

**January 11, 2011
Medway Planning and Economic Development Board
155 Village Street
Medway, MA 02053**

BOARD MEMBERS PRESENT: Andy Rodenhiser, Chan Rogers, Bob Tucker, and Karyl Spiller-Walsh.

ABSENT WITH NOTICE: Tom Gay, Member
Susan Affleck-Childs, Planning and Economic Development
Coordinator

ABSENT WITHOUT NOTICE:

ALSO PRESENT: Amy Sutherland, Meeting Recording Secretary
Gino Carlucci, PGC Associates Planning Consultant

The Chairman opened the meeting at 7:05 pm.

The Chairman asked for comments from the public.

Minutes November 16, 2010:

On a motion made by Bob Tucker and seconded by Chan Rogers, the minutes of the November 16, 2010 meeting were accepted unanimously as written.

Minutes December 14, 2010:

On a motion made by Bob Tucker and seconded by Chan Rogers, the minutes of the December 14, 2010 meeting were accepted unanimously as written.

Village Estates Preliminary Subdivision Plan Estimate:

The Board is in receipt of an estimated budget submittal dated January 7, 2011 from PGC Associates for review of the Village Estates preliminary subdivision plan as submitted by owners Russell and Dorothy Santoro. The cost estimate is \$340.00. (See **Attached**) The location is 272 Village Street across from Shaw Street.

2012 Budget:

The Board is in receipt of the FY 2012 Planning and Economic Development Budget Proposal. The total budget is level funded from the previous year. The total budget amount is \$101,418. The Board is comfortable with this proposal. (See **Attached**).

On a motion made by Bob Tucker and seconded by Chan Rogers, the Board voted unanimously to accept the estimate for Village Estates by PGC to review and comment on the preliminary subdivision.

There will be a special meeting on February 1, 2011.

Charles River Village Open Space Residential Development

The Chairman opened the continued public hearing.

The Chairman began the meeting by indicating that for the purpose of disclosure, he wanted to inform the board of a letter he had received from Mr. Leonard Mitchell who resides at 2 Massapoag ST (which abuts the Charles River Village property). Mr. Mitchell had previously been a customer of Rodenhiser Plumbing, Heating and Air Conditioning and had filed a complaint against the company. The letter references that Mr. Mitchell fears retribution from the Chairman through the Chairman's actions on this proposed development project because he is a former client. Chairman Rodenhiser wanted to disclose this information for the record.

Chairman Rodenhiser indicated that he did work at the home in the past perhaps he feels aggrieved because of the proceedings but that has no bearing on his ability to make a decision about this application. The Chairman currently has no business with him.

Mr. Yorkis asked about the absence of Member Gay.

Chairman Rodenhiser noted that Mr. Gay was not able to attend due to a very last minute personal circumstance. He will be able to participate in the discussion and vote on this project as he will view the videotape and meeting notes and provide a Mullins Rule certification.

Mr. Rodenhiser checked to determine that the videotape equipment was working properly.

Mr. Yorkis, as official representative of the applicant John Claffey, introduced the development team – David Faist/Faist Engineering, Dan O'Driscoll/O'Driscoll Land Surveying, W. Phillip Barlow from TO Design is the new landscape architect. John Claffey was also present. The former landscape architect is no longer involved. The two landscape architects have communicated and met on site. The new plans are stamped by Mr. Barlow. Both landscape architects stamps are on the plan.

Engineer David Faist will review the revised plans. These incorporate all of our past discussions.

Faist Engineering:

Engineer David Faist began the presentation by distributing the revised plans showing the members the latest revisions to the Charles River Concept Plan dated December 30, 2010. **(See attached).**

Copies of the plan were provided to the Board members and further copies were placed on the table for the audience to view.

Chairman Rodenhiser asked if the plans reflect everything that has been discussed. David Faist responds that it is inclusive of all the changes.

The plan showed the reduced width of the road to 18 feet. There is also a 15 ft radius coming in (off of Village Street) which gives enough room for two passenger cars per AASHTO standards. This is the best we can do.

The Chairman asks if this complies with the standards.

Faist engineer indicated that in an ideal world this would be wider. This does meet the AASHTO standard for passenger cars. The larger vehicles such as dump trucks are not reflected in this diagram. This change would be an improvement to the existing conditions based on the limitations we have been given.

These were the other things added based on the input from the police department - the proposed stop signs, painted lines, and two no parking signs on either side of Neelon Lane near the intersection with Village Street.

It was indicated that some of the telephone poles within the 25 foot right of way will need to be relocated. Mr. Faist also distributed a revised (12/29/2010) Village Street/Neelon Lane Proposed Conditions Sketch.

(See attached).

Member Spiller-Walsh asked for clarification related to where the property line is and where the proposed edge of pavement is.

Faist Engineer indicated that the dotted line is the edge of pavement. The dark solid line was the property line/right of way based on the O'Driscoll Survey.

Mr. Yorkis informs the Board that a letter (dated January 7, 2011) from attorney Don Quinn had been provided to the Board with additional information about the Neelon Lane location issues. The letter provided the history of the site prior to 1863 regarding width, layout and reasons for the layout.

(See Attached)

Faist Engineer next discussed the revised Concept Plan (12-30-2010). The only change is the 18 foot width pavement which is consistent with the Neelon Lane/Village Street intersection plan. The new plan references a 3 foot sidewalk from the end of the development to Cherokee Lane. It also shows the statutory private way limits as indicated by the O'Driscoll survey and Tetra Tech Rizzo review.

The pathway within Cherokee Lane will be similar to what was constructed at the Pine Ridge Development off of Candlewood with gravel and loam.

Abutter Diulio asked if the proposed sidewalk will result in Cherokee Lane being narrowed in width.

Chairman Rodenhiser responds that the sidewalk will not impact the width of Cherokee Lane. This is just a sidewalk to connect the development to the end of the existing paved Cherokee Lane. The gravel access will have a sidewalk in its center.

Attorney Thomas Valkevich (representing abutter Beth McDonald) wanted to know if the Board has made a determination about the location of the roadway (Neelon Lane) and is there going to be Land Court action.

Chairman Rodenhiser stated that the Board is not making any determination at this point. We are only collecting testimony.

Attorney Valkevich also wanted to know if the letter from Mr. Quinn can be made available so they may have an opportunity to comment on it.

The Chairman indicated that he has just received the letter and has not yet reviewed it.

Member Tucker indicated that the Board had just received the Quinn letter electronically. It is too late to talk about this letter at tonight's meeting.

Mr. Yorkis wanted it noted that he is concerned about any new information being submitted to the Board so late. This hinders the Board from considering the new information since it was not presented in a timely manner and thus the process gets delayed. At some point, when does the information presentation end?

The Chairman indicated that the information seeking ends when the public hearing closes.

Mr. Yorkis asks when the Board will close the public hearing.

Chairman Rodenhiser notes that the Board is not ready this evening to close the hearing. We are not at the point tonight to do that. Mr. Rodenhiser notes that he understands the applicant's frustration.

Mr. Yorkis indicated that the information was provided to the Board last week.

NOTE – The letter from Attorney Quinn was received on January 10, 2011 and was forwarded to Board members via email on January 11, 2011.

Member Spiller Walsh indicated that with anything that comes in tonight it is unfortunate that the information was not presented earlier. She notes that not having the information sooner holds up the board.

Chairman Rodenhiser indicates that the Board has a responsibility to review all materials that are submitted, otherwise, it opens the Board up for an appeal. They have an obligation to review all of the information and take it into consideration when the Board makes its decision.

Abutter McDonald communicates that the Neighborhood Alliance had submitted 14 questions two meetings ago and to date those have not been addressed or answered by the Board. These were not just submitted but resubmitted because they were never addressed and she would like some answers.

Member Spiller-Walsh states there have been fragments of things that have been started to be addressed.

The Chairman reiterated that the process is continuous. The Board is looking for evidence to make a determination not necessarily to answer questions. A question is not evidence. We have gone through an ample amount of information as part of the presentation as an effort to be fair to all sides. When things keep getting resubmitted, it gets confusing. I have given you plenty of time to ask questions.

Abutter McDonald states again that a lot of the questions have not been answered. We feel these are important questions.

Chairman Rodenhiser promises that this will be a fair process.

Member Rogers indicated that some of the questions will be included within the details of the decision whatever way the Board may decide to vote on this. All of the questions may not be answered until the decision phase is underway. A decision will not be made until all the evidence is before us.

The Chairman asked if the Board members have any questions.

Member Spiller-Walsh moved the discussion to the roadway. It is her opinion that the 18 foot roadway on Neelon Lane as noted on the plan is difficult for pedestrian safety (because there is no sidewalk). This will cause a problem for buses at one end and possibly the other. Member Walsh wants to know if the latest plan submittal is the applicant's final answer to the sidewalk issue within the development.

Mr. Yorkis responded that the new Concept Plan does not have sidewalks on Neelon Lane or on the interior of the development. It was never their intention to have sidewalks within the development. Mr. Yorkis states that they find there is no need for internal sidewalks in this development. The sidewalk connection (thru to Cherokee Lane) was added but there is no need for sidewalks internally.

Member Spiller-Walsh responded that the 18 ft paved road way is a deviation from the Board's standards/rules and regs but she feels it can work because of her experience with her subdivision (Wingate Farm) where, however, there is room to walk next to the roadway. Spiller Walsh notes prior references to Fisher St. and Maple Streets being narrow. We need to learn from those and do better. We don't need to go backwards.

She feels that a meandering pathway would work better. This road gets very narrow and dangerous. There is not enough space to walk within the right of way.

Mr. Yorkis responds that the Town of Medway Police and Fire Departments have reviewed the plans and provided a written communication about their approval of the plan in terms of safety.

Member Spiller-Walsh responds that the letters from the Town of Medway Police and Fire Departments did not reference the safety of children, or walkers. The letters simply indicate that the road was safe for emergency vehicles to get around.

Mr. Yorkis disagrees with the Ms. Spiller-Walsh's statement, interpretation and characterization of the letters (from the Police and Fire departments). He indicated that the Police and Fire Department Chiefs met at the site, reviewed the plans and clearly understand that both vehicles and pedestrians would be using the roadway.

Member Spiller-Walsh asks could you explain how the Fire and Police department felt about two vehicles passing each other on Neelon Lane with walkers as well.

Mr. Yorkis responded that in regards to the pedestrians, the Police and Fire Departments have indicated that the pedestrians have the right of way when in the public way. People will have to just slow down or stop to pass a pedestrian safely, that is what the statute is in Massachusetts.

Member Spiller-Walsh says that the Departments may be OK with jockeying for position, but she does not know if she is comfortable with this.

She further communicated concerns about corner roundings (Village St. and Neelon Lane) being so tight. There is difficulty getting in and out of this area. Spiller-Walsh indicates that exploring easements with the abutters could make this plan more viable.

Chairman Rodenhiser noted that the abutters have been asked previously and were not interested.

Member Spiller-Walsh asked did I hear exactly no.

Member Tucker responded that the Board heard no from both abutters (Kaplan and Bancewicz) at the last meeting.

Member Spiller-Walsh wanted to ask abutter Mrs. Elena Kaplan if she is interested in granting an easement on her property (at the east corner of Village and Neelon Lane).

Abutter Kaplan states that her answer depends on a lot of things. She cannot answer the question this evening. She needs to know a lot more. She communicates the Board that she has three children and hopes that none of them get hit by a car. She communicates to the Board that the traffic coming off of Village St. is extremely dangerous because it is so busy. It is a major travelled road in Medway. She is concerned that the Police and Fire Departments feel that a 15 ft radius is safe. Mrs. Kaplan notes that she is not comfortable with a 15 ft. radius. She states they had an expert come to one of the meeting and he indicated that it was not safe. She further

indicates that this process is very confusing when you have experts whose opinions are being ignored.

Chairman Rodenhiser asks member Spiller-Walsh did you get an answer to your question.

Member Spiller-Walsh responded, I got a maybe. There is a possibility.

Member Spiller-Walsh next wants to ask the other abutter Mr. Bancewicz about how he feels.

Abutter Mr. Ken Bancewicz (owner of the property at the southwest corner of Neelon and Village Streets) communicates that he is willing to work with the Board and applicant to create a safe intersection. He wants it the same on both sides. He does not want to be the one to give it all up. He also wants the same amount of land taken on both sides of the street (Neelon Lane).

Member Spiller-Walsh asks Mr. Yorkis if there was a compromise worked out with the abutters to grant footage on both sides, would you be interested in acquiring an easement to enlarge the roadway width and for landscaping?

Mr. Yorkis responds by asking how many years is this discussion going to go on? He states that over a year ago, the abutters were asked if they would grant easements. Mr. Yorkis indicated that at that time, Ms. Kaplan refused. The applicant cannot make this project complete based on abutters "maybe" granting easements. And now the Board is asking us again. The applicant must have certainties to present to this Board. This process takes time and money. A new series of plans were provided every single time we met with the Board. The applicant has not denied the Board a plan revision to date. We cannot deal with maybes. The team met with Mr. Bancewicz at the Board's request to look at options for an 18 foot (paved) road width and a 19 foot (paved) width. Mr. Bancewicz indicated that he preferred the 18 width foot and that whatever is done on his side, the exact same thing is done on the opposite side (Kaplan property). The paved road is centered as much as is humanly possible. It shifts easterly to impact the abutters as little as possible. The team has tried to cooperate with the Board, and the abutters, but a "maybe" is not a plan. He respects the questions and the idea about a wider intersection being safer and he stated that he agrees with that. It comes down to a question of fairness between the two abutters. Mr. Yorkis notes that common sense indicates that a wider intersection is a better intersection.

Chairman Rodenhiser asks abutter Kaplan if she is willing to do the same thing on the other side.

Abutter Kaplan states it would depend on a lot of things. She states that she resents Mr. Yorkis' description of what happened a year ago. She expresses that she was never brought into the process. The granting of an easement would depend on many things. The intersection would need to be safer for her own family and herself. Ms. Kaplan also would want to know what she would be given for compensation for granting an easement.

Member Spiller-Walsh agrees with Mr. Yorkis that you cannot do a project on a "maybe". She indicates that this discussion needs to explore more options such as a pull over spot (for traffic).

Mr. Yorkis responds that the applicant will not be held up by an abutter. This is not going to happen.

Member Spiller-Walsh responds that now Mr. Yorkis sounds like he is unparticipatory.

Chairman Rodenhiser responds that there is an application in front the Board.

Member Spiller-Walsh responds that she sees it!

Chairman Rodenhiser indicates the Board needs to make a determination one way or another what it is going to do. The Chairman further explains that he understands that this is a controversial project before us and the facts which are in front of the Board must be discussed. Any discussion about easements from the abutters is not before the Board right now but that something might change between now and the next meeting.

Mr. Yorkis again states that the Fire and Police Department have approved this plan.

Member Spiller-Walsh indicates that the Fire and Police Department have not given an approval. What they have given is their recommendations and it is up to the Board to approve this plan.

Chairman Rodenhiser asks if there are any other issues to discuss.

Member Spiller-Walsh states she wants to speak about the mitigating problems with the third house (Newell). Spiller-Walsh wants clarity about if and when there will be a Land Court decision on where the property line falls. She inquires if there was going to be a Land Court decision to determine the roadway layout?

Member Rogers indicates that the Board has nothing to do with a Land Court decision.

The Chairman responded that Town Counsel has advised that the Board has to determine if there is legitimate prima-fascia evidence regarding the roadway layout and access to do what the applicants wants to do. He states that the Board has heard that the property lines are in question. Once the public hearing is closed, the Board needs to decide if there is bona-fide access to the site. The decision which is rendered can be appealed by whatever side (abutters or applicant).

Member Spiller-Walsh notes that the Board has to do this without really knowing where within 2-3 feet the roadway layout will be. She communicates that it is the Board's responsibility to facilitate both the applicant and the abutters.

The Chairman responds that the applicant has an application before us and it is the Board's job to approve or deny it. The abutters are not part of the process except that they attend and can give comments.

Member Spiller-Walsh responds that this could be a viable project, if the property lines were more distinct and involved the abutters, With a clear property line there may be space for a sidewalk.

Mr. Yorkis responds that the applicant has retained two different attorneys. The first attorney (Smythers) addressed the issue of the statutory private way. He provided the Board with an extensive letter that there is no issue. If you read the letter carefully, it indicates that the property line on the east side of Neelon Lane and edge of Neelon Lane are one and the same going up to the 131 foot mark.

Member Spiller-Walsh states that she had read the letter (from Attorney Smythers).

Mr. Yorkis states that the width of Neelon Lane is 25 ft. If you use the east line and go 25' to the west, the layout of the road is correct. If you use the east side and west side of Neelon Lane there is no deviation in that respect.

Member Spiller-Walsh indicates that she knows that.

The Chairman responds that Mr. Yorkis is establishing his prima-fascia case.

Mr. Yorkis responds those who represent the applicant - the attorneys and surveyors and the engineers - are absolutely certain as to the location of Neelon Lane. Where there was uncertainty was the observation made by Bob Daylor from Tetra Tech Rizzo about the extra length of the roadway layout (further south into the parcel). After further discussion about this, it was determined that it made no difference whether the roadway length was extended or shown on the plan. The applicant is very comfortable with the plan presented to the Board with accuracy and correctness of property lines and layout lines for a statutory private way which is an easement that is 25 feet wide.

The Chairman notes that at the end of the last public hearing, the Board was comfortable with an 18 foot wide paved road.

Member Spiller-Walsh would like the applicant to be a little more creative and continue thinking about the dire need for a sidewalk for safety. She believes that (not having a sidewalk) will be a huge issue. This could be a mutual endeavor among the applicant, abutter, and the town and would improve the situation all around. Why not? Further, if we had a possibility of an easement at the corner roundings, which are badly needed, continuing into the project, sidewalks might then be possible. It (sidewalks) might be possible in the land between the roadway and the layout and even onto the abutters' property (an easement).

Mr. Yorkis responds that there is no land between the property line and the roadway layout. The road layout and the property line are one and the same on the east side.

Member Spiller Walsh asks Faist Engineering what is gray area indicated on the plan on the west side.

Faist Engineering replies that the gray area is the actual pavement. The property line is the dark solid line.

Member Spiller-Walsh communicates that with a little easement on both abutters land, there could be enough room for a sidewalk.

It was communicated by an (unidentified) abutter that the trees (on the north side of Neelon Lane near Kaplan's) would need to be removed.

Member Spiller-Walsh responded that they could be replaced handsomely.

The Chairman wanted to know what Spiller-Walsh is proposing.

Member Spiller-Walsh responds that if this were a receptive team of abutters on the east and west sides, that the abutters would grant easements over their property to create a sidewalk down to the end and think about possible landscape replacements (for the trees that would have to be removed).

The Chairman responds that one of the abutters (Beth McDonald) is spending a ton of money on legal and other professional services. He doubts that she will be willing to give up a portion of the land.

Member Spiller-Walsh states that she is not sure if this would really involve Ms. McDonald's property at all.

Abutter Beth McDonald responds that if this went through, she would consider it. It depends since they do not know where the line actually is and it has to go to Land Court.

Member Spiller-Walsh asks what do you think about the concept.

Mr. Yorkis explains that the property line at Ms. McDonald's is very clear. If her property line and Neelon Lane are two different lines then she has no frontage for her lot based on the 1959 plan. Statutorily they have to be the same. The predecessors to the Planning Board in 1959 endorsed that plan (ANR Plan) with 131 feet of frontage on Neelon Land which created the lot where Ms. McDonald resides. If that plan is wrong, then Ms. McDonald has no frontage. It is that simple.

The Chairman communicates that he respects what member Spiller-Walsh is trying to do. What you are asking for is outside what is being applied for. It is not what is shown on the plan. They need to work on this outside of the meeting. It is not for the Board to adjudicate at this point. He applauds what Spiller-Walsh is trying to do.

Member Spiller-Walsh responds that this is a difficult situation for the applicant. There are some big problems but she believes they are solvable. This current plan is filled with difficulties. This could be a good plan at this end of the project with some minor morphing and compromising.

The Chairman asks the audience if they have any questions.

Attorney Valkevich asks if the latest revision to the plan shows a 25 ft wide roadway all the way to the end to where Tetra Tech envisions it ending.

Chairman Rodenhiser responds that it is an 18 foot paved road.

Mr. Valkevich asks if the revised concept plan represent the findings from Attorney Quinn. Tetra Tech Rizzo and Guerrierre and Halnon have both indicated that they cannot determine it engineering wise.

Chairman Rodenhiser asks if the revised plan reflects the 25' width (right of way).

Mr. Yorkis responds that the letter (from Attorney Quinn) presented to the Board was very precise. There are two ways to establish roadway locations - through plans and deeds. The Board has all of the information and history going back prior to 1863 and explaining everything. It is 25 feet wide and is as long as it needs to be. He suggests that Attorney Valkevich go back and look at all the information presented.

Attorney Valkevich communicates that he needs a copy of the letter from Mr. Quinn.

The Chairman responds that the Board has also not yet reviewed the letter from Attorney Quinn. The review of the letter will not happen until next week. The Chairman has not read it yet.

Attorney Valkevich also wants to know how the Board is going to address where the 25 ft. width as accepted by the Town is located on the ground.

The Chairman communicates that the Board will address that when the Board works on the decision. He notes that all information for the Board to review must be in by the Friday before the meeting.

Attorney Valkevich indicates he wants a chance to respond to the Quinn letter. He also wanted to know when the Board will address the neighbors' questions in the email which were submitted to the Board on November 10, 2010. He had provided a reminder email about the neighbors' questions to the Board on January 10, 2011. Mr. Valkevich states it wasn't anything new.

Member Rogers communicates that he has read the questions from Attorney Valkevich and the answers may lie within the Board's (future) decision and will depend on the Board members' reaching an agreement and justification for the position. There are many improbable in this.

Attorney Valkevich wanted to know how the 25 foot will affect the applicant's plan for his road and access. Doesn't that need to be shown and accounted for somewhere?

The Chairman responds that the applicant feels he has shown through plan and deeds.

Attorney Valkevich wants to know if Attorneys Quinn's findings are shown on the current concept plan.

The applicant's surveyor, Dan O'Driscoll, indicates that based on deeds and plans the easterly side of Neelon Lane as shown on the plan from 1959 coincides with the property line of the Kaplan/McDonald property. The right of way on the McDonald property goes straight and then bends to the southeast. It reaches an old fence and goes to the tree line per the Bob Daylor/Tetra Tech Rizzo letter/opinion.

The Chairman indicates that the fact that the road extends beyond, is irrelevant. The applicant is not proposing to block or obstruct this area. There is nothing to be constructed within it.

Attorney Valkevich wanted to know if it is fair to say that it (the Quinn letter) does not reach the same conclusion that had been reached (previously) by Tetra Tech Rizzo and Guerriere & Halnon.

Member Spiller-Walsh says it could be. She recollects that Mr. Daylor, from Tetra Tech Rizzo, indicated that there needs to be a Land Court decision to determine where exactly the road layout would fall.

Chairman Rodenhiser states that the Board will make its decision based on the opinions it is given. He indicates he might not agree with opinions provided and that Board members may have their own ideas.

Member Spiller-Walsh states that Mr. Daylor represents the Board. The Board goes by what our the Board's consultants say. She goes to the white board to explain her understanding her interpretation of Mr. Daylor's opinion. She states that Mr. Daylor said the road layout was within 2-3 feet like a curtain moving.

Mr. Yorkis responded that member Spiller-Walsh's recollection is absolutely correct, but what the applicant did as a result of Mr. Daylor's letter was to consult with Attorney Donald Quinn to research this further. Attorney Quinn researched deeds further back from 1863 to get a better understanding of whether Mr. Daylor's "curtain" example was correct. Mr. Daylor had suggested to me prior to the last public hearing that this may take more research so that is what we did and Attorney Quinn prepared the letter.

Attorney Valkevich comments that the 1863 plan or layout references monumentation that does not exist (on the ground today). He states that the 1863 documentation would supersede prior deeds. The determination needs to be made based on the 1863 taking. This needs to go to Land Court.

The Chairman states that the Board will make its decision based on the available information. There are lots of opinions out there.

Abutter Bancewicz indicates that his previous letter had called into question his property line. He wants to inform the Board that he no longer questions where his property lines are as such relates to the provided information. He states that he accepts the revised plan as it relates to his property line.

Mr. Yorkis states he has sent a copy of Mr. Quinn's letter to Mr. Daylor from Tetra Tech and asked Mr. Daylor to review the Quinn letter and provide his opinion to the Board.

Member Spiller-Walsh states that assuming we come to a finding about where the 25 foot roadway layout is, then at that point, she would hope that there would be some kind of better communication from this team about being on board with what is going to happen and that they would look to create those sidewalks and easements.

Mr. Yorkis states that prior to this meeting they had specifically asked the Board for their opinion whether there was a need for or lack of the need for sidewalk on Neelon Lane. Based on those discussions, we would revise the plans and get those to the Board prior to the next meeting. Mr. Yorkis states that that is exactly what they did.

Member Rogers communicates that it is the intent that the pedestrian traffic would exit the development through Cherokee Lane right of way and the paved path which is going to be provided for pedestrian use.

Mr. Yorkis indicates that the goal is to provide additional and more convenient means of pedestrian access. He states pedestrians and large trucks may use Neelon Lane. He is not going to represent where pedestrians WILL travel; they could use Neelon Lane or the sidewalk to Cherokee Lane.

The Chairman notes that the sidewalk (within Cherokee Lane) provides a connection between the neighborhoods so that pedestrians can get in and out of there and emergency vehicles can get in and out. It also provides the water connection. My belief is that people walk every day on my own street (Fisher St.) and the volume of traffic is considerable. Pedestrians do have the right of way. In this instance, there is only a 25 foot right of way and we all agreed that an 18 ft (paved) width would be a better width and we sent them back to redo the plan without a sidewalk but with 18 feet, at our request.

Member Spiller-Walsh communicates that 18 feet means that passenger cars can pass. But it doesn't resolve the fact that people need to walk someplace and if there was a meandering path on private property with an easement

Rodenhiser notes that the Board should have stated that at the last meeting.

Spiller-Walsh indicates that she believes that the Board did say that and the applicant did not want to hear what the Board was saying.

Member Tucker indicates that maybe Spiller-Walsh said that but the entire Board did not.

Member Rogers notes that he had specifically mentioned Fisher Street as an example with over 100 homes that feed onto Fisher Street and 80 homes on Fisher Street itself and there is no sidewalk and the roadway is no wider than 18 foot paved.

Member Spiller-Walsh states the Planning Board should not refer back to streets that were created in the 1600's and that are archaic, pre-existing and dangerous. She asks why are we referring to Fisher and Maple Streets.

Chairman Rodenhiser communicates that in this case there is only 25 foot right of way to work with and there is not a 50 foot right of way as would be with the normal subdivision.

Member Spiller-Walsh notes that this is why the Subdivision Control Law exists. We need to make improvements with a place to walk where you won't get squished.

Chairman Rodenhiser notes that what is being proposed will be an improvement from what is currently there. There will also be a new water line.

Member Spiller-Walsh notes that this is not an improvement if you are adding 13 houses on top of everything else. It is NOT an improvement!

Chairman Rodenhiser asks if there is anything else that member Spiller-Walsh wants to ask. He states he wants to move the dialogue along.

Member Spiller-Walsh stated that she has difficulty with the density and would like to see better use of the vistas and the open space. She would like to see the four step design process (specified in the bylaw) followed and does not feel this was considered enough.

Chairman Rodenhiser asked if there is information that Spiller-Walsh wants from the applicant.

Member Spiller-Walsh asks the applicant if they will do that.

Mr. Yorkis stated that the Board has approved two OSRD developments in the past – Pine Ridge which is near completion and Williamsburg which is under construction. In both cases the formula in the bylaw was followed. The applicant in this case has calculated the number of units which has been reviewed by the Board's planning consultant and is based on the OSRD Bylaw. Based on the affordable housing portion of the bylaw, the number of units increases from 11 to 13. The applicant is required to provide two affordable units based on the formula. He encourages the Board to be consistent with its following of the bylaw. He states they are aware there is a Catch 22 phrase in the bylaw. He states that if the Board is unhappy with its formula then it should revise it for future applications, but not in the middle of an application process. Applicants need to have a clear understanding of what is permitted. With respect to the vista, great consideration was given to the previous suggestions and comments and we made every honest attempt to incorporate the concerns that were expressed. Can we meet all that concerns that have been expressed, probably not. But we have made a good faith effort.

Chairman Rodenhiser asked Consultant Carlucci if the applicant had followed the 4 step design process.

Consultant Carlucci responds that in general yes.

Chairman Rodenhiser asks if anything else needs attention.

Consultant Carlucci responds that it would be only a matter of interpretation. The process was followed.

Chairman Rodenhiser asks member Spiller-Walsh if she has a problem with the four step design process.

Member Spiller-Walsh communicates that she has a huge problem with it and that we are working on it and plan to have it further tweaked for the future to be much better.

Chairman Rodenhiser states that any future changes to the Bylaw have no bearing on this application.

Member Spiller-Walsh indicates that the OSRD Bylaw references the Medway Master Plan when we created it probably at least 8 years ago. The Master Plan is the leader and producer of the ethics and intent under the land use section. The guidelines and the intent and purpose of the language is to NOT increase overall net density. She notes that the applicant has not been able to prove that they could create a 13 unit subdivision on this land by conventional means.

Chairman Rodenhiser notes that the application before the Board follows the formula we allow. It may be that the formula is flawed. If the Board does not like the formula then they should change it.

Member Spiller-Walsh notes that the OSRD bylaw refers back to the Master Plan which indicates there should be varying housing types and densities.

Chairman Rodenhiser states that the Master Plan is a guideline for the Board to follow.

Member Spiller-Walsh argues that the Master Plan comes first - it is the guideline that the open space bylaw follows. The purpose is to not create neighborhoods that increase density. They (the applicant) could not get that many units in a conventional subdivision.

Consultant Carlucci communicates that the OSRD formula provides for 11 units and not 13. (NOTE – The additional 2 units are a density bonus due to the Town's supplemental affordable housing requirements applicable to all developments.)

Chairman Rodenhiser responds that we would not look to the Master Plan as evidence for what we should do here.

Member Spiller-Walsh communicates that yes we should. She recollects that when the Board dealt with a prospective development at 50 Winthrop Street in the past, we had encouraged them to look at the OSRD option and had them prepare a proposed conventional Subdivision Plan to prove the number of units they could get. Then that would be the number of units they could do with an OSRD.

Chairman Rodenhiser notes that this (approach) was before we had the (current) OSRD formula. Doesn't the current OSRD formula supersede what that (the master plan) says because we used the master plan to develop the formula.

Consultant Carlucci responds the master plan is a guideline and does not supersede a bylaw. The formula may result in more or less units than a conventional subdivision depending on the particular land. The intent was for the formula to generate approximately the same number of units (for an OSRD) as a conventional subdivision. The formula may not be perfect.

Member-Spiller Walsh feels the applicant is bumping the density over what they could produce conventionally.

Mr. Yorkis indicated that he was a proud member of the first Master Plan Committee (late 1990's) and they had advocated for diverse and affordable housing types. The three projects and approaches used in the past few years with OSRD projects (Pine Ridge and Williamsburg and now Charles River Village) have addressed the needs noted in the Master Plan for a diversity of housing types. And he has advocated for diverse and affordable housing types. There are 3 different styles and 3 different approaches. All address the Master Plan policies.

Member Spiller-Walsh expresses she is concerned the vistas and the loss of pine trees. AS the plans were revised, they moved the subdivision back and the backs became a rote design. It is all controlled and has lost any vision of views.

Mr. Yorkis agrees with member Spiller –Walsh that a more varied design could have been used. There could have been a more varied design for this site, but it was designed this way since the Bylaw requires that each building must be a minimum of 30 ft apart. We have tried to address those concerns within the limitations of the bylaw but there are certain things we cannot do. This is the Bylaw, and the applicant cannot vary from that. We know you can't waive it. If this could be changed, a different design would have been submitted. We have complied with the Bylaw; however the Bylaw restricts some design considerations.

Member Spiller-Walsh responded that this could have been solved by pulling out two units.

Mr. Yorkis responded that reducing the number of units is not a financially viable option for the applicant.

Abutter McDonald asked why the comparative density numbers provided at the previous meeting were calculated on the densest portions of Charles River Road neighborhood. Why wouldn't they compare the density to the Neelon Lane properties that would be most affected? The Charles River neighborhood is not going to be affected by the (increased) traffic (this development will generate). The density should be compared to Neelon Lane.

The Chairman responded that the density was discussed at the last meeting. The applicant was trying to demonstrate how the density of the proposed development compared to the density of those streets (Charles River Road and adjacent roads) as there had been a question from an abutter in that area.

Member Spiller-Walsh states that it was a comparative density that was being discussed, not the (OSRD) formula (for density).

Abutter McDonald states that she thought the density formula was based on not being any denser per . . .

Member Spiller-Walsh indicated no. That has nothing to do with it.

Chairman Rodenhiser states that she (McDonald) is mistaken.

Abutter McDonald apologized for her misunderstanding.

Member Spiller-Walsh wanted to next discuss the rain gardens and stormwater management. It is her opinion that the space allotted (for stormwater management) is not going to be adequate knowing the high water table in that area. She felt that if two dwelling units were taken out, there would be more actual space for the needed stormwater management facilities. We have rain gardens that are detention ponds.

The Chairman explained that at the next stage, the applicant is going to need make room for the drainage. If units need to come out to make the rain gardens work, we vote no.

Member Spiller Walsh states that with our experience, the number of units doesn't decrease, they jam the water in between the units.

Mr. Yorkis explained that the drainage information and design is part of the Definitive Plan stage.

Member Spiller-Walsh indicates that this is part of the roadway design of the conceptual phase as well. She asked Faist Engineering if they are secure with the amount of allotted space for stormwater facilities given the water table issues and the size of the rain gardens.

Faist Engineer responded that he cannot give a definitive answer about the drainage since there are only preliminary numbers. He further indicated that there may be a need for conventional stormwater management facilities as well. The rain gardens do take up less area space than a conventional stormwater basin.

Member Spiller-Walsh states that is all grey and fuzzy.

Mr. Yorkis indicated that if the drainage design does not work with this site plan, the applicant will have to find a way to make the drainage work. We understand that making the drainage work will not result in there being more buildings.

Chairman Rodenhiser states that may mean they have to lose a unit.

Member Spiller-Walsh mentions that she has seen situations where the number of units has not been reduced and the water has been jammed into a small area and she would like to address some of these concerns now.

Mr. Yorkis responds that between the state stormwater regulations and the Town of Medway bylaws and Tetra Tech Rizzo's (future) review of the engineering work. He does not believe that anyone would allow water to get "jammed in".

Member Spiller-Walsh responds that we have all seen that occur.

Abutter Beth McDonald indicated that 25% of area that is buildable is impervious and that is huge. She has lived on this property for 15 years and there are washout issues.

Chairman Rodenhiser states that they have to make the drainage work.

Abutter McDonald asks do they wait to find that out after it is built. She then asks if there is a limit for the amount of impervious surfaces. Does the applicant have to provide calculations?

The Chairman indicated that the project must be able to handle (on site) the storm water coming off the property. The math is checked by Tetra Tech Rizzo, the Town's consulting engineer.

Member Spiller-Walsh notes that the prior OSRD for this site for 11 units had a drainage trench facilities in the open space on the slope. She wants confirmation that there will be no drainage facilities in the open space areas for this project. She expresses her concern about the allotted space for the rain gardens.

Member Tucker states that he has hounded them on drainage.

The Chairman asked engineer Faist if he can assure us that there will be no drainage structures in the open space.

Engineer Faist responded that there will be no drainage structures in the open space. That is not allowed in the Bylaw. The drainage on the site must meet the State and Town Bylaw standards during the definitive stage plan.

Member Spiller-Walsh does not want to see the rain gardens lost in the future stormwater design. They are an important part of the proposed landscape design.

Faist Engineer responded that they will take that into consideration during the definitive plan stage for drainage design. We know we have to meet the Mass and town standards.

Chairman Rodenhiser asks if there are any other questions.

Attorney Valkevich wanted to know if he could get a copy of the letter from Mr. Quinn, so that he may respond. He wants to confirm that the Board wants to have any written responses by the Thursday prior to the meeting.

The Chairman asks Attorney Valkevich to put in writing any questions that have not been answered and that the Board could ask the applicant to provide and supply it to the Board.

Mr. Yorkis provided Attorney Valkevich with a copy of the letter from Attorney Quinn.

The Chairman responded that Susy Affleck-Childs will provide through her office an official copy of the letter from Attorney Quinn and any updated plans for those who may seek such.

The hearing was continued to Tuesday, February 8, 2011 at 7:15 pm.

Williamsburg Release of Covenant:

On a motion made by Bob Tucker and seconded by Chan Rogers, the Board voted unanimously to sign the Release of Covenant for Williamsburg, pending that all the appropriate paperwork is reviewed and requirements are met.

Draft Revisions to OSRD Bylaw:

The Board would like to table discussion on this to the next meeting.

Adjourn

On a motion made by Chan Rogers, and seconded by Karyl Spiller-Walsh, the Board voted unanimously to adjourn the meeting at 9:25 PM.

Future Meetings:

The next meetings scheduled are:

- Regular Meeting January 25, 2011
- Special PEDB Workshop Meeting – February 1, 2011

The meeting was adjourned at 9:25 PM.

Respectfully Submitted,

Amy Sutherland
Meeting Recording Secretary

Edited by,

Susan E. Affleck-Childs
Planning and Economic Development Coordinator
(after viewing the videotape of the public hearing 3 times)

**January 11, 2011
Medway Planning and Economic Development Board
155 Village Street
Medway, MA 02053**

BOARD MEMBERS PRESENT: Andy Rodenhiser, Chan Rogers, Bob Tucker, and Karyl Spiller-Walsh.

ABSENT WITH NOTICE: Tom Gay, Member
Susan Affleck-Childs, Planning and Economic Development
Coordinator

ABSENT WITHOUT NOTICE:

ALSO PRESENT: Amy Sutherland, Meeting Recording Secretary
Gino Carlucci, PGC Associates Planning Consultant

The Chairman opened the meeting at 7:05 pm.

The Chairman asked for comments from the public.

Minutes November 16, 2010:

On a motion made by Bob Tucker and seconded by Chan Rogers, the minutes of the November 16, 2010 meeting were accepted unanimously as written.

Minutes December 14, 2010:

On a motion made by Bob Tucker and seconded by Chan Rogers, the minutes of the December 14, 2010 meeting were accepted unanimously as written.

Village Estates Preliminary Subdivision Plan Estimate:

The Board is in receipt of an estimated budget submittal dated January 7, 2011 from PGC Associates for review of the Village Estates preliminary subdivision plan as submitted by owners Russell and Dorothy Santoro. The cost estimate is \$340.00. (**See Attached**) The location is 272 Village Street across from Shaw Street.

2012 Budget:

The Board is in receipt of the FY 2012 Planning and Economic Development Budget Proposal. The total budget is level funded from the previous year. The total budget amount is \$101,418. The Board is comfortable with this proposal. (**See Attached**).

On a motion made by Bob Tucker and seconded by Chan Rogers, the Board voted unanimously to accept the estimate for Village Estates by PGC to review and comment on the preliminary subdivision.

There will be a special meeting on February 1, 2011.

Charles River Village Open Space Residential Development

The Chairman opened the continued public hearing.

The Chairman began the meeting by indicating that for the purpose of disclosure, he wanted to inform the board of a letter he had received from Mr. Leonard Mitchell who resides at 2 Massapoag ST (which abuts the Charles River Village property). Mr. Mitchell had previously been a customer of Rodenhiser Plumbing, Heating and Air Conditioning and had filed a complaint against the company. The letter references that Mr. Mitchell fears retribution from the Chairman through the Chairman's actions on this proposed development project because he is a former client. Chairman Rodenhiser wanted to disclose this information for the record.

Chairman Rodenhiser indicated that he did work at the home in the past perhaps he feels aggrieved because of the proceedings but that has no bearing on his ability to make a decision about this application. The Chairman currently has no business with him.

Mr. Yorkis asked about the absence of Member Gay.

Chairman Rodenhiser noted that Mr. Gay was not able to attend due to a very last minute personal circumstance. He will be able to participate in the discussion and vote on this project as he will view the videotape and meeting notes and provide a Mullins Rule certification.

Mr. Rodenhiser checked to determine that the videotape equipment was working properly.

Mr. Yorkis, as official representative of the applicant John Claffey, introduced the development team – David Faist/Faist Engineering, Dan O'Driscoll/O'Driscoll Land Surveying, W. Phillip Barlow from TO Design is the new landscape architect. John Claffey was also present. The former landscape architect is no longer involved. The two landscape architects have communicated and met on site. The new plans are stamped by Mr. Barlow. Both landscape architects stamps are on the plan.

Engineer David Faist will review the revised plans. These incorporate all of our past discussions.

Faist Engineering:

Engineer David Faist began the presentation by distributing the revised plans showing the members the latest revisions to the Charles River Concept Plan dated December 30, 2010. **(See attached).**

Copies of the plan were provided to the Board members and further copies were placed on the table for the audience to view.

Chairman Rodenhiser asked if the plans reflect everything that has been discussed. David Faist responds that it is inclusive of all the changes.

The plan showed the reduced width of the road to 18 feet. There is also a 15 ft radius coming in (off of Village Street) which gives enough room for two passenger cars per AASHTO standards. This is the best we can do.

The Chairman asks if this complies with the standards.

Faist engineer indicated that in an ideal world this would be wider. This does meet the AASHTO standard for passenger cars. The larger vehicles such as dump trucks are not reflected in this diagram. This change would be an improvement to the existing conditions based on the limitations we have been given.

These were the other things added based on the input from the police department - the proposed stop signs, painted lines, and two no parking signs on either side of Neelon Lane near the intersection with Village Street.

It was indicated that some of the telephone poles within the 25 foot right of way will need to be relocated. Mr. Faist also distributed a revised (12/29/2010) Village Street/Neelon Lane Proposed Conditions Sketch.

(See attached).

Member Spiller-Walsh asked for clarification related to where the property line is and where the proposed edge of pavement is.

Faist Engineer indicated that the dotted line is the edge of pavement. The dark solid line was the property line/right of way based on the O'Driscoll Survey.

Mr. Yorkis informs the Board that a letter (dated January 7, 2011) from attorney Don Quinn had been provided to the Board with additional information about the Neelon Lane location issues. The letter provided the history of the site prior to 1863 regarding width, layout and reasons for the layout.

(See Attached)

Faist Engineer next discussed the revised Concept Plan (12-30-2010). The only change is the 18 foot width pavement which is consistent with the Neelon Lane/Village Street intersection plan. The new plan references a 3 foot sidewalk from the end of the development to Cherokee Lane. It also shows the statutory private way limits as indicated by the O'Driscoll survey and Tetra Tech Rizzo review.

The pathway within Cherokee Lane will be similar to what was constructed at the Pine Ridge Development off of Candlewood with gravel and loam.

Abutter Diulio asked if the proposed sidewalk will result in Cherokee Lane being narrowed in width.

Chairman Rodenhiser responds that the sidewalk will not impact the width of Cherokee Lane. This is just a sidewalk to connect the development to the end of the existing paved Cherokee Lane. The gravel access will have a sidewalk in its center.

Attorney Thomas Valkevich (representing abutter Beth McDonald) wanted to know if the Board has made a determination about the location of the roadway (Neelon Lane) and is there going to be Land Court action.

Chairman Rodenhiser stated that the Board is not making any determination at this point. We are only collecting testimony.

Attorney Valkevich also wanted to know if the letter from Mr. Quinn can be made available so they may have an opportunity to comment on it.

The Chairman indicated that he has just received the letter and has not yet reviewed it.

Member Tucker indicated that the Board had just received the Quinn letter electronically. It is too late to talk about this letter at tonight's meeting.

Mr. Yorkis wanted it noted that he is concerned about any new information being submitted to the Board so late. This hinders the Board from considering the new information since it was not presented in a timely manner and thus the process gets delayed. At some point, when does the information presentation end?

The Chairman indicated that the information seeking ends when the public hearing closes.

Mr. Yorkis asks when the Board will close the public hearing.

Chairman Rodenhiser notes that the Board is not ready this evening to close the hearing. We are not at the point tonight to do that. Mr. Rodenhiser notes that he understands the applicant's frustration.

Mr. Yorkis indicated that the information was provided to the Board last week.

NOTE – The letter from Attorney Quinn was received on January 10, 2011 and was forwarded to Board members via email on January 11, 2011.

Member Spiller Walsh indicated that with anything that comes in tonight it is unfortunate that the information was not presented earlier. She notes that not having the information sooner holds up the board.

Chairman Rodenhiser indicates that the Board has a responsibility to review all materials that are submitted, otherwise, it opens the Board up for an appeal. They have an obligation to review all of the information and take it into consideration when the Board makes its decision.

Abutter McDonald communicates that the Neighborhood Alliance had submitted 14 questions two meetings ago and to date those have not been addressed or answered by the Board. These were not just submitted but resubmitted because they were never addressed and she would like some answers.

Member Spiller-Walsh states there have been fragments of things that have been started to be addressed.

The Chairman reiterated that the process is continuous. The Board is looking for evidence to make a determination not necessarily to answer questions. A question is not evidence. We have gone through an ample amount of information as part of the presentation as an effort to be fair to all sides. When things keep getting resubmitted, it gets confusing. I have given you plenty of time to ask questions.

Abutter McDonald states again that a lot of the questions have not been answered. We feel these are important questions.

Chairman Rodenhiser promises that this will be a fair process.

Member Rogers indicated that some of the questions will be included within the details of the decision whatever way the Board may decide to vote on this. All of the questions may not be answered until the decision phase is underway. A decision will not be made until all the evidence is before us.

The Chairman asked if the Board members have any questions.

Member Spiller-Walsh moved the discussion to the roadway. It is her opinion that the 18 foot roadway on Neelon Lane as noted on the plan is difficult for pedestrian safety (because there is no sidewalk). This will cause a problem for buses at one end and possibly the other. Member Walsh wants to know if the latest plan submittal is the applicant's final answer to the sidewalk issue within the development.

Mr. Yorkis responded that the new Concept Plan does not have sidewalks on Neelon Lane or on the interior of the development. It was never their intention to have sidewalks within the development. Mr. Yorkis states that they find there is no need for internal sidewalks in this development. The sidewalk connection (thru to Cherokee Lane) was added but there is no need for sidewalks internally.

Member Spiller-Walsh responded that the 18 ft paved road way is a deviation from the Board's standards/rules and regs but she feels it can work because of her experience with her subdivision (Wingate Farm) where, however, there is room to walk next to the roadway. Spiller Walsh notes prior references to Fisher St. and Maple Streets being narrow. We need to learn from those and do better. We don't need to go backwards.

She feels that a meandering pathway would work better. This road gets very narrow and dangerous. There is not enough space to walk within the right of way.

Mr. Yorkis responds that the Town of Medway Police and Fire Departments have reviewed the plans and provided a written communication about their approval of the plan in terms of safety.

Member Spiller-Walsh responds that the letters from the Town of Medway Police and Fire Departments did not reference the safety of children, or walkers. The letters simply indicate that the road was safe for emergency vehicles to get around.

Mr. Yorkis disagrees with the Ms. Spiller-Walsh's statement, interpretation and characterization of the letters (from the Police and Fire departments). He indicated that the Police and Fire Department Chiefs met at the site, reviewed the plans and clearly understand that both vehicles and pedestrians would be using the roadway.

Member Spiller-Walsh asks could you explain how the Fire and Police department felt about two vehicles passing each other on Neelon Lane with walkers as well.

Mr. Yorkis responded that in regards to the pedestrians, the Police and Fire Departments have indicated that the pedestrians have the right of way when in the public way. People will have to just slow down or stop to pass a pedestrian safely, that is what the statute is in Massachusetts.

Member Spiller-Walsh says that the Departments may be OK with jockeying for position, but she does not know if she is comfortable with this.

She further communicated concerns about corner roundings (Village St. and Neelon Lane) being so tight. There is difficulty getting in and out of this area. Spiller-Walsh indicates that exploring easements with the abutters could make this plan more viable.

Chairman Rodenhiser noted that the abutters have been asked previously and were not interested.

Member Spiller-Walsh asked did I hear exactly no.

Member Tucker responded that the Board heard no from both abutters (Kaplan and Bancewicz) at the last meeting.

Member Spiller-Walsh wanted to ask abutter Mrs. Elena Kaplan if she is interested in granting an easement on her property (at the east corner of Village and Neelon Lane).

Abutter Kaplan states that her answer depends on a lot of things. She cannot answer the question this evening. She needs to know a lot more. She communicates the Board that she has three children and hopes that none of them get hit by a car. She communicates to the Board that the traffic coming off of Village St. is extremely dangerous because it is so busy. It is a major travelled road in Medway. She is concerned that the Police and Fire Departments feel that a 15 ft radius is safe. Mrs. Kaplan notes that she is not comfortable with a 15 ft. radius. She states they had an expert come to one of the meeting and he indicated that it was not safe. She further

indicates that this process is very confusing when you have experts whose opinions are being ignored.

Chairman Rodenhiser asks member Spiller-Walsh did you get an answer to your question.

Member Spiller-Walsh responded, I got a maybe. There is a possibility.

Member Spiller-Walsh next wants to ask the other abutter Mr. Bancewicz about how he feels.

Abutter Mr. Ken Bancewicz (owner of the property at the southwest corner of Neelon and Village Streets) communicates that he is willing to work with the Board and applicant to create a safe intersection. He wants it the same on both sides. He does not want to be the one to give it all up. He also wants the same amount of land taken on both sides of the street (Neelon Lane).

Member Spiller-Walsh asks Mr. Yorkis if there was a compromise worked out with the abutters to grant footage on both sides, would you be interested in acquiring an easement to enlarge the roadway width and for landscaping?

Mr. Yorkis responds by asking how many years is this discussion going to go on? He states that over a year ago, the abutters were asked if they would grant easements. Mr. Yorkis indicated that at that time, Ms. Kaplan refused. The applicant cannot make this project complete based on abutters "maybe" granting easements. And now the Board is asking us again. The applicant must have certainties to present to this Board. This process takes time and money. A new series of plans were provided every single time we met with the Board. The applicant has not denied the Board a plan revision to date. We cannot deal with maybes. The team met with Mr. Bancewicz at the Board's request to look at options for an 18 foot (paved) road width and a 19 foot (paved) width. Mr. Bancewicz indicated that he preferred the 18 width foot and that whatever is done on his side, the exact same thing is done on the opposite side (Kaplan property). The paved road is centered as much as is humanly possible. It shifts easterly to impact the abutters as little as possible. The team has tried to cooperate with the Board, and the abutters, but a "maybe" is not a plan. He respects the questions and the idea about a wider intersection being safer and he stated that he agrees with that. It comes down to a question of fairness between the two abutters. Mr. Yorkis notes that common sense indicates that a wider intersection is a better intersection.

Chairman Rodenhiser asks abutter Kaplan if she is willing to do the same thing on the other side.

Abutter Kaplan states it would depend on a lot of things. She states that she resents Mr. Yorkis' description of what happened a year ago. She expresses that she was never brought into the process. The granting of an easement would depend on many things. The intersection would need to be safer for her own family and herself. Ms. Kaplan also would want to know what she would be given for compensation for granting an easement.

Member Spiller-Walsh agrees with Mr. Yorkis that you cannot do a project on a "maybe". She indicates that this discussion needs to explore more options such as a pull over spot (for traffic).

Mr. Yorkis responds that the applicant will not be held up by an abutter. This is not going to happen.

Member Spiller-Walsh responds that now Mr. Yorkis sounds like he is unparticipatory.

Chairman Rodenhiser responds that there is an application in front the Board.

Member Spiller-Walsh responds that she sees it!

Chairman Rodenhiser indicates the Board needs to make a determination one way or another what it is going to do. The Chairman further explains that he understands that this is a controversial project before us and the facts which are in front of the Board must be discussed. Any discussion about easements from the abutters is not before the Board right now but that something might change between now and the next meeting.

Mr. Yorkis again states that the Fire and Police Department have approved this plan.

Member Spiller-Walsh indicates that the Fire and Police Department have not given an approval. What they have given is their recommendations and it is up to the Board to approve this plan.

Chairman Rodenhiser asks if there are any other issues to discuss.

Member Spiller-Walsh states she wants to speak about the mitigating problems with the third house (Newell). Spiller-Walsh wants clarity about if and when there will be a Land Court decision on where the property line falls. She inquires if there was going to be a Land Court decision to determine the roadway layout?

Member Rogers indicates that the Board has nothing to do with a Land Court decision.

The Chairman responded that Town Counsel has advised that the Board has to determine if there is legitimate prima-fascia evidence regarding the roadway layout and access to do what the applicants wants to do. He states that the Board has heard that the property lines are in question. Once the public hearing is closed, the Board needs to decide if there is bona-fide access to the site. The decision which is rendered can be appealed by whatever side (abutters or applicant).

Member Spiller-Walsh notes that the Board has to do this without really knowing where within 2-3 feet the roadway layout will be. She communicates that it is the Board's responsibility to facilitate both the applicant and the abutters.

The Chairman responds that the applicant has an application before us and it is the Board's job to approve or deny it. The abutters are not part of the process except that they attend and can give comments.

Member Spiller-Walsh responds that this could be a viable project, if the property lines were more distinct and involved the abutters, With a clear property line there may be space for a sidewalk.

Mr. Yorkis responds that the applicant has retained two different attorneys. The first attorney (Smythers) addressed the issue of the statutory private way. He provided the Board with an extensive letter that there is no issue. If you read the letter carefully, it indicates that the property line on the east side of Neelon Lane and edge of Neelon Lane are one and the same going up to the 131 foot mark.

Member Spiller-Walsh states that she had read the letter (from Attorney Smythers).

Mr. Yorkis states that the width of Neelon Lane is 25 ft. If you use the east line and go 25' to the west, the layout of the road is correct. If you use the east side and west side of Neelon Lane there is no deviation in that respect.

Member Spiller-Walsh indicates that she knows that.

The Chairman responds that Mr. Yorkis is establishing his prima-fascia case.

Mr. Yorkis responds those who represent the applicant - the attorneys and surveyors and the engineers - are absolutely certain as to the location of Neelon Lane. Where there was uncertainty was the observation made by Bob Daylor from Tetra Tech Rizzo about the extra length of the roadway layout (further south into the parcel). After further discussion about this, it was determined that it made no difference whether the roadway length was extended or shown on the plan. The applicant is very comfortable with the plan presented to the Board with accuracy and correctness of property lines and layout lines for a statutory private way which is an easement that is 25 feet wide.

The Chairman notes that at the end of the last public hearing, the Board was comfortable with an 18 foot wide paved road.

Member Spiller-Walsh would like the applicant to be a little more creative and continue thinking about the dire need for a sidewalk for safety. She believes that (not having a sidewalk) will be a huge issue. This could be a mutual endeavor among the applicant, abutter, and the town and would improve the situation all around. Why not? Further, if we had a possibility of an easement at the corner roundings, which are badly needed, continuing into the project, sidewalks might then be possible. It (sidewalks) might be possible in the land between the roadway and the layout and even onto the abutters' property (an easement).

Mr. Yorkis responds that there is no land between the property line and the roadway layout. The road layout and the property line are one and the same on the east side.

Member Spiller Walsh asks Faist Engineering what is gray area indicated on the plan on the west side.

Faist Engineering replies that the gray area is the actual pavement. The property line is the dark solid line.

Member Spiller-Walsh communicates that with a little easement on both abutters land, there could be enough room for a sidewalk.

It was communicated by an (unidentified) abutter that the trees (on the north side of Neelon Lane near Kaplan's) would need to be removed.

Member Spiller-Walsh responded that they could be replaced handsomely.

The Chairman wanted to know what Spiller-Walsh is proposing.

Member Spiller-Walsh responds that if this were a receptive team of abutters on the east and west sides, that the abutters would grant easements over their property to create a sidewalk down to the end and think about possible landscape replacements (for the trees that would have to be removed).

The Chairman responds that one of the abutters (Beth McDonald) is spending a ton of money on legal and other professional services. He doubts that she will be willing to give up a portion of the land.

Member Spiller-Walsh states that she is not sure if this would really involve Ms. McDonald's property at all.

Abutter Beth McDonald responds that if this went through, she would consider it. It depends since they do not know where the line actually is and it has to go to Land Court.

Member Spiller-Walsh asks what do you think about the concept.

Mr. Yorkis explains that the property line at Ms. McDonald's is very clear. If her property line and Neelon Lane are two different lines then she has no frontage for her lot based on the 1959 plan. Statutorily they have to be the same. The predecessors to the Planning Board in 1959 endorsed that plan (ANR Plan) with 131 feet of frontage on Neelon Land which created the lot where Ms. McDonald resides. If that plan is wrong, then Ms. McDonald has no frontage. It is that simple.

The Chairman communicates that he respects what member Spiller-Walsh is trying to do. What you are asking for is outside what is being applied for. It is not what is shown on the plan. They need to work on this outside of the meeting. It is not for the Board to adjudicate at this point. He applauds what Spiller-Walsh is trying to do.

Member Spiller-Walsh responds that this is a difficult situation for the applicant. There are some big problems but she believes they are solvable. This current plan is filled with difficulties. This could be a good plan at this end of the project with some minor morphing and compromising.

The Chairman asks the audience if they have any questions.

Attorney Valkevich asks if the latest revision to the plan shows a 25 ft wide roadway all the way to the end to where Tetra Tech envisions it ending.

Chairman Rodenhiser responds that it is an 18 foot paved road.

Mr. Valkevich asks if the revised concept plan represent the findings from Attorney Quinn. Tetra Tech Rizzo and Guerrierre and Halnon have both indicated that they cannot determine it engineering wise.

Chairman Rodenhiser asks if the revised plan reflects the 25' width (right of way).

Mr. Yorkis responds that the letter (from Attorney Quinn) presented to the Board was very precise. There are two ways to establish roadway locations - through plans and deeds. The Board has all of the information and history going back prior to 1863 and explaining everything. It is 25 feet wide and is as long as it needs to be. He suggests that Attorney Valkevich go back and look at all the information presented.

Attorney Valkevich communicates that he needs a copy of the letter from Mr. Quinn.

The Chairman responds that the Board has also not yet reviewed the letter from Attorney Quinn. The review of the letter will not happen until next week. The Chairman has not read it yet.

Attorney Valkevich also wants to know how the Board is going to address where the 25 ft. width as accepted by the Town is located on the ground.

The Chairman communicates that the Board will address that when the Board works on the decision. He notes that all information for the Board to review must be in by the Friday before the meeting.

Attorney Valkevich indicates he wants a chance to respond to the Quinn letter. He also wanted to know when the Board will address the neighbors' questions in the email which were submitted to the Board on November 10, 2010. He had provided a reminder email about the neighbors' questions to the Board on January 10, 2011. Mr. Valkevich states it wasn't anything new.

Member Rogers communicates that he has read the questions from Attorney Valkevich and the answers may lie within the Board's (future) decision and will depend on the Board members' reaching an agreement and justification for the position. There are many improbable in this.

Attorney Valkevich wanted to know how the 25 foot will affect the applicant's plan for his road and access. Doesn't that need to be shown and accounted for somewhere?

The Chairman responds that the applicant feels he has shown through plan and deeds.

Attorney Valkevich wants to know if Attorneys Quinn's findings are shown on the current concept plan.

The applicant's surveyor, Dan O'Driscoll, indicates that based on deeds and plans the easterly side of Neelon Lane as shown on the plan from 1959 coincides with the property line of the Kaplan/McDonald property. The right of way on the McDonald property goes straight and then bends to the southeast. It reaches an old fence and goes to the tree line per the Bob Daylor/Tetra Tech Rizzo letter/opinion.

The Chairman indicates that the fact that the road extends beyond, is irrelevant. The applicant is not proposing to block or obstruct this area. There is nothing to be constructed within it.

Attorney Valkevich wanted to know if it is fair to say that it (the Quinn letter) does not reach the same conclusion that had been reached (previously) by Tetra Tech Rizzo and Guerriere & Halnon.

Member Spiller-Walsh says it could be. She recollects that Mr. Daylor, from Tetra Tech Rizzo, indicated that there needs to be a Land Court decision to determine where exactly the road layout would fall.

Chairman Rodenhiser states that the Board will make its decision based on the opinions it is given. He indicates he might not agree with opinions provided and that Board members may have their own ideas.

Member Spiller-Walsh states that Mr. Daylor represents the Board. The Board goes by what our the Board's consultants say. She goes to the white board to explain her understanding her interpretation of Mr. Daylor's opinion. She states that Mr. Daylor said the road layout was within 2-3 feet like a curtain moving.

Mr. Yorkis responded that member Spiller-Walsh's recollection is absolutely correct, but what the applicant did as a result of Mr. Daylor's letter was to consult with Attorney Donald Quinn to research this further. Attorney Quinn researched deeds further back from 1863 to get a better understanding of whether Mr. Daylor's "curtain" example was correct. Mr. Daylor had suggested to me prior to the last public hearing that this may take more research so that is what we did and Attorney Quinn prepared the letter.

Attorney Valkevich comments that the 1863 plan or layout references monumentation that does not exist (on the ground today). He states that the 1863 documentation would supersede prior deeds. The determination needs to be made based on the 1863 taking. This needs to go to Land Court.

The Chairman states that the Board will make its decision based on the available information. There are lots of opinions out there.

Abutter Bancewicz indicates that his previous letter had called into question his property line. He wants to inform the Board that he no longer questions where his property lines are as such relates to the provided information. He states that he accepts the revised plan as it relates to his property line.

Mr. Yorkis states he has sent a copy of Mr. Quinn's letter to Mr. Daylor from Tetra Tech and asked Mr. Daylor to review the Quinn letter and provide his opinion to the Board.

Member Spiller-Walsh states that assuming we come to a finding about where the 25 foot roadway layout is, then at that point, she would hope that there would be some kind of better communication from this team about being on board with what is going to happen and that they would look to create those sidewalks and easements.

Mr. Yorkis states that prior to this meeting they had specifically asked the Board for their opinion whether there was a need for or lack of the need for sidewalk on Neelon Lane. Based on those discussions, we would revise the plans and get those to the Board prior to the next meeting. Mr. Yorkis states that that is exactly what they did.

Member Rogers communicates that is it the intent that the pedestrian traffic would exit the development through Cherokee Lane right of way and the paved path which is going to be provided for pedestrian use.

Mr. Yorkis indicates that the goal is to provide additional and more convenient means of pedestrian access. He states pedestrians and large trucks may use Neelon Lane. He is not going to represent where pedestrians WILL travel; they could use Neelon Lane or the sidewalk to Cherokee Lane.

The Chairman notes that the sidewalk (within Cherokee Lane) provides a connection between the neighborhoods so that pedestrians can get in and out of there and emergency vehicles can get in and out. It also provides the water connection. My belief is that people walk every day on my own street (Fisher St.) and the volume of traffic is considerable. Pedestrians do have the right of way. In this instance, there is only a 25 foot right of way and we all agreed that an 18 ft (paved) width would be a better width and we sent them back to redo the plan without a sidewalk but with 18 feet, at our request.

Member Spiller-Walsh communicates that 18 feet means that passenger cars can pass. But it doesn't resolve the fact that people need to walk someplace and if there was a meandering path on private property with an easement

Rodenhiser notes that the Board should have stated that at the last meeting.

Spiller-Walsh indicates that she believes that the Board did say that and the applicant did not want to hear what the Board was saying.

Member Tucker indicates that maybe Spiller-Walsh said that but the entire Board did not.

Member Rogers notes that he had specifically mentioned Fisher Street as an example with over 100 homes that feed onto Fisher Street and 80 homes on Fisher Street itself and there is no sidewalk and the roadway is no wider than 18 foot paved.

Member Spiller-Walsh states the Planning Board should not refer back to streets that were created in the 1600's and that are archaic, pre-existing and dangerous. She asks why are we referring to Fisher and Maple Streets.

Chairman Rodenhiser communicates that in this case there is only 25 foot right of way to work with and there is not a 50 foot right of way as would be with the normal subdivision.

Member Spiller-Walsh notes that this is why the Subdivision Control Law exists. We need to make improvements with a place to walk where you won't get squished.

Chairman Rodenhiser notes that what is being proposed will be an improvement from what is currently there. There will also be a new water line.

Member Spiller-Walsh notes that this is not an improvement if you are adding 13 houses on top of everything else. It is NOT an improvement!

Chairman Rodenhiser asks if there is anything else that member Spiller-Walsh wants to ask. He states he wants to move the dialogue along.

Member Spiller-Walsh stated that she has difficulty with the density and would like to see better use of the vistas and the open space. She would like to see the four step design process (specified in the bylaw) followed and does not feel this was considered enough.

Chairman Rodenhiser asked if there is information that Spiller-Walsh wants from the applicant.

Member Spiller-Walsh asks the applicant if they will do that.

Mr. Yorkis stated that the Board has approved two OSRD developments in the past – Pine Ridge which is near completion and Williamsburg which is under construction. In both cases the formula in the bylaw was followed. The applicant in this case has calculated the number of units which has been reviewed by the Board's planning consultant and is based on the OSRD Bylaw. Based on the affordable housing portion of the bylaw, the number of units increases from 11 to 13. The applicant is required to provide two affordable units based on the formula. He encourages the Board to be consistent with its following of the bylaw. He states they are aware there is a Catch 22 phrase in the bylaw. He states that if the Board is unhappy with its formula then it should revise it for future applications, but not in the middle of an application process. Applicants need to have a clear understanding of what is permitted. With respect to the vista, great consideration was given to the previous suggestions and comments and we made every honest attempt to incorporate the concerns that were expressed. Can we meet all that concerns that have been expressed, probably not. But we have made a good faith effort.

Chairman Rodenhiser asked Consultant Carlucci if the applicant had followed the 4 step design process.

Consultant Carlucci responds that in general yes.

Chairman Rodenhiser asks if anything else needs attention.

Consultant Carlucci responds that it would be only a matter of interpretation. The process was followed.

Chairman Rodenhiser asks member Spiller-Walsh if she has a problem with the four step design process.

Member Spiller-Walsh communicates that she has a huge problem with it and that we are working on it and plan to have it further tweaked for the future to be much better.

Chairman Rodenhiser states that any future changes to the Bylaw have no bearing on this application.

Member Spiller-Walsh indicates that the OSRD Bylaw references the Medway Master Plan when we created it probably at least 8 years ago. The Master Plan is the leader and producer of the ethics and intent under the land use section. The guidelines and the intent and purpose of the language is to NOT increase overall net density. She notes that the applicant has not been able to prove that they could create a 13 unit subdivision on this land by conventional means.

Chairman Rodenhiser notes that the application before the Board follows the formula we allow. It may be that the formula is flawed. If the Board does not like the formula then they should change it.

Member Spiller-Walsh notes that the OSRD bylaw refers back to the Master Plan which indicates there should be varying housing types and densities.

Chairman Rodenhiser states that the Master Plan is a guideline for the Board to follow.

Member Spiller-Walsh argues that the Master Plan comes first - it is the guideline that the open space bylaw follows. The purpose is to not create neighborhoods that increase density. They (the applicant) could not get that many units in a conventional subdivision.

Consultant Carlucci communicates that the OSRD formula provides for 11 units and not 13. (NOTE – The additional 2 units are a density bonus due to the Town's supplemental affordable housing requirements applicable to all developments.)

Chairman Rodenhiser responds that we would not look to the Master Plan as evidence for what we should do here.

Member Spiller-Walsh communicates that yes we should. She recollects that when the Board dealt with a prospective development at 50 Winthrop Street in the past, we had encouraged them to look at the OSRD option and had them prepare a proposed conventional Subdivision Plan to prove the number of units they could get. Then that would be the number of units they could do with an OSRD.

Chairman Rodenhiser notes that this (approach) was before we had the (current) OSRD formula. Doesn't the current OSRD formula supersede what that (the master plan) says because we used the master plan to develop the formula.

Consultant Carlucci responds the master plan is a guideline and does not supersede a bylaw. The formula may result in more or less units than a conventional subdivision depending on the particular land. The intent was for the formula to generate approximately the same number of units (for an OSRD) as a conventional subdivision. The formula may not be perfect.

Member-Spiller Walsh feels the applicant is bumping the density over what they could produce conventionally.

Mr. Yorkis indicated that he was a proud member of the first Master Plan Committee (late 1990's) and they had advocated for diverse and affordable housing types. The three projects and approaches used in the past few years with OSRD projects (Pine Ridge and Williamsburg and now Charles River Village) have addressed the needs noted in the Master Plan for a diversity of housing types. And he has advocated for diverse and affordable housing types. There are 3 different styles and 3 different approaches. All address the Master Plan policies.

Member Spiller-Walsh expresses she is concerned the vistas and the loss of pine trees. AS the plans were revised, they moved the subdivision back and the backs became a rote design. It is all controlled and has lost any vision of views.

Mr. Yorkis agrees with member Spiller –Walsh that a more varied design could have been used. There could have been a more varied design for this site, but it was designed this way since the Bylaw requires that each building must be a minimum of 30 ft apart. We have tried to address those concerns within the limitations of the bylaw but there are certain things we cannot do. This is the Bylaw, and the applicant cannot vary from that. We know you can't waive it. If this could be changed, a different design would have been submitted. We have complied with the Bylaw; however the Bylaw restricts some design considerations.

Member Spiller-Walsh responded that this could have been solved by pulling out two units.

Mr. Yorkis responded that reducing the number of units is not a financially viable option for the applicant.

Abutter McDonald asked why the comparative density numbers provided at the previous meeting were calculated on the densest portions of Charles River Road neighborhood. Why wouldn't they compare the density to the Neelon Lane properties that would be most affected? The Charles River neighborhood is not going to be affected by the (increased) traffic (this development will generate). The density should be compared to Neelon Lane.

The Chairman responded that the density was discussed at the last meeting. The applicant was trying to demonstrate how the density of the proposed development compared to the density of those streets (Charles River Road and adjacent roads) as there had been a question from an abutter in that area.

Member Spiller-Walsh states that it was a comparative density that was being discussed, not the (OSRD) formula (for density).

Abutter McDonald states that she thought the density formula was based on not being any denser per . . .

Member Spiller-Walsh indicated no. That has nothing to do with it.

Chairman Rodenhiser states that she (McDonald) is mistaken.

Abutter McDonald apologized for her misunderstanding.

Member Spiller-Walsh wanted to next discuss the rain gardens and stormwater management. It is her opinion that the space allotted (for stormwater management) is not going to be adequate knowing the high water table in that area. She felt that if two dwelling units were taken out, there would be more actual space for the needed stormwater management facilities. We have rain gardens that are detention ponds.

The Chairman explained that at the next stage, the applicant is going to need make room for the drainage. If units need to come out to make the rain gardens work, we vote no.

Member Spiller Walsh states that with our experience, the number of units doesn't decrease, they jam the water in between the units.

Mr. Yorkis explained that the drainage information and design is part of the Definitive Plan stage.

Member Spiller-Walsh indicates that this is part of the roadway design of the conceptual phase as well. She asked Faist Engineering if they are secure with the amount of allotted space for stormwater facilities given the water table issues and the size of the rain gardens.

Faist Engineer responded that he cannot give a definitive answer about the drainage since there are only preliminary numbers. He further indicated that there may be a need for conventional stormwater management facilities as well. The rain gardens do take up less area space than a conventional stormwater basin.

Member Spiller-Walsh states that is all grey and fuzzy.

Mr. Yorkis indicated that if the drainage design does not work with this site plan, the applicant will have to find a way to make the drainage work. We understand that making the drainage work will not result in there being more buildings.

Chairman Rodenhiser states that may mean they have to lose a unit.

Member Spiller-Walsh mentions that she has seen situations where the number of units has not been reduced and the water has been jammed into a small area and she would like to address some of these concerns now.

Mr. Yorkis responds that between the state stormwater regulations and the Town of Medway bylaws and Tetra Tech Rizzo's (future) review of the engineering work. He does not believe that anyone would allow water to get "jammed in".

Member Spiller-Walsh responds that we have all seen that occur.

Abutter Beth McDonald indicated that 25% of area that is buildable is impervious and that is huge. She has lived on this property for 15 years and there are washout issues.

Chairman Rodenhiser states that they have to make the drainage work.

Abutter McDonald asks do they wait to find that out after it is built. She then asks if there is a limit for the amount of impervious surfaces. Does the applicant have to provide calculations?

The Chairman indicated that the project must be able to handle (on site) the storm water coming off the property. The math is checked by Tetra Tech Rizzo, the Town's consulting engineer.

Member Spiller-Walsh notes that the prior OSRD for this site for 11 units had a drainage trench facilities in the open space on the slope. She wants confirmation that there will be no drainage facilities in the open space areas for this project. She expresses her concern about the allotted space for the rain gardens.

Member Tucker states that he has hounded them on drainage.

The Chairman asked engineer Faist if he can assure us that there will be no drainage structures in the open space.

Engineer Faist responded that there will be no drainage structures in the open space. That is not allowed in the Bylaw. The drainage on the site must meet the State and Town Bylaw standards during the definitive stage plan.

Member Spiller-Walsh does not want to see the rain gardens lost in the future stormwater design. They are an important part of the proposed landscape design.

Faist Engineer responded that they will take that into consideration during the definitive plan stage for drainage design. We know we have to meet the Mass and town standards.

Chairman Rodenhiser asks if there are any other questions.

Attorney Valkevich wanted to know if he could get a copy of the letter from Mr. Quinn, so that he may respond. He wants to confirm that the Board wants to have any written responses by the Thursday prior to the meeting.

The Chairman asks Attorney Valkevich to put in writing any questions that have not been answered and that the Board could ask the applicant to provide and supply it to the Board.

Mr. Yorkis provided Attorney Valkevich with a copy of the letter from Attorney Quinn.

The Chairman responded that Susy Affleck-Childs will provide through her office an official copy of the letter from Attorney Quinn and any updated plans for those who may seek such.

The hearing was continued to Tuesday, February 8, 2011 at 7:15 pm.

Williamsburg Release of Covenant:

On a motion made by Bob Tucker and seconded by Chan Rogers, the Board voted unanimously to sign the Release of Covenant for Williamsburg, pending that all the appropriate paperwork is reviewed and requirements are met.

Draft Revisions to OSRD Bylaw:

The Board would like to table discussion on this to the next meeting.

Adjourn

On a motion made by Chan Rogers, and seconded by Karyl Spiller-Walsh, the Board voted unanimously to adjourn the meeting at 9:25 PM.

Future Meetings:

The next meetings scheduled are:


- Regular Meeting January 25, 2011
- Special PEDB Workshop Meeting – February 1, 2011

The meeting was adjourned at 9:25 PM.

Respectfully Submitted,


Amy Sutherland
Meeting Recording Secretary

Edited by,


Susan E. Affleck-Childs
Planning and Economic Development Coordinator
(after viewing the videotape of the public hearing 3 times)

PGC ASSOCIATES, INC.

1 Toni Lane

Franklin, MA 02038-2648
508.533.8106
508.533.0617 (Fax)
pgca@comcast.net

January 7, 2-11

Mr. Andy Rodenhiser, Chairman
Medway Planning Board
155 Village Street
Medway, MA 02053

BT (v)(v)
CR

Re: Village Estates Preliminary Subdivision Plan

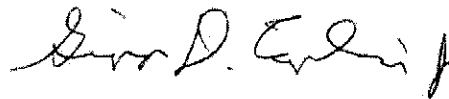
Dear Mr. Rodenhiser:

PGC Associates is pleased to present the following cost estimate to review and comment on the preliminary subdivision plan called Village Estates, submitted by owners Russell and Dorothy Santoro of Medway and prepared by Colonial Engineering, Inc. of Medway The plan is dated November 25, 2011.

<u>Task</u>	<u>Hours</u>
Prepare estimate	0.5
Technical review and comment	2.0
Planning Board meeting	1.5
Total	4.0
Cost Estimate (@\$85)	\$340.00

If there are any questions about this estimate, please call me.

Sincerely,



Gino D. Carlucci, Jr.

Budget CA w/ B. W.

Planning and Economic Development - FY 12 Budget Proposal

		FY11 Budget	FY 12 Budget	Notes
SALARIES				
5110	Full time salaries	\$ 58,610	\$ 59,301	Per SKK, reclassify Planning & Economic Development Coordinator's position to Grade 10 - Step 4 (\$28.51/hour) effective July 1, 2010.
	SAC (\$27.23/hour) no pay grade			
5111	Part time salaries	\$ 24,490		
	20 hours/week		\$ 20,967	Grade 5 - Step 5 (July 1, 2011 - June 30, 2012) \$20.16/hour
	20 hours/month		\$ 3,503	Grade 3 - Step 3 (July 1, 2011 - June 9, 2012) \$15.23/hour
			\$ 163	Grade 3 - Step 4 (June 10, 2012 - June 30, 2012) \$16.28/hour
			\$ 24,633	
5150	Longevity pay (sac)	\$ 250	\$ 250	
	Total	\$ 83,350	\$ 84,184	
	EXPENSES - 01175002			
5305	Consulting services	\$ 3,840	\$ 3,006	
5306	Advertising	\$ 1,000	\$ 1,000	
5342	Copying/binding	\$ 315	\$ 315	
5383	Contracted services	\$ 10,180	\$ 10,180	
	DRC \$2,000			
	Planning \$4,090			
	EDC \$4,090			
5384	Mapping	\$ 788	\$ 788	ArcView software annual fee
5420	Office supplies	\$ 600	\$ 600	
5521	Books/resource materials	\$ 210	\$ 210	
5710	In state travel	\$ 135	\$ 135	
5730	Dues, subscriptions, meetings	\$ 500	\$ 500	
5851	Office equipment	\$ 500	\$ 500	
	Total Expenses	\$ 18,068	\$ 17,234	
	TOTAL	\$ 101,418	\$ 101,418	
	sac notes 1/4/2011			

Donald P. Quinn, P.C.

Counsellors

Donald P. Quinn

Danielle Justo

32 Court Street, Plymouth, MA 02360

Telephone (508) 830-0400, Fax (508) 830-0058

Email dquinn@dpqpc.com

djusto@dpqpc.com

January 7, 2011

Town of Medway
Planning and Economic Development Board
155 Village Street
Medway, MA 02023
ATTN: Andy Rodenhiser, Chairman

Re: Charles River Village Open Space Residential Development
Neelon Lane Legal Analysis

Dear Chairman Rodenhiser:

Our office has been retained by John Claffey, Proponent of the above-captioned OSRD, to review the recommendations of Tetrattech Rizzo ("Tetrattech") made by letter dated December 10, 2010. Tetrattech recommended that the PEDB has enough information to act upon petitioner's OSRD application at this time. It also opined that while the exact east-west location of Neelon Lane remains in question, it is not an issue to be decided by the PEDB.

Tetrattech suggested that the PEDB may condition its approval of the project in one of two ways:

- 1) provide a condition that absolves the PEDB from any responsibility to adjudicate the Neelon Lane location matter. It would be the responsibility of the individual parties to take any further action regarding its location; or
- 2) provide a condition requiring that the parties resolve the dispute prior to its construction.

With respect to TetraTech's first condition, it is our opinion that the PEDB has no responsibility to adjudicate the Neelon Lane location matter because it is a private title issue between the Proponent and certain abutters. This matter should be independently resolved. PEDB is not required to analyze and determine title issues which might arise between proponents and opponents of a project. Its responsibility is to comply with the special permit provisions of M.G.L. c.40A and the Town's related bylaws in order to reach a decision based upon reasonable factual evidence produced during the course of its

deliberation. Its decision should be based upon consideration of the evidence produced by its own investigation or offered by the proponents or opponents of the project. It has the ability to exercise discretion in reaching its decision. In the event an aggrieved party were to appeal your decision, the PEDB's unwillingness to decide a private title issue should be unassailable.

We respectfully suggest that to adopt Tetrattech's second condition (requiring the parties to resolve the alleged title issue before commencement of construction) would unduly delay the commencement of the project and probably cause the Proponent to abandon it. We do not think it is within the purview of the PEDB to mandate that a petitioner take affirmative action to cure an alleged potential title issue. It is up to an aggrieved party to address any Neelon Lane title issue directly in an appropriate forum, such as a court with competent jurisdiction over the matter. A final court resolution of the alleged title issue could take years to obtain. The Proponent would not be able to retain control of his land option for that length of time. Imposing this condition would, in effect, be handing a victory to the project's opponents.

Multiple Methods to Fix Location of Private Way

Your special permit decision-making process has been delayed due to opponent's efforts to discredit the location and length of Neelon Lane. Neelon Lane has been in continuous existence since at least 1863 without dispute. In reality, the permitting process attack on the location of Neelon Lane reflects opponent's desire to kill the entire project. This diversionary effort has caused survey experts to submit and analyze technical data in an effort to exactly locate the lane by survey. We submit that this is not an engineering problem, but a title issue in which PEDB should not be involved.

Survey plans are only one way to determine the location of ways. The location of a way can also be made by investigating the words contained in deeds and other public records. We have done so and believe that there is sufficient evidence in the Norfolk Registry of Deeds and other public records to fix the location of Neelon Lane. We believe that the records of both the Registry and the Selectmen provide sufficient information to fix both the location and width of Neelon Lane, notwithstanding the absence of a specific recorded stand-alone survey of the Statutory Private Way. Our rationale for reaching this conclusion is set forth in the following analysis.

Legal Analysis

Over 150 years ago three abutting landowners were parties to the initial dispute over the use of what is currently known as Neelon Lane: namely Charles Whittier, Francis Neelon, and John Kearm. We attach a Permitting Plan (Exhibit A) which highlights the historical location of the Whitney Parcel in green, the Neelon Parcel in blue and the Kearm Parcel in pink. Neelon Lane is highlighted in yellow. Historically, Neelon Lane has been referred to as Wilson's Lane, Neelon's Lane and Neelon Lane. They all refer to the same Statutory Private Way.

In 1950, the Kearn Parcel was divided into two house lots, (See 1950 Plan attached as Exhibit B). In 1959, the section of the Whittier Parcel which abuts Neelon Lane was subdivided into Lots 1 and 2 (see 1959 Plan attached as Exhibit C).

To bring abutting ownership up to date, the two house lots created from the Kearn Parcel are now owned by Kenneth and Terri Bancewicz (223 Village Street) and Peter and Michele Newell (2 Neelon Lane). The Neelon Parcel and Neelon Lane are now in control of the Proponent. The portions of the Whitney Parcel are now owned by Daniel and Mariclanna Kaplan (221 Village Street) and Mary Elizabeth McDonald (9 Neelon Lane).

In 1856, the Neelon Parcel had no direct frontage on the Old Boston and Hartford Road (now called Village Street). However, it benefited from two rights of way for access to and from Village Street. The first right of way was created by reservation in a deed from Eleazer Morse, a prior owner of the Neelon Parcel, to John Kearn described as follows:

“Reserving to myself and to my heirs and assigns the right of passage over the easterly side of said premises [the Kearn Parcel] next to land of [Charles B.] Whitney as have been recently granted and used for that purpose.”

The Neelon Parcel also benefited from an additional right of way over the Kearn Parcel described as follows:

“a right of way is mutually granted and guaranteed on the easterly side of these premises [Neelon Parcel abutting Whitney] and of land of Morse [Kearns Parcel] lying northerly thereof.”

It is clear from Registry records that the easterly side of the Kearn Parcel (which abuts the Whitney Parcel) was subject to both rights of way. Following his 1856 acquisition of the Neelon Parcel, Neelon utilized these mutually granted rights of way to pass and repass over the easterly side of the Kearn Parcel to Village Street. Possibly, while using the right of way, Neelon may have “meandered” or otherwise trespassed over the Whitney Parcel. At any rate, it appears that a disagreement arose between Neelon, Kearn and Whitney as to the width and use of these rights of way. The dispute was submitted to the Medway Selectmen for resolution, resulting in their 1863 decision to lay out and accept a 25 foot wide Statutory Private Way (see opinion of Sidney Smithers, Esq., dated September 21, 2010). The Selectmen’s decision created a 25 foot wide Statutory Private Way over the land of both Whitney and Kearns. Both Kearns and Whitney were monetarily compensated as a result of that decision.

The Selectmen's decision to lay out and accept a Statutory Private Way appears to have cured the problem. To this day, the Neelon Parcel enjoys the benefit of the two underlying rights of way as well as the Statutory Private Way. In the 147 years following the creation of Neelon Lane as a Statutory Private Way, we have found no evidence in the Registry to reflect a continuation or revival of the earlier dispute. Since the 1863 layout, a travelled way (which is now paved) has been maintained over both the Whitney and Kearns Parcels to provide access and egress between Village Street and the Neelon Parcel. The only reason that a challenge to the location has arisen at this time is because it is a pawn in the chess game being played currently before your governmental body.

Deeds Using "Bounding" Descriptions

Historically, using the words bounded by" in recorded deeds are very important words relating to an abutter's right in ways. The words "bounded by" or "bounding on" have significant legal relevance. The historical meaning of "bounding" on a way was codified in 1972 by M.G.L. Ch. 183, Sec. 58 attached as Exhibit G.

Also, according to the conveyancer's bible, *Crocker's Notes on Common Forms*, Section 178,

"When land is described as bounding on...way, if the grantor is the owner of the adjoining land over which such...way is described as laid out, [the owner]...and all person claiming under her...are estopped from setting up any claim or doing any acts inconsistent with the grantee's use of such street or way. This is sometimes referred to as the doctrine of easement by estoppel."

The current owners of Lots 1 and 2 on the 1959 Plan (Kaplan and McDonald) claim through Whittier, the grantor, and are thus estopped from setting up any claim or doing any acts inconsistent with Proponent's use of Neelon Lane.

In several of the deeds in the Whittier Parcel chain of title the words "bounded by Wilson's Way" were used. It is clear from the 1863 Selectmen's layout that a portion of the Whittier Parcel was within Neelon Lane. See for example, an 1878 deed from Fisher to Plummer recorded with the Registry in Book 579, Page 559 (the "Plummer Deed") attached hereto as Exhibit D. Most importantly, the Plummer Deed description was substantially carried forward by Schofield Brothers Engineering, Inc. in its preparation of the 1959 Plan for the then owner William S. McDonald. To further drive the nail into the coffin, the 1959 owner conveyed Lot 1 on the 1959 Plan to LeBlanc specifically using the words "bounded by Nealon's Lane" (see deed attached as Exhibit E). Likewise, the deed of Lot 2 from Katherine McDonald to its current owner, Mary Elizabeth McDonald, specifically referred to the 1959 Plan and the *frontage* utilized to justify and create Lot 2 was *131 feet along Neelon Lane*.

We are of the opinion that having used Neelon Lane as required frontage on the 1959 Plan for the purposes of creating Lot 2, the owner of Lot 2 is now estopped from

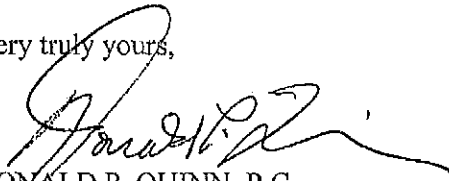
Andy Rodenhiser, Chairman, PEDB
January 7, 2011
Page 5 of 6

arguing that she is uncertain about its location. If the Neelon Lane frontage did not abut Lot 2, then her present house lot was improperly subdivided. She should be estopped from arguing to the contrary.

Finally, because the easterly sideline of Neelon Lane coincides with the westerly boundary of Lots 1 and 2 on the 1959 Plan, the Registry records have provided a *fixed location* for the easterly sideline of Neelon Lane. There is no dispute that Neelon Lane is 25 feet wide; therefore the westerly boundary of Neelon Lane is 25 feet to the west of the Lot 1/Lot 2 boundary lines. It has been demonstrated by survey that the current traveled portion lies within 25 feet of the Kaplan/McDonald westerly boundaries. (See O'Driscoll Existing Condition Plan revised 12/14/10 attached as Exhibit F.) Therefore, the westerly sideline of Neelon Lane is 25 feet from the Lot 1 and Lot 2 boundaries on the 1959 Plan.

Hopefully, this technical legal discussion will assist the PEDB in reaching the conclusion that a location can be fixed by words in recorded documents as well as surveys. We have significant research data and Supreme Judicial court decisions to support our conclusions. Please do not hesitate to have your consultants or agents contact us with any question or comments.

Very truly yours,

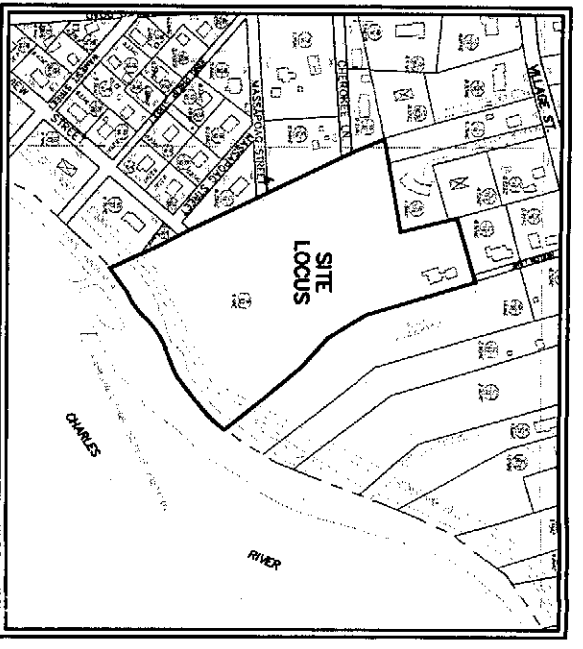


DONALD P. QUINN, P.C.

DPQ/dmj

cc: Robert Daylor, P.E.

- LEGEND**
- N/F. NOW OR FORMERLY
 - CG OH CONCRETE BOUND WITH DRILL HOLE
 - FOUND
 - EXIST. PROPOSED
 - INVERT
 - R.C.P. APPROXIMATE
 - APPROX. APPROXIMATE
 - HYDRANT
 - SEWER MANHOLE
 - BRAN MANHOLE FOR TOWN BASIN
 - EXISTING CONCRETE
 - PROPOSED CONTOUR LINE
 - OVERHEAD WIRE
 - SPW SEWER FORCE MAIN
 - OTH DEEP TEST HOLE
 - DET. DETENTION
 - UTILITY POLE
 - FES FLARED END SECTION ELEV. ELEVATION
 - BIT. BITUMINOUS
 - CONC. CONCRETE
 - F.F. FIRST FLOOR ELEVATION
 - B.F. BASEMENT FLOOR ELEVATION
 - G.F. GARAGE FLOOR ELEVATION
 - BM. BENCHMARK
 - FA. FIRE ALARM BOX
 - WATER GATE
 - V.G.C. VERTICAL GRANITE CURB
 - TEST PINS
 - ELECTRIC, TELEPHONE & CABLE



"CHARLES RIVER VILLAGE"

NEELON LANE - MEDWAY, MASSACHUSETTS

SPECIAL PERMIT - CONCEPT PLANS

OPEN SPACE RESIDENTIAL DEVELOPMENT (OSRD)

RECORD OWNER: MICHAEL ACQUARRESA & CAROL SUPERIOR
 EXECUTIVE OF HELEN PRODROMOS
 282 PURCHASE STREET
 MILFORD, MA 01757
 CONTACT: CAROL SUPERIOR
 7A WINDO DRIVE
 WINDSOR, MA 01803
 (508) 770-0825

PREPARED FOR: CHARLES RIVER VILLAGE, LLC
 ASSESSORS REFERENCE: MAP 1-7 PARCEL 10/33

DEED REFERENCE: NORFOLK COUNTY REGISTRY OF DEEDS
 BOOK 05948 PAGE 353
 08902 SEWER ALIGNMENT
 BOOK 05224 PAGE 185

ZONING DISTRICT: AGRICULTURAL-RESIDENTIAL II (AR II)
 MIN. REQUIRED AREA: 22,500 S.F.
 MIN. REQUIRED FRONTAGE: 150'
 MIN. SETBACK FROM STREET LINE: 35'
 MIN. SET AND REAR LOT LINES: 15'

APPLICANT: CHARLES RIVER VILLAGE, LLC
 P.O. BOX 100
 MEDWAY, MA 02053
 P: (508) 326-7508

PROJECT ENGINEER: GAVIN T. FAIST, P.E.
 FAIST ENGINEERING, INC.
 600 CHARLTON STREET
 SOUTHBRIIDGE, MA 01550
 PH: (508) 765-7755

RECORD OWNER: MICHAEL ACQUARRESA & CAROL SUPERIOR
 EXECUTIVE OF HELEN PRODROMOS
 282 PURCHASE STREET
 MILFORD, MA 01757
 CONTACT: CAROL SUPERIOR
 7A WINDO DRIVE
 WINDSOR, MA 01803
 (508) 770-0825

PROJECT SURVEYOR: DANIEL A. O'DRISCOLL, P.L.S.
 O'DRISCOLL LAND SURVEYING, CO.
 46 COTTAGE STREET
 MEDWAY, MA 02053
 P: 1-508-333-3314

LANDSCAPE ARCHITECTS: LONNIE ROBINSON
 LANDSCAPE ARCHITECT
 91 WINDSOR STREET
 NORFOLK, MA 02055
 PH: (508) 528-3503

LANDSCAPE ARCHITECTS: W. PHILIP BARLOW, A.S.I.A.
 W. DESIGN, LLC
 11 STATE ST. 2ND FLOOR
 NEW BRITAIN, CT
 PH: (860) 812-1700

RESERVED FOR RECEIPT USE

TOWN OF MEDWAY PLANNING & ECONOMIC DEVELOPMENT BOARD

APPROVAL DATE _____

ENDORSEMENT DATE _____

TOWN CLERK _____ DATE _____

I, MARLYNNE WHITE, CLERK OF THE TOWN OF MEDWAY, HEREBY CERTIFY THAT THE NOTICE OF APPROVAL OF THIS PLAN BY THE PLANNING BOARD HAS BEEN RECEIVED AND RECORDED AT THIS OFFICE AND NO NOTICE OF APPEAL HAS BEEN RECEIVED. THIS CERTIFICATE IS VALID ONLY IF RECEIVED NEXT AFTER SUCH RECEIPT AND RESPONSE OF SAID NOTICE.

PLAN INDEX

SHEET #	TITLE SHEET
SHEET 1:	TITLE SHEET
SHEET 2:	CONTEXT & ANALYSIS PLAN
SHEET 3:	CONCEPT PLAN "CHARLES RIVER VILLAGE" OSRD
SHEET 4:	YIELD PLAN

"CHARLES RIVER VILLAGE"
 SPECIAL PERMIT - CONCEPT PLANS
 OPEN SPACE RESIDENTIAL DEVELOPMENT (OSRD)
 IN
 MEDWAY, MASSACHUSETTS

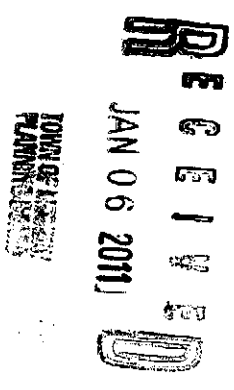
DATE: JULY 28, 2010

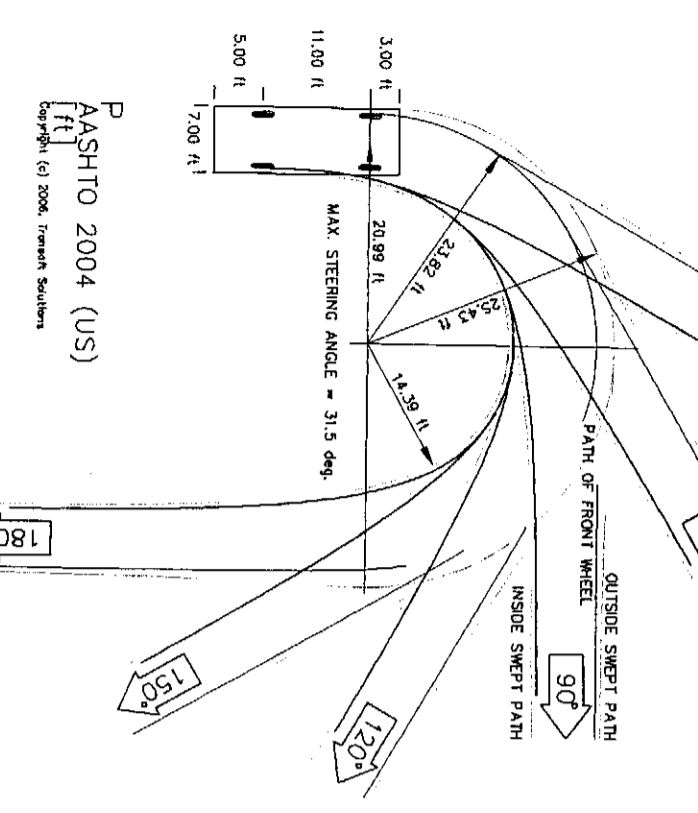
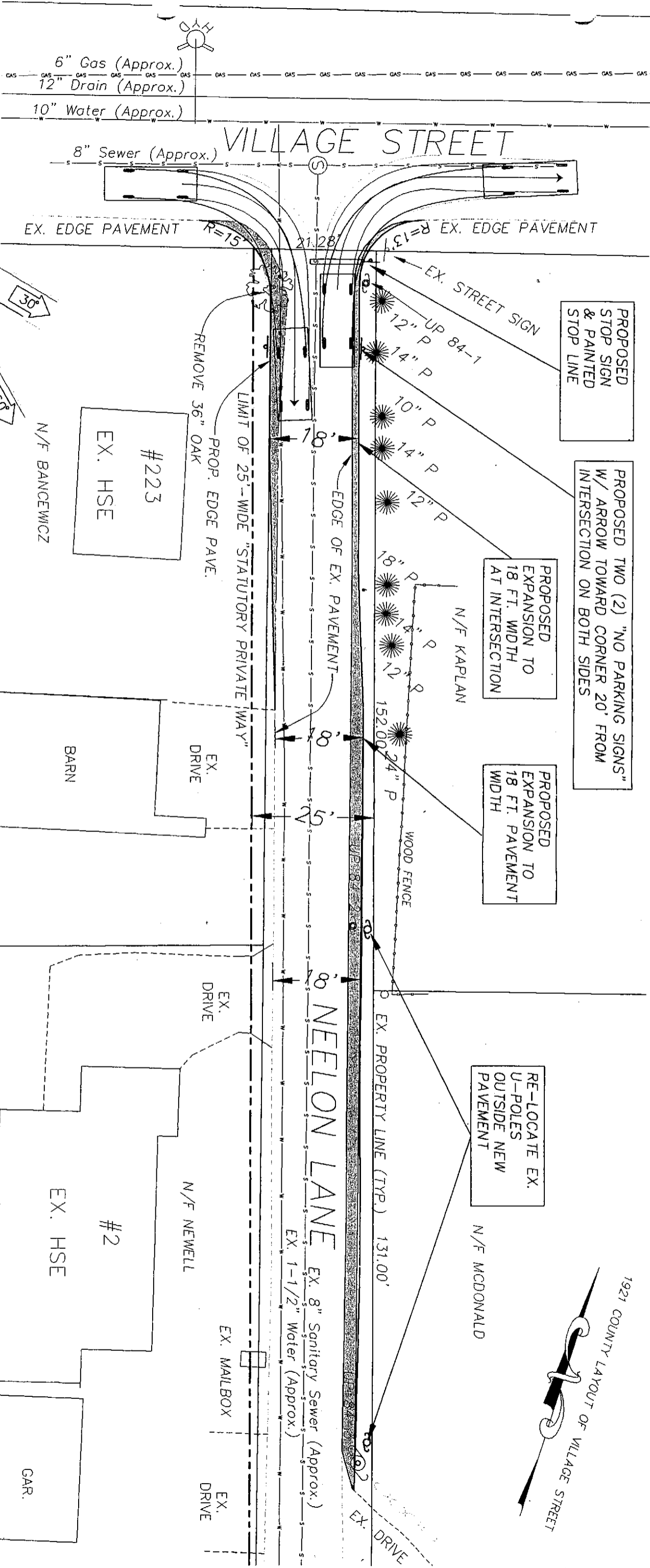
REVISION DATES:
 SEPTEMBER 24, 2010
 DECEMBER 30, 2010

O'DRISCOLL LAND SURVEYING Co.
 600 Charlton Street
 Southbridge, MA 01550
 MA Phone/Fax: (508) 765-7755
 e-mail: dfaist@o1driscoll.com

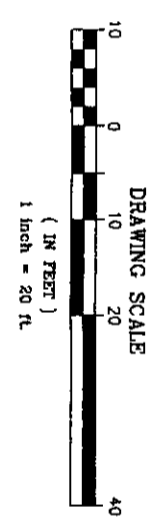
FAIST ENGINEERING, INC.
 600 Charlton Street
 Southbridge, MA 01550
 MA Phone/Fax: (508) 765-7755
 e-mail: dfaist@faisteng.com

- NOTES:**
- 1) LIMITED EXISTING CONDITIONS & SITE PROPERTY BOUNDARIES ARE BASED ON AN AERIAL PHOTOGRAPHIC SURVEY CONDUCTED BY O'DRISCOLL LAND SURVEYING CO. DURING JUNE-JULY 2010. INFORMATION SHOWN IS FOR OSRD PURPOSES ONLY.
 - 2) TOPOGRAPHY, UTILITIES, WATER BANK AND FLOOD PLAIN LOCATIONS ARE BASED ON A PLAN PROVIDED BY THE APPLICANT AND A PROFESSIONAL LANDSCAPE ARCHITECT TO DETERMINE THESE RESOURCE AREAS AND FILE AN OFFICIAL AIRBANK WITH THE MEDWAY CONSERVATION COMMISSION.
 - 3) THE PROPOSED PROJECT SHALL BE SERVED BY TOWN WATER AND TOWN SEWER VIA NEELON LANE & CHARLOTTE LANE.
 - 4) NO CURBS OR PILES GREATER THAN 6" OR SLOPES GREATER THAN 2:12 WILL BE ALLOWED FOR THIS PROJECT. BASED ON A PRELIMINARY REVIEW OF AVAILABLE TOPOGRAPHIC DATA.
 - 5) AREAS OF 100-YEAR FLOOD SHOWN BASED ON FIRM FLOOD INSURANCE RATE MAP FOR THE TOWN OF MEDWAY MASSACHUSETTS PANEL 5 OF 5 COMMUNITY PANEL NUMBER 250243 0005 B, EFFECTIVE DATE: JUNE 18, 1980.
- THIS PLAN TO BE USED FOR PRELIMINARY SITE PLANNING PURPOSES ONLY -





**VILLAGE STREET - NEELON LANE
PROPOSED CONDITIONS SKETCH**



NOTES:
1) LIMITED EXISTING CONDITIONS & SITE PROPERTY BOUNDARIES ARE BASED ON AN ON-THE-GROUND SURVEY BY O'DRISCOLL LAND SURVEYING CO. INFORMATION SHOWN IS SOLELY FOR OSRD SPECIAL PERMIT CONCEPT PLAN PURPOSES ONLY.



FAIST ENGINEERING, INC.
600 Charlton Street Southbridge, MA 01550
MA Phone/Fax: (508) 765-7755
O'DRISCOLL
LAND SURVEYING Co.
LAND SURVEYING GPS MAPPING LAND CONSULTING
46 COTTAGE STREET MEDWAY, MASSACHUSETTS 02053 (508) 533-3314
DATE ISSUED: 10/29/10 PROJECT NO: CHA-2345
REVISION DATE: 12/29/10

AAASHTO 2004 (US)
Copyright (c) 2006, Transient Solutions

