

1 ZONING BOARD OF ADJUSTMENT  
2 268B MAMMOTH ROAD  
3 LONDONDERRY, NH 03053  
4

5 DATE: NOVEMBER 18, 2009  
6

7 CASE NO.: 11/18/2009-4  
8

9 APPLICANT: HENRY E. PAUL REVOCABLE TRUST  
10 HENRY E. PAUL, TRUSTEE  
11 75 LITCHFIELD ROAD  
12 LONDONDERRY, NH 03053  
13

14 LOCATION: 75 LITCHFIELD ROAD, 11-89, AR-I  
15

16 BOARD MEMBERS PRESENT: YVES STEGER, ACTING CHAIR  
17 JIM SMITH, VOTING MEMBER  
18 MICHAEL GALLAGHER, VOTING ALTERNATE  
19 LARRY O'SULLIVAN, CLERK  
20

21 ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/  
22 ZONING OFFICER  
23

24 REQUEST: AREA VARIANCE TO ALLOW A SUBDIVISION PLAN  
25 WITHOUT SHOWING THE ENTIRE CONSERVATION  
26 OVERLAY DISTRICT BUFFER ON THE PARCEL AS  
27 REQUIRED BY SECTION 2.6.3  
28

29 PRESENTATION: Case no. 11/18/2009-4 was read into the record with one previous case  
30 listed.  
31

32 YVES STEGER: Who will be presenting?  
33

34 TIM WININGS: I am Timothy Winings of TJW Survey.  
35

36 YVES STEGER: I'm sorry?  
37

38 TIM WININGS: Timothy Winings of TJW Survey.  
39

40 YVES STEGER: And how are you related to Mr. Paul Henry?  
41

42 TIM WININGS: I'm the surveyor of record for the subdivision plan or the lot line adjustment  
43 plans that are being filed.  
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45 LARRY O'SULLIVAN: Yeah, he's listed as the representative on the application.

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YVES STEGER: Sorry about that. Okay. You understand the restrictions that we are four (4) members...

TIM WININGS: I do, indeed.

YVES STEGER: ...so you have the option of continuing or proceeding.

TIM WININGS: Yes, I'm continuing.

YVES STEGER: I'm sorry...

TIM WININGS: I'm proceeding tonight with the applications.

YVES STEGER: Oh, okay. Alright, so if you would like to present the overall picture of your case and then go through the five (5) points of law, please.

TIM WININGS: Okay, actually, this is gonna be a little unusual this evening because I'm actually here tonight to present four (4) separate cases on two (2) different projects. They all deal with the application of the Conservation Overlay District regulations. In the Paul case, what the applicant is trying to achieve is a lot line adjustment between two (2) existing lots, one at 69 and one at 75 Litchfield Road. He currently owns both lots under separate trusts, so they're two (2) separate entities but it's the same family. Trying to sell one, the smaller of the lots, and he's trying to retain certain areas of that lot that he's selling with the larger area because it has some family significance. The house on the existing lot that he's selling and the driveway and some other minor improvements would fall within the Conservation Overlay District as applied, as defined, because it is a wetland defined on the wetland inventory maps on file with the Town. The situation here is that there is going to be no further improvements made to the lot. It's been before the Conservation Commission to discuss the situation. The lot line adjustment plans have been through the DRC process. There are comments from all the divisions, but the only one that really applied was one from [Town Planner] Tim Thompson. Both Tim and the Conservation Commission felt that a variance was needed because these structures were actually within the newly created, so to speak, one hundred (100) foot buffer from the wetland.

YVES STEGER: Are you talking about new structures that are gonna be built?

TIM WININGS: No, they're existing structures.

YVES STEGER: Okay.

TIM WININGS: But as they sit now, they're grandfathered lots but because we're going to the lot line adjustment procedure, that grandfather clause kind of goes away under their interpretation and therefore they believe that the Conservation Overlay District buffer would apply. So, that's why I submitted the application for the variances here tonight. In his review

91 of...I'll let him speak to it, but in his review of the applications, Richard thought it wasn't  
92 necessary but because he couldn't get a hold of anybody to really discuss why they thought it  
93 was necessary, he let them proceed to allow you to make the final interpretation this evening on  
94 whether or not it really should apply. In the meantime, I've actually read the ordinance a little  
95 bit closer and I believe now that it should not apply at all under the provision in the ordinance  
96 2.6.3.7.3. "New subdivisions (Condominium Conversions where there are no improvements  
97 proposed to the [sic] site are exempt from Section 2.6.3)." Under that provision, and being that  
98 there are no improvements proposed for this site, I do not believe that the C.O. District should  
99 apply but I need somebody to make a definitive decision on that for me.

100  
101 JIM SMITH: What was the number again?

102  
103 LARRY O'SULLIVAN: Which one?

104  
105 YVES STEGER: Two point three point seven (2.3.7)...

106  
107 TIM WININGS: Two point six point three point seven point three (2.6.3.7.3), under "Pre-  
108 Existing Subdivisions and Site Plans."

109  
110 LARRY O'SULLIVAN: This makes it a new subdivision when you add to it, right?

111  
112 RICHARD CANUEL: A lot line adjustment is considered a subdivision. That's a new  
113 subdivision.

114  
115 LARRY O'SULLIVAN: So that's a new subdivision.

116  
117 RICHARD CANUEL: Right.

118  
119 TIM WININGS: It's considered a re-subdivision, yes.

120  
121 LARRY O'SULLIVAN: So that's really what the issue is.

122  
123 TIM WININGS: Yes.

124  
125 LARRY O'SULLIVAN: Okay. Well, I think one of the advantages that we have on this is that  
126 we can place restrictions so that no construction happens despite the fact that you may be  
127 granted an area variance for it now, so...

128  
129 TIM WININGS: Well, the point is, if you make the interpretation that the ordinance does not  
130 apply, I don't need a variance.

131  
132 YVES STEGER: That is correct.

133  
134 LARRY O'SULLIVAN: Mm-hmm. So are you offering to withdraw your request for a variance?

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TIM WININGS: If you make that decision, yes, I will withdraw the application.

[laughter]

RICHARD CANUEL: That was funny because when I looked at these applications, actually all four (4) of these applications, my determination by looking at the ordinance is that these variances were not necessary, simply because some of those provisions were already permitted in the C.O. District in our ordinance. But because the Conservation Commission had already given a recommendation to the Planning Board that the applicant proceed with the variance and that the Conservation Commission had already given the recommendation to this Board on how their determination was, I figured it would be best to proceed with the application and let his Board make that decision whether that's necessary or not.

YVES STEGER: So we need to look at...the documents that we have right now on file here do not relate to that, so I need to read the...

JAYE TROTTIER: You can look up the ordinance on the website.

LARRY O'SULLIVAN: Yeah...

YVES STEGER: Yes, that's what I'm trying to find.

TIM WININGS: It's actually on page sixty five (65) of the ordinance, if that helps.

YVES STEGER: Zoning Ordinance, there it is. You said page...?

TIM WININGS: Sixty five (65).

YVES STEGER: Sixty five (65). I'm gonna be there very quickly. Sixty five (65). You said two point six...?

TIM WININGS: Two point six point three point seven point three (2.6.3.7.3).

YVES STEGER: "New subdivisions (Condominium Conversions where there are no improvements proposed to a site are exempt from Section 2.6.3)."

LARRY O'SULLIVAN: I don't think we've ever had a finding that no variance is required.

[laughter]

YVES STEGER: We're going into uncharted territory today.

RICHARD CANUEL: Well, that's not the issue at hand. The thing is, is a lot line adjustment, by statute, is considered a subdivision. This would be a new subdivision because it did not

180 preexist prior to the adoption of this section of the ordinance. So there's no question there. This  
181 is definitely a new subdivision. However, there are issues with that property where the C.O.  
182 District gives some relief. Existing residential structures, for example, are allowed to remain  
183 without restriction in the C.O. District. Accessory structures are allowed to be located within  
184 the C.O. District. So there are certain uses that are permitted there that I don't think apply in  
185 this particular variance. The issue of a subdivision is not a question but the issue of the other  
186 items having to do with that property I don't think apply.

187  
188 LARRY O'SULLIVAN: Okay, so you're saying that he does need a variance.

189  
190 RICHARD CANUEL: I'm saying that he doesn't need a variance for the existing structures on  
191 the property, because those uses are permitted in the C.O. District.

192  
193 LARRY O'SULLIVAN: But he can't do any...

194  
195 RICHARD CANUEL: Basically, all that I can foresee for this particular application is relief  
196 from the requirement to delineate the entire C.O. District on the site plan and to include the  
197 signage on the property. That's really the only relief that I can see for this particular case.

198  
199 LARRY O'SULLIVAN: Will we hear from Mr. Speltz too?

200  
201 MIKE SPELTZ: Should the Chairman permit it.

202  
203 RICHARD CANUEL: You can, sure. Yeah.

204  
205 YVES STEGER: Yes, please, sir. We're just facing something that we have not seen in a long  
206 time.

207  
208 MIKE SPELTZ: Mike Speltz representing the Conservation Commission. There really are four  
209 (4) separate issues here as Tim described it, so just to make sure we're all talking about one (1)  
210 issue, the first one that we're talking about here has to do with the fact that we have what  
211 amounts to a subdivision for the purposes of the ordinance. That subdivision places an existing  
212 structure and driveway in the Conservation Overlay District. Now, there is a provision in the  
213 ordinance that...well, let me address the top level question first. Tim pointed out to you  
214 2.6.3.7.3, but if you look up to 2.6.3.7, all those three (3) subsections are introduced by the  
215 "ordinance becomes applicable in the following situations: New subdivision." So, 2.6.3, the  
216 Conservation Overlay District, is applicable. So now we've got a district that's applied to an  
217 existing lot, so as Richard says, what there probably is not an issue with the existing house and  
218 driveway. But the question is, how do we draw that line? And what the Conservation  
219 Commission has agreed with the applicant is that we can change that line under the condition  
220 that we take the rest of that property and allow it to remain in its natural state. So we're going  
221 to accept some detriment to the overlay district, even though it now applies that lot. I'm talking  
222 'area' now. But we're going to compensate for that by adding another area that will remain  
223 natural that is actually partly outside of the overlay district. So, the area part of this is what I  
224 think applies and I think Richard is right in talking about the use, the residential use, those

225 structures, the driveway and the house, being protected under the ordinance. But I do believe  
226 he needs to be here to get the area variance.

227  
228 YVES STEGER: So it's not clear. We have, currently...we have two (2) lots and the line between  
229 the lots is going to be changed.

230  
231 MIKE SPELTZ: Yes.

232  
233 YVES STEGER: So, essentially, we need an area variance for each lot independently.

234  
235 MIKE SPELTZ: The larger lot is not at issue here. That lot is simply gaining some additional  
236 land.

237  
238 YVES STEGER: Okay, so there is no overlay district problem with the larger lot.

239  
240 TIM WININGS: Only in the matter in which it is required to show the entire district on the  
241 subdivision plan, which I did not really want to do. It's a seventeen (17) acre lot, there's lots of  
242 wet on it and nothing is being affected. The key, I think here, the first consideration is that no  
243 new improvements are going to be made on either lot.

244  
245 LARRY O'SULLIVAN: Okay.

246  
247 YVES STEGER: Okay. So we're gonna proceed with the area variance...

248  
249 RICHARD CANUEL: To put it in a nutshell, the only relief that the applicant is asking for in  
250 this particular case, case number four (4), is to not be required to delineate the entire  
251 Conservation Overlay District on the site plan or have to label it on the property itself. That's  
252 the only relief they're asking for in this particular case.

253  
254 TIM WININGS: Well, that's the second variance.

255  
256 YVES STEGER: What's the benefit of that?

257  
258 RICHARD CANUEL: Excuse me?

259  
260 TIM WININGS: That's why I have two (2) variance requests.

261  
262 RICHARD CANUEL: Right.

263  
264 TIM WININGS: That's the subject of the second one.

265  
266 RICHARD CANUEL: That's...yeah.

267  
268 YVES STEGER: So what is the benefit of doing that?

269

270 LARRY O'SULLIVAN: You're not drawing a line, you're not taking all the time to go out there  
271 and plot it all, you mean, or...?

272  
273 RICHARD CANUEL: Basically.

274  
275 TIM WININGS: As I say, it's a seventeen (17) acre lot. In order to do that, it would take a  
276 couple of days to delineate it and an additional plan to fit in the plan set and there's already, as  
277 far as the boundary goes, there's already a plan of record on file. And as I say, nothing is  
278 changing on the site and actually, the Conservation Commission agreed on that issue as well,  
279 that it was not necessary to delineate that, but...

280  
281 YVES STEGER: Alright. If you could go now...

282  
283 JIM SMITH: I just wanna give him one other thing. The second case, is that gonna be necessary  
284 or what is the second case supposed to do?

285  
286 RICHARD CANUEL: Okay, well, I was trying to avoid confusion by going one case at a time  
287 but the second case, basically, the applicant is asking for a reduction in the Conservation  
288 Overlay District buffer simply because of the existence of the existing structures on the  
289 property. In my interpretation of the ordinance, that's not necessary because those existing  
290 structures are allowed within the C.O. District to begin with, so the reduction of the buffer isn't  
291 necessary.

292  
293 YVES STEGER: Okay.

294  
295 TIM WININGS: And the way I interpret this last line here is that if no changes are being made  
296 physically, no improvements are being made, no part of this ordinance should apply.

297  
298 YVES STEGER: Okay.

299  
300 TIM WININGS: And if you should decide that it is, then we'll proceed with the variance  
301 request. But you have to make that decision first.

302  
303 LARRY O'SULLIVAN: I think we have to treat this the same as we would with any lot line  
304 adjustment request. So you need to get a variance for it.

305  
306 YVES STEGER: Yup.

307  
308 LARRY O'SULLIVAN: Anybody else?

309  
310 YVES STEGER: Yeah.

311  
312 JIM SMITH: Okay, I just want to go into something. What is the lot line accomplishing by  
313 moving? What are you gaining or losing?

314

315 TIM WININGS: It is reducing the lot size at 69, increasing the lot size of 75. In that area that is  
316 being exchanged is a wooded area and a family cemetery. One grave. Because they're selling  
317 the smaller of the lots, they wanted to retain that wooded area and the gravesite with the family  
318 compound.

319  
320 JIM SMITH: Okay.

321  
322 RICHARD CANUEL: You should have a copy of that site plan in your packet.

323  
324 TIM WININGS: Yes, you have reduced copies of that plan in...

325  
326 JIM SMITH: Okay, I was just trying to...

327  
328 YVES STEGER: Yeah, we need to go through the details.

329  
330 LARRY O'SULLIVAN: ...marked on it, though.

331  
332 JIM SMITH: I'm trying to get the logic of why they wanted to do this. But we're not physically  
333 changing anything.

334  
335 TIM WININGS: No. Physically, no. Just moving a lot line.

336  
337 YVES STEGER: So, in your present for case dash five (5)...the lot line changes reduces the  
338 buffer or it was already the same before?

339  
340 TIM WININGS: Okay, perhaps I need to...the first thing is to determine exactly which case  
341 we're hearing first.

342  
343 LARRY O'SULLIVAN: We're only gonna do four (4).

344  
345 YVES STEGER: Yeah, we're doing four (4). Yeah, let's go. So, has anybody a problem  
346 proceeding with the area variance?

347  
348 LARRY O'SULLIVAN: No.

349  
350 JIM SMITH: No.

351  
352 YVES STEGER: No? Good. If you could...

353  
354 LARRY O'SULLIVAN: You need to have an area variance.

355  
356 TIM WININGS: So you believe I do need an area variance.

357  
358 YVES STEGER: Yes.

359



360 TIM WININGS: Okay, so, which case are we actually hearing, then? Case four (4)?  
361  
362 LARRY O'SULLIVAN: Case four (4).  
363  
364 JIM SMITH: Four (4).  
365  
366 YVES STEGER: Four (4) only at this time.  
367  
368 TIM WININGS: Which is for...  
369  
370 LARRY O'SULLIVAN: To allow the plan without showing the entire Conservation Overlay  
371 District buffer on the parcel.  
372  
373 TIM WININGS: Okay.  
374  
375 YVES STEGER: And I think...  
376  
377 LARRY O'SULLIVAN: That accomplishes what you want. That accomplishes the variance  
378 which covers the property as far as we're concerned, so...  
379  
380 TIM WININGS: If you're saying that I need the variance, then you actually need to hear both of  
381 them. So we'll cover this one first.  
382  
383 YVES STEGER: Yup. It would help; do you have drawings there in the record?  
384  
385 TIM WININGS: You have reduced copies in your packet and I have a larger one here.  
386  
387 YVES STEGER: Because that will help. I'm a visual person, you know. You tell me something,  
388 it goes through one ear and out of the other one. But I see it and I will remember it to my death.  
389  
390 LARRY O'SULLIVAN: I just don't see it, Jaye, or...?  
391  
392 JAYE TROTTIER: It's in case number five (5).  
393  
394 LARRY O'SULLIVAN: Oh, it's in with case five (5)?  
395  
396 YVES STEGER: This is the current one?  
397  
398 TIM WININGS: This was submitted to the Planning Board [see Exhibit "A"]. The existing lot  
399 line is this. They wanna reduce this lot, bring the lot line down here. So they're moving this  
400 area to the larger lot. This is like an existing seventeen (17) acre lot being made into a nineteen  
401 (19) acre lot. So this is the existing house and what we'll be addressing in the next variance,  
402 but...See, because this is such a large lot area, you can actually see...no, you can't see it that  
403 much more here, but it's in here and...  
404

405 MICHAEL GALLAGHER: It shows it here.  
406  
407 TIM WININGS: It's very large and its existing house back in here, so...and nothing back there  
408 is being touched either and there's really not a whole lot of point in showing the whole thing.  
409 But that leads to another question because I could not find in the ordinance where it  
410 requires...in the zoning ordinance, that requires everything be shown on the subdivision plan.  
411 I'm gonna take Tim's word that it's there but I couldn't find it. But it's just a lot of extraneous  
412 work that really doesn't need to be performed.  
413  
414 JIM SMITH: How big is this lot in the...?  
415  
416 TIM WININGS: This lot?  
417  
418 JIM SMITH: One point three (1.3) acres?  
419  
420 TIM WININGS: One point three (1.3) acres.  
421  
422 JIM SMITH: Okay. And it's sized for five (5) bedrooms, I take it.  
423  
424 TIM WININGS: Yes.  
425  
426 JIM SMITH: And there's an existing house on this lot?  
427  
428 TIM WININGS: That's an existing two (2) bedroom house on this lot. It's right over, back  
429 there...right there. You can see this one has the whole tax map better on it. You can see the  
430 entire size of the lot. The larger lot.  
431  
432 LARRY O'SULLIVAN: Yeah, we have the tax maps online, so, that I'd seen.  
433  
434 YVES STEGER: Okay.  
435  
436 LARRY O'SULLIVAN: That's colored and marked, right? That one?  
437  
438 YVES STEGER: Yes.  
439  
440 LARRY O'SULLIVAN: So, we don't need both of them. We'll just take that one for the record.  
441  
442 YVES STEGER: Yup.  
443  
444 LARRY O'SULLIVAN: Jim, before you, the...thank you.  
445  
446 YVES STEGER: Alright. So, essentially, you are removing half of the size of the lot?  
447  
448 TIM WININGS: Yes.

449  
450 YVES STEGER: And placing it into the larger lot?

451  
452 TIM WININGS: Correct.

453  
454 YVES STEGER: But there is no improvement, no changes, it's existing conditions? The distance  
455 to the overlay district doesn't change? Okay.

456  
457 LARRY O'SULLIVAN: [inaudible] will be quick.

458  
459 YVES STEGER: If you could go through the five (5) points of law, please?

460  
461 TIM WININGS: Okay. Just want to make sure I'm looking at the right application that I have  
462 here. Well, they're eventually the same for both but okay, I'm asking for a variance to Section  
463 2.6.3 of the zoning ordinance. I'm not exactly sure which portion of that because I couldn't find  
464 it. But the point is to not show the entire parcel on the subdivision plan as required. The  
465 proposed use would not diminish the surrounding property areas because basically, there  
466 are...no conditions will change. There's absolutely no physical changes whatsoever, you noted,  
467 as a result of the plan. Granting the variance would not be contrary to the public interest  
468 because, again, nothing will change, and there's no harm from the existing conditions that  
469 anybody's noted or complained of. The variance is needed to enable the applicant's proposed  
470 use of the property, given the following special exceptions [sic] of the property. It's basically  
471 the size and shape and the amount of wetlands on the site. To delineate and locate the wet  
472 areas of so much unaffected area is not reasonable and we have support from both the  
473 Conservation Commission and the Planning Department on that point. And the benefit sought  
474 by the applicant cannot be achieved by some other reasonably foreseeable [sic] method. Well, it  
475 could, but it's not reasonable. It could be mapped and it could be shown but we feel it's not  
476 reasonable.

477  
478 LARRY O'SULLIVAN: Could you give us an idea of the expense?

479  
480 TIM WININGS: Of the expense?

481  
482 LARRY O'SULLIVAN: Days, time, hours?

483  
484 TIM WININGS: I hadn't actually adjusted it but we're probably talking something in the area  
485 of four (4) to five thousand (5,000) dollars. Granting the variance would do substantial justice  
486 because complying would be of little benefit to the public while placing a hardship on the  
487 applicant. And it certainly is not contrary to the spirit of the ordinance because the parcel is so  
488 large and there's no changes to it. It's not [inaudible] by anybody.

489  
490 YVES STEGER: Okay. Anybody in the public who would like to speak in favor of this  
491 application? Seeing none, anybody that has questions or is opposed to the proposal? Okay. I'll  
492 bring it back to the Board. More questions?

493

494 LARRY O'SULLIVAN: I have one. Is the drawing pertinent to the acceptance by the  
495 Conservation Commission?  
496  
497 TIM WININGS: Is it pertinent?  
498  
499 LARRY O'SULLIVAN: Is the drawing pertinent to the acceptance by the Conservation  
500 Commission? Does it have anything to do with the acceptance of the Conservation Commission  
501 or is it anything to do with...  
502  
503 TIM WININGS: No.  
504  
505 LARRY O'SULLIVAN: ...a requirement of the Conservation Commission?  
506  
507 TIM WININGS: No.  
508  
509 LARRY O'SULLIVAN: Okay.  
510  
511 YVES STEGER: Is there anything you would like to add? Because essentially, the only request  
512 here is not to have to show the overlay district without changing anything. So...  
513  
514 MIKE SPELTZ: Right. I think you might want to make clear that the request applies only to  
515 the larger lot.  
516  
517 YVES STEGER: Correct.  
518  
519 TIM WININGS: Yes.  
520  
521 YVES STEGER: That's what we're looking at right now.  
522  
523 TIM WININGS: Right.  
524  
525 MIKE SPELTZ: No, otherwise, the Commission supports that request.  
526  
527 YVES STEGER: Okay. Any more questions? Okay, we're gonna take it then under  
528 deliberation.  
529  
530 DELIBERATIONS:  
531  
532 LARRY O'SULLIVAN: This is, I guess, mostly a pro forma thing at this point.  
533  
534 YVES STEGER: This is a pro forma, as far as I'm concerned.  
535  
536 LARRY O'SULLIVAN: Yup, let's get on with it.  
537  
538 YVES STEGER: There is absolutely no change and if the...

539

540 LARRY O'SULLIVAN: Everybody's in favor of it. Let's get rolling here. I make a motion that  
541 we approve case 11/18/2009-4 as presented.

542

543 JIM SMITH: Second.

544

545 YVES STEGER: So we have a motion by Larry, seconded by Jim. Any further discussion?  
546 Seeing none, all in favor say 'aye.'

547

548 LARRY O'SULLIVAN: Aye.

549

550 MICHAEL GALLAGHER: Aye.

551

552 JIM SMITH: Aye.

553

554 YVES STEGER: Aye. Against, say 'nay.'

555

556 [no response in opposition]

557

558 RESULT: THE MOTION TO GRANT CASE NO. 11/18/2009-4 WAS APPROVED, 4-0-0.

559

560 RESPECTFULLY SUBMITTED,

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562

563

564 LARRY O'SULLIVAN, CLERK

565 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

566

567 **APPROVED DECEMBER 16, 2009** WITH A MOTION MADE BY LARRY O'SULLIVAN,  
568 **SECONDED BY YVES STEGER AND APPROVED 4-0-2 (VICKI KEENAN AND NEIL DUNN**  
569 **ABSTAINED AS THEY HAD NOT ATTENDED THE MEETING).**