take occupancy in the next thirty days and we've had a huge amount of workforce housing folks...
638

639 LARRY O'SULLIVAN: Applications?
640

641 TOM MONAHAN: ...apply and it's really encouraging. And, you know, I've built a lot of houses and a lot of
642 units in southern New Hampshire and I'm building...if you were to look at the numbers, and this was what I
643 said to the Town of Bedford when we had to produce the numbers, you'd think I'm crazy because all I'm
644 looking to do is create the workforce housing, make the commitment for forty (40) years, and at some point in
645 time, you know, the debt's gonna get amortized, the rent's are gonna go up, and then you, in five years down
646 the road, it's gonna turn into a nice investment. But, you know, as you look at it, when you're at home
647 reviewing everything, you'll see, you're gonna say "what the heck is this guy doing it for?" But I'm in it for the
648 long term and it's something that, you know, eventually will be my kids and hopefully by then it'll be a nice
649 positive cash flow, but it certainly isn't out of the gate. And I look forward to dealing with the Town of
650 Londonderry and when I was shown this parcel of land, I just...it's really nice and, you know, we...again, we
651 met with the Planning Board and I think we took into...into, you know, effect what...a lot of the
652 recommendations and also one thing Jay didn't mention, but there are a lot of...there are single family homes
653 on Perkins Road and they too spoke that night and I really do believe that we took into effect a lot of the
654 requests that they made, too, so I look, you know, I look forward, hopefully going forward, working with the
655 neighbors and all the Boards. Thank you.
656

657 MATT NEUMAN: Thank you. Alright, is there a motion?
658

659 NEIL DUNN: I would like to make a motion to continue cases 10/17/2012-2, case 10/17/2012-3, and case
660 10/17/2012-4 'til out next scheduled meeting of November 15th, 2012.

661
662 LARRY O'SULLIVAN: Second.
663
664 MATT NEUMAN: I have a motion and a second. All those in favor?
665
666 JIM SMITH: Aye.
667
668 MATT NEUMAN: Aye.
669
670 LARRY O'SULLIVAN: Aye.
671
672 JAY HOOLEY: Aye.
673
674 NEIL DUNN: Aye.
675
676 MATT NEUMAN: Opposed?
677
678 JIM SMITH: I'd like to make a motion we adjourn.
679
680 NEIL DUNN: Hold it. Do we need to talk about what we're gonna send to the attorney or is it...you're doing it
681 in a general sense or how's...?
682
683 MATT NEUMAN: Yeah, I don't...
684
685 JAY LEONARD: If it helps the Board, we actually delivered...Tom...who was it that asked? One of the Board
686 of...one of the members of the Selectmen asked Mr. Monahan to deliver that package that I put together, in
687 other words, my memo and the exhibits, to your Town Counsel. So he has most of it, if not all. I think the one
688 thing he does not have is the Dubai memo.
689
690 MATT NEUMAN: Speak into the...I'm sorry.
691
692 JAY LEONARD: I believe the one thing he does not have is the Dubai memo.
693
694 MATT NEUMAN: Excuse me, folks? Folks, we're still in the meeting. If everybody could just kind of keep it
695 down, please. Thank you.
696
697 UNIDENTIFIED: Sorry, we waited all day to talk and [indistinct] so...
698
699 UNIDENTIFIED: We didn't get a chance...
700
701 UNIDENTIFIED: I think there should be consideration for the fact that everybody's been sat here for four
702 hours when...
703
704 MATT NEUMAN: And we've all sat here as well, sir and we're...
705

706 UNIDENTIFIED: Well, you're elected...
707
708 MATT NEUMAN: No, actually, we're not. We volunteer. So, we're trying to take everything into
709 consideration.
710
711 UNIDENTIFIED: [Indistinct] talking as well, and we would have liked to have had the opportunity to put public...
712
713 MATT NEUMAN: And sir, you will. And we're trying to hear from the applicant.
714
715 UNIDENTIFIED: I thought we heard from the applicant.
716
717 MATT NEUMAN: No, we're still trying to...
718
719 JIM BUTLER (?): We're close.
720
721 MATT NEUMAN: ...to everything together. And I appreciate all of your patience.
722
723 UNIDENTIFIED: So in November we can talk? Is that what we're getting at?
724
725 UNIDENTIFIED: Are we gonna vote on this?
726
727 UNIDENTIFIED: That's what I'm asking, 'cause I'm gonna leave if that's the case [indistinct].
728
729 UNIDENTIFIED: All they're doing is [indistinct].
730
731 MATT NEUMAN: If you wanna go ahead.
732
733 JAY LEONARD: To be honest with you, I forgot the question. Oh yes, I'm sorry. Yeah, we delivered the packet
734 to Town Counsel. I think the one thing that was not in that packet that was delivered was the Dubai memo,
735 'cause I hadn't received it yet, so perhaps you'd give him that, but other than that, I think he has everything.
736
737 LARRY O'SULLIVAN: Can you do that, Jaye? You can send it over to the...
738
739 NEIL DUNN: We have it on the thing now, don't we?
740
741 JAY LEONARD: Yeah, you have it in the electronic thing now.
742
743 LARRY O'SULLIVAN: Yeah, but will our counsel have it?
744
745 JAY LEONARD: Do you want another?
746
747 NEIL DUNN: So do we need...?
748
749 LARRY O'SULLIVAN: Will you be sending it to them? To our counsel?
750

751 JAYE TROTTIER: Yes.
752
753 LARRY O'SULLIVAN: The...what is it? The guys up in Concord?
754
755 JAYE TROTTIER: No, that's not...that's not the attorney [indistinct].
756
757 MATT NEUMAN: Oh, who is it?
758
759 LARRY O'SULLIVAN: Somebody else then?
760
761 UNIDENTIFIED: I have extra copies of these.
762
763 JAY LEONARD: Oh wait, we have an extra right here.
764
765 UNIDENTIFIED: Well, black and white.
766
767 JAY LEONARD: Do you want one right now to...? Okay. I'll actually give you more than one. [Indistinct].
768 Thank you.
769
770 MATT NEUMAN: And as a reminder, our meeting is November fifteenth, which is not...wouldn't be the normal
771 scheduled time in November, but due to the...
772
773 NEIL DUNN: Thanks giving.
774
775 MATT NEUMAN: ...due to the holiday, it's November fifteenth.
776
777 JAY LEONARD: Alright. Thanks very much.
778
779 MATT NEUMAN: Thank you.
780
781 NEIL DUNN: I guess I'm just trying to help figure out, do we want them to review what we should and should
782 not be ruling on here and any overall thoughts on the whole...
783
784 MATT NEUMAN: Well, I don't know...
785
786 NEIL DUNN: ...package? Or what are we after from the attorney?
787
788 MATT NEUMAN: I don't know if you can really...I think it's...
789
790 JAY HOOLEY: Before us now.
791
792 MATT NEUMAN: What our...what we have the actual authority to be [indistinct].
793
794 NEIL DUNN: Well, I guess I'm just trying to make sure we're all...
795

796 MATT NEUMAN: Yeah.
797
798 NEIL DUNN: ...we're comfortable with where we were going with it. Okay.
799
800 LARRY O'SULLIVAN: Well, we have three...I think five or six variances here, five different requests for different
801 things.
802
803 NEIL DUNN: Kind of packaged [indistinct].
804
805 LARRY O'SULLIVAN: I'd like to make sure that we're...we have the authority to rule...if this is what you mean?
806
807 NEIL DUNN: Yeah...
808
809 LARRY O'SULLIVAN: I wanna make sure that we have the authority to rule on each of those items prior to the
810 Planning Board or are we taking something away from the Planning Board by acting on them or hearing the
811 var...applying a variance to something that we have no authority to?
812
813 JIM BUTLER: I think the best thing to do is send a memo to John Farrell on what you want the attorney to do
814 or not to do. 'Cause I'm pretty John is the one that asked for that package.
815
816 LARRY O'SULLIVAN: Okay, that's you, Matt.
817
818 NEIL DUNN: That's why I was trying to help clarify just a little...
819
820 LARRY O'SULLIVAN: I'll email you the detail. But in the meantime, are you looking for a motion or...?
821
822 MATT NEUMAN: Yeah. Any other business before we look for a motion to adjourn?
823
824 NEIL DUNN: None here.
825
826 LARRY O'SULLIVAN: You don't wanna hear anything from the public tonight?
827
828 NEIL DUNN: Not [indistinct] half of them left, but I...
829
830 MATT NEUMAN: Alright, do we have a motion?
831
832 JAY HOOLEY: Motion to adjourn.
833
834 MATT NEUMAN: I have a motion to adjourn.
835
836 JIM SMITH: Second.
837
838 MATT NEUMAN: There's a second. All those in favor?
839
840 JIM SMITH: Aye.

841

842 JAY HOOLEY: Aye.

843

844 NEIL DUNN: Aye.

845

846 LARRY O'SULLIVAN: Aye.

847

848 MATT NEUMAN: Aye. Opposed?

849

850 [No response in opposition].

851

852 RESULT: THE MOTION TO CONTINUE CASE NOS. 10/17/2012-2 WAS APPROVED, 5-0-0.

853

854

855 RESPECTFULLY SUBMITTED,

856

857

858

859

860 NEIL DUNN, CLERK

861 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

862

863 **APPROVED NOVEMBER 15, 2012** WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY JAY HOOLEY
864 AND APPROVED 5-0-0.