

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

DATE: JANUARY 21, 2009

CASE NO.: 1/21/2009-2

APPLICANT: RICHARD AND DEBRA HIGGINS
87 PILLSBURY ROAD
LONDONDERRY, NH 03053

LOCATION: 85 PILLSBURY ROAD, 9-85, R-III

BOARD MEMBERS PRESENT: YVES STEGER, ACTING CHAIR
BARBARA DILORENZO, VOTING MEMBER
VICKI KEENAN, VOTING MEMBER
JIM SMITH, VOTING ALTERNATE
MICHAEL GALLAGHER, NON-VOTING ALTERNATE
MATTHEW NEUMAN, NON-VOTING ALTERNATE
LARRY O'SULLIVAN, CLERK

REQUEST: AREA VARIANCE TO ALLOW A LOT WITHOUT THE REQUIRED
FRONTAGE IN ACCORDANCE WITH THE PROVISIONS OF SECTION
2.3.1.3.2.

PRESENTATION: Case No. 1/21/2009-2 was read into the record with two previous cases
listed.
Clerk Larry O'Sullivan read two letters, Exhibits "A" and "B", into the record.

YVES STEGER: Who will be presenting?

JOSEPH MAYNARD: Good evening, my name's Joseph Maynard, I'm from Benchmark Engineering. I represent this Higgins in this application before you tonight. Mr. and Mrs. Higgins own a couple of lots that exist today on Pillsbury Road. There's an existing farmhouse that is along the frontage here at Pillsbury Road and behind that farmhouse is an existing single family residence that actually sits on a second parcel of land. There's two (2) parcels of land here that exist today. The existing parcel along the frontage is approximately one point eight (1.8) acres and consists of the house and the barn. The rear lot is about eight and a half (8.5) acres and actually comes in a dog leg shape back out to Pillsbury Road's frontage around the outside of the existing barn lot. A number of years ago, Mr. Higgins placed a agricultural or a conservation easement over this open field and this large portion of land that comes along the Pillsbury Road frontage and it actually comes up to just about the existing

home that sits on the house behind the old farmhouse. Currently, the existing house that sits in back accesses...its access to Pillsbury Road is through a driveway easement which comes in just between the existing home and barn on the front lot. This rear portion or this rear lot which has the frontage down on Pillsbury Road also has frontage on the Town road, Winding Pond Road, at the very end of its length. There was a provision, when Mr. Higgins put this land under conservation restrictions that he could, in theory, construct a separate driveway to Pillsbury Road around the perimeter of the old barn, backing out to the front but at this time, he actually would like to maintain the rights to the field with the farmhouse, which he currently lives in. In order to do that, he'd like to sell off the home that's on the rear lot but in doing so, he wants to create its own driveway and access from Winding Pond to that lot. And therefore, he'd like to subdivide this open field portion here which consists of about four (4) acres from the rear lot and attach that to the existing home and barn and create the existing home with its frontage on Winding Pond Road at this location here, which is a little over fifty (50) feet on that right of way. So, the proposal before you tonight is to actually adjust this lot line and allow the creation of the existing house lot to remain with just the fifty (50) feet of frontage on this road that's out front, off of Winding Pond Road.

YVES STEGER: Okay. Would you like to go now to the points of law?

JOSEPH MAYNARD: I can...

YVES STEGER: Are you familiar with the concept?

JOSEPH MAYNARD: Yes, I am.

YVES STEGER: Okay.

JOSEPH MAYNARD: The Higgins are asking for a variance to Section 2.3.1.3.1.1, Table I, to create a lot with less than the minimum required one hundred and fifty (150) feet of frontage. Facts that actually support this request: the proposed use would not diminish surrounding property values because this is a lot of record now; it has an existing home and dwelling on it. The property access that currently exists from Pillsbury Road is through an easement through an abutting property. The variance will not create any new building lots and the existing structures will remain as already permitted. (B), granting the variance would not be contrary to the public interest because the lot currently has access to Winding Pond Road. No new lots would be created. No new lots would be created once the driveway is permitted and approved through the Public Works Department. This will also become the perceived frontage of this lot once this driveway is actually constructed so that when people come and visit this dwelling, their access and their street address will change from Pillsbury Road to actually be Winding Pond Road. So the perceived frontage for that lot will actually be this stub that's left at the end of Winding Pond Road in lieu of any frontage that would have existed along Pillsbury Road. (C), Special conditions exist that literal enforcement of the ordinance results in unnecessary hardship. Granting the variance will allow these existing fields that exist along Pillsbury Road to remain with the original farmhouse and allow the adjustment of the lot line so there will be no complications or confusion with the sale of the home on lot 9-85. It will also, again, there was a reservation put across the front piece of property to allow a driveway for that home to be constructed out to Pillsbury through this conservation easement by allowing the reduced

frontage for this lot. It'll allow this land to go to the farmhouse which, that condition will be removed and there will no longer be the option for that rear property to cross the wetlands that actually come out through the conservation easement, out to Pillsbury Road. Two (2), The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than a variance, because there is no other out for the driveway which does not involve a large amount of wetland crossings or crossing the conservation easement. The subdivision is necessary to prevent any issues with lot lines and allow lot 9-85-1 the ability to own and manage the fields. There is no other land available for purchase to create the necessary frontage on this side of the wetlands other than the frontage that's available at Winding Pond Road. Granting the variance would do substantial justice. It would allow the open field and the majority of the agricultural easement on that front property to remain with the old farmhouse. It'll also prevent any confusion with the lot lines, again, with the sale of lot 9-85. Again, we're looking to create a new lot line in this general area here, which is along a wetland that flows west to east, actually, across the Higgins' property. That wetland is roughly gonna, what we're looking to do to create the new lot line so that it's actually a definitive location for the property line between the rear lot and the front lot. (E), the use is not contrary to the spirit of the ordinance because no new building lots are to be created. The approved variance would create a new lot configuration which preserves the wetlands and the conservation easement on the property. And I think there's one (1) more, right? No, (E) is the last one, right?

YVES STEGER: Okay. Thank you. We can start with questions now.

LARRY O'SULLIVAN: Sure, you said in (E), when you were answering (E), "no new building lot is created." May I ask what you have now?

JOSEPH MAYNARD: There are two (2) lots here now. There's approximately a two (2) acre lot with the existing house and barn. The other lot is an existing home on the rear that's behind the house and barn.

LARRY O'SULLIVAN: How big is the lot?

JOSEPH MAYNARD: We're not looking to create...that lot consists of eight (8) acres.

LARRY O'SULLIVAN: Eight (8) acres today?

JOSEPH MAYNARD: Yes.

LARRY O'SULLIVAN: So there is no new lot that is being created. Just access to that lot is what's changing.

JOSEPH MAYNARD: We're trying to change the frontage for that rear lot. That rear lot now kind of hooks around through the open field and that rear lot's frontage is actually along Pillsbury Road, in this location here. What we're trying to do is, there's a conservation or an agricultural easement on this whole property and what we're trying to do is we're trying to...Mr. Higgins would like to stay in the farmhouse and that's his property. But he also manages and maintains the agricultural use that he has along this frontage. What he'd like to do is he'd like to sell the rear house. He owns both

properties. In order for him to sell the rear house, he'd like to still own and maintain this portion, so he'd like to take this approximately four (4) acres of land, go back to the Planning Board, re-subdivide that to attach it to the farmhouse, okay? In taking this open field away from the back lot, the back lot will no longer have the minimum required hundred and fifty (150) feet of frontage on Pillsbury Road. But the rear lot does have frontage on Winding Pond Road. Winding Pond Road is a Town road.

LARRY O'SULLIVAN: It has fifty (50).

JOSEPH MAYNARD: It has a little more than fifty (50)...

LARRY O'SULLIVAN: Okay.

JOSEPH MAYNARD: ...but it's a fifty (50) foot stub.

LARRY O'SULLIVAN: I guess what my question is, is right now someone lives in that home...

JOSEPH MAYNARD: Yes.

LARRY O'SULLIVAN: They access it through a shared driveway...

JOSEPH MAYNARD: Yes.

LARRY O'SULLIVAN: Had it been considered to just be treated as a back lot?

JOSEPH MAYNARD: Back lot development?

LARRY O'SULLIVAN: Yeah.

JOSEPH MAYNARD: Mr. Higgins owns both properties. He rents the rear one. He wishes to sell the back lot.

LARRY O'SULLIVAN: Correct.

JOSEPH MAYNARD: The back lot, when this was put under conservation easement, okay, there was a provision to allow that back lot to construct a driveway out to Pillsbury Road, okay, and create its own access point, okay? He is actually...he'd like to maintain the field himself and own this field, this property, this visual frontage, this viewshed that, as you come up, he wants to own, maintain, operate, manage that frontage. If he sells the rear lot, he loses that with the rear lot that that easement and that restriction on this front portion goes with the back lot, okay? 'Cause it's part of that lot at this time. He wants to set it up so that he owns and maintains that as part of his dwelling now. But by doing so, he can't do that because he needs to leave legal and maintain frontage for the rear house lot. Am I confusing or...?

LARRY O'SULLIVAN: And you're coming here so that you can still keep it legal.

JOSEPH MAYNARD: So I can still keep it legal. But it does have fifty (50) feet of frontage on Winding Pond Road and, again, if we reconstruct the driveway into that location, the perceived entrance is now that road, which would give him the ability to take this portion of land of four (4) or five (5) acres, merge it or re-subdivide it so that it can stay with this farmhouse. He actively manages that portion of the land now. But he'd like to someday sell off that rear property. In order for him to sell off the rear property, he still wants to manage that portion, he needs to own that so he can manage it.

LARRY O'SULLIVAN: But my leading to there was that's an eight (8) acre piece...

JOSEPH MAYNARD: Yes.

LARRY O'SULLIVAN: ...that we're now providing access to?

JOSEPH MAYNARD: We're providing frontage for, yes.

LARRY O'SULLIVAN: Okay, direct access over Winding Pond Road, right? So why wouldn't we just extend Londonderry's ownership of a driveway so that you could get eight (8) acres back there and eight (8) lots back there.

JOSEPH MAYNARD: There's a conservation restriction on this whole piece of land. It can be subdivided no further.

LARRY O'SULLIVAN: On the number of lots that there...?

JOSEPH MAYNARD: There can be no more house lots out here. There's two (2) lots now and that's all there will ever be here. There's a restriction that was put on the property when he put the easements on it.

LARRY O'SULLIVAN: Okay, so the property has the restriction already that it is always going to be a one (1)...

JOSEPH MAYNARD: One (1) house lot.

LARRY O'SULLIVAN: ...one (1) house lot.

JOSEPH MAYNARD: Each one will be one (1) house lot.

LARRY O'SULLIVAN: Okay.

JOSEPH MAYNARD: So there will be no new lots ever be able to be created here. It's just who owns the land is what we're working with here.

LARRY O'SULLIVAN: Mm-hmm.

JOSEPH MAYNARD: And, again, he, you know, he's gettin' up there in age, so...just kidding. So, you know...

YVES STEGER: I'm sorry, you have to keep the discussions with the Board, please.

JOSEPH MAYNARD: I understand. But, you know, he'd like to be able to sell off the rear property. In order to sell off the rear property, he's trying to clean up these things. He'd like to still own the farm field. So in order for that to stay with that property so that there will...right now, the rear property has the option. So even if we do come out to Winding Pond right now, a future homeowner could, theoretically, apply and cross wetlands and cut across that out to Pillsbury Road. As part of this variance granting, we would go back to the Planning Board, subdivide it so that, and remove that ability for that lot to do anything to that portion along there.

YVES STEGER: So, that was my question, actually, even though we could subdivide, there could be an easement for the back lot going through the other property, just an easement, not an ownership, just for...

LARRY O'SULLIVAN: Access.

YVES STEGER: ...just for the access. It exists in many other places, so that would essentially contradict the...it could be achieved by other means, that just having to go to Winding Road. We could still give them and there is plenty of frontage in the other portion of the eight (8) acres.

JOSEPH MAYNARD: There is, but again, we're trying...I'm not fully adept at the conservation easement that was granted across this property. Mr. Speltz from the Conservation Commission is here tonight.

RICHARD HIGGINS: Mr. Chairman...?

YVES STEGER: I'm sorry...

RICHARD HIGGINS: Is it possible for the owner to supplement the...?

YVES STEGER: Not at this time. You will have time to...

JOSEPH MAYNARD: But it's my understanding that when this easement was put on the open field and this land, that a portion was reserved to allow a driveway to be constructed in this location out to Pillsbury Road.

YVES STEGER: Correct.

JOSEPH MAYNARD: In order for us to construct a driveway to Winding Pond, we're working with the Conservation Commission to eliminate this potential easement that exists today out to Pillsbury altogether in exchange for the swap to allow just the one out to Winding Pond because the conservation easement now comes almost to this existing house, so all of this land here is under a

conservation easement with the ability for this house to run a driveway out to Pillsbury Road in this location.

YVES STEGER: No, I...

JOSEPH MAYNARD: We're working with Conservation to eliminate this altogether with the, you know, if the variance is granted, to allow the field to go with the farmhouse. This would come out of that agreement, this would go into that agreement and it would be ratified.

JIM SMITH: Okay, I think part of where we're getting confused, I think it's not really been brought out clearly. What you are, in fact, doing, you're reducing the lot in question by four (4) or five (5) acres and adding that to the existing lot, which has the home that he's residing in, which is the front lot. So, you're actually reducing the size of that rear lot by that four (4) or five (5)...

YVES STEGER: No, I understand that.

JIM SMITH: And that eliminates the frontage on Pillsbury Road by doing that.

LARRY O'SULLIVAN: Mm-hmm.

JIM SMITH: So he does not have that frontage anymore.

YVES STEGER: Sure, he does, because there was an easement, so he can still do that as an other option to going to the Winding Pond, so it could still, we could draw and reduce the back lot so that the "O" would be smaller and the one (1) would be bigger but that easement exists and we can have an easement of the back lot to the front lot which is already authorized, so it would not be contrary to the original conservation agreement.

BARBARA DILORENZO: Yeah, 'cause the easement...

YVES STEGER: And that essentially creates a...

LARRY O'SULLIVAN: What's the benefit though, for doing...going across the wetlands as opposed to not?

YVES STEGER: I don't want to argue, I'm just asking questions to try to determine if there are...

LARRY O'SULLIVAN: I understand.

YVES STEGER: ...alternatives to the points of law and that is realistic question.

VICKI KEENAN: Can I ask a question? The conservation easement will not be eliminated, it would be amended. Is that correct?

JOSEPH MAYNARD: It would be amended.

VICKI KEENAN: Amended.

JOSEPH MAYNARD: It's there forever and always.

VICKI KEENAN: 'Cause that's important. Okay, because the conservation easement limits the number of lots.

JOSEPH MAYNARD: It limits any use of that lot also...

VICKI KEENAN: Okay. Alright.

JOSEPH MAYNARD: ...to specific things.

VICKI KEENAN: Okay, so that's important to be clear on.

BARBARA DILORENZO: But the Conservation has already accepted that easement.

JOSEPH MAYNARD: The easement's been on the property for a number of years, yes, with certain...not restrictions, but certain things are allowed, one of them being a septic system for that home, another one being that relocation of that driveway, another is being some agricultural uses. So there's certain things that are allowed but no new homes are allowed on the property. It's restricted to what's there now.

YVES STEGER: Okay, do you have a question?

JIM SMITH: Okay, I think there's still a certain confusion. The right of way, or easement would not provide any frontage.

JOSEPH MAYNARD: No. The easement out to this road, you're talking?

JIM SMITH: Right. That does not provide any frontage for that rear lot. It's strictly...

YVES STEGER: That's a good point.

JIM SMITH: That's the point I...

YVES STEGER: No, no. It's a good point.

JIM SMITH: I think that's where you were confused.

YVES STEGER: Yes, okay. Yes, it would give access to the road but not frontage and that's the word of the law.

JIM SMITH: Right.

YVES STEGER: That's interesting. Okay.

JOSEPH MAYNARD: Right, so, he actually would just like to own and manage this property which encompasses the frontage with the farmhouse and therefore just allow the rear lot this limited frontage so that he can sell it as a homestead without having to create a driveway through what he's trying to preserve.

YVES STEGER: Okay. Other questions?

MICHAEL GALLAGHER: So, essentially, you would go to two (2) four (4) acre lots, then? If it were granted.

JOSEPH MAYNARD: This portion...this will be approximately four (4) acres. It's eight (8) acres now, so eight and a half (8.5). So, the four and a half (4.5) or five (5) acres from this would be merged with this so this front lot would become almost seven (7) acres. Okay? And then that rear lot would be the residual.

YVES STEGER: Okay. Others? Okay, thank you. We will come back. Anybody in the audience that would like to speak in favor of the application?

LARRY O'SULLIVAN: I think we ought to hear from the owner, anyway.

YVES STEGER: Oh, sorry, yes.

RICHARD HIGGINS: If I might...

YVES STEGER: Good suggestion.

RICHARD HIGGINS: ...on a couple of points.

YVES STEGER: If you could introduce yourself...

RICHARD HIGGINS: Richard Higgins, 87 Pillsbury Road.

YVES STEGER: Please speak into the microphones. Any which one you prefer.

RICHARD HIGGINS: Okay, does this work without a wire?

YVES STEGER: Yes.

RICHARD HIGGINS: Where's our audio guy?

YVES STEGER: Yeah, you're on TV, sir.

RICHARD HIGGINS: One of the key things that I would like to emphasize on this is, this is my current home lot. This is the other lot. The septic system for my home is on that lot. You see that dark circle right there? That's my septic system from this house. One of the benefits of doing this plan is by adding this piece to my house, I now have my septic system on the same lot as my house. Imagine trying to sell this rear house to a buyer and say, 'by the way, here's a couple of complications; you have to share this driveway with me for the rest of your life.' They don't know me from a hole in the wall. They don't know whether I'm a good neighbor, whether I'm a problem, whatever. And then I have to say, 'and by the way, my septic system is on your land.' So, that's the hardship that I face. And by separating these two (2) along this line, leaving my septic system on, now on my land, we face this problem; if we divide along this line, this lot now has no frontage on Pillsbury Road. That's the bad news. The good news is that by utilizing this plan and tapping into Winding Pond Road, we eliminate any crossing of this wetland, which is in the spirit of the conservation easement that my wife and I chose to put on all this land about six (6) years ago. We find it unattractive from our point of view to build a culvert across this wetland and then take the driveway out this way when this is available. By the way, with respect to this option of tapping into the Winding Pond right of way, I believe I have that right without any action from you folks. That's the Public Works letter. This is the Winding Pond Road does not end at the cul de sac. There's a right of way on paper that continues from the cul de sac right to my land. I think I have the legal right to tap into that without any action, just by going through the Public Works and them reviewing with the standards that Janusz highlighted. So that's the entire name of this, is to find a solution to be able to sell off that property and not have to disturb the wetlands to find access. If, for instance, I were to continue to use this, leave everything the same way and continue to use this and sold this, this person has no way, this back house has no way to get to this land because there's wetlands across the entire parcel of land. So, you'd have a house separated from a large piece of land by a wetland and the alternative, of course, is to cross that wetland. So, that's what we're trying to do. It's partially motivated by my age. I'm past the age of retirement. We've had this land, we've kept it as is for twenty eight (28) years. You may be familiar with it, driving down Pillsbury Road, it's right across the street from the greenhouses, there are two (2) white Adirondack chairs sitting way in the far corner of it and so forth. We've kept the land just as it is for twenty eight (28) years. This plan will not change a single physical thing on the land with one (1) exception. It will prevent a wetlands crossing to go out to Pillsbury Road. Other than that, every single aspect of the conservation easement remains in place. Forever and a day, there can only be two (2) residences on this entire property and this residence can't be moved anywhere into the field. It has to stay in this area. So, if you approve this, it will change nothing on the land, except the prohibition or the prevention of a wetlands crossing and it will finally put my septic system on the same lot of land as my house, which would be a nice...You folks enjoy that luxury. It'll be nice to have that for a change. So thank you very much for your time.

YVES STEGER: Thank you, sir. Anybody speaking in favor of the application? Please state your name.

MIKE SPELTZ: Mike Speltz, Londonderry Conservation Commission. I'm here representing the Conservation Commission. The Commission voted unanimously to urge the ZBA to support, to approve this application. And our motivation was pretty much what Dick just outlined for you. We're trying to avoid the wetlands crossing that would take place here. Dick and his house, under

the new plan, has no need to cross this wetland because he'd be going into what will become a neighbor's parcel and the neighbor has no need to cross back to Pillsbury Road if he's got access out Winding Pond. So, for that reason, to avoid that wetland crossing, which Dick reserved as a right...

[new CD inserted by audio technician]

MIKE SPELTZ: ...but you may wish to consider conditioning your approval on the approvals, these other two (2) approvals that I just mentioned, that the Planning Board approve the lot line adjustment, that all necessary approvals are received to amend the conservation easement and then I would make two (2) further suggestions that you may wish to consider. One (1) would be that the area around here be allowed to return to its natural state. There is a little impoundment here and that would probably have to stay because it's what helps create the pond back here which is a scenic amenity for both homes and I think we're fine with that. And then the other thing I would recommend is that you condition your approval on marking the area that is a conservation easement. It'll be a little bit harder with this driveway running through here to remember that it's a conservation easement but basically, that easement starts right along here and covers all of this territory. So the amendment to the easement will allow this driveway and the quid pro quo is he will have to give up the reserved right to run a driveway through here. Does that...did I make myself clear? Does the Board have any questions for me?

YVES STEGER: What did you mean by "markings"?

MIKE SPELTZ: Typically, we use little three (3) by five (5) metal placards. They can be affixed to a tree where a tree is available and in the case where it's an open field, usually you don't need one because it's inter-visible. I mean, in this case, right along his road is gonna be fairly easy to see. But, in other words, some visible way to mark the conservation easement.

YVES STEGER: Any other questions from the Board?

JIM SMITH: From a historical point of view, how long have these two (2) homes been on this property?

RICHARD HIGGINS: The farmhouse we live in is, I believe, 1780. The one that we rent, the back property, I think it's...it was there when I got there in 1980. I think it was about 1960.

JIM SMITH: So they both predate zoning?

RICHARD HIGGINS: I believe they do both predate zoning.

YVES STEGER: Thank you, sir. Anybody else who wants to speak in favor of the applicant?

RICHARD SERIO: Richard Serio, 91 Pillsbury.

YVES STEGER: Please, could you come close to a microphone?

RICHARD SERIO: Richard Serio, 91 Pillsbury Road. I'm in favor.

YVES STEGER: Thank you, sir.

LARRY O'SULLIVAN: Would you point out where you...Mr. Serio?

RICHARD SERIO: Pardon?

LARRY O'SULLIVAN: Could you point out which direction you're in?

JOSEPH MAYNARD: He's west of the property.

LARRY O'SULLIVAN: Okay, gotcha. Thank you. You're a direct abutter?

RICHARD SERIO: Pardon?

RICHARD HIGGINS: He asked if you were a direct abutter.

RICHARD SERIO: Yes.

LARRY O'SULLIVAN: Okay.

YVES STEGER: Anybody else speaking in favor? Seeing none, anybody that is opposed or having questions, please approach the microphone. State your name.

DAVID SUTHERLAND: David Sutherland, 43 Winding Pond Road. I think I know the answer to this but I don't know if you have the jurisdiction to answer it or not, but once this driveway is put through, it's nice to hear that there can only be two (2) homes on these pieces of property. That makes, I know, me feel much more comfortable. I know some of our biggest concern of the homeowners that live on Winding Pond, were what is the possible future...what is the future possibility of increased traffic? But knowing that there's only two (2) lots and two (2) homes that could be on here as a limitation, makes me feel much better about this. Once this is put through, because it sounds like there is...this driveway will remain, is there any chance in the future that this...let's say somebody came in and bought both lots, could that owner make this a thruway?

LARRY O'SULLIVAN: No, it's driveway.

DAVID SUTHERLAND: Once it's a driveway...so, even if they came in, leveled everything, could they make this a thruway? And maybe you can't even answer that.

LARRY O'SULLIVAN: Well, I don't believe, with the conservation overlay...

DAVID SUTHERLAND: They would allow that.

LARRY O'SULLIVAN: ...that that can be done.

DAVID SUTHERLAND: I didn't think so. Just wanted to make sure because that was our only concern was how traffic would be affected but one (1) house isn't really traffic. Thank you.

YVES STEGER: Thank you. Anybody else having questions or being opposed to the application? Seeing none, I'll get back to the Board for additional questions. Everybody okay? Thank you very much. We will take it under advisement now and we will start the deliberation.

DELIBERATIONS:

YVES STEGER: So, what did you think about the points of law?

LARRY O'SULLIVAN: They were covered.

VICKI KEENAN: Mm-hmm.

LARRY O'SULLIVAN: Everything was pretty well covered.

YVES STEGER: Anybody disagree with that assessment?

MICHAEL GALLAGHER: No.

YVES STEGER: No? So, if that's the case, I think our main purpose now is going to have to draft carefully the restrictions...

LARRY O'SULLIVAN: What the restrictions, right.

YVES STEGER: ...that have been asked by the Public Works and by the Conservation Committee.

LARRY O'SULLIVAN: If anybody wants the...who's going to make the motion, wants the actual wording, I'll let you take Exhibit "B," I think this is marked...

YVES STEGER: Okay.

LARRY O'SULLIVAN: ...and read from Exhibit "B," but just add your own...

YVES STEGER: Yup. At least, we need to at least include the following conditions that are one (1) and two (2) here. I think we heard more from the Conservation Committee, but those we have to decide if we want to include them or not.

LARRY O'SULLIVAN: Well, the things that I wonder if...I know we have more authorities to place restrictions here than the Planning Board does.

VICKI KEENAN: Than the Planning Board.

YVES STEGER: Yes. Correct.

LARRY O'SULLIVAN: Okay, so...

YVES STEGER: We have to do it here.

VICKI KEENAN: Okay.

YVES STEGER: Not afterwards.

BARBARA DILORENZO: Although I would think that the Planning Board would have comments about marking the conservation easement.

LARRY O'SULLIVAN: Let them make the determination.

YVES STEGER: Yeah.

LARRY O'SULLIVAN: We can ask that it be marked and placed by the Planning Board at a suggested location.

YVES STEGER: So what else did we have? Four (4) approvals...

LARRY O'SULLIVAN: So we could require it, we require it and let the Planning Board make the determination of where it's placed.

VICKI KEENAN: Make the final...yeah.

YVES STEGER: Yup.

BARBARA DILORENZO: Okay. Alright.

VICKI KEENAN: Okay.

BARBARA DILORENZO: I have that on my list, so that's why I asked.

LARRY O'SULLIVAN: And if one of the other restrictions would be that...what was it? The State AG was it, or whoever needs to approve...

VICKI KEENAN: Attorney General.

YVES STEGER: The easement amendment.

LARRY O'SULLIVAN: ...the change, right.

BARBARA DILORENZO: That'd be the driveway easement.

JIM SMITH: Wouldn't they have to get that just to get the Planning...

VICKI KEENAN: Is that the conservation...?

JIM SMITH: ...the subdivision approved anyways?

YVES STEGER: I don't know in what order it has to happen.

LARRY O'SULLIVAN: This has already been done, right? So we already know that there are two (2) lots there. Now the access is the only thing that's changing. There already is two (2) lots, so I don't believe...

JIM SMITH: Well, they're changing the configuration.

YVES STEGER: They're changing the line.

LARRY O'SULLIVAN: Oh, the configuration of the lot, you're right. Yes.

YVES STEGER: They're changing the line.

JIM SMITH: That means they have to go through Planning Board to have a re-subdivision.

LARRY O'SULLIVAN: Planning Board. Yeah.

YVES STEGER: Yup. And because that one...

BARBARA DILORENZO: Which would include the conservation...

YVES STEGER: ...impacts the conservation easement, they need also to get the approval for the conservation easement, which is...

BARBARA DILORENZO: Right, which would be part of what the Planning Board would...

LARRY O'SULLIVAN: Are you taking notes, Vicki?

BARBARA DILORENZO: ...require them to do.

VICKI KEENAN: Mm-hmm. I'm writing everything down.

YVES STEGER: I don't know if we can put any restriction. I know that they are not going to essentially eliminate the road because it acts as a...

LARRY O'SULLIVAN: The road.

JIM SMITH: The driveway.

YVES STEGER: ...the driveway that is currently being used between the back lot and the front. We probably need to put some wording where we can prevent that to be used.

LARRY O'SULLIVAN: Well, you're eliminating the need for it, therefore the suggestion would be to allow it to go back to the wild or...

VICKI KEENAN: The driveway no longer...

LARRY O'SULLIVAN: The driveway be [inaudible] to a point.

YVES STEGER: Well, I think you mentioned the fact that it was actually used to block the water so that they can keep the little lake there. I heard that as a statement.

JIM SMITH: I think what you probably could say is 'a restriction to abandon the existing...'

YVES STEGER: The use.

JIM SMITH: 'The use of the existing driveway for the rear lot.'

YVES STEGER: Yup.

JIM SMITH: Or words to that effect.

YVES STEGER: Yeah. Prevent the use of the interconnecting driveways between the back lot and the front. Even if it's not physically destroyed, the not being able to allow it and actually that will allay some of the fears that we heard here. And it makes sense, you know, even if they didn't destroy it because it has an actual physical use to create that lake, which we want to conserve...

LARRY O'SULLIVAN: Well, I had the impression that the driveway would be an impediment in that area...

YVES STEGER: Yeah.

LARRY O'SULLIVAN: ...through the leaching of the...from section to section or whatever it would do. The flow of the water.

YVES STEGER: Okay.

LARRY O'SULLIVAN: So that's the reason to abandon it.

YVES STEGER: Yeah? You agree.

VICKI KEENAN: I do.

YVES STEGER: You feel good?

VICKI KEENAN: I do.

YVES STEGER: Okay. Anybody else wants to add or make comments?

VICKI KEENAN: Do you wanna just review the restrictions real quickly...

LARRY O'SULLIVAN: Yeah, why don't we do that.

VICKI KEENAN: ...just to make sure we're all clear and we've got them worded properly?

YVES STEGER: Yeah, why don't you go through. Yup.

VICKI KEENAN: Do you want me to go through these?

LARRY O'SULLIVAN: To make sure we wanna vote for your motion.

VICKI KEENAN: Alright. Thanks. I'm drumming up support here. Abandon use or prevent use of driveway to Pillsbury Road for the back lot. That's a restriction, right?

YVES STEGER: Okay.

VICKI KEENAN: Require the owner. Require that they receive the State Attorney General's Office approvals. Is that worded...?

MIKE SPELTZ: I'd say 'if required.'

VICKI KEENAN: If required. Obtain Planning Board approvals for lot line adjustments. Obtain Conservation Commission approvals of amendment of easement. Okay?

YVES STEGER: Mm-hmm.

VICKI KEENAN: Require that the conservation area be marked per the Planning Board direction. Do we need to say that?

YVES STEGER: Okay.

VICKI KEENAN: And then the two (2) items on the list from the Public Works Department as listed.

YVES STEGER: That's good.

VICKI KEENAN: Are we missing anything?

YVES STEGER: No. Anybody else?

LARRY O'SULLIVAN: I'm fine. I think it covers everything.

YVES STEGER: Now is the right time, you know, to say it.

MICHAEL GALLAGHER: No.

YVES STEGER: Okay. Are you ready to make...?

LARRY O'SULLIVAN: Are you looking for a second?

YVES STEGER: What?

LARRY O'SULLIVAN: Do you want a second or was that a motion or...?

VICKI KEENAN: No, I think we were just clarifying the points.

YVES STEGER: I think she needs to read the motion now.

VICKI KEENAN: I have to re-read it all?

YVES STEGER: Yes, please.

VICKI KEENAN: Okay. So, can I make a motion?

YVES STEGER: Yes, please.

VICKI KEENAN: I'm sorry.

MICHAEL GALLAGHER: No, I'm all set.

VICKI KEENAN: Okay. Can I make a motion to grant the area variance with the following conditions: the first that the existing driveway for the back lot to Pillsbury Road be abandoned for use for that lot; that if approvals are required from the State Attorney General's Office, that they obtain those approvals; they obtain the Planning Board approval for the lot line adjustment; they obtain the Conservation Commission approval for the conservation easement amendment; that the conservation area be marked accordingly to the Planning Board's recommendations; that the proposed driveway location shall be approved by the Town of Londonderry Department of Public Works and

Engineering; and that the driveway shall be in accordance with the Town of Londonderry's driveway regulations.

YVES STEGER: Excellent. Anybody care to...?

BARBARA DILORENZO: I will second that.

YVES STEGER: Second. So, we have a motion to approve the request by Vicki and seconded by Barbara. Anybody in favor say 'aye'.

LARRY O'SULLIVAN: Aye.

BARBARA DILORENZO: Aye.

YVES STEGER: Aye.

MICHAEL GALLAGHER: Aye.

VICKI KEENAN: Aye.

YVES STEGER: Anybody against? Nobody.

RESULT: THE MOTION TO GRANT THE AREA VARIANCE WITH RESTRICTIONS WAS APPROVED, 5-0-0.

RESPECTFULLY SUBMITTED,

LARRY O'SULLIVAN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED FEBRUARY 18, 2009 WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY BARBARA DILORENZO AND APPROVED 5-0-0.