

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

DATE: OCTOBER 17, 2012

CASE NO.: 10/17/2012-1

APPLICANTS: THE DIONNE FAMILY REVOCABLE TRUST
(LUCILLE & ROBERT DIONNE, TRUSTEES),
22 LARCH STREET
MANCHESTER, NH 03102

ELAINE DALTON
22 ELMER AVE
HOOKSETT, NH 03106

BRENDA COTE
22 ELMER AVENUE
HOOKSETT, NH 03106

ROSE SEARLES
51 BLUFFS DRIVE #124
PENACOOK, NH 03303

BRIAN SEARLES
42 CANTERBURY HILL
TOPSFIELD, MA 01983

LOCATION: 381 MAMMOTH ROAD; 12-57; AR-I

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

REQUEST: VARIANCE TO ALLOW 20 SINGLE FAMILY DWELLINGS ON ONE 9.82 ACRE
LOT IN THE AR-I ZONE WHERE OTHERWISE LIMITED BY SECTION 2.3.1.3.

PRESENTATION: Case No. 10/17/2012-1 was read into the record with no previous cases listed.

46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90

NEIL DUNN: We do have a letter to clarify some notification. Apparently the original submittal was done by the Dionne Family Revocable Trust with the applicant representative being Benchmark Engineering, however it appears there was more than one owner...or one joint owner in the property, so we do have a waiver of notification.

The Clerk read Exhibit "G," a waiver of notification from the five separate owners, into the record.

NEIL DUNN: And that's that, so I guess...

MATT NEUMAN: Okay.

NEIL DUNN: ...the notification, I guess if we wanna hear it or do we wanna have it re-notified? But they seem to be in agreement, so...

MATT NEUMAN: And if the applicant could come forward?

MORGAN HOLLIS: Good evening, Mr. Chairman. My name is Morgan Hollis. I'm an attorney with Gottesman and Hollis in Nashua and I'm here representing the applicant, Mesiti Development, with regard to the application. I guess as a preliminary procedural issue, someone had raised the question as to whether or not all of the owners had gotten notification as notification really went to one location and so what we tried to do is correct that so that the Board can understand that while they might not have gotten mail delivery, they got actual notice of the meeting. So I didn't think it would be an issue, but I just wanna speak on that procedural issue in case there is a question.

MATT NEUMAN: Okay, great. Thank you.

NEIL DUNN: Mr. Chairman, if I may? And do we have someone from Benchmark here?

JACK SZEMPLINSKI: Yes, right here. Jack Szemplinski, Benchmark Engineering.

MORGAN HOLLIS: And I also have...my client is here this evening in case there are questions that come up. If I might, Mr. Chairman, I have a large...several large maps. Where would be the best place for me to locate them? Is it better for you to see them? I have smaller versions of each so each of you can read them without having to strain your eyes, but I didn't know if it's better to leave it there for the public or put it up front for you/

LARRY O'SULLIVAN: Is that something different than what we have now?

MORGAN HOLLIS: I'm not sure what you have. I apologize.

MATT NEUMAN: Yeah, I think it'd be helpful if we saw the handouts first.

MORGAN HOLLIS: Yes.

91 LARRY O'SULLIVAN: Well, that's a drawing, right?
92
93 MATT NEUMAN: Yeah, but I don't think it's what's up there.
94
95 LARRY O'SULLIVAN: Paul Peloquin?
96
97 MORGAN HOLLIS: What I have are an aerial map of the area [see Exhibit "A"] and a tax map of the area [see
98 Exhibit "B"] and I believe what was submitted was a proposed layout of the site and that would be what you
99 have in your packet.
100
101 UNIDENTIFIED: [Indistinct] addresses of the [indistinct] owners.
102
103 JACK SZEMPLINSKI: Thank you.
104
105 LARRY O'SULLIVAN: Oh, I see. I see. One of each now.
106
107 MATT NEUMAN: Okay, we'll be automated. I think this would probably be fine for the Board. Does anyone
108 have any objection to the drawing staying where it is up there?
109
110 LARRY O'SULLIVAN: That's fine.
111
112 MATT NEUMAN: I don't think we'd be able to see it any better.
113
114 LARRY O'SULLIVAN: Why don't you turn it so that anybody in the audience may wanna see it.
115
116 MORGAN HOLLIS: Should I just turn it at a slight angle?
117
118 LARRY O'SULLIVAN: Sure.
119
120 MORGAN HOLLIS: I'd like to identify the property. It is, as advertised, 381 Mammoth Road and it's also
121 identified on the map...the tax map is lot 12-57. If you look at the small tax map which you have in front of
122 you, you will see the number about in the center of the picture, circled, and then if you're looking at the aerial
123 view, which I'll put up on the board, flip it, it's just the back side of that, it is more or less in the center. If you
124 look closely along Mammoth Road, you can see the street address is highlighted in yellow, 381. So it's the
125 same lot. The lot itself has frontage of approximately 285 feet on Mammoth Road. There is an existing
126 structure on the property. It is a two family structure and most of the property is to the rear of that structure.
127 It is ten acres in size, 9.8 actually, but approximately ten acres in size. It's located in the AR zone. Sewer and
128 water are available and the allowed density in an AR zone with sewer and water is .92 acre lots. So essentially,
129 in order to get that number of lots, you would have to build a roadway because there's inadequate frontage
130 when you have the one existing lot. You need...the requirement is 150 feet of frontage and we're not asking
131 for a frontage variance, so the only thing we could do with that property is to have the one house lot on there
132 unless we got a variance to put a second house lot with inadequate frontage. What we're here this evening is
133 that isn't a very feasible or reasonable return on one's investment and that is the standard of the variance
134 application. So what the owners, in order to obtain a reasonable return on a ten acre piece of land in
135 Londonderry, would need to build a road in order to get into the back of that property. Once you build a road,

136 between the road and some of the other site characteristics of that property which I'm going to get into, you
137 end up with the only thing you can get out of there would be eight house lots. Now it would seem that that
138 would be a reasonable use of the property. But I'm gonna demonstrate for you this evening why eight house
139 lots, building a road of 1,000 feet with eight house lots is not a reasonable return on that property in
140 Londonderry and therefore, that's why it hasn't been done yet and that's why it wouldn't be done. The only
141 way to make that property have any reasonable return is to increase the density greater than what your
142 zoning ordinance allows. So with that introduction, let me first state by in your packet, you have a plan which
143 shows a rough map of how 20 house lots might be shown. And I just wanna make sure this is the same map
144 you all have. And this is, again, a plan which shows a private road with detached single family homes that
145 would be in a condominium format. They would meet the requirements of setback, they would meet all the
146 requirements, it would be on sewer and water, but they would not meet the density requirement because it's
147 double the density. More than double the density out there. There's a reason why the developer has looked
148 at this density and how this density works and I'm going to describe that for you, but I do have to cover all the
149 points of the variance. The first thing I wanna say is as you look at the plan, there's gonna be one change. So
150 where we're asked for 20, we're really only going to ask for 19. One of the units would be dropped. So if you
151 can just have that in the back of your mind. I don't believe it needs to be re-advertised because they're asking
152 for less than what the advertisement called for. But we're going to drop one of the units. In the area, as you
153 enter off Mammoth Road, it's unit one right down in front. That unit would not be built in that area. There
154 are some issues with drainage collection and control, which is one of the unique features of this property and
155 that unit will not be built. So you'll end up with a non-built area. Sort of, if you will, it would be woods or
156 detention basins or no structures on that front piece. And we're down to 19 [indistinct]. So that's the first
157 introduction. As you look at the tax map, you will see what we have, which is 9.8 acres, or as I say, one-two
158 family house, the frontage at 285 feet. If you look at the aerial and on the tax map, you will see immediately
159 below on the tax map, there's Fieldstone Drive, Mountain Home Estates. Mountain Home Estates is a project
160 which was approved by the Planning Board in the AR zone back in 1973. And the approval in 1973 granted 46
161 units. In 1975 and 1976, subsequent plans were approved and so you end up with a 200 unit complex on the
162 property. It's the only complex in the AR zone of that magnitude and it's immediately adjacent to this
163 property. Across the street from the locus, as you look on the tax map and as you look on the aerials, you can
164 see Trail Haven Drive. Trail Haven Drive is one of the two entrances to an elderly project, Whittemore Estates,
165 which was approved back in 1983, I believe. I actually passed a sheet of paper that has my notes on the back.
166 Someone has my notes. If everybody would look up, I'd be happy to exchange...at least I think I did. In any
167 event, that's a elderly...age restricted development that was approved for 83 units. It has not been
168 constructed, but there are approvals in place. So it was originally approved for density of six units per acre.
169 So you have directly opposite it a multi-family housing development approved, some of which is constructed,
170 directly adjacent to it. You have a multi-family housing project which has been constructed and is in place
171 with high density. In addition, if you look at the aerial and on the tax map, on the tax map, you'll see a yellow
172 dotted line that bisects lot 12-57 and you can see that as you look at the aerial, there is a cleared area, a
173 cleared space area. That is the gas pipeline which bisects the property. As you look at the map, you can see
174 that in that immediate area, it's the only property that's so significantly affected that bisects it and we have to
175 deal with that in any development plan, whatever you are going to do out there. So when you add those
176 factors together, the fact that it's an unusually shaped lot with limited frontage, not enough to even create
177 two lots, which one might argue, at least if you had two house lots on Mammoth Road, you've got a
178 reasonable use of ten acres. We can't do that. We can put a house and a road, but by the time you construct
179 the road, and the cost of the road, I'm going to demonstrate you can't do it for eight house lots. In addition,
180 as I say, your immediate neighbor, whatever you put up there, your immediate neighbor is the back side of a

181 multi-family residential development. The only one in the area that frankly, backs up tot het length, the entire
182 length of that property. So it's unique in that regard. It's unique in that it's also across the street from a multi-
183 family development. All of those factors we'll get to when we get to the hardship argument because I have to
184 demonstrate it's a unique piece of property and as a result, we need relief. Let me cover the five points of the
185 variance, the first four before I get to the hardship argument. The first point is the variance will not be
186 contrary to the public interest. New Hampshire courts have said that the Zoning Board should make two
187 inquiries when they're considering whether it's contrary to the public interest. The first is; will granting the
188 variance alter the essential character of the neighborhood? And the second is; will granting the variance
189 threaten the public health, safety, or welfare? As to the first point, will granting the variance alter the
190 essential character of the neighborhood, we have to look at the character of the neighborhood. It's shown on
191 both of these plans that are in front of you, but most importantly, consider as I said, who is their side yard
192 neighbor? Who is the entire length of that side yard, is multi-family. They're within 30 to 35 feet, in places
193 right up against the property. So that's a different character than a large one 1 acre or two 2 acre lot
194 residential development in the area. On the other side, you have a undeveloped lot, a very large lot similar to
195 this one. Similar in shape but a little bit larger on the frontage. In the back of it, you have undeveloped land
196 but there's a dedicated Class VI road subject to gates and bars which is identified as Kelley Road, not built. It's
197 shown on a plan because it was originally dedicated, not built, subject to gates and bars, which is a little
198 different than discontinued. You have a single lot in the front. As you drive up and down Mammoth Road,
199 you all are familiar with the character of Mammoth Road in that area, but I was able to specifically identify
200 within five to six lot area, three businesses on Mammoth Road. Mammoth Road is a heavily traveled area.
201 Putting a residential house on Mammoth Road is not, today, the best planning objective. What we plan is to
202 leave that section which is currently vacant on Mammoth Road to remain vacant. And that's one of the
203 advantages in the public interest if you were to increase density as we have applied for, under the conditions
204 as applied, we would not build on Mammoth Road. We would have a new road in there, but there would be
205 no house going in. So the character of the neighborhood is established by 'what are your surrounding
206 neighbors?' I've pointed out who they are and essentially, they're multi-family and a single family and several
207 businesses on the street. If you grant the variance, we're going to have a permitted use, single family homes,
208 they're going to be cluster developed in style, which means there's gonna be open space around them and
209 there's gonna be...meet the proper setback requirements. There's gonna be buffer to the neighbors because
210 of the nature of the development and it would have to proceed to the Planning Board, obviously, to get any
211 approval should you grant a variance here. It's entirely up to the Planning Board and they may say, "Well, you
212 have the density, but it doesn't work on this site, so you're not gonna get that density." We have to start
213 somewhere, so we're starting with the density. With the project we're proposing, it is going to be in keeping
214 with the character because it will be detached single family homes. They'll be on a half acre if you were to
215 subdivide, but we're not subdividing. We've proposed private driveways and proposed shared driveways as
216 shown on the plan. So if you've been in cluster projects, you know how they work. They're three or four
217 houses clustered together and then open space. That is in keeping with the character of the neighborhood. It
218 wouldn't alter the character of the neighborhood. Number two, will granting threaten the public health,
219 safety, or welfare? This is gonna be sewer and water. There will be no threat. As I said, we're going to collect
220 all the drainage. That runs downhill directly to Mammoth. We're going to have an area in the front where we
221 can collect the drainage. It is not gonna run into the street and off onto other people's property. So because
222 of that situation, we won't be threatening in any fashion the health, safety, or welfare. The purpose of a
223 zoning ordinance as far as minimum lot size is twofold. One, adequate space between the lots, between
224 buildings, to make sure you're not congested in an area, and typically in what they call an AR,
225 agricultural/residential zone, to encourage larger lots to leave more open space. And what we're trying to do

226 is accomplish that through increase the density, which would allow a reasonable return on the investment, but
227 not fight the intent of the ordinance. Open space, space to your neighbor, and single family homes. Number
228 two [sic], the spirit and intent of the ordinance will be observed if you grant the variance. The courts have said
229 the same two questions that apply to public interest apply to whether or not this is going to be contrary to the
230 spirit of the ordinance. Are you altering the essential character of the neighborhood? AR zone. Again, while
231 the zoning may be AR, the neighbors are not typical AR neighbors. The neighbors here, Mountain Home
232 Estates, is categorized as a preexisting nonconforming use. Two hundred units. Across the street is elderly,
233 which is allowed greater density under...at the time it was passed, so you have increased density. You don't
234 have a typical AR neighborhood here. So we're asking you to view our lot in consideration of those. It won't
235 threaten the public health, safety, or welfare, as I said. It will maintain the spirit and intent of the ordinance of
236 residential uses in the AR zone. Number three, substantial justice will be done. Again, this is a hard one for a
237 lot of people to get their hands around, but when the loss to the individual is...an injustice is declared when a
238 loss to the individual is not outweighed by a gain to the general public. That's the court's definition. The way I
239 break it out is you have to determine if you have an ordinance and it imposes a burden on a lot, and you waive
240 that ordinance by variance, is there damage to the general public? What is that ordinance trying to preserve,
241 keeping it in place, what it is the gain to the public of keeping it in place, what is the harm to the public to
242 waiving it or varying it? What is the gain to the applicant when you vary it? What is the harm when you
243 don't? And how do those two things play out? In this case, it is our argument that when you don't grant the
244 variance, you leave the property owner with a ten acre parcel with one choice. They're gonna have a house
245 on it as it sits today. They can't...they can arguably build a road but you can't afford a road on the lots that
246 you could build under your density. So you're stuck with what you have on ten acres. That's not a reasonable
247 use of one's property. The harm, therefore, is significant to the owner. They really are stuck with what they
248 have, one house on ten acres. What's the harm to the public if a variance is granted? Again, the neighbor on
249 the one side; not gonna be any harm to them. We're gonna be much less dense, there's gonna be adequate
250 space between the homes. The neighbor on the other side, we're gonna have adequate space, buffer, the
251 Planning Board's gonna consider that setback requirement. It's private roads, it's not gonna hurt the public.
252 It's not gonna be a public road, a burden on the public. It's private roads, private driveways, shared
253 driveways. It's also a nice buffer. As you know, in zoning and planning, when you have a heavier density zone
254 and you go up next to, say, call it industrial/commercial, and then put a residential next to it, you try to have a
255 buffer in place. Maybe you can have heavier density residential. Maybe you can have multi-family. And you
256 transition from heavier use to lighter use. In this case, you're gonna be transitioning from, while it's not zoned
257 heavy multi-family, it exists as heavy density multi-family and you're transitioning right into AR. One acre lots.
258 In our case, we would be a good transition buffer. Increase the density, but not go crazy. Allow only single
259 family, not go into duplex or multiple...and by the way, duplexes are allowed on this lot, but I'm gonna
260 demonstrate why they're not financially feasible either. You would have a good transition. So substantial
261 justice would be done both to the applicant and to the community. The fourth point, the values of
262 surrounding properties will not be diminished. In this case, my client, through its real estate agent, reached
263 out and contacted an appraiser to be sure that by an independent opinion, if those 20 units, and we're only
264 asking for 19, but the application was 20, if the 20 units go in as proposed versus having, say, eight, if you
265 could build eight, will that increase of density adversely affect the values of the surrounding properties? And I
266 have a report [see Exhibit "C"], which is rather lengthy, but the conclusion...he describes his familiarity, what
267 he looked at, what he considered, and George Brooks said "It is my opinion that the properties adjacent to this
268 project would not be any more impacted by the increase in density as proposed for this project than by
269 general economic conditions." So, that's his opinion. I'm gonna, with your permission, I'll pass it to each of
270 you so you'll [indistinct].

271
272 MATT NEUMAN: Great. Thank you.
273

274 MORGAN HOLLIS: I also have Mr. Brook's qualifications [see Exhibit "D"]. So that leads us to the final point,
275 the fifth point of the variance requirements. And as you know, this is often times the crunch point and it is
276 here as well. Under the New Hampshire law, and under your own format, as you know, the requirements are
277 that the literal enforcement of the requirement will result in unnecessary hardship and that hardship is
278 defined...that hardship is further defined as saying that there can be no fair and substantial relationship
279 existing between the general public purposes of the ordinance and the specific application of it and that the
280 proposed use is reasonable. That's one option when you're trying to prove that due to the special conditions
281 of the property, relief is necessary. The other option, if you cannot prove that is, if that does not work, than
282 an unnecessary hardship will be deemed to exist only if owing to special conditions of the property that
283 distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance
284 with the ordinance and a variance is necessary to enable a reasonable use. When you look at the two options,
285 most of the time, the argument is there's no fair and substantial relationship between the required ordinance
286 and this property, so we need some relief. I think I've made that argument already, that we're impacted by
287 our abutters. Uses that have been approved and one use which is a preexisting nonconforming use. It's not
288 like the small gas station on the corner. This abuts us the entire length of the property. It's our immediately
289 adjacent neighbor. So we're affected by that. When you impose a low density requirement on a property
290 which abuts that, you're imposing an unnecessary burden. You cannot sell a large house on this lot. That's
291 our case. You are not going to be able to market and sell a large, expensive Londonderry home on this lot, and
292 as a result, you're left with no alternative. You're left with the alternative of "we need to come up with a
293 different product." We need smaller homes on smaller lots and that's why we've proposed to cluster. We
294 think the proposed use is reasonable. So, in that regard, we think it is not fair to require the larger density to
295 this uniquely situated property and imposing it doesn't have any relationship to the intent of the ordinance,
296 the intent being to maintain open space and larger lots in the AR district. However, I happen to think the
297 better argument, if you don't believe that that applies in this case, I happen to believe that (B) applies because
298 my first question to my client is "why don't you just put a roadway in and be done with it and build your lots?"
299 And the answer is, it doesn't carry. There's not enough...there's not enough return on the house that you're
300 gonna build there to cover the costs of the road, the cost of the infrastructure, the cost of marketing, the cost
301 to carry. At the end of the day, you're left with nothing. You're left with so little that it's not worth the risk
302 you take when you go to try to do something up there, so my job is to convince you of that situation. That this
303 is a unique piece of property and because of its unique setup, a reasonable return is not a road with eight lots.
304 The courts have said "this is what we call the old variance argument," and the way you have to prove that is
305 you have to demonstrate with some numbers that you can't do what you're allowed to do. That it's financially
306 under water. So what I did was ask my client, "You gotta lay out on a piece of paper why you've told me that
307 you can't do what you're allowed to do." And he's done that and I'm gonna walk you through this paper
308 which demonstrates you simply can't build those kind of houses out there. The first piece of paper that I'm
309 gonna pass out is a letter from Real Estate Results to Mesiti Development [Morgan Hollis read Exhibit "E" into
310 the record]. The second piece of paper is called "Mammoth Road Property Analysis" [see Exhibit "F"] and this
311 is an analysis where they've established the maximum price and they've established a column for duplex units,
312 a column for eight single family at one price, eight single family at another price and then the 20 condominium
313 units. And it's essentially a workup of what it costs to get there, assuming a built in profit, because you're not
314 gonna do it without a profit, and can you do it. So I'll pass this out and then I'll walk everyone through it. So if
315 everyone looks at the chart, on the left hand column, on the identification lines, land cost, the cost to tear

316 down the house, cost of installing road and utilities at a thousand feet, cost of bringing sewer, water, electric,
317 gas to the site, and a total lot development cost of \$760,000. As you go across each column, the first column
318 says if you could get a maximum sale price of the \$375,000, this is what would happen to you. The next one
319 says if you were building seven duplex units, and it goes down, it has a selling price at the bottom, if you go all
320 the way to the bottom of the column, and at the bottom tells you what your net number is. The next column
321 is if you built eight single family homes and this column really would have, if you look to the bottom, this eight
322 single family homes has a sale price of \$330,000. The next column is eight single family homes at \$375,000.
323 And then the final column is if you built it out at 20 condominiums with a sales price of \$320,000. The first
324 part is fairly consistent, as I said, it's all of the costs divided by the number of units to get a per unit cost. Then
325 you go into add the site work for each of the units. Then you add the soft costs and those are pretty standard
326 soft costs. Taxes, interest, salaries, architect permits, impact fees, engineering, legal, dumpsters, temporary
327 utilities, contingency, commission and closing. And built into these numbers are carry costs, anticipated
328 absorption rate, and so these are the costs get you, you add up the soft costs, so now you're down to a
329 column that says the total cost to build these units before you start on the unit and you can see the lines
330 there. Then you have a line which is identified as profit. Again, that's not built into the number, but as we all
331 know, you're not going to build a house unless you can make some money. So they have put in a number
332 which you might argue is too much or too little. You will see when you get to the bottom line. It's not really
333 that relevant 'cause all of them don't make even the profit except one. So our case is regardless of the profit,
334 you're underwater. But you aren't going to develop this property unless you can make a profit. So below the
335 profit line are the sort of what I call the segregated lines. If you have a 2,400 [square foot] single family home,
336 it will cost you \$204,000 and you can sell it for \$375,000, but you will lost \$38,000 if you do it. The next one
337 says if you build 1,700 square foot duplexes, they will cost you \$136,000. Duplexes are smaller, a little less
338 expensive, they have joint walls. You can sell them for less, however, that's \$250,000, so you come up with,
339 again, you're losing \$39,523. If you didn't want to make any profit, you might make \$700. That's what you're
340 gonna make. The next column is for a 1,900 square foot single family and that's \$161,500 of construction
341 costs. Total selling price, \$330,000. You end up with a net loss of \$41,025. Again, if you take zero profit,
342 you're still gonna lose \$1,000. The next column over, eight single family homes, selling them at \$375,000.
343 These are larger homes, make them 2,800 square feet instead of 2,400 square feet and you're gonna costs
344 \$238,000 of construction costs. This isn't gonna work because you're now losing \$72,000. So take away the
345 profit, say you do it for free, you're now losing \$32,000 per house. And that's if you wanna put eight houses at
346 a fairly large number, 2,800 square feet, and sell it at the price of \$375,000. The final column is the column
347 that says this is what my client can afford to do. This is how the owner gets a reasonable return on the
348 property. Because remember, the owner has to sell to somebody who's willing to pay them. They're only
349 gonna pay if they can get some money out of this. So the owner will sell to somebody who can look at this
350 and say "with increased density, I have a chance to make some money. I can make my profit plus \$1,000." So
351 it's worth my risk to go forward at this level. That's a sheet that's been worked up by my client, who's realtor
352 is here to testify if you have questions about these numbers. I can't answer them. I can attest that I went
353 through them with him, but I'm not in a position to answer them. You all may have questions about them and
354 should feel free to ask. But the point of presenting this is if you want to argue (B) on the hardship, you must
355 say that you're not getting a reasonable use and our argument is one lot's not reasonable. I don't think that's
356 hard to agree with. But we're saying the density of eight lots with a single road is not a reasonable return
357 because you can't get a reasonable return if you do it that way. So who would come in here and do this if
358 there wasn't a hope of doing some...making some money. No one. Now the owner's stuck with "I can only
359 sell what I have. I can't even put a second building on that lot. I don't have frontage to put a second building.
360 I gotta build a road or get a variance to get frontage. So I'm stuck with what I have." That's not reasonable for

361 a ten acre piece. So those are the two arguments on hardship. As I say, I have...Jack is here from Benchmark
362 and he can answer the questions about the plan, the proposed plan, and the layouts. I think you have to
363 consider who are the neighbors, you have to consider the unusual nature of the lot with the gas pipeline going
364 through it. Nobody else has that. You have to consider the uniqueness of the shape which causes a frontage
365 problem. Can't even get two lots. I think it makes it unique and I think when you look at those numbers which
366 are very real, it's unfair. It's an unfair and unnecessary burden imposed on this owner to enforce the density
367 requirement, which in the end is not gaining anything for the town. You wouldn't be harming the town by
368 granting the variance. That's a key criteria for you. Happy to answer any questions that anybody may have,
369 Mr. Chairman.

370
371 LARRY O'SULLIVAN: Just to put it in a little nutshell for me, please, on five. What was it you answered? I must
372 have missed it out of all this because...

373
374 MORGAN HOLLIS: On five?

375
376 LARRY O'SULLIVAN: Yeah.

377
378 MORGAN HOLLIS: What's the unnecessary hardship?

379
380 LARRY O'SULLIVAN: Yeah.

381
382 MORGAN HOLLIS: I argued both (A) and (B)...

383
384 LARRY O'SULLIVAN: You said economics.

385
386 MORGAN HOLLIS: But I said the economics, in my belief, are the better case because you cannot do what the
387 ordinance allows and get a reasonable return on your property. You can't do it. You can't build what's
388 allowed out there, which would be a road and eight lots, and get a reasonable return. And you clearly can't
389 get a reasonable return with one lot with one unit on a ten acre lot. That is not a reasonable return of
390 anybody's investment. Everybody else who has ten acres that weren't...if they weren't here, would be able to
391 get a better return. A reasonable return. This poor property owner cannot do that because of the abutter,
392 the gas pipeline, the frontage, the neighbors, cannot get that reasonable return that you might get. If you
393 didn't have the neighbor and you didn't have the gas pipeline, maybe you could put a nice, huge house and
394 sell it for \$450,000. If you got a variance for the frontage. But we don't have a variance for the frontage. You
395 might be able to put a road and put some houses up there for \$375,000, but that area, they're not gonna sell
396 for \$375,000. That's the letter that the realtor said that that's the highest mark, but in my opinion, \$330,000
397 is the target price. So you have kind of a tough area. You have an area which depresses the numbers. And
398 then the court cases have said the only way you get the (B) part of the variance that I've argued, 'cause you've
399 gotta demonstrate this kind of number, and if these numbers are real, then you're entitled to relief.

400
401 NEIL DUNN: Mr. Chairman, if I may?

402
403 MATT NEUMAN: Neil, go ahead.
404

405 NEIL DUNN: So you don't give us the bottom line, but if I'm looking at \$40,000 per unit profit, 20 units, that's
406 \$800,000 and then 1,750 when you do the \$1,375 net, so is there a limit the court has said that an investor
407 should be able to make \$817,500 on this project?
408
409 MORGAN HOLLIS: No, I think what you wanna do is if you look at the net at the bottom, and then that net
410 reflects if I built in a profit of \$40,000. So you have to offset those two. You have to say, alright, there's
411 \$40,000, but the bottom line is you're gonna lose \$38,000 when you add all those numbers up. So some
412 people would say, well, you can't put a profit in there. But you have to put a profit in. My point is that at
413 \$40...if you build in the number \$40,000, on the first column, you lose \$38,000. So forget a profit. Forget it.
414 What does that tell you? You made \$2,000 selling that house. What does the next column tell you? You
415 made...
416
417 NEIL DUNN: Yeah, but just let's get to the bottom line. The proposal is for 20 condos...
418
419 MORGAN HOLLIS: Yes.
420
421 NEIL DUNN: ...and there is no bottom line. We can...we can't say...
422
423 MORGAN HOLLIS: The bottom line is...
424
425 NEIL DUNN: ...you're saying they're gonna make \$1,000 times \$20,000 on the whole project? I...
426
427 MORGAN HOLLIS: I think you're question, if I understand it is, somewhere between not making any money
428 and making a killing, how do we decide what it is?
429
430 LARRY O'SULLIVAN: And we wanna know what this is gonna be if we do the 20.
431
432 MORGAN HOLLIS: Yeah, and I showed you what we...what happens if you do the 20, if you do 19, you
433 obviously...you make less.
434
435 LARRY O'SULLIVAN: So what happens when you do the 20? Twenty times \$40,000 profit each.
436
437 MORGAN HOLLIS: You make \$40,000...\$40,000 for each house...
438
439 LARRY O'SULLIVAN: Okay.
440
441 MORGAN HOLLIS: ...and then another \$1,000, essentially.
442
443 LARRY O'SULLIVAN: Okay, so...
444
445 NEIL DUNN: So \$817,000. I'm sorry...
446
447 MORGAN HOLLIS: Yes.
448
449 LARRY O'SULLIVAN: That's the way I'm getting through the math...

450
451 MORGAN HOLLIS: That's right. If you do...and so my...I think what you're saying is yeah, if you put in 20, you
452 make a huge profit. That's a great return on your investment. If you do the others, you're showing me you
453 make zero. So why should I decide somewhere between eight and 18? You can do that. You can do what you
454 want, but my client applied for 20, so I have to demonstrate what happens.

455
456 NEIL DUNN: Right, but you're making the argument that we're supposed to consider the cost on 5(B), part
457 two, whatever you wanna call it and I'm just looking for what is considered reasonable. And so I was just
458 trying to get a real number 'cause it wasn't really easy to get out of there.

459
460 MORGAN HOLLIS: Yeah, no, you're absolutely right. If you multiply times...20 times the profit, that would be
461 what they would get...the developer would get for a return. Now, the owner wouldn't get that for a return,
462 but the developer would get it for a return. But allowing a developer to get that kind of return allows the
463 owner to get a reasonable return. My point in the first four columns is that's what's permitted out there. So if
464 you do what's permitted, you don't make anything. So nobody's gonna do that. So somewhere you gotta
465 have some relief. Maybe 20 is too much. Maybe you all decide that 20 is too much and somewhere in
466 between there, there's gotta be a range. I don't...that's your call, but that's not what we applied for, so I had a
467 duty to say this is what we're asking for, 'cause this is what we thinks works. And this is...it will give a
468 reasonable return to the property owner. Someone will take that chance, take the risk that they can build and
469 sell 20 units because there's enough profit in it. They will not take the risk to build seven duplexes, eight
470 single families, at whatever price you wanna put 'em at. Three and a quarter, \$375,000. And the realtor says
471 you can't sell 'em over \$375,000, so there's no sense doing a higher number. It shows you more underwater.
472 So that's what I tried to demonstrate under (B).

473
474 MATT NEUMAN: And all the units would be 1,900 square feet?

475
476 MORGAN HOLLIS: Yes.

477
478 MATT NEUMAN: So all the exact same layouts, the...?

479
480 MORGAN HOLLIS: Yes. That's the proposal before you and we would have to come back and change that if
481 we change what we represent to you. It obviously has to go to the Planning Board and as I say, they may say
482 "lose that unit, lose that one, lose this, you've got some topographics, you've got some wetlands problems
483 you can't get around," so you maybe down to less. I don't know what the Planning Board will do. But we have
484 to deal with the density before we even start the plan.

485
486 LARRY O'SULLIVAN: Sure. Can I ask a question?

487
488 MATT NEUMAN: Go right ahead.

489
490 LARRY O'SULLIVAN: You start off the first line of your spreadsheet with land costs \$260,000, right?

491
492 MORGAN HOLLIS: Yes, acquisition cost of land.
493

494 LARRY O'SULLIVAN: Okay. So you have ten acres. And you can't build a \$400,000 on that and get half a
495 million dollars for it?

496
497 MORGAN HOLLIS: Not according to the opinion letter that because of this neighborhood, that is not going to
498 sell in this neighborhood. Not on that parcel. And I think you've gotta...I've gone through it four times. It's a
499 unique piece. There's nobody else who's got that neighbor backing up to them in that zone. There's nobody
500 who's got the gas line bisecting them, so, you know, all those factors come to play. They're right on
501 Mammoth, you know, across the street is the elderly. All of those factors come to play. The answer that I'm
502 telling you is my client says no. I've offered that letter that says no. The most you could build is \$375,000. A
503 single lot up there for \$375,000. So if you buy it for \$260,000, what are you gonna do with it?

504
505 MATT NEUMAN: Neil, do you have a question?

506
507 NEIL DUNN: Yeah, well, you're...that gas line goes through...

508
509 LARRY O'SULLIVAN: Town. It goes through the whole town.

510
511 NEIL DUNN: It goes through the Fieldstone development also and it didn't seem to impact them too much. It
512 goes through all the lots all the way through there, so I'm not sure that you can't live with that. Obviously,
513 Fieldstone didn't. They put a whole bunch of units in there. And then thirdly, talking to the uniqueness and
514 that it's...that property is so much more unique. You have one, two, three, four, five lots grouped there that
515 have a very similar layout and look. So I'm struggling with the uniqueness of that lot compared to 12.60,
516 12.39, 12.37, [sic] and whatever the other one is buried there.

517
518 MORGAN HOLLIS: There's 37, 39, 60, 57. Those are the four lots. Right?

519
520 NEIL DUNN: Right, and they all looked very similar, so I don't see where that uniqueness argument is, other
521 than the abutter to that side, which was there prior to the purchase of the property. Well, it hasn't been
522 purchased. The homeowners live there currently.

523
524 NEIL DUNN: Right, but whoever bought it in 2008, was when it was sold, I believe to the trust, and that who's
525 on the application and Benchmark as the engineering, so I guess if we're arguing the uniqueness, I don't see it
526 that much more unique than those four other lots in that same little area. When 12-60 doesn't abut a multi-
527 family housing within 30 feet, so they don't have to put a house up and look at one, two, three buildings which
528 are multi-story buildings, townhouses, and each one of them has a back deck off the back, so there are five
529 units in each building, so that's 15 back decks, 15 units within that small area on one section and up in the
530 back there's five more units with five decks in the back. So I would say nobody else faces that. Twelve sixty
531 certainly doesn't, 12-37 doesn't, 12-39 doesn't, and any other lot in that area doesn't. The gas pipeline bisects
532 the lot. Twelve sixty, it crosses in the front where you could cross the pipeline and locate something to the
533 rear. You've gotta deal with this in the front. I'm sorry, you gotta deal with this as it bisects the lot. If you
534 continue south and look at the pipeline, the pipeline existed, obviously, as you said, in the Fieldstone Drive
535 area. They worked with it. You can work with it when you're putting multi-family units in a very large lot.
536 That's the reason we're asking for a condo. Heavier density, but a flexible design. If we have to go with a grid
537 subdivision, it adversely impacts where you can locate the house 'cause you have frontage requirements on a
538 public way. You have to have 150 feet. You have to space them 150. If that gas pipeline comes in there and it

539 hits that 150 mark, it moves everything around. So you have to deal with that issue that other people don't
540 have to deal with. Across the street, you have a road that comes directly facing into you. That doesn't occur
541 on 12-60, 12-37, 12-39. That road is from an elderly housing complex. Comes right up the hill, points right at
542 the property. Those are all different than any other lot in the area.

543
544 NEIL DUNN: What is your frontage right there on Mammoth, please?

545
546 MORGAN HOLLIS: Total frontage is 285, Jack? Two hundred and eighty five feet.

547
548 NEIL DUNN: Thank you.

549
550 MORGAN HOLLIS: And with that, you're essentially allowed one lot. So you're almost forced to put a road in
551 in order to do something with this property. You know, it wouldn't be like you could just put a driveway and
552 stick one large house back up there.

553
554 JAY HOOLEY: Mr. Chairman?

555
556 MATT NEUMAN: Jay.

557
558 JAY HOOLEY: Barring a ten acre parcel that were exactly one acre deep and ran ten acres in width along the
559 road, would it not be typical to need to put a road in in order to fully develop any block shaped ten acre
560 parcel?

561
562 MORGAN HOLLIS: Unless you were gonna have one large house or perhaps two off a shared driveway, if you
563 somehow could get some relief.

564
565 JAY HOOLEY: Correct.

566
567 MORGAN HOLLIS: Yeah, you would have to put a road in and that's why they looked at putting a road in.

568
569 JAY HOOLEY: In almost any instance, though, a ten acre parcel...

570
571 MORGAN HOLLIS: And we're not arguing that putting a road in is a particular hardship, except you have no
572 choice. If you had a big enough frontage, you might be able to put lots on the front or you could put two lots
573 in the front and a road between them. You might, in other words, get a lot on each side and then...

574
575 JAY HOOLEY: Right.

576
577 MORGAN HOLLIS: ...develop the road, so...We're not arguing that it wouldn't be reasonable to put a road in a
578 ten acre piece...

579
580 JAY HOOLEY: I think that that is...

581
582 MORGAN HOLLIS: ...I'm saying you can't...you can't...it doesn't pay for itself is the problem here because of
583 the neighbors and because of the location of the pipeline, you have to do some jiggling and jogging and you

584 can't sell the kind of house that you need to sell to justify the cost of the road. That's why homes are so
585 expensive. Not just in Londonderry but everywhere. The cost of building the infrastructure drives a price
586 unless you have lower density. So it's not like we're trying to pull any fast one here. This is the way it looks on
587 a piece of paper and that's why it's sat there. Because the cost of building the road, which you really need to
588 do to get some use out of that property, is outrageous. And when you factor in how you're gonna get that in
589 the homes that you're allowed to build, it doesn't work. You're at a loss in every way that's permitted to be
590 done there. Whether it's eight single family's, or it's seven duplexes. Normally, if you could build a \$500,000
591 house, you got more money to build the road. But you can't do that here. This neighborhood is not going to
592 be that kind of a house because of what's below it and that's why there is this hardship that's...it's unique in
593 that respect. I would agree with you, if you didn't have those as neighbors, I couldn't make this argument. I
594 would say, well, put the road in and build your houses. What's wrong with it? But you have to consider what
595 you're building up against. What is the market that you're building against and across the street from? What
596 is that market and how is that going to affect what you can get out of this land? And, quite frankly, these are
597 very unusual, difficult arguments, why nobody hardly makes an argument under (B), but that's what the court
598 says you must make. You must break out your costs, then if you can demonstrate that you can't get a
599 reasonable return, then you're entitled to a variance and actually, I'll read what the court has to say about
600 this. "Deprivation by ordinance restriction must be so great as to effectively prevent the owner from making
601 reasonable use of the land. It's not a requirement that the owner be deprived of all beneficial use, but that
602 the owner obtain a reasonable return on his investment." The only way to prove a reasonable return is to do
603 this layout of numbers. As I say, you might quibble whether a reasonable return is 12 instead of eight or 20 as
604 we're asking. We're asking for 20. But a reasonable return is not what the ordinance will allow you to get
605 under eight. It just isn't. So some relief needs to be done here.

606
607 LARRY O'SULLIVAN: Well you wouldn't be here if you were asking for eight.

608
609 MORGAN HOLLIS: We don't need permission, right. And that's why we're here. It doesn't allow a reasonable
610 return. That's what we have to demonstrate. The permitted use does not allow that.

611
612 LARRY O'SULLIVAN: Mm-hmm.

613
614 MATT NEUMAN: Any other questions from the Board before we open it up?

615
616 NEIL DUNN: I'm interested to hear the neighbors.

617
618 LARRY O'SULLIVAN: You call this a transition buffer, right?

619
620 MORGAN HOLLIS: Yes.

621
622 LARRY O'SULLIVAN: That's what your proposed use of the land is gonna be?

623
624 MORGAN HOLLIS: I said it could be considered a transition.

625
626 LARRY O'SULLIVAN: You called it a transition buffer.

627
628 MORGAN HOLLIS: I said it could be considered a transition. Single family...

629
630 LARRY O'SULLIVAN: Mm-hmm.
631
632 MORGAN HOLLIS: ...but it's heavier density. So it's not duplex...
633
634 LARRY O'SULLIVAN: You also said that this is gonna be a private road.
635
636 MORGAN HOLLIS: Private road, that's correct.
637
638 LARRY O'SULLIVAN: So if we made that part of the variance, that would be...
639
640 MORGAN HOLLIS: That would be a absolute condition.
641
642 LARRY O'SULLIVAN: A condition. Okay.
643
644 MORGAN HOLLIS: You know, as you present a variance, anything you offer...of course, it's in the record, but I
645 think most boards want to put it in writing on a condition, so, yes...
646
647 MATT NEUMAN: Mm-hmm.
648
649 MORGAN HOLLIS: ...private road.
650
651 LARRY O'SULLIVAN: The document you gave us from Brooks Real Estate Services...
652
653 MORGAN HOLLIS: Yes.
654
655 LARRY O'SULLIVAN: This isn't an appraisal.
656
657 MORGAN HOLLIS: No, it is not an appraisal. It's an opinion of an appraiser as to his view based on his review
658 of the situation.
659
660 LARRY O'SULLIVAN: Okay and the Real Estate Results document that you have...
661
662 MORGAN HOLLIS: Yes.
663
664 LARRY O'SULLIVAN: Is that how we wound up with the \$375,000 price here...
665
666 MORGAN HOLLIS: That is correct.
667
668 LARRY O'SULLIVAN: ...for the selling...? Okay. So you've got one realtor who told you that.
669
670 MORGAN HOLLIS: That's what I have, yes. That's correct.
671

672 LARRY O'SULLIVAN: Okay. And had you considered any of the cumulative impact of 20 homes versus eight or
673 the cumulative impact of...on groundwater, of impermeable ground...Have you been through the Planning
674 Board yet

675
676 MORGAN HOLLIS: No, we...you have to go to the Planning Board, but there's no sense going to even start the
677 engineering and design. Jack could probably better explain this, but I'll just give you my layman's version
678 which is 'til you know what the density is, you're not gonna go spend all the money to determine all of the
679 issues of what's on the ground. Jack...

680
681 LARRY O'SULLIVAN: So have you done soils or what have you already? Things along those lines that have to
682 be done prior to...?

683
684 JACK SZEMPLINSKI: Yeah. If I could maybe answer a couple questions here regarding the land. The land,
685 actually, is pretty level at the road. At Mammoth Road. It's actually...there was a little wetland there as well.
686 As you proceed further north, the land kind of just gently slope, it kind of rises and it's actually fairly good
687 quality land once you get beyond the gas line. As far as density, I mean, like comparing any commercial
688 development or any elderly housing development, this is a much lower density. By your elderly housing rules,
689 we could probably put a lot more units in that particular location and we could, you know, 20 units...

690
691 LARRY O'SULLIVAN: Workforce housing. Has anyone considered that?

692
693 JACK SZEMPLINSKI: Yeah. And also elderly housing would allow multi-tenant structures, you know, in this
694 zone.

695
696 MATT NEUMAN: Great. Thank you.

697
698 LARRY O'SULLIVAN: Okay, so we know then that you'd be going to the Planning Board and they will...If we
699 have you...this is preliminary to any kind of a motion, please...

700
701
702 MATT NEUMAN: Mm-hmm.

703
704 LARRY O'SULLIVAN: Don't take this the wrong way. If we gave you permission for 20, they would be the one
705 who said you'd phase them if it was required because of the impacts on schools and the growth ordinances
706 and so forth, correct?

707
708 MORGAN HOLLIS: That's correct.

709
710 JACK SZEMPLINSKI: Yeah, you would have to obtain all the permits, including alternation of terrain that deals
711 with erosion and runoff and impact on groundwater recharge and all these other issues that are common with
712 thus type of development.

713
714 MORGAN HOLLIS: They would also weigh those issues of impact that you raise. Traffic impact; probably be
715 obligated to do some sort of a study to determine sight distance, road conditions, accessibility, all of the
716 drainage and infrastructure review of course. But all of those things and just, again, if you're thinking of

717 conditions, one offer we made was no development of the area shown as number one on the submitted plan.
718 And number two, 19 units, not 20.

719
720 LARRY O'SULLIVAN: Okay, so is this gonna be one of those the State has to give you approval for a turning
721 lane and all the rest of that stuff for this? Or a traffic light or...?

722
723 MORGAN HOLLIS: That'd be up to both the State and the...the State has the driveway permit control, doesn't
724 it?

725
726 JACK SZEMPLINSKI: Right.

727
728 MORGAN HOLLIS: And then the Town Planning Board, of course, will control other factors that the State may
729 not look at.

730
731 MATT NEUMAN: Yeah, there's still a lot more work to be done after tonight.

732
733 MORGAN HOLLIS: Yeah. All of those issues. I mean, even if you were to grant it, everything we asked, it may
734 never come to fruition. There's a long way to go, but my point is you can't even get started if it's a non-
735 starter.

736
737 MATT NEUMAN: You gotta start somewhere.

738
739 MORGAN HOLLIS: It's a non-starter if it's eight.

740
741 MATT NEUMAN: Right. Any other questions from the Board?

742
743 MORGAN HOLLIS: Thank you.

744
745 MATT NEUMAN: If there's anyone in the audience who'd like to come forward and speak in favor of the
746 applicants? Please feel free to do so. No? Anyone opposed who'd like to come forward? Please come
747 forward and state your name and address please. Please.

748
749 BRETT LABRANCHE: Good evening, my name is Brett LaBranche. I live at 138 Fieldstone Drive. I guess I'm the
750 abutter to this property. I'm also the president of the Mountain Homes Association...Condominium
751 Association. I don't represent 200 families, but I am a board member of the Association. And I have concerns
752 with 20 units being proposed to be put into that property. Some of the concerns have to do with traffic. I'm
753 looking at the proposed area and I see, you know, two entrance ways right across from each other. Our
754 entrance way is just a little bit further down. You know, I've been living there for about eight years. It's not
755 very easy to get in and out of Mountain Home Estates as it is now. I feel that would be an additional burden if,
756 you know, there was another 20 families living that close to our entranceway as well as for the senior citizens
757 living across the street. I'm not opposed to a developer, I'm not opposed to property being developed at all. I
758 can tell you we are a great community of great people. I've been living there long enough to know those
759 people and I know that we are a good community and I believe that in today's economic hardship times, it can
760 be difficult for people to, you know, manage what they have, you know, from an economic terms. Being on
761 the Board, I've seen many foreclosures in our community as a result of, you know, what everybody else has

762 been dealing with, you know, with the fraudulent mortgages over the years and people losing their jobs
763 mostly, you know? I guess one of the questions I had...I was a little confused. Is this a condominium
764 association or is this privately owned single units?
765

766 MATT NEUMAN: No, it would be in a condo. A condominium association.
767

768 BRETT LABRANCHE: So it would be a condominium association. So that furthers my concerns and I'll tell you
769 why. Being the president of the condo association, we've had to manage many, many different things like
770 delinquencies in condo fees as a result of the economic times. And the property values have diminished
771 considerably as a result of the economic times. And I believe that it takes a good commitment, a large
772 commitment from a group of people to manage a property. Our property budget is approximately \$750,000.
773 We manage that every year. It has been more and more difficult to manage that as a result of the economic
774 times and people losing their jobs and the financial situations that have happened. Being a condominium
775 association, it concerns me because I feel that...and I'll give you an example. I was the Board President for a
776 few years and I decided to take a break, mostly because my wife asked me to take a break and I ended up
777 becoming the Board President again a short time after because we couldn't get the commitment level from
778 the people to become part of the organization. Now, I'm not saying that that would happen with any other
779 condominium association. But I'm also very familiar with a lot of the associations in Londonderry and other
780 towns who are going through some very similar situations. So I'm wondering if it really is a good idea to put in
781 a condominium association at this time and mostly, you know, can you really, you know, find committed
782 people to run that association? So, as I said, I'm not against development. I'm just against the type of
783 development that you're gonna have and the impact that it could have. So, for instance, if you had a
784 condominium association that wasn't managed well, and then all of a sudden, you had properties being
785 foreclosed on and emptied, well that doesn't really look good for the community around you. And I can tell
786 you, we've done everything that we possibly can to manage our association. And I think we do a really good
787 job. We actually have good financials. But would that be the case of an additional condominium association?
788 We are unique in a sense because we're an association that runs very well and is actually doing very well in
789 these economic times. But we've had to, you know, put some rules in place to make sure that that was the
790 case. So I just, from a...my concern is, you know, the type of development that goes in there and the situation
791 of the times today because of the economic situation and mainly, you know, we also are a large family
792 community, we have a lot of children. If you look at the bus stops, there are many, many different age groups
793 in there and I...and we had an incident this past year where a child was struck, you know by a vehicle, so it's a
794 safety concern as well. You know, we have pets in the neighborhood. You know, somebody mentioned about
795 putting up a traffic light. That would be a great idea if we could have that. If you could help us with that, that
796 would be...
797

798 MATT NEUMAN: That would be something the Planning Board would...
799

800 BRETT LABRANCHE: I'm just kidding. I'm sorry.
801

802 MATT NEUMAN: Wrong meeting.
803

804 BRETT LABRANCHE: So...but basically, that's, you know...so I just wanted to say, you know, I have to...I'm
805 representing myself as a homeowner, but I'm also, as a Board member and from a management perspective,
806 I'm wondering of this is the right type of development for that area. Thank you.

807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850

MATT NEUMAN: Thank you. Is there anyone else who would like to come forward?

LARRY O'SULLIVAN: Anybody have questions?

CHRIS PAUL: I'll be quick. Chris Paul, 118 Hardy Road. Now, I have a business down the street too and it doesn't really seem like it'll impact me whatsoever, but does the town have some sort of obligation to make sure that property owners reap some kind of benefit from properties that they purchase? So, I...that's my only question.

MATT NEUMAN: Any other questions or any...? I don't know if the applicant would like to rebut any?

MORGAN HOLLIS: Just briefly. The concern of Mountain View Estates about the traffic is a legitimate concern, whether its eight units or 19 units and those concerns are in front of the Planning Board when an application is made. And the applicant at that time will have to demonstrate that they have either no impact or they can mitigate their impact to make it no impact. Safety issues get taken up at the Planning Board too. There is a...the concern about the condo association. I guess my only comment as whether it's a condo ownership or whether it's single family ownership, you're gonna have those same questions of who's gonna take care of it. Some condos...some people can argue condos are great because you at least have a cluster of people ensuring that the open space is taken care of and it's not left to one owner. Others say, well, if it's a separate lot, at least that owner is responsible for that backyard. I think the argument could go either way but I think the concerned raised is one that could happen whether you had eight single family lots or 20 condos, 20 single family's, or eight condos. So I don't think that's a fair issue to raise. On the owner from 118 Hardy Road, my answer would be that it is not the Town's obligation to ensure that a property owner gets a benefit out of their property. But it is the law that says ordinances may not be so confiscatory as to prevent reasonable return and when they are, it's up to the Board to give relief on a lot by lot basis. Not on a town wide basis. And my case here is you have a very unique situation. Not like other lots. So that's why we're asking for relief. Thank you.

JACK SZEMPLINSKI: I would also like to point out that Mesiti Development has a number of development projects that are condominiums and he has some...most of them are very successful as far as running the association. And also, this type of development does promote for alternate way to live, for people to live more in a community rather than living on their acre lot. There's a lot of people that would like that. So, it does provide for alternative housing for townspeople.

MATT NEUMAN: Okay. Thank you.

MORGAN HOLLIS: Thank you.

MATT NEUMAN: Any questions of the Board?

NEIL DUNN: You said Mesiti has been involved in...is involved with this development or other developments? I missed that. I...

851 JACK SZEMPLINSKI: The applicant is Mesiti Development. He's involved in a number of developments in town,
852 including The Nevins that you're probably familiar with. The south part of town.
853
854 NEIL DUNN: I thought the applicant was the Dionne family.
855
856 MORGAN HOLLIS: They're the owner of the property.
857
858 JACK SZEMPLINSKI: They're the owner.
859
860 NEIL DUNN: And Mesiti is the potential buyer?
861
862 MORGAN HOLLIS: Yes.
863
864 JACK SZEMPLINSKI: Right.
865
866 NEIL DUNN: And so a potential buyer with a vested interest is making a judgment call on the price?
867
868 LARRY O'SULLIVAN: You can ask for alternatives.
869
870 NEIL DUNN: Well, no, I'm just...I want it to be brought out...
871
872 MORGAN HOLLIS: I can only give you what...I can only give you what I have. That realty firm gave me the
873 letter.
874
875 NEIL DUNN: Okay, no, but I was just verifying that that is the case.
876
877 MORGAN HOLLIS: Yeah.
878
879 NEIL DUNN: And is Brooks involved in any way with the project?
880
881 MORGAN HOLLIS: Not to my knowledge at all. No.
882
883 NEIL DUNN: Is it...was it to your knowledge?
884
885 JACK SZEMPLINSKI: Sorry?
886
887 NEIL DUNN: Is Brooks Real Estate involved at all with the project?
888
889 JACK SZEMPLINSKI: No.
890
891 MATT NEUMAN: Any other questions?
892
893 NEIL DUNN: If I may...?
894
895 MATT NEUMAN: Yeah, Neil, go ahead.

896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940

NEIL DUNN: The back road, the Kelley Road where it's bars and hold and stuff, Richard, could you explain that to me? All those lots...well, the lots that I was talking about whether they're five of them and that's why I don't...I'm having trouble with the uniqueness. They all have that Kelley Road, mapped road, whatever, to bars and barriers or whatever he called it.

MORGAN HOLLIS: I can give you the information, which I gleaned from the Town file on Mountain Home Estates. Back in 1973, there were letters from the applicant's attorney Bob Carr and the Town's then attorney, whose name I can't recall, but...and they both concluded that it was a Class VI road laid out in 1933...laid out in 1918. It was discontinued, subject to gates and bars, in 1933. That's different than discontinued and my opinion is the same as both those letters, which is when you discontinue a street, subject to gates and bars, it means the Town could come back...

LARRY O'SULLIVAN: And build a road.

MORGAN HOLLIS: ...and build a road, whereas if it's discontinued flat out before 19...if it was discontinued prior to 1980, as a matter of law, if it wasn't built, it went to the abutters. But "subject to gates and bars" means the Town could, if it wanted to, build a road out there.

NEIL DUNN: Or is a developer wanted to, Richard, they could build it in that area to the Town's spec and then the Town would take it over in then norm...

RICHARD CANUEL: They could, yes.

NEIL DUNN: ...in the normal fashion.

RICHARD CANUEL: Sure.

NEIL DUNN: Because I'm looking and there's one lot that appears to be landlocked, unless Kelley Road is extended through. One has a right of way off...across from Walnut and...so, for any of those other ones other than the lots on Mammoth Road, there's three other lots that seem very similar to this one, back up to Fieldstone, one of them, so that road would almost have to come there to Kelley...Kelley Road...

JACK SZEMPLINSKI: Mr. Chairman, can I...?

NEIL DUNN: ...in order to make it serviceable. And I'm only saying that because they have a bunch of...a bigger hardship than this one and I'm just trying to get a sense of what that road's all about. So they could go in there and develop it and turn it over to the Town?

RICHARD CANUEL: They could, yes, and develop it to Town standards. Sure.

MATT NEUMAN: Go ahead.

JACK SZEMPLINSKI: Typically, when you try to open a Class VI road, one of the biggest hurdles is, first of all, the layout of the road, but one of the biggest ones is the width of right of way. Typically, those old roads have two

941 or three road layouts and the Town requires minimum 50 feet. So you would have to, I mean, this is not
942 something the Town is ever flexible on as far as giving somebody 40 feet or 33. Somebody would have to
943 acquire the proper right of way and most likely, if those parcels were ever developed, they would probably be
944 developed jointly with parcels that have access and then basically the right of way would be widened out to 50
945 feet and that's really the only way you can get into the parcel. Other than that, those parcels are all
946 landlocked.

947
948 MATT NEUMAN: Alright. Thank you. Other questions? No? [Indistinct]? Neil?

949
950 NEIL DUNN: I'm good.

951
952 MATT NEUMAN: You sure?

953
954 NEIL DUNN: Well, I can probably think of some more, but...

955
956 LARRY O'SULLIVAN: Wanna give a me a sec...one more...one more shot? What was your timeframe? When
957 did you want to start this? When did you want this to be completely developed?

958
959 JACK SZEMPLINSKI: Realistically, just to get it to Planning Board, we're probably talking late next year as far as,
960 you know, when would be the most optimal time to...

961
962 LARRY O'SULLIVAN: Late next year?

963
964 JACK SZEMPLINSKI: Right.

965
966 LARRY O'SULLIVAN: So 2014 you'd...?

967
968 JACK SZEMPLINSKI: Well, 2013, maybe fall would be probably the most optimistic schedule as far as
969 development of a property based on permitting process.

970
971 LARRY O'SULLIVAN: Okay, so 12 months or so.

972
973 JACK SZEMPLINSKI: Roughly.

974
975 MATT NEUMAN: Still a lot of hurdles here, I think, still...for them to get over. Alright, well if there are no
976 other questions, then we'll pull this back for deliberation.

977
978 MORGAN HOLLIS: Thank you.

979
980 MATT NEUMAN: Thank you.

981
982 DELIBERATIONS:

983
984 MATT NEUMAN: Alright. Anyone have any thoughts right off they wanna talk about?
985

986 LARRY O'SULLIVAN: Sure, if they'd put a lot of restrictions on themselves by saying that they'll do
987 underground utilities, sewer, water from municipals, and that isn't in any plan that I see, but that's what they
988 said. So I suggest that if we do go for an approval on this 19 residences, that we include that as a variance, as
989 part of the variance restriction and that we include, just to ensure that we have a shovel in the ground in 18
990 months, that we put a time limit on it of 18 months. I mean, we've been trying to do this for, what, four years
991 now to put a time limit on variances where we have a development place? Well, we don't wanna see a cell
992 tower get a variance that sits up on an empty lot and nothing's gonna be built for another ten years. But the
993 variance still exists. And that's the kind of thing, not that I want to see that cell tower done, but at the same
994 time, that's the kind of thing we stated as an example, missing the boat on that, so let's not do that anymore.
995 Let's always put a time frame on. We discussed it before these forms came out and we haven't. So that's why
996 I think we need to take a re-look at that. A strong re-look at it. So other than that, I like their idea of using this
997 property as a transition buffer. I don't have any issue with the...despite the restrictions that I would say that
998 we need to put on it, with the approval go ahead for this.
999

000 MATT NEUMAN: Mm-hmm.

001
002 LARRY O'SULLIVAN: Planning Board's still got a say-so.
003

004 MATT NEUMAN: Yeah, there's a lot to be done. Neil, I mean, you raised a lot of issues about the uniqueness...
005

006 NEIL DUNN: I...

007
008 MATT NEUMAN: ...and that you don't really see that.
009

010 NEIL DUNN: I have a big problem with one, two, three...the values, I mean you argue maybe that...well, public
011 interest. I guess that's where I was trying to go. He's saying that it takes into consideration public safety,
012 welfare, and health and will it alter the...
013

014 LARRY O'SULLIVAN: Traffic?
015

016 NEIL DUNN: Well, no, his first point, will it alter the character of the neighborhood? I'm looking at those five
017 other lots that are ten acre lots and, you know, you...I think it does. I think it does alter the character and I do
018 think that we have that zoning with the acre, the .92 or whatever, for a reason and that is to keep traffic
019 down, make safety...Mammoth Road is tough. That is a tough intersection there. To bring up the one that's a
020 non-conforming existing use that, you know, nothing's gonna change there.
021

022 LARRY O'SULLIVAN: Mm-hmm.
023

024 NEIL DUNN: And the elderly are allowed to have a tighter footprint. So there's nothing wrong with what's
025 going on there. I don't see how that compares.
026

027 LARRY O'SULLIVAN: [indistinct] good comparison. Yeah.
028

029 NEIL DUNN: However, you have five lots that are identical. One right next to it is for sale, just like this one.
030 And I don't see how you can say this one's gonna be the transition to the next one 'cause they'll want some

031 kind of...I don't know. I just don't see it. And I don't see any hardship on the property. The evaluation on the,
032 you know, a big house in there I would think, with ten acres, could get a whole lot more than \$375,000. So I
033 don't see where that hardship or the reasonable use based on the fact that they're saying a cost of \$260,000,
034 that it can't be used reasonably with some kind of...I don't want to say payback, but worthwhile investment
035 for the owner. I don't agree with it. I don't think it complies with the spirit. I don't think it does substantial
036 justice. I don't think it would really hurt the surrounding property values unless someone does it the right way
037 and puts a big house on that ten acre lot right next door, then they might say it would impact them down the
038 road. And I don't think he met part five. I don't think we have an obligation to make sure people make money
039 on an investment, so, you know, it's like saying "okay, well I paid a million for the lot, so now you gotta let me
040 make some proportion, even though I overpaid." No, that's not what the court was saying. So I'm not in favor
041 of it at all.

042
043 LARRY O'SULLIVAN: So you think that it missed four out of the five.

044
045 NEIL DUNN: Four out of the five I think it missed.

046
047 LARRY O'SULLIVAN: I tried to flesh out, that's why I was asking as many questions as I did, but I tried to flesh
048 out just what exactly he was trying to drive to at with number five. Because economics is their reason for
049 doing this in this manner. No doubt. Yes, I think...I agree that they have a unique lot. Yes, I agree with them
050 that there's public interest that's being served by doing something along these lines. It's not contrary to
051 public interest at the least. There is no threat to public safety, health, or welfare. My concern is that the
052 growth ordinance is...it will be considered and that's why I asked about the Planning Board. But we all know
053 that we have to have Planning Board approval before this is gonna be approved.

054
055 MATT NEUMAN: That's right.

056
057 LARRY O'SULLIVAN: Or something can be done. I asked about the traffic impact. They haven't done that yet
058 but I'm sure the Planning Board's gonna ask about traffic impact study or something similar if not a traffic
059 impact study. My question to them about the turn lane on Mammoth Road, I mean that's what they're
060 moving that house for, so they can get a turn lane there. But it's for only 20 houses? I mean, that's...I don't
061 know, it doesn't seem like it's a logical thing to me. Why are they losing out on that lot? Anybody got
062 that...input on that? Okay, so there's 19. We're not talking about 20. Then I went to the spirit of the
063 ordinance. Well, this is not your typical AR-I neighborhood because it is sitting across the street from elderly
064 multi-fam...I'm not...it's rather condensed residences and next to condensed residences. So it's very highly
065 condensed I guess is the best term for the amount of people that are gonna be there and this would be a
066 means of a buffer, as far as I'm concerned, to the surrounding lots and probably would be a better thing than
067 adding another road off of Mountain Home and do the same kind of homes there. So this, to me, is something
068 that's in between. If you think that they have some special conditions because they do have that...that gas
069 pipeline and there's nothing that you can do with that land other than make it look like a golf course. I mean,
070 that's it. It's lawn, period. I mean, I don't even see people putting plants on the thing where it goes past my
071 neighborhood and up between Reverend Parker and that neck of the woods off of Shasta. That's...I mean, it's
072 pretty but at the same time, you can't do anything with it, so your value's, you know, underground. I'm
073 particularly pleased, though, that they are talking about building into their own costs and increasing their own
074 costs of all this stuff because they're gonna put all their water and sewer in the ground and they're gonna put
075 their wires underground and as far as I'm concerned, that's a major thing that most communities, most new

076 developers don't volunteer for. This is...that's an expensive thing. So, as far as I'm concerned, if that's the way
077 for us to have the density in that area, that's the place for it. My other thing was that they said it'll be a
078 private road and I know that a lot of roads start out as private roads and then the Town has been asked...and I
079 don't know if the Town has ever said no to a road that needed to be turned over but I'm not aware of one if
080 they have. Janusz may remember one but I don't. But I also think that the neighbor who had the
081 condominiums...was it Brett who was the condominium association president from next door?
082

083 MATT NEUMAN: Mm-hmm.
084

085 LARRY O'SULLIVAN: He's got some good points. No doubt about it. But that's not the purvey of this Board.
086 That's not our thing.
087

088 MATT NEUMAN: Right.
089

090 LARRY O'SULLIVAN: You know, they are built in problems when you have a condominium association and the
091 owners are the ones that have to deal with it. Not us. So, I'm done.
092

093 MATT NEUMAN: Jim.
094

095 JIM SMITH: A follow up comment on your...about the private road. I believe that Planning Board would
096 require them to build that road to the Town's specifications just in case what you propose would happen. So
097 it wouldn't be an under...I would say "non-conforming road."
098

099 LARRY O'SULLIVAN: It'd still have to have the 50 foot right of way?
100

101 JIM SMITH: I believe so.
102

103 LARRY O'SULLIVAN: I don't think so.
104

105 RICHARD CANUEL: Yeah. Yeah, the Town would require them to build that road to Town standards.
106

107 LARRY O'SULLIVAN: After the...after it was built?
108

109 RICHARD CANUEL: Because it is always anticipated that...
110

111 LARRY O'SULLIVAN: After it was built? After it was built up and it was donated to the Town? We wouldn't
112 take it unless it was built up to standard?
113

114 RICHARD CANUEL: Right. Yeah. Because it's always anticipated that that petition's gonna come to the Town
115 to accept that road at some time in the future. So part of the Planning Board's requirements are that those
116 roads be built to Town standards.
117

118 LARRY O'SULLIVAN: Very good.
119

120 JIM SMITH: In underground utilities, there's a requirement as well, right?

121
122 RICHARD CANUEL: Part of the subdivision requirements.
123
124 LARRY O'SULLIVAN: Yeah, but this has water and sewer as well as, obviously, an electric.
125
126 JIM SMITH: Yeah, but all of that would have to be underground anyways.
127
128 NEIL DUNN: Mm-hmm.
129
130 LARRY O'SULLIVAN: Yeah, by our definitions, yes.
131
132 JIM SMITH: Sure. Right.
133
134 LARRY O'SULLIVAN: Yeah. Okay. I'd still put it in there, though. To anything that we say in the waiver, 'cause
135 I've seen....there's...
136
137 JIM SMITH: Okay, another point...
138
139 LARRY O'SULLIVAN: There are roads, there are houses where there's only...I'm sorry, roads where we above
140 ground that are new.
141
142 MATT NEUMAN: Jim?
143
144 LARRY O'SULLIVAN: Off of Peabody and off of...over by Woodmont. That house...the...anyway, there's a
145 couple of them that we allowed above ground. So...
146
147 JIM SMITH: Are you sure the...?
148
149 [Overlapping comments, laughter]
150
151 LARRY O'SULLIVAN: Pretty sure of it.
152
153 MATT NEUMAN: [indistinct]
154
155 NEIL DUNN: Jim was probably there for it.
156
157 JIM SMITH: I don't believe so. When you talk about a time limit, would you extend it or...how would say...be
158 from the point where the Planning Board approval is granted or from when the zoning variance was granted?
159
160 LARRY O'SULLIVAN: Well that's why I asked how long before he figured he'd have a shovel in the ground.
161 That's why I said a year, 14 months. So, if you said in 18 months...
162
163 JIM SMITH: I...
164
165 LARRY O'SULLIVAN: How much of a buffer...

166
167 JIM SMITH: The planning process can be unpredictable.
168
169 MATT NEUMAN: Long
170
171 LARRY O'SULLIVAN: Yeah.
172
173 MATT NEUMAN: Especially in a situation like this. So you would say...
174
175 JIM SMITH: I would say...
176
177 MATT NEUMAN: From the...
178
179 JIM SMITH: ...the time limit from the Planning Board approval.
180
181 MATT NEUMAN: ...from the Planning Board approval.
182
183 LARRY O'SULLIVAN: Okay. That's fine.
184
185 MATT NEUMAN: Mmm.
186
187 JIM SMITH: I think that's fairer.
188
189 LARRY O'SULLIVAN: Okay. It's fine with me. Just as long as you put a time line on it, that's all I care.
190
191 JIM SMITH: Yeah.
192
193 LARRY O'SULLIVAN: Just as long as it, you know, 'cause this is infinity we're talking about. When you get a
194 variance, it goes forever. If nobody does something about it...
195
196 JIM SMITH: Yeah.
197
198 LARRY O'SULLIVAN: ...you know, for a hundred years, and in, you know, a hundred years, somebody wants to
199 say, "Well, I got a variance, I could do this now." Sorry. We'd like to be able to say no, you need to move on
200 this.
201
202 JIM SMITH: Yeah, I understand what you're saying but I think it should be tied to the time that the planning
203 process is complete.
204
205 LARRY O'SULLIVAN: That's fine. That's fine with me.
206
207 MATT NEUMAN: [Indistinct].
208
209 NEIL DUNN: Neil, you had another comment?
210

211 NEIL DUNN: I was just...I'm really having trouble with the spirit of the ordinance and with number five and I
212 guess I'm just trying to get Larry's take on...so if this is the buffer lot to the lot that's next to it that's about ten
213 acres that is also for sale, so we'd let them put in ten and that'd be another transitional lot? I mean, to me, it's
214 the spirit of the ordinance and we have the zoning and the density for the safety and the health and that's
215 why it's there. The elder housing is a legal proper density.

216
217 LARRY O'SULLIVAN: Mm-hmm.

218
219 NEIL DUNN: So to say that...use that as an argument for this one to have greater density and it's a legal setup
220 doesn't seem to make sense to me. And then the second thing I would wanna point out is the property was
221 bought in 2008. These laws...our ords have not changed since then. Enough to affect this. So when the lot
222 was purchased, it was known what was there and what the regs were and what the ordinances and zoning
223 was, so I just don't...I'm having a hard time with five and two especially. The spirit. And I guess I'm just trying
224 to get a better feel for how you clear those out.

225
226 LARRY O'SULLIVAN: Spirit because it's not a typical AR neighborhood. Totally not [indistinct].

227
228 JAY HOOLEY: Due to the existing non-conforming?

229
230 LARRY O'SULLIVAN: Oh yeah.

231
232 JAY HOOLEY: But we have...

233
234 LARRY O'SULLIVAN: And...and the gas line going underneath. Dividing the property pretty much in half.

235
236 JAY HOOLEY: Correct me, I may misunderstand, but I believe the gas line runs from the Hudson border...

237
238 LARRY O'SULLIVAN: All the way through town.

239
240 JAY HOOLEY: ...to the outside of Litchfield Road.

241
242 LARRY O'SULLIVAN: Absolutely.

243
244 JAY HOOLEY: It's not unique to this property in that respect then, to me.

245
246 MATT NEUMAN: How it bisects the property, you could argue though.

247
248 JAY HOOLEY: Do we have...can we validate how many ten acre plus lots are bisected by that gas pipeline?

249
250 MATT NEUMAN: I don't think we have to...I think you just look at that area. I mean, we're not gonna look
251 town wide.

252
253 LARRY O'SULLIVAN: It looks as if it's...the next lot over's got one very similar to it, right? Neil? Isn't the
254 next...?

256 NEIL DUNN: Well, it goes through Mountain Homes, it goes through those other...
257
258 LARRY O'SULLIVAN: [Indistinct] in a corner. It goes through a corner of the next lot up.
259
260 NEIL DUNN: Right, going to Mammoth, but going the other direction towards Shasta, it gets a few yards in
261 their yards and...
262
263 LARRY O'SULLIVAN: Yeah, but they're all small houses.
264
265 NEIL DUNN: Well, I...but they're single family houses on lots.
266
267 LARRY O'SULLIVAN: That's what I mean. They're all single family houses.
268
269 JIM SMITH: Yeah.
270
271 NEIL DUNN: I don't know. I...
272
273 LARRY O'SULLIVAN: That's not a [indistinct].
274
275 NEIL DUNN: I was just looking for clarity on that 'cause I don't...I don't...how do you make a transition...I don't
276 know. And then five...
277
278 LARRY O'SULLIVAN: That's something...
279
280 NEIL DUNN: ...five, to me, the other four lots right next to them are identical, maybe other than a little
281 inconvenience of a right of way of a gas line, but...Anyway, I was just...I was looking for clarity, Larry, 'cause I...
282
283 JAY HOOLEY: Lastly on five, for me, even taking the math at face value, three out of the five show, in theory,
284 some profit doing this. Just not enough to, at the moment, in this market, warrant it to this particular set of
285 investors. And one option that was mentioned that doesn't seem to have been considered would have been
286 elderly, which is another...
287
288 LARRY O'SULLIVAN: Or workforce.
289
290 [Overlapping comments]
291
292 LARRY O'SULLIVAN: Or workforce housing.
293
294 JAY HOOLEY: Or work...so, in other words, there are many other...
295
296 NEIL DUNN: Options to...
297
298 JAY HOOLEY: Options available...
299
300 LARRY O'SULLIVAN: But this is what's in front of us, gang.

301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345

MATT NEUMAN: Right, exactly.

[Overlapping comments]

JAY HOOLEY: I understand, but...

NEIL DUNN: Right, but we have to look is...are the...

JAY HOOLEY: Due to the uniqueness of the property, it not being able to be used, I...

LARRY O'SULLIVAN: Well, we can always ask to see if we can find somebody who wants to provide us with alternatives for that lot or a ten acre piece with seven duplex units, eight single family...eight single family, you know, 1,700 or 1,900 square foot, and then 20 condos at 1,900 square feet. You know, we could ask...have the applicant provide us with, you know, a real appraisal. A real appraisal, as opposed to the letter from somebody who says that, you know, this is what it may look like.

MATT NEUMAN: Well, I think the letter really spoke to the surrounding, didn't it?

LARRY O'SULLIVAN: Right.

MATT NEUMAN: Right, so...

LARRY O'SULLIVAN: It didn't do us much...it didn't do me any good.

MATT NEUMAN: No, I didn't put a whole lot of stock into it either.

NEIL DUNN: And the maximum price was by the developer themselves.

LARRY O'SULLIVAN: Right. So, I mean, there are alternatives, but this is what he's saying is his. That's why I'm saying okay, they think they can do that, God bless 'em. I don't think there's anything that's outright wrong about it. I think that because they have the economic issues, at the very least, there is...that makes for in [indistinct].

MATT NEUMAN: Sounds like you wanna make a motion, Larry.

LARRY O'SULLIVAN: Only 'cause I have so many different restrictions that I wanna put on. I'm gonna have to write it up.

[Pause]

LARRY O'SULLIVAN: Okay, are you...you want one from me?

MATT NEUMAN: If...unless there's someone else that'd like to...

346 LARRY O'SULLIVAN: We didn't hear from everybody, though. We have Jim, and Jim, and Jim. Or James and
347 Jay.
348
349 JIM BUTLER: Question. Can we limit the number of condos?
350
351 LARRY O'SULLIVAN: Mm-hmm. We can restrict it.
352
353 JIM BUTLER: Maybe that's something we can do is restrict the...
354
355 MATT NEUMAN: The Planning Board will probably take, I think, a further look at that.
356
357 LARRY O'SULLIVAN: Well if we say 19, the Planning Board's not gonna say 17. Or 18.
358
359 MATT NEUMAN: Well, they certainly...well, I think they certainly could. If they...I mean, after they do all the
360 soils and everything and they determine...
361
362 LARRY O'SULLIVAN: Because what I would...one of the things we have to put on ours is "per Planning Board
363 approval."
364
365 MATT NEUMAN: Right.
366
367 LARRY O'SULLIVAN: Alright? So that would allow them, I suspect, the ability to lower the number. I mean,
368 have we seen that before? Have you ever seen this?
369
370 RICHARD CANUEL: Well...
371
372 LARRY O'SULLIVAN: Us approve something and then Planning Board take away from it?
373
374 RICHARD CANUEL: Yeah, I mean, if I could intervene. What I suggest the language is...what you could state is
375 to grant a variance to allow no more than 19 single family units.
376
377 MATT NEUMAN: Mm-hmm.
378
379 RICHARD CANUEL: There are a number of different variables that may dictate the actual density of that lot
380 based on soil types, based on traffic and so forth that the Planning Board will consider. Based on those
381 factors, I mean, there may be a possibility that the Planning Board may say more than 19 units may fit there
382 because of the density of that property. So, I'd say if you have a concern, that you place that condition to limit
383 no more than 19 units.
384
385 MATT NEUMAN: Any other comments or anything before we...?
386
387 LARRY O'SULLIVAN: Anything from James?
388

389 JIM SMITH: Well, on your restrictions, rather than make it any more complicated than we have to, why don't
390 you just say limit it to the 19 and Planning Board approval? Because that's gonna take care of and put your
391 time limit of 18 months from...
392
393 LARRY O'SULLIVAN: Planning Board approval,
394
395 JIM SMITH: Planning Board approval. And I don't think you need to put the underground and all that other
396 stuff in there.
397
398 LARRY O'SULLIVAN: Okay, fine.
399
400 JIM SMITH: Because the process takes that into consideration anyway.
401
402 MATT NEUMAN: [Indistinct]?
403
404 LARRY O'SULLIVAN: Nothing out of James?
405
406 JAMES TOTTEN: I don't see the need for a variance. They can develop it with eight lots. I don't agree with the
407 financials.
408
409 LARRY O'SULLIVAN: Think we should get alternative financials then?
410
411 JAMES TOTTEN: I don't see the need. I don't see a hardship. I don't see uniqueness of the lot. They can
412 do...they can develop the lot with eight.
413
414 JAY HOOLEY: Even by their own math.
415
416 LARRY O'SULLIVAN: Mm-hmm. Okay. So, in other words, if I make a motion to approve, I shouldn't...
417
418 JAMES TOTTEN: I'm not [indistinct]...
419
420 LARRY O'SULLIVAN: I shouldn't bother.
421
422 NEIL DUNN: No, he's not voting, though. He's not voting.
423
424 JAMES TOTTEN: I'm non-voting.
425
426 MATT NEUMAN: No, he's not voting, so, it's...
427
428 JAMES TOTTEN: So I'd abstain anyways.
429
430 LARRY O'SULLIVAN: Oh, okay.
431
432 NEIL DUNN: No, you vote as a non-member.
433

434 LARRY O'SULLIVAN: So it's a...we have to have you say something, Neil. Or should I not make a motion?
435 'Cause my motion's gonna be to approve it with the...I'm not making it, I'm saying it's...
436
437 MATT NEUMAN: No, honestly, I see the uniqueness of the property. The pipe line is a major factor for me.
438
439 NEIL DUNN: Hmm.
440
441 MATT NEUMAN: The fact that it's right up against Mountain View. I don't...I don't what you're gonna...
442
443 NEIL DUNN: So we continue to congest and congest and congest.
444
445 MATT NEUMAN: But what I...
446
447 NEIL DUNN: That's where I'm having trouble with the spirit portion.
448
449 MATT NEUMAN: I'm just...what are the uses for this particular parcel? I think...I don't see how one...
450
451 NEIL DUNN: Eight houses? Eight houses legitimately, which is allowed.
452
453 LARRY O'SULLIVAN: 'Cause the...I believe what they said is they're not gonna sell eight houses there. They're
454 not gonna go. People aren't gonna want them.
455
456 MATT NEUMAN: So then we have another half done development sitting there? That looks great on
457 Mammoth Road.
458
459 JIM SMITH: You know, I think one of the problems we have with the way the ordinance is written right now,
460 and they pointed it out, is the fact that we give such a small bonus for having both sewer and water on a piece
461 of property.
462
463 LARRY O'SULLIVAN: Yeah, .8, is it?
464
465 JIM SMITH: I mean, that...for the expense of...and the advantage of that, having those features on the land.
466 Because now you're eliminating the septic problem...
467
468 LARRY O'SULLIVAN: Water resources aren't a major issue.
469
470 JIM SMITH: Yeah. The other problem, the condominium next door is an example of it, they've had to replace
471 their septic systems on numerous occasions at great expense. Otherwise, they would be creating a real health
472 problem and by having the sewer and water on this piece of property, it would seem, in my mind, more
473 justifiable for a higher density than what we currently allow.
474
475 NEIL DUNN: Which they would have. They would go .92 instead of...
476
477 JIM SMITH: I mean, that's not much of a...
478

479 NEIL DUNN: Right, but you could also argue...so I guess my thought is, and if the ordinance were to be
480 changed by the proper procedure, they could go to a quarter acre lot and if everybody in town wants
481 everybody to have quarter acre lots, then that's the ordinance we would rule by. But that is not what's here
482 now.

483
484 LARRY O'SULLIVAN: Right. Mm-hmm. That's why we're here.

485
486 NEIL DUNN: And, you know, the density and the acre lot was also for space and other concerns along, and
487 they do give a little break, but I mean, to me, we're stamping all over the spirit of that ordinance and it's...I
488 guess I'll leave it there. I've said that about five times, so...

489
490 JAY HOOLEY: Yup.

491
492 LARRY O'SULLIVAN: Okay. I'd like to make a motion to approve case number 10/17/2012-1 with...or to no
493 more than 19 residences and subject to Planning Board approval and acted upon after Planning Board
494 approval within an 18 month timeframe.

495
496 MATT NEUMAN: We have a motion to approve with restrictions. Do I have a second?

497
498 JIM SMITH: I'll second.

499
500 MATT NEUMAN: I have a second. All those in favor?

501
502 LARRY O'SULLIVAN: Aye.

503
504 JIM SMITH: Aye.

505
506 MATT NEUMAN: Aye. Those opposed?

507
508 NEIL DUNN: Aye.

509
510 JAY HOOLEY: Nay.

511
512 RESULT: THE MOTION TO GRANT CASE NO. 10/17/2012-1 WITH RESTRICTIONS WAS APPROVED, 3-2-0.

513
514
515 RESPECTFULLY SUBMITTED,

516
517 A handwritten signature in cursive script, appearing to read "Neil Dunn".

518
519
520 NEIL DUNN, CLERK

521 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

522
523
524
525

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