

**TOWN OF NEW BOSTON  
NEW BOSTON PLANNING BOARD  
Minutes of 2011 Meetings**

February 22, 2011

1

1 The meeting was called to order at 6:30 p.m. by Acting Chairman Mark Suennen.  
2 Present were regular member Dean Mehlhorn; alternate Don Duhaime; and, Ex-officio Dwight  
3 Lovejoy. Also present was Planning Board Assistant Shannon Silver.  
4

5 The Acting Chairman appointed Don Duhaime to a full voting member for the evening's  
6 meeting in Peter Hogan's absence.  
7

8 Present in the audience for all or part of the meeting were Morgan Hollis, Esq., Jeff  
9 Rider, PE, Shiv Shrestha, Dana Lorden, Eric Mitchell, PE, Vinnie Iacozzi, Jay Marden, and Dave  
10 Elliott .  
11

12 **Discussion, re: Planning Board Goals.**  
13

14 The Acting Chairman noted that the Board had previously discussed the suggested goals  
15 numbered one through six. He moved on to #7 on the list.  
16

17 #7 Mixed Use/Village District

18 The Acting Chairman was not sure what this item referred to. He asked the Planning  
19 Board Assistant if there was currently a mixed use/village district in New Boston, to which the  
20 Planning Board Assistant replied there was not. The Acting Chairman presumed that the Board  
21 was to determine whether or not such a district was a good idea and whether or not to propose  
22 something for ballot vote in 2012. He suggested skipping discussion of this goal until more  
23 Board members were present.  
24

25 #8 Rules of Procedure

26 The Acting Chairman noted that the Planning Board had a set of Rules and Procedures  
27 that guided their actions and that needed some updating to reflect the way the Board did  
28 business. He noted that the Coordinator and Chairman both had ideas about what should be  
29 addressed in this document. He thought this would be a fairly easy goal to accomplish. The  
30 Acting Chairman asked the Board if there were any updates or changes that they knew to be  
31 needed to this document. Dean Mehlhorn asked when was the last time that the Rules of  
32 Procedure had been updated. The Acting Chairman said that it looked as if they were last  
33 updated in June of 2007, and prior to that August 2004 and December 2002.

34 The Planning Board Assistant noted that she was not totally familiar with the goals as  
35 that was part of the Coordinator's regular responsibilities. She also noted that the Chairman had  
36 told her when he stopped by to say that he could not attend the meeting this evening that the  
37 Board could postpone discussion of the goals until a future meeting if they wanted to.  
38

39 The Acting Chairman supposed that over the course of the year the Board would review  
40 the procedures against the way the Board was operating to make sure that things were working  
41 the way they should. He said that he would leave it to the Chairman to set a timeline for the  
42 Board to have reviewed this document.  
43

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1 **DISCUSSION RE: PLANNING BOARD GOALS, cont.**

2  
3 #9 Letter of Credit/Bond Language

4 The Acting Chairman noted that the goal was listed as: "Standard language to be  
5 prepared for Letters of Credit/Performance Bonds to avoid the chasing of deadlines and to add a  
6 standard call provision.". He thought that the Planning Board Assistant had dealt with some of  
7 the issues to do with bonds and letters of credit. The Planning Board Assistant noted that she  
8 was familiar with this issue and that there were many telephone calls and letters required to get  
9 revised bonds prior to or on the expiration date of the existing bond/letter of credit. She further  
10 noted that at a recent conference she attended a lawyer had spoken at length about standardizing  
11 language for bonds and adding a call provision to the bond so that the developer was a lot more  
12 attentive to the deadline date on a bond. The Planning Board Assistant noted that examples from  
13 other towns would probably be reviewed and then the final document reviewed by Town  
14 Counsel. The Acting Chairman asked if there would be any warning letters sent to the developer  
15 reminding them of the date. The Planning Board Assistant stated that would be a discussion  
16 point for the Planning Board. Dean Mehlhorn thought that developers should know all the  
17 details about bonds that were out there in their name and should be keeping track of them. The  
18 Planning Board Assistant stated that the Board always liked the bond to run at least for the  
19 timeframe of the conditions to the approval and noted that a lot of banks lately were only issuing  
20 six month bonds and reviewing and renewing them then rather than having them go for twelve or  
21 eighteen months. She stated that it was a constant struggle to get the renewed bonds submitted.  
22 The Acting Chairman did not think that waiting until the last minute for these things was in  
23 anyone's best interest. Dean Mehlhorn asked how old the bonds were that the Town was  
24 holding. The Planning Board Assistant noted that some of the bonds were in place for projects  
25 on which no work was currently taking place, for example, Pulpit Road.

26 The Acting Chairman noted that the Board currently allowed the developer to submit  
27 either a bond or a letter of credit. He asked if there should be a preference for one type of  
28 security over the other. Don Duhaime stated that he preferred letters of credit, noting that the  
29 developer had to have money with the bank in order to have the credit. He noted that bonds from  
30 insurance companies were worth nothing if the developer did not pay the premiums. He stated  
31 that in his work he had found that the letters of credit were more effective. The Acting Chairman  
32 wondered if the Board should require letters of credit and allow developers to request using a  
33 bond instead of the current choice that was allowed. Don Duhaime thought that the regulation  
34 should state that the Town preferred a letter of credit. He thought that acquiring bonds was  
35 getting much more difficult for people.

36 The Acting Chairman returned to the idea of a warning letter being sent about an  
37 approaching deadline. He asked if the office staff should be burdened with the responsibility of  
38 issuing any warnings or should the security be automatically called within a certain amount of  
39 time of the expiration date. Dwight Lovejoy asked if the Building Department had any authority  
40 in this matter to issue cease and desist orders. The Planning Board Assistant stated that these  
41 securities were for the conditions of the subdivision not the building of structures. The Acting  
42 Chairman asked the Planning Board Assistant if the lawyer at the conference had provided any  
43 paperwork or samples and suggestions for language. The Planning Board Assistant stated that

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1 **DISCUSSION RE: PLANNING BOARD GOALS, cont.**

2  
3 no such documentation had been provided but the suggestion was to survey other towns to see  
4 what their methods were in this regard. The Acting Chairman asked that the Planning staff come  
5 back to the Board with a survey of surrounding towns and similar size towns to determine how  
6 they dealt with the security issue to be discussed at a future meeting.

7  
8 #10 Other Zoning Districts

9 The Acting Chairman noted that this goal was to "Review Master Plan Future Land Use  
10 Chapter for further potential zoning ordinance/regulation revisions". The Acting Chairman  
11 thought that this was a goal that probably showed up on the list every year. He asked if the  
12 Board knew of any potential zoning ordinance/regulation revisions that should be looked at,  
13 noting that the Coordinator probably had some ideas. He said this would be left as an open item  
14 for the Board to bring ideas to any future meetings if anything occurred to them.

15  
16 #11 Master Plan

17 The Acting Chairman stated that the Master Plan should be updated on a regular basis  
18 and New Boston should be thinking about this for 2012. He noted that this was a big effort that  
19 should start earlier rather than later. He did not think that every chapter necessarily needed to be  
20 updated but should be reviewed to determine whether or not it was still valid or needed some  
21 current information. The Acting Chairman noted that population statistics and so on would  
22 obviously need to be revised. He asked that the Board look through the Master Plan to see if  
23 anything needed to be changed other than the basic facts and figures.

24  
25 The Acting Chairman asked if the Board had any other ideas to add to the list of goals or  
26 anything from the list that should be postponed for a future time or year. He thought that the  
27 Board may achieve some of these goals due to the slow building economy at this time. Don  
28 Duhaime stated that the Master Plan usually had a sub-committee that worked on the plan and  
29 then presented it to the Board. The Acting Chairman noted that advertising for volunteers for  
30 such a sub-committee was a good idea and could possibly be done in time to post something at  
31 town meeting.

32  
33 **MISCELLANEOUS BUSINESS AND CORRESPONDENCE FOR THE MEETING OF**  
34 **FEBRUARY 22, 2011**

- 35  
36 1. Approval of January 25, 2011, minutes, distributed by email.

37  
38 Dwight Lovejoy **MOVED** to approve the minutes of January 25, 2011, as written. Dean  
39 Mehlhorn seconded the motion and it **PASSED** unanimously.

- 40  
41 2. Approval of February 8, 2011, minutes, distributed by email.

42  
43 Dean Mehlhorn **MOVED** to approve the minutes of February 8, 2011, as written.

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1 **MISCELLANEOUS BUSINESS, cont.**

2  
3 Dwight Lovejoy seconded the motion and it **PASSED** unanimously.

- 4  
5 3. Final draft of "New Boston Road Construction Inspection Procedures", for the Board's  
6 review and discussion, to be scheduled for adoption at the meeting of March 22, 2011.

7  
8 The Acting Chairman postponed discussion of this item until later in the meeting.

- 9  
10 4a. Continued Discussion, re: Ten-Year Transportation Improvement Program FY 2013 - FY  
11 2022.

- 12  
13 4b. Draft copy of Ten-Year Transportation Improvement Program FY 2013 - FY 2022 letter,  
14 for the Board's review and discussion.

15  
16 The Acting Chairman postponed discussion of this item until later in the meeting.

- 17  
18 5. Article from New Hampshire Town and City, February 2011, titled Providing Clean  
19 Water Into the Future: The Benefits of Land Conservation, By Alicia Carlson and Holly  
20 Green, was distributed for the Board's information.

- 21  
22 6. A copy of Percent Change in Residential Population for the 50 States from U.S.  
23 Department of Commerce/U.S. Census Bureau, was distributed for the Board's  
24 information.

25  
26 The Acting Chairman noted that New Hampshire was experiencing less growth than the  
27 national average but more than the other New England states.

- 28  
29 7a. Second letter copy dated, January 26, 2011, (incorrectly) was written and mailed  
30 February 10, 2011, to Jim Hansen, re: Secondary Driveway, 31 Briar Hill Road, from  
31 Shannon Silver, Planning Board Assistant, for the Board's information.

- 32  
33 7b. Faxed copy of letter received February 21, 2011, from Jim & Pat Hansen, re: driveways  
34 at 31 Briar Hill Road, for the Board's review and discussion.

35  
36 The Planning Board Assistant noted that the Planning Department's first letter to Mr.  
37 Hansen was dated January 26, 2011, and the Board had not received a response from Mr. Hansen  
38 prior to the requested date of February 4, 2011. A second letter was sent which should have been  
39 dated February 10, 2011, but the date of the first letter had inadvertently been left in place. The  
40 Acting Chairman suggested taking a five minute break to review Mr. Hansen's letter.

41 When the meeting reconvened, the Acting Chairman asked the Board for their input.  
42 Dwight Lovejoy noted that for any new driveway the Town had standards and this applicant had  
43 built the driveway before he came and asked about it. He noted that all the water from this  
44

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1 **MISCELLANEOUS BUSINESS, cont.**

2  
3 driveway pitched into the road. Dwight Lovejoy further stated that installing culverts for  
4 driveways had been standard practice for a long time and this property owner was not being  
5 treated differently than any other. He noted that based on a recent drive-by one of the driveways  
6 was not being plowed out or used at this time. Dean Mehlhorn asked what the owner's options  
7 were and whether he could block off the old driveway. Dwight Lovejoy stated that the issues  
8 with the newer driveway still needed to be fixed. He stated that the Town's goal was to improve  
9 the roads which included ditch maintenance.

10 The Acting Chairman noted that Mr. Hansen referenced Burton Reynolds, the Town  
11 Administrator, in his letter and asked if Burton Reynolds had anything to say in the matter.  
12 Dwight Lovejoy stated that Mr. Reynolds was aware of the matter since Ed Hunter, Building  
13 Inspector and Code Enforcement Official, had brought it to his attention and then Dwight  
14 Lovejoy had been up to look at the driveway. The Acting Chairman asked if the Selectmen had  
15 been reviewing this matter. Dwight Lovejoy said that they had. He noted that the property  
16 owner had wanted a Certificate of Occupancy and had no driveway permit on file in order to  
17 allow release of the CO. The Planning Board Assistant confirmed this to be the case and noted  
18 that the contractor had come into the office to fill out the permit application form and paid with a  
19 check. She noted that the driveway permit was not issued after Dwight Lovejoy went onsite and  
20 noted problems with drainage and the fact that there were two accesses on the property. She  
21 further noted that Mr. Hansen asserted that there had always been two driveways and his letter  
22 stated that "...we have no intention of changing either of them in any way.". Dwight Lovejoy  
23 noted that the contractor did the work and then came to get the permit and found out the  
24 driveway was installed incorrectly. He also noted, to confirm a question from the Planning  
25 Board Assistant, that the two driveways were only 35 - 40' apart instead of the required 200'.

26 Dwight Lovejoy suggested that Town Counsel be consulted. The Acting Chairman asked  
27 that Burton Reynolds be told that the two driveways could not be maintained as they were not in  
28 compliance and that the Selectmen be asked to take whatever steps were necessary to pursue this  
29 to its conclusion.

30  
31 Dwight Lovejoy **MOVED** that the Planning Board take the issue of the Hansen  
32 driveways to the Selectmen and that the Building Inspector be notified as well. Dean  
33 Mehlhorn seconded the motion and it **PASSED** unanimously.

- 34  
35 8. Email received February 22, 2011, from the Board of Fire Wards, to Nic Strong, Planning  
36 Coordinator, re: request to meet with the Planning Board to discuss requests for  
37 additional supplemental water supplies in subdivisions, for the Board's review and  
38 discussion.

39  
40 The Acting Chairman read from the email: "The Board of Fire Wards reviewed your  
41 response from the meeting of January 25<sup>th</sup> regarding the request of the Board to require the  
42 above-noted subdivision to install sprinklers and an additional 7,500 to 15,000 gallon cistern...",  
43 the Acting Chairman noted that this was in direct reference to the Twin Bridge Land

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1 **MISCELLANEOUS BUSINESS, cont.**

2  
3 Management Subdivision, "...Although sprinklers are the preference for life safety pertaining to  
4 the main fire protection system for a major subdivision, there are cases when the Board feels a  
5 supplemental fire suppression water supply is necessary for purposes of supporting wildland fires  
6 and outbuilding fires. The Board of Fire Wards would like to meet with the Planning Board to  
7 discuss the rationale the Board uses in regard to additional requests for supplemental water  
8 supply. Please advise the Board of the meeting date."

9 The Acting Chairman asked the Planning Board if they wanted to meet with the Fire  
10 Wards; when they would like to meet; and if it would be before or after the next meeting on the  
11 Twin Bridge Land Management application, which he noted was March 22<sup>nd</sup>. Finding out that  
12 the Planning Board did not have another meeting prior to March 22<sup>nd</sup>, the Acting Chairman  
13 inquired of the Planning Board Assistant if there was room on the agenda that night to discuss  
14 this with the Fire Wards. Don Duhaime stated that this matter should not be discussed at the  
15 same meeting as the Twin Bridge application and the Planning Board should have an idea on  
16 where there were heading prior to meeting with the applicants. He noted, however, that he  
17 would not be here the week of the 22<sup>nd</sup> and would prefer to meet prior to that date. Dean  
18 Mehlhorn and Dwight Lovejoy both agreed that they had no problems meeting at the Fire  
19 Department. The Acting Chairman asked if the Fire Wards had a regularly scheduled meeting.  
20 The Planning Board Assistant said that she did not know their schedule and said she could email  
21 and find out if they were having a meeting prior to March 22<sup>nd</sup>. The Acting Chairman said that  
22 Peter Hogan and Stu Lewin should be informed of the meeting too. Don Duhaime agreed and  
23 noted that this issue should be hashed out once and for all so that each time it came up it did not  
24 become a big argument.

25 The Acting Chairman asked the Planning Board Assistant to find out if the Fire Wards  
26 had a regularly scheduled meeting between now and the 22<sup>nd</sup> of March and, alternatively, send  
27 an email to all the Planning Board members if the Fire Wards did not have a regularly scheduled  
28 meeting, to see which evening may best suit everyone involved. Dwight Lovejoy asked for  
29 clarification as to what exactly was going to be discussed and if it was to do with asking for  
30 equipment over and above what the regulations call for. Don Duhaime stated that the meeting  
31 would seek to make clearer what the regulations state. The Acting Chairman stated that the  
32 regulations provided for two additional methods of requiring fire fighting water supply over and  
33 above the standard requirement for any subdivision of five or more lots to provide water supply:  
34 1) the Planning Board could require fire fighting water supply for any subdivision if deemed  
35 appropriate due to reasons of "... unusual danger or injury to health, safety or prosperity by  
36 reason of a lack of an acceptable fire fighting water supply system..."; and, 2) the Fire Wards  
37 could recommend additional fire protection methods if "... there is sufficient threat to life or  
38 property...". He noted that the regulations included the right of the Fire Wards to request a  
39 certain fire fighting water supply system but the Planning Board had the ultimate authority to  
40 determine which to require.

41  
42 4a. Continued Discussion, re: Ten-Year Transportation Improvement Program FY 2013 - FY  
43 2022.

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1 **MISCELLANEOUS BUSINESS, cont.**

2  
3 4b. Draft copy of Ten-Year Transportation Improvement Program FY 2013 - FY 2022 letter,  
4 for the Board's review and discussion.

5  
6 The Planning Board Assistant noted that the draft copy of the letter with regard to the  
7 Ten-Year Transportation Plan had to be sent to the SNHPC by March 4<sup>th</sup>. She noted that the  
8 Board would not have the opportunity, therefore, to see the letter again. She further noted that  
9 the Town Administrator and Planning Coordinator were going to get together to fill in the list of  
10 bridges and that the Coordinator suggested that if the Board needed to see it one more time she  
11 could email it prior to the letter having to be sent back to SNHPC.

12  
13 **FREDERICK K. LORDEN REVOCABLE TRUST (OWNER)**  
14 **HARVEY J. DUPUIS FAMILY TRUST (OWNER) (Adjourned from 01/11/11)**  
15 **S & R HOLDINGS, LLC (APPLICANT)**  
16 Public Hearing/Major Subdivision/42 Lots

17 Location: McCurdy & Susan Roads  
18 Tax Map/Lot #12/19, 96 & 93-34  
19 Residential/Agricultural "R-A" District

20  
21 The Acting Chairman read the public hearing notice. Present in the audience were  
22 Morgan Hollis, Esq., Jeff Rider, PE, Shiv Shrestha, Dana Lorden, Jay Marden, and Dave Elliott.

23 The Acting Chairman ran through the list of recent submission items for the record.  
24 Morgan Hollis, Esq., stated that from the letters and reviews that had been recently prepared  
25 there seemed to be very few issues that remained outstanding for this application. He noted that  
26 the applicant agreed with the comments made by Kevin Leonard, PE, Northpoint Engineering,  
27 LLC, in his February 16<sup>th</sup> letter. He asked the Board if he could discuss Kevin Leonard, PE's  
28 comment #2 regarding guardrail: "A "Long Span Nested Metal Guardrail" detail has been added  
29 to the plans to address the conflict between guardrail posts and the proposed arch culvert at STA.  
30 3+20. Long span guardrail designs are an industry accepted solution for these types of  
31 situations. However in our experience, these designs often incorporate double blockouts,  
32 breakaway CRT posts, and extended sections of nested rail. Please document that the proposed  
33 design provides adequate protection for a 35 MPH design speed.". Morgan Hollis, Esq., noted  
34 that the design engineer had spoken with Kevin Leonard, PE, regarding this matter and explained  
35 that there would be testing of the wall which would include testing of the rail at the time the wall  
36 was designed and Kevin Leonard, PE, seemed comfortable with that. The Acting Chairman  
37 confirmed that the applicant was willing to work this out with the Town's consulting engineer  
38 prior to the pre-construction meeting as part of the overall review of the proposed arch culvert.  
39 Jeff Rider, PE, noted that part of the design of the retaining wall in this location would be to  
40 prove the design of the guardrail to show it would withstand the impact of a car. He noted that it  
41 did not make sense to do a detailed design of the guardrail without doing the design of the wall  
42 also.

43 Morgan Hollis, Esq., stated again that the applicant agreed with Kevin Leonard, PE's,

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1 **LORDEN/DUPUIS/S&R HOLDINGS, LLC, cont.**

2  
3 comments and thought that there were so few the Board could make their fulfillment a condition  
4 of approval. The Board agreed.

5 Morgan Hollis, Esq., stated that the letter dated February 16<sup>th</sup> from the Planning  
6 Coordinator identified three outstanding issues. He noted that the first comment that all the  
7 waivers should be listed on the plans would be taken care of on the final set of plans. He noted  
8 that the next comment was with regard to Lot #12/19-19 and the town's access road to the  
9 drainage structures being in the same location as the private driveway to that lot. The third  
10 comment was to do with a discrepancy in the numbers for the height of a detention structure  
11 which Jeff Rider, PE, confirmed to be a drafting error and which it was noted would be corrected  
12 on the final plans.

13 Morgan Hollis, Esq., noted that Lot #12/19-19 was a point of discussion and Jeff Rider,  
14 PE, had prepared a detailed section showing the location and details of the area. Morgan Hollis,  
15 Esq., described the plans and noted that the Coordinator's concern seemed to be what would  
16 happen if the Town's equipment, during use of the access to get to the drainage structures,  
17 damaged the property owner's driveway entrance. He noted that there were two solutions: 1) if  
18 the Town caused any damage, the Town would have to repair it; and, 2) a covenant in the deed  
19 for the lot could declare that the driveway was shared with the Town's drainage access and the  
20 owner would be put on notice that the Town would not be held liable if the equipment damaged  
21 the driveway. Morgan Hollis, Esq., stated that it did not make sense to have a double driveway.  
22 He also noted that they had looked at alternative locations to install the driveway but a separate  
23 location would require more tree removal and would affect the layout of the property. Morgan  
24 Hollis, Esq., stated that he could understand the Coordinator's concern with this situation.  
25 Dwight Lovejoy stated that he did not want to be responsible for fixing someone's driveway.

26 Morgan Hollis, Esq., noted that this lot was encumbered by an easement already and the  
27 access road that went along with it so future owners should be aware of the potential for issues to  
28 arise. Jeff Rider, PE, described the access and drainage structures in more detail, noting that the  
29 access was over the encumbrance that was already in place for the drainage pipes and so on that  
30 went down to the detention ponds in back. He stated that he was trying to minimize grading and  
31 tree cutting, noting that some of the slopes in the area were steep and would be hard to access  
32 with the Town's heavy equipment. He went on to say that the access road as shown covered all  
33 the areas that needed to be maintained with minimal disruption to the site. Morgan Hollis, Esq.,  
34 stated that the Board would have a better idea than he of how often the Town would need to  
35 access the driveway to the detention basin.

36 The Acting Chairman asked if there was any kind of restriction on the property so that the  
37 property owner was required to maintain access to the Town's roadway. Morgan Hollis, Esq.,  
38 stated that the easement made it quite clear that the property owner had to keep the driveway  
39 open subject to the Town being able to pass over it. Don Duhaime asked if the easement made it  
40 clear that nothing could be built in the easement, sheds and so on. Morgan Hollis, Esq.,  
41 confirmed that it did. The Acting Chairman noted that this was an uncomfortable situation  
42 because the Town had to maintain access over a significant portion of a private property.

43 Jay Marden asked when the trees would be cut in the easement area on Lot #12/19-19.



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1 **LORDEN/DUPUIS/S&R HOLDINGS, LLC, cont.**

2  
3 Morgan Hollis, Esq., stated that the trees would be cut when the installation of the drainage  
4 improvements was taking place. It was noted that this would be prior to the lot being for sale.  
5 Dave Elliott stated that there would be more taking place than cutting trees because trenching  
6 would be needed and the drainage laid as well as the access road being constructed. He stated  
7 that a road bed would be needed, the area would be graded and sometimes light loam was  
8 required on top to get some vegetation established. He further noted that the only difference  
9 between the access road and a paved driveway was the pavement. He also noted that the area  
10 was easy to recognize as the easement area as it did not blend in with the surrounding woods at  
11 all.

12 The Acting Chairman noted that the types of equipment that would be using this  
13 driveway would range from a pickup truck to a bobcat. Dean Mehlhorn stated that a backhoe  
14 may have to access the detention structures, possibly also a vacuum truck. The Acting Chairman  
15 stated they would be heavier vehicles than the homeowners personal vehicles. He asked what  
16 the profile grade of the drainage access road was proposed to be. Jeff Rider, PE, noted that it  
17 was relatively flat, around 4%. The Acting Chairman stated that there could be rutting created  
18 by the heavier vehicles unless the driveway pavement was built to a higher standard than a  
19 typical driveway. He was concerned that no matter the legal language written up, the property  
20 owners were likely to come back to the town if a backhoe left tracks in their driveway pavement.  
21 He wondered if it was feasible to require that the driveway at this location be built to a higher  
22 standard with a stronger pavement than would be required for a standard residential driveway.  
23 Morgan Hollis, Esq., stated that he could see no reason why that would not be feasible. He noted  
24 that it would affect the marketability of the lot but it made more sense to do it right from the  
25 start. The Acting Chairman also noted the need for some kind of protection at the transition from  
26 paved driveway to gravel access road to prevent break up of the material at the edge. Morgan  
27 Hollis, Esq., asked if the language could say, if paved, the pavement had to be capable of  
28 supporting the equipment. Don Duhaime noted that manholes and drainage would require H20  
29 loading so perhaps using that terminology with regard to the driveway would work. Dave Elliott  
30 thought that the weights the access road was likely to see would be similar to a delivery truck of  
31 fuel. He thought the standard for the driveway within the town easement would easily support  
32 those loads. Jay Marden stated his concern that even with written easements the Town was not  
33 going to be able to wash its hands of the property owners coming in with complaints if the  
34 Town's equipment damaged the driveway. The Acting Chairman tended to agree with Jay  
35 Marden and noted that was probably why the Coordinator brought it up in the first place, because  
36 no matter what type of legal protection was put in place, the driveway would begin to fail at  
37 some point and whether or not it had anything to do with the Town's use of it for maintenance,  
38 the property owner would try to have the Town responsible to fix it.

39 Don Duhaime asked if there was room to have the driveway with the Town's access road  
40 alongside it. Jeff Rider, PE, stated that there was not really the room to do that due to the  
41 property grades in that location. Don Duhaime stated that it was bad enough that the drainage  
42 pipe was going to be under the driveway and the driveway would have to be excavated to access  
43 it in the event of failure. He thought it would be better if the drainage could be moved over

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1 **LORDEN/DUPUIS/S&R HOLDINGS, LLC, cont.**

2  
3 somewhat to keep it out from under the potentially paved driveway. Jeff Rider, PE, stated he  
4 would have to go back and look at the grades and so on, and noted that this would basically  
5 require a redesign of the drainage system in this location. Dean Mehlhorn asked why the  
6 designer could not turn the garage to a front load garage, move the driveway over towards the  
7 septic system and put in a gravel path over the drainage pipe all the way out back. Jeff Rider,  
8 PE, noted that was possible but noted that the lot worked better with the driveway the way it was  
9 currently shown. He noted that he wanted to stay as far as possible from the septic system  
10 because he did not want to end up in a situation where the septic system was under the driveway  
11 either. Jeff Rider, PE, noted that this was not a unique situation and plenty of towns had  
12 easements for water and sewer lines on private property. The Acting Chairman noted that the  
13 driveway did not necessarily have to be paved and that was an option for the homeowner. Jeff  
14 Rider, PE, confirmed that would be the homeowner's choice. He noted that because the  
15 driveway had to be built to the standards for the Town's access road it would probably be one of  
16 the best non-paved driveways in the area. The Acting Chairman asked if a viable deed  
17 restriction was that the driveway could not be paved. Morgan Hollis, Esq., stated that could  
18 certainly be put in the deed and on the plan. The Acting Chairman stated that the Board would  
19 make a note that the Building Inspector should be asked to remind the future owner of Lot  
20 #12/19-19 that they would not be permitted to pave the driveway. Don Duhaime stated he was  
21 only concerned about pavement over the drainage pipe. Morgan Hollis, Esq., agreed, noting that  
22 the homeowner may wish to have some kind of paved apron in front of the garage.

23  
24 Dean Mehlhorn **MOVED** that Lot #12/19-19 shall not have pavement over the section  
25 where the drainage pipe is, however, the owner could install a small apron in front of the  
26 garage. Dwight Lovejoy seconded the motion and it **PASSED** unanimously.

27  
28 Morgan Hollis, Esq., noted that was the only issue he had. He stated that he had  
29 submitted all legal documents to Town Counsel and Bill Drescher, Esq., had stated he was going  
30 to try to have his review completed by this evening's meeting. Morgan Hollis, Esq., stated that  
31 he did not know if Bill Drescher, Esq., had been able to write a letter but he had told Attorney  
32 Drescher that he would be representing that they had spoken about the matter and that Attorney  
33 Drescher had noted that he would review the final documents before they were recorded anyway.  
34 The Acting Chairman noted that the Board had received a letter dated February 22, 2011, which  
35 the Board had not yet had the chance to read. He asked if the applicant was willing to give the  
36 Board ten minutes to read the letter so that they could decide whether or not to release it.  
37 Morgan Hollis, Esq., indicated that he was. The Acting Chairman said that prior to doing that he  
38 had a question about the bond estimate. The Planning Board Assistant noted that Kevin  
39 Leonard, PE, had submitted an estimate for construction monitoring but still had comments  
40 regarding the road bond estimate so he could not confirm a number for that yet. Jeff Rider, PE,  
41 stated that he had received Kevin Leonard, PE's, email and noted that he was confused and  
42 would have to get in touch with him because he was referencing bond calculations dated  
43 November 8, 2010, when he had submitted a latest set of numbers with the last set of revised

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11

1 **LORDEN/DUPUIS/S&R HOLDINGS, LLC, cont.**

2  
3 plans and he had signed that bond estimate on February 1, 2011. Jeff Rider, PE, stated that when  
4 he confirmed whether or not Kevin Leonard, PE, had the latest version of the bond estimate he  
5 was sure a lot of the comments would go away. The Acting Chairman asked the applicant to  
6 consider while the Board took their short break to read Town Counsel's letter, if the Board were  
7 to issue a conditional approval this evening, would the applicant be willing to accept Kevin  
8 Leonard, PE's, review and estimate without having a chance to review it at a public hearing.  
9 Morgan Hollis, Esq., stated that they would be willing to do so. The Acting Chairman stated that  
10 the Board would take a short recess to review Town Counsel's letter.

11 Following the short break the Acting Chairman reopened the hearing and thanked the  
12 applicant's representatives for their patience. He noted that the Board had the chance to review  
13 Town Counsel's letter. He asked if the Board would be willing to release the letter to the  
14 applicant.

15  
16 Dean Mehlhorn **MOVED** to accept Town Counsel's letter and release same. Dwight  
17 Lovejoy seconded the motion and it **PASSED** unanimously.

18  
19 A copy of the letter was given to the applicant. The Acting Chairman asked the  
20 applicant's engineer if any of the comments Kevin Leonard, PE, had made regarding the bond  
21 estimate that were apparently based on the November revision would still be an issue if he  
22 looked at the February revision. Jeff Rider, PE, noted that these items would be double checked  
23 but noted that he and Kevin Leonard, PE, should have no problems in amicably resolving the  
24 differences and agreeing on the final numbers. The Acting Chairman noted that Kevin Leonard,  
25 PE, had calculated a number of \$59,076 for the construction monitoring, noting further that this  
26 was an estimate that could be adjusted upwards or downwards depending on the final bond  
27 estimate calculation. He asked if the applicant was comfortable with this number and its  
28 changeability based on what the final bond estimate number came out at. Morgan Hollis, Esq.,  
29 stated that was fine.

30 The Acting Chairman asked if Morgan Hollis, Esq., had had a chance to review Town  
31 Counsel's letter, to which Morgan Hollis, Esq., replied that he had. The Acting Chairman asked  
32 if there was anything that Morgan Hollis, Esq., wished to discuss. Morgan Hollis, Esq., stated  
33 there was not. The Board had no comments on Town Counsel's letter. The Acting Chairman  
34 confirmed that the applicant was in negotiations with the Piscataquog Land Conservancy (PLC)  
35 regarding the details of the deed to the open space land. Morgan Hollis, Esq., stated that they  
36 were. The Acting Chairman asked if Morgan Hollis, Esq., had anything to add to the details of  
37 the reserved rights as Town Counsel had highlighted for the Board in the letter. Morgan Hollis,  
38 Esq., noted that the reserved right for logging required that it be done in accordance with Best  
39 Management Practices and under the oversight of a forester which was standard language for  
40 conservation easement deeds. He noted that he did not know if the PLC had any intention of  
41 logging the property but it was standard language so he added it. Morgan Hollis, Esq., noted that  
42 the other rights were for stormwater drainage from each of the lots, subsurface flowage from  
43 septic systems, subsurface water withdrawal, well protective radii, and use of the area for septic

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12

1 **LORDEN/DUPUIS/S&R HOLDINGS, LLC, cont.**

2  
3 reserve calculations. The Acting Chairman pointed out Town Counsel's footnotes with regard to  
4 the other legal documents. Morgan Hollis, Esq., stated that he would take care of all the  
5 comments.

6 The Acting Chairman next noted that the Board had received the narrative report  
7 regarding the Open Space subdivision and asked if the Board agreed that the report defined the  
8 development as an Open Space development and that the applicant had met the requirements of  
9 the Zoning Ordinance for an appropriate development. The Board's consensus was that they did  
10 and the narrative report was accepted.

11 The Acting Chairman noted that the driveway permits needed to be acted upon. The  
12 Planning Board Assistant noted that the driveway permits were for lots #12/19-39, 40 and 42, on  
13 McCurdy Road and the road entry permits, one for the Lorden/McCurdy Road intersection and  
14 one for the Lorden/Susan Road intersection.

15 The Acting Chairman noted that the Board had to discuss Active and Substantial  
16 Development and Substantial Completion of Improvements for this subdivision. He pointed out  
17 that according to State law a subdivision once approved had 12 months to begin active and  
18 substantial development or building on the property in order to qualify for four year vesting  
19 against changes to zoning and subdivision regulation. He asked what the developer would  
20 propose as an appropriate amount of work in 12 months in order to vest and protect the  
21 development. Morgan Hollis, Esq., suggested that clearing, grubbing, stumping and construction  
22 up to binder course of the Phase I roadway would be active and substantial development. The  
23 Board agreed. The Acting Chairman asked what would be considered substantial completion of  
24 the improvements. He suggested that a completed Phase I roadway would be one thing and  
25 wondered if it would have to be accepted by the Town. The Board said it would have to be  
26 accepted. Morgan Hollis, Esq., stated that once Phase I was completed he would argue that was  
27 substantial completion of the improvements. The Acting Chairman noted that release of the  
28 Phase I bond would require Phase I to be completed which would include access to the drainage  
29 areas. Morgan Hollis, Esq., asked at what point the Town of New Boston accepted roads. The  
30 Acting Chairman noted that the road had to overwinter one year and the finish coat had to be in  
31 place. The Board determined that completion of Phase I to acceptance would constitute  
32 substantial completion of the improvements.

33 The Acting Chairman asked if there was any further public input. There was none. The  
34 Acting Chairman closed the public hearing and the Board entered into deliberations. He asked  
35 the Board if there was enough information to allow a conditional approval of this application or  
36 if the applicant should be adjourned to a future meeting to allow the last minute details or  
37 reviews to be figured out. The Board seemed to indicate that a conditional approval was in  
38 order. The Acting Chairman gave the applicant a copy of the proposed Notice of Decision and  
39 read through the Conditions Precedent for the record. He inserted the bond amount of  
40 \$593,454.40, as calculated by the design engineer but subject to change following Kevin  
41 Leonard, PE's review, and asked in what form the security would be submitted. Morgan Hollis,  
42 Esq., was not sure if it would be a bond, letter of credit or a check. The Acting Chairman noted  
43 that the security should be submitted in a form acceptable to the Town and that it was subject to

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13

1 **LORDEN/DUPUIS/S&R HOLDINGS, LLC, cont.**

2  
3 review by the Town Engineer and may be revised as such. He went on to note that the  
4 construction monitoring inspection estimate was \$59,076, subject to final tally by the Town  
5 Engineer upon receipt of the final bond amount. The Acting Chairman noted that the offsite road  
6 improvement amount previously agreed upon in the amount of \$10,350.00 was a further  
7 condition. He asked for a deadline date by which the applicant would be able to finalize all those  
8 items. Morgan Hollis, Esq., suggested 60 days. The Board agreed to April 22, 2011. The  
9 Acting Chairman noted that any delay should be communicated to the Board so that it could be  
10 discussed. He next noted that there were many Conditions Subsequent attached to the approval.  
11 Morgan Hollis, Esq., stated that he had read the conditions and mentioned #3, e), with regard to  
12 the completion of the project, noting that Phase I would have a deadline and a longer deadline  
13 would be attached to Phase II & III. He asked how far out that deadline could be set. He  
14 suggested two years for Phase I - November 15, 2013, and three additional years beyond that for  
15 Phases II & III - November 15, 2016. The Acting Chairman recapped the previously defined  
16 conditions of Active and Substantial Development: clearing, grubbing, and binder of Phase 1  
17 roadway; and, Substantial Completion of the Improvements: Completion of all road  
18 improvements listed under the bond for Phase 1, including Town acceptance of the Phase 1  
19 roadway.

20  
21 Dean Mehlhorn **MOVED** to approve the Subdivision Plan, Forest View II, McCurdy  
22 Road and Susan Road, Prepared for S&R Holdings, LLC, Tax Map/Lot #12/19, 12/96  
23 and 12/93-34, to relocate the lot line between Lot #12/96 and Lot #12/93-34, consolidate  
24 Lot #12/96 with Lot #12/19, and divide the resulting Lot #12/19 into 40 residential and 2  
25 open space lots, subject to:

26  
27 **CONDITIONS PRECEDENT:**

- 28 1. Submission of a minimum of five (5) blue/blackline copies of the revised plat,  
29 including all checklist corrections and any corrections as noted at this hearing,  
30 and including Individual Stormwater Management Plans.  
31 2. Submission of a suitable mylar for recording at the HCRD.  
32 3. Digital plat data shall be submitted per Subdivision Regulations Section IV-F, 3.  
33 4. Receipt of Northpoint Engineering, LLC's approval of the road plans and profiles.  
34 5. Submission of the language of the form of the security for review and approval by  
35 Town Counsel, the cost of which review shall be borne by the applicant.  
36 6. Submission of the security, in the amount of \$593,454.40 and in the form  
37 acceptable by the town, for the construction of Lorden Road, Phase I, as shown on  
38 the approved plans and profiles, subject to final agreement by the Town Engineer  
39 and may be revised as such.  
40 7. Submission of the estimated construction inspection fees regarding the  
41 construction of Lorden Road, Phase I, in the amount of \$59,076.00, subject to  
42 final tally by the Town Engineer upon receipt of the final agreed upon bond  
43 amount. A mandatory pre-construction meeting is required to be held with the

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1 **LORDEN/DUPUIS/S&R HOLDINGS, LLC, cont.**

2  
3 developer/agent, road contractor, Town's Road Agent, and representatives of the  
4 Planning Board, and Board of Selectmen, as well as the Fire Inspector/Fire Wards  
5 and the Town's consulting engineer, prior to the start of the road construction  
6 project.

- 7 8. Receipt of revised Declaration of Covenants, Restrictions and Easements as to  
8 Conservation Areas of Open Space Lots (Lots 19, 96 & 93-34 of Map 12) for  
9 Forest View II Subdivision; Lorden Road, Roadway Deed, Phase I; Lorden Road  
10 and Sawmill Lane, Roadway Deed, Phase II and III; Temporary Right of Way  
11 deed; Warranty Deed (sample lot deed); Drainage/Slope Easement Deed;  
12 Declaration of Restrictive Covenant, Forest View II (sprinkler systems), subject to  
13 final review and approval by Town Counsel.
- 14 9. Submission of the off-site improvement fees according to the Town of New  
15 Boston's off-site road improvement formula previously agreed upon in the amount  
16 of \$10,350.00, in a form acceptable to the Town.
- 17 10. Execution of a Subdivision Agreement regarding the conditions subsequent.
- 18 11. Approved Pre-Engineered Individual Stormwater Management Plans may be  
19 resubmitted as the final Individual Stormwater Management Plans at the time of  
20 application for a building permit provided the builder complies with those plans.  
21 If critical areas are to be disturbed beyond those shown on the Pre-Engineered  
22 Individual Stormwater Management Plans, revised Individual Stormwater  
23 Management Plans shall be prepared and submitted for approval. If the Pre-  
24 Engineered Stormwater Management Plans are not to be used at the time of  
25 application for a building permit new Individual Stormwater Management Plans  
26 shall be submitted for approval. In any event, the bonds for the Individual  
27 Stormwater Management Plans must be submitted prior to issuance of a building  
28 permit.
- 29 12. Payment of any outstanding fees related to the subdivision application and/or the  
30 recording of documents with the HCRD (if necessary).
- 31 13. Upon completion of the conditions precedent, the final plans and mylar shall be  
32 signed by the Board and forwarded for recording at the HCRD.

33 The deadline date for compliance with the conditions precedent shall be **April 22, 2011**,  
34 the confirmation of which shall be an administrative act, not requiring further action by  
35 the Board. Should compliance not be confirmed by the deadline date and a written  
36 request for extension is not submitted by that date, the applicant is hereby put on notice  
37 that the Planning Board may convene a hearing under RSA 676:4-a to revoke the  
38 approval.

39  
40 **CONDITIONS SUBSEQUENT:**

- 41 1. Sprinkler systems shall be installed, inspected, tested and approved by the New  
42 Boston Board of Fire Wards or their designee before the occupancy of any  
43 dwelling in the approved subdivision.

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15

**LORDEN/DUPUIS/S&R HOLDINGS, LLC, cont.**

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2. Lorden Road, Phase I, is to be constructed in accordance with the Application for Inspection and in accordance with the approved plans and profiles. After the base (binder) course of pavement is approved by the Road Agent/town's engineer, the developer will allow the road to set over one winter, during which time the developer will be liable for the roads, including, but not limited to, winter maintenance thereof. The wearing (finish) course of pavement shall be applied no later than one (1) year from the date of application of the binder course. The Application for Inspection must be turned into the Planning Department after the road is 100% complete, in order to initiate final inspection and acceptance of the road, and the release of the security for same after a compliance inspection and hearing is held.
3. In addition to the other Subsequent conditions listed here, Phases II and III of the Forest View II subdivision require:
- a) Submission of design plans, calculations and supporting details for the associated culvert arches, retaining walls and guardrails, for review and approval by the Town's consulting engineer;
  - b) Submission of revised bond estimate forms for the Phase in question, for review and approval by the Town's consulting engineer;
  - c) Submission of the security for the Phase in question, in a form acceptable to the Planning Board;
  - d) Submission of the estimated construction inspection fees regarding the construction of the Phase of the road in question, as determined by the Town's consulting engineer. A mandatory pre-construction meeting is required to be held with the developer/agent, road contractor, Town's Road Agent, and representatives of the Planning Board, and Board of Selectmen, as well as the Fire Inspector/Fire Wards and the Town's consulting engineer, prior to the start of the road construction project.
  - e) Lorden Road, Phases II & III, are to be constructed in accordance with the Application for Inspection and in accordance with the approved plans and profiles. After the base (binder) course of pavement is approved by the Road Agent/town's engineer, the developer will allow the road to set over one winter, during which time the developer will be liable for the roads, including, but not limited to, winter maintenance thereof. The wearing (finish) course of pavement shall be applied no later than one (1) year from the date of application of the binder course. The Application for Inspection must be turned into the Planning Department after the road is 100% complete, in order to initiate final inspection and acceptance of the road, and the release of the security for same after a compliance inspection and hearing is held.
4. Driveway locations on the proposed roads in all Phases shall be approved at sub-grade and driveways shall be installed through binder to the satisfaction of the

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16

1 **LORDEN/DUPUIS/S&R HOLDINGS, LLC, cont.**

2  
3 Road Agent/town engineer and in conformance with the Application for  
4 Inspection and approved driveway permits.

- 5 5. Per Subdivision Regulations Section V-S, 1, J), As-Built plans shall be submitted  
6 for review by the Town's consulting engineer after all infrastructure  
7 improvements have been completed and at least the binder course of pavement  
8 has been placed.
- 9 6. Submission of executed Declaration of Covenants, Restrictions and Easements as  
10 to Conservation Areas of Open Space Lots (Lots 19, 96 & 93-34 of Map 12) for  
11 Forest View II Subdivision; Lorden Road, Roadway Deed, Phase I; Lorden Road  
12 and Sawmill Lane, Roadway Deed, Phase II and III; Temporary Right of Way  
13 deed; Warranty Deed (sample lot deed); Drainage/Slope Easement Deed;  
14 Declaration of Restrictive Covenant, Forest View II (sprinkler systems). The cost  
15 of recording any of the Deeds and other legal documents at the HCRD shall be  
16 borne by the applicant.
- 17 7. Submission of a Certificate of Bounds Set, and the appropriate fee for recording  
18 same with the HCRD.
- 19 8. The applicant shall install road identification sign(s) and stop sign(s) to the  
20 satisfaction of the Road Agent.
- 21 9. Driveway permits must be approved for completed acceptable installation by the  
22 Road Agent and Planning Board prior to the issuance of any Certificates of  
23 Occupancy (CO's) for the related lots.
- 24 10. No Certificates of Occupancy shall be issued until the sprinkler systems are  
25 installed, inspected, tested and approved by the New Boston Board of Fire Wards  
26 or their designee, and the driveways are installed and approved by the Road Agent  
27 and the Planning Board and the subdivision road, Lorden Road (as well as the off-  
28 site section of Susan Road and Indian Falls Road) are installed through binder  
29 pavement and the road identification sign(s) and stop sign(s) are installed to the  
30 satisfaction of the Road Agent/town's engineer, guard rails are installed, if  
31 necessary.
- 32 11. Payment of any outstanding fees related to the subdivision application and/or the  
33 recording of documents with the HCRD.

34 The deadline for complying with the conditions subsequent for Phase I shall be  
35 **November 15, 2013**, the confirmation of which shall be determined at a compliance  
36 hearing to be held on the application. Prior to the acceptance of the completed road by  
37 the Town, an acceptable two year maintenance bond must be submitted by the applicant  
38 for the road in the amount of 10% of the performance bond value.

39 The deadline for complying with the conditions subsequent for Phases II and III shall be  
40 **November 15, 2016**, the confirmation of which shall be determined at a compliance  
41 hearing to be held on the application. Prior to the acceptance of the completed Phase II  
42 and III roads by the Town, an acceptable two year maintenance bond must be submitted  
43 by the applicant for the road in the amount of 10% of the performance bond value.



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1 **LORDEN/DUPUIS/S&R HOLDINGS, LLC, cont.**

2  
3 ACTIVE AND SUBSTANTIAL DEVELOPMENT OR BUILDING AND  
4 SUBSTANTIAL COMPLETION OF IMPROVEMENTS:

5 1. Within 12 months after the date of approval, the following items must be  
6 completed in order to constitute "active and substantial development or building"  
7 pursuant to RSA 674:39,I, relative to the 4-year exemption to  
8 regulation/ordinance changes:

9 Clearing, grubbing, stumping and binder of Phase 1 roadway.

10 2. The following items must be completed in order to constitute "substantial  
11 completion of the improvements" pursuant to RSA 674:39,II, relative to final  
12 vesting:

13 Completion of all road improvements listed under the bond for Phase 1,  
14 including Town acceptance of Phase 1 roadway.

15  
16 Dwight Lovejoy seconded the motion and it **PASSED** unanimously.

17  
18 The Acting Chairman noted that the Conditional Use Permit needed to be acted upon. He  
19 asked the Board if they had read the application forms and agreed with the four conditions on the  
20 application.

21  
22 Dwight Lovejoy **MOVED** to accept the application as complete, and to grant the  
23 Conditional Use Permit and approve the plans of S&R Holdings, LLC, to effect four  
24 wetland crossings on property on Lorden Road and Sawmill Lane, known as Tax  
25 Map/Lot #12/19, 12/96 and 12/93-34, as the four conditions for granting the Permit have  
26 been found to exist, subject to the following conditions:

27  
28 **CONDITIONS PRECEDENT:**

- 29 1. Submission of the financial security for the installation as included in the road  
30 bond to be submitted as Condition Precedent #6 of the subdivision approval  
31 above.
- 32 2. Submission of revised plans to include any checklist corrections and any revisions  
33 to the site plan as decided by the Board at the hearing.
- 34 3. Upon completion of the conditions precedent and the conditions precedent as  
35 listed above for the subdivision approval, the final subdivision plans and mylar  
36 shall be signed by the Board and forwarded for recording at the HCRD.

37 The deadline for complying with the conditions precedent shall be **July 1, 2011**, the  
38 confirmation of which shall be an administrative act, not requiring further action by the  
39 Board. Should the conditions to approval not be fulfilled by the deadline date, and a  
40 written request for extension is not submitted prior to that date, the applicant is hereby  
41 put on notice that the Planning Board may convene a hearing under RSA 676:4-a to  
42 revoke the approval.

43

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18

1 **LORDEN/DUPUIS/S&R HOLDINGS, LLC, cont.**

2  
3 **CONDITIONS SUBSEQUENT:**

- 4 1. Completion of the site improvements as related to the wetland crossings, as  
5 shown on the approved construction design plan.

6 The financial security shall not be released until the site has been inspected upon  
7 notification to the Planning Department by the applicant that the project has been  
8 completed, and a compliance hearing is held and confirms that the project has been  
9 satisfactorily completed by no later than **November 15, 2016**.

10  
11 Dean Mehlhorn seconded the motion and it **PASSED** unanimously.

12  
13 The Acting Chairman noted that the last item for the Board's consideration was the  
14 driveway permits for the three lots off McCurdy Road and the road entry permits.

15  
16 Don Duhaime **MOVED** to approve the Driveway Permits with the standard Planning  
17 Board requirements: 1) These permits require two inches (2") of winter binder  
18 (pavement) to be applied to the driveways to a minimal distance of twenty-five feet (25')  
19 from the centerline of the road; 2) The driveway intersection with the road shall be  
20 joined by curves of ten foot (10') radii minimum; and, 3) The driveway shall intersect  
21 with the road at an angle of 60 - 90 degrees; and the Road Entry Permits with the  
22 standard Planning Board requirements: 1) The driveway intersection with the road shall  
23 be joined by curves of ten foot (10') radii minimum; and, 2) The driveway shall intersect  
24 with the road at an angle of 60 - 90 degrees.

25 Dean Mehlhorn seconded the motion and it **PASSED** unanimously.

26  
27 **VISTA ROAD, LLC (OWNER) (Adjourned from 02/08/11)**

28 Submission of Application/Public Hearing/Major Subdivision/2 Lots

29 Location: Byam Road and River Road (Route 13)

30 Tax Map/Lot #6/40-2

31 Residential-Agricultural "R-A" District

32  
33 The Chairman read the public hearing notice. Present in the audience were Vinnie  
34 Iacozzi, Eric Mitchell, PE, Jay Marden and Dave Elliott.

35 The Acting Chairman apologized for the delay in beginning the hearing and asked the  
36 applicant to present any information they wished to.

37 Eric Mitchell, PE, noted that the application had been before the Board on February 8,  
38 2011, and a couple of modifications had been made to the plan since that time. He noted that an  
39 easement had been shown over Lot #6/40-2 to get to the backland and that had been changed to  
40 show frontage to the backlot, #6/40-2-1, on N.H. Route 13 a/k/a River Road. He pointed out that  
41 the lot line between the two lots would be going down the middle of the common driveway and  
42 that there were cross easements to each lot to allow access and maintenance of the driveway.

43 Eric Mitchell, PE, noted that the lot with the existing farmhouse was now just over 8 acres and

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19

1 **VISTA ROAD, LLC, cont.**

2  
3 the remainder was 50 acres. He stated that he had applied to NH DOT for a driveway permit for  
4 two lots to share the existing access but a final approval had not yet been received. He stated  
5 that a note had been added to the plan requiring sprinkler systems for any dwellings to be  
6 constructed on the backland and he had submitted language that would be part of the covenants  
7 regarding that requirement.

8 Eric Mitchell, PE, noted that the Board had inquired at the last meeting about existing  
9 Alteration of Terrain and Wetlands permits. He noted that the permits had been applied for  
10 during prior discussion of potential subdivision of the lot but the final permits had not been  
11 pursued. He further noted that no Alteration of Terrain permit was required for the pending  
12 subdivision before the Board currently.

13 Eric Mitchell, PE, stated that the plans included a profile showing the driveway at about  
14 8½ - 9% to the backlot to where a future building pad would be.

15 Eric Mitchell, PE, stated that some waivers had been applied for. The first was for the  
16 fiscal impact study. He noted the justification was that the subdivision was for only one lot and  
17 the impact of one lot was minor enough that granting the waiver would be reasonable. The  
18 waiver for the traffic study was similarly justified in that the traffic from only one new lot would  
19 be entering the highway which was under DOT's jurisdiction and for which a driveway permit  
20 had been applied. Eric Mitchell, PE, noted that the waiver request for the environmental impact  
21 study was because of the minor nature of the subdivision application creating one new lot with  
22 only one house. He noted that any future development of the lot would require additional studies  
23 at that point.

24 Eric Mitchell, PE, noted that he was not sure of the Board's procedures and asked that the  
25 Board consider granting a conditional approval to the plan provided that they had met the  
26 Planning Board's requirements.

27 The Acting Chairman noted that the question for the Board prior to any conditional  
28 approvals was the question of completeness of the application. He noted that the items he  
29 thought were still missing were a statement of intent regarding fire fighting water supply and  
30 said that the engineer had mentioned sprinklers in his introduction. The Planning Board  
31 Assistant noted that the applicant had submitted some language regarding the sprinkler system  
32 requirement. The Acting Chairman stated that the statement of intent regarding fire fighting  
33 water supply was in hand. The Planning Board Assistant pointed out that prior to approval of the  
34 plan a sample deed would be required which included the requirement. Eric Mitchell, PE, asked  
35 if this meant the deed with the metes and bounds of the lot should also include the sprinkler  
36 covenant. He noted that the language they submitted could be used as the deed/covenant  
37 language. The Acting Chairman asked the Board if they accepted the language submitted as the  
38 statement of intent as to fire fighting water supply.

39 Dwight Lovejoy stated that as he was reading the plan the easement line followed the  
40 length of the brook, and asked if he was correct. Eric Mitchell, PE, asked what line Dwight  
41 Lovejoy was referring to. Dwight Lovejoy stated that they had changed the easement and he was  
42 having a hard time picking it out. Eric Mitchell, PE, marked up a copy of the plan to show the  
43 lines and noted that Lot #6/40-2-1 now had frontage to Route 13 with a slope and maintenance

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20

1 **VISTA ROAD, LLC, cont.**

2  
3 easement for the use of either lot. He said those cross easements for slopes and maintenance  
4 were now the only easements on the plan. Eric Mitchell, PE, asked if Dwight Lovejoy  
5 understood the changes. Dwight Lovejoy said that he did but noted that he thought all the  
6 property along the river was untouchable with covenants all along it from the Piscataquog River  
7 agencies and that nothing could be done to the land within 250' of the river, no construction  
8 whatsoever. Vinnie Iacozzi stated that was not correct. Dwight Lovejoy stated that he lived on  
9 the river. Vinnie Iacozzi said that what Dwight Lovejoy had just said was not correct. He stated  
10 that there was a whole set of regulations as to what could be done in that area, and this  
11 subdivision was part of it. Eric Mitchell, PE, asked if Dwight Lovejoy was referring to a town  
12 regulation or the Comprehensive Shoreland Protection Act (CSPA). Dwight Lovejoy stated he  
13 was talking statewide. Eric Mitchell, PE, stated that the CSPA would have jurisdiction within  
14 250' of the reference line which would be mean high water in this case. He noted that within 50',  
15 which this application was not in, there were restrictions on what could be done in that area for  
16 tree cutting or anything of that sort. Dwight Lovejoy asked about tributaries. Eric Mitchell, PE,  
17 stated that tributaries were not part of the CSPA, noting that to be covered by the CSPA a  
18 watercourse had to be a fourth order stream. He noted that a first order stream was a year-round  
19 brook; when two year-round brooks come together they became a second order stream; when  
20 two second order streams came together they became a third order stream; and, so on. He noted  
21 that the tributary in this case was a first or second order stream but the river was a fourth order  
22 and that was from where the 250' was measured. Dwight Lovejoy noted that he was jumping  
23 ahead and thanked Eric Mitchell, PE, for the information.

24 Jay Marden noted that he was interested in the meaning of the easement shown on the  
25 plans with the dotted line. Eric Mitchell, PE, stated that in the event that a subdivision was  
26 proposed in the future for the backlot and a detention structure was needed, the flat area at the  
27 bottom of the hill was being encumbered by an easement if it were ever needed in the future as a  
28 place to send water. He noted that it may never be used.

29 The Acting Chairman noted that the Board had covered the fire fighting water supply and  
30 noted that the other item was driveway permits from the State and/or Town. He noted that the  
31 applicant had told the Board that they had applied for a State driveway permit. He asked if a  
32 permit had been applied for off Byam Road. Eric Mitchell, PE, stated that they had not  
33 submitted a Town permit because their intent was not to use that frontage as access. He noted  
34 that a copy of the application to the State had been provided to show that one had been  
35 submitted. The Acting Chairman stated that the applicant had applied for a State driveway  
36 permit and based on recent legislative action the Board could not require the applicant to have  
37 the permit in hand. He asked the Board if they thought they had enough information to take  
38 jurisdiction over the application and accept it as complete. Don Duhaime thought that the Board  
39 needed a viable completed driveway permit and approval in order to accept the application as  
40 complete and asked the Acting Chairman if that was not the case. The Acting Chairman noted  
41 that there was a legislative action in the 2010 legislative session that said that Boards could not  
42 require a permit from a State legislative body as a requirement for acceptance of an application.  
43 Don Duhaime asked what would happen if the State denied the permit. The Acting Chairman

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1 **VISTA ROAD, LLC, cont.**

2  
3 noted that if the State denied them then the Board would deny them as part of the public hearing  
4 process.

5 Dwight Lovejoy stated that if he remembered right the applicant had said he could not get  
6 a permit before. Eric Mitchell, PE, noted that he had been involved in the previous plans that  
7 had involved the lot currently before the Board and the lot on the other side of Wilson Hill Road  
8 at the top of the hill and at that time the State had said that all the traffic from the subdivision  
9 could not come down and exit onto Route 13 by the existing farmhouse but would have to come  
10 out onto Byam Road and then to the intersection with Route 13. Eric Mitchell, PE, noted that for  
11 a single or shared driveway to two properties the driveway was fine in the location as shown on  
12 these plans and they had specifically spoken with NH DOT about this fact. Dwight Lovejoy  
13 stated that his understanding when Vinnie Iacozzi left the last meeting was that there was not  
14 going to be another driveway cut and the driveway to Lot #6/40-2-1 would come in at the same  
15 location as the driveway to Lot #6/40-2. Vinnie Iacozzi stated that was what they were doing.  
16 Eric Mitchell, PE, noted that there was still one curb cut and the Board had asked them to put the  
17 lot line down the middle of the driveway between the two lots so that the entrance would be  
18 shared. Dwight Lovejoy asked why the proposed access to this lot did not come off Byam Road  
19 which would take some of the heat off the brook in the vicinity of the Route 13 access. Eric  
20 Mitchell, PE, stated that the main reason was that there was an existing driveway in the location  
21 already and a new driveway could go in right beside it.

22 The Acting Chairman confirmed that the applicants were retaining the existing residential  
23 curb cut on Route 13 and expanding it wider to accommodate the driveway for the backlot and  
24 the State approval would be to allow another residential access on the existing curb cut. Eric  
25 Mitchell, PE, confirmed that was the case. The Acting Chairman noted further that the shared lot  
26 line was in the center of the driveway and the shared easement for the driveway ended about 45'  
27 into the property. Eric Mitchell, PE, said that was so but added that there were slope and  
28 drainage easements further in on the property in the event that any future development of the  
29 backlot was to take place. The Acting Chairman then asked Eric Mitchell, PE, if any further  
30 development of the backlot over and above a single family dwelling and the proposed curb cut to  
31 be shared by two residential lots would need further approvals from the State. Eric Mitchell, PE,  
32 said that they would have to reapply and meet whatever requirements would be placed at that  
33 time.

34 The Acting Chairman noted that in order to be in compliance with RSA 676:4,I,(c),(1),  
35 the Board had three options: to act on the completeness of the application; to accept the  
36 application as complete with the condition that any missing items be submitted; or to deny the  
37 application as incomplete citing the things that were missing. He noted that the question was  
38 whether the driveway permit from the State was something that the Board could require to be  
39 complete. The Acting Chairman stated that legally he did not know the answer to that and  
40 although he had given his opinion earlier it was up to the Board to decide as a whole. Don  
41 Duhaime noted that past practice was that the application was never complete unless the Board  
42 had a driveway permit in hand. Dwight Lovejoy agreed that the driveway permit should be in  
43 hand.

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1 **VISTA ROAD, LLC, cont.**

2  
3 Eric Mitchell, PE, stated that if there was a question about moving the driveway further  
4 from the brook that would affect the permit so if it was the opinion of the Board that the plan was  
5 not ready to be accepted in the absence of that permit he asked for a continuance so he could  
6 work with the State and allow time for discussion of whether or not to move the driveways  
7 further to the east. The Acting Chairman noted a fourth option: that the applicant could  
8 withdraw their application and resubmit it at a later date when the necessary driveway issues  
9 were resolved. He noted that, unfortunately, the Board did not have the authority and would be  
10 violating the RSA if the application was not accepted as complete. He noted that the Board had  
11 to act on an application within 30 days of its submission and waiting until the Board's next  
12 meeting of March 22, 2011, would be outside of the 30 days and violating the applicant's rights.  
13 Eric Mitchell, PE, asked that the application not be denied if the Board determined that the  
14 driveway permit had to be received and would consider withdrawing the application if it was the  
15 only option. Vinnie Iacozzi stated that an existing driveway permit existed for the farmhouse.  
16 He noted that the Acting Chairman was correct in his previous statements. He stated that he did  
17 not feel like litigating everything every time he came before this Board. He went on to say that  
18 the property had three curb cuts allowed by NH DOT and they were only using one. Vinnie  
19 Iacozzi stated that the property lines had been put exactly where the Board had asked them to at  
20 the last meeting. He stated that the only reason the plans were delivered late was because the  
21 wetland scientist had not been able to get to their office to stamp the plans. He stated he thought  
22 the application was complete according to the Town's checklist and the plans were ready to go.  
23 He further noted that when the legislation changed something past practice could not apply.

24 Don Duhaime stated he was confused about something the Acting Chairman had said  
25 regarding the sprinkler systems. The Acting Chairman said that the applicant had to supply a  
26 statement of intent regarding which particular type of fire fighting water supply they were  
27 proposing for the application. He said they submitted a document purporting to be a covenant  
28 regarding sprinklers. He said he did not know if it was correct but in his opinion was enough to  
29 show the intent of the applicant and therefore was enough to meet the regulations. He stated the  
30 final language had to be worked out during the public hearing process.

31 The Acting Chairman stated he would poll the Board so that the applicant could make a  
32 decision on how he wanted to proceed prior to the Board making a motion. He noted for the  
33 applicant's benefit that Don Duhaime, Planning Board alternate, had been seated as a full voting  
34 member for this meeting, in the absence of regular member Peter Hogan.

35 Don Duhaime stated he was sticking to requiring the driveway permit. Dean Mehlhorn  
36 thought the application could be considered complete. Dwight Lovejoy needed to see the  
37 driveway permit. The Acting Chairman stated that he agreed with Dean Mehlhorn but did not  
38 get to vote.

39 Vinnie Iacozzi stated that he wanted the Planning Board to deny the application. He left  
40 the meeting. Don Duhaime asked Eric Mitchell, PE, if he wanted to withdraw the application.  
41 Eric Mitchell, PE, stated that Vinnie Iacozzi represented the owner of the property and his  
42 decision was final.  
43

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1 **VISTA ROAD, LLC, cont.**

2  
3 Dwight Lovejoy **MOVED** to deny the application as complete until the driveway permit  
4 was in hand and accepted from the State. Don Duhaime seconded the motion. Dwight  
5 Lovejoy and Don Duhaime voted AYE. Dean Mehlhorn abstained. The Acting  
6 Chairman voted NAY and the motion **PASSED**.

7  
8 The Acting Chairman stated that the motion carried 2 - 1 and the application was denied  
9 as incomplete with the requirement that a completed application should include an approved NH  
10 DOT driveway permit for the driveway along River Road.

11  
12 **MISCELLANEOUS BUSINESS, cont.**

- 13  
14 3. Final draft of "New Boston Road Construction Inspection Procedures", for the Board's  
15 review and discussion, to be scheduled for adoption at the meeting of March 22, 2011.

16  
17 The Acting Chairman stated that this was an updated version that appeared to include the  
18 things that the Board had discussed the last time. He asked if there was anything else the Board  
19 needed to have added or changed prior to adopting the document at the next meeting. Dean  
20 Mehlhorn stated that he liked it and Dwight Lovejoy said it was a good job.

- 21  
22 4a. Continued Discussion, re: Ten-Year Transportation Improvement Program FY 2013 - FY  
23 2022.

- 24  
25 4b. Draft copy of Ten-Year Transportation Improvement Program FY 2013 - FY 2022 letter,  
26 for the Board's review and discussion.

27  
28 The Acting Chairman noted that there would not be another Planning Board meeting  
29 before the date that this letter had to be sent out. The Planning Board Assistant stated that the  
30 letter had to be to SNHPC by March 4<sup>th</sup> and the only missing item was the list of bridges that  
31 needed to be included following the Coordinator's meeting with the Town Administrator to go  
32 over that information. She noted that if the Board wanted to get a copy of the letter once that  
33 information was included the Coordinator would send it out by email to everyone.

34 The Acting Chairman suggested that the Board's edits or comments should be submitted  
35 to the Planning Department by March 1, 2011. The Board agreed.

36 Don Duhaime asked where the footbridge project currently stood. Dwight Lovejoy stated  
37 that the Selectmen were discussing using a different piece of land for the footbridge as the  
38 owners of the Tavern had some requirements for restrictions on the property that the Selectmen  
39 were not comfortable with.

40 The Acting Chairman also asked the Board to review the Road Committee's list of  
41 projects when reviewing the letters regarding the Ten-Year Transportation Program.

- 42  
43 9. Memo received February 22, 2011, from Ed Hunter, Code Enforcement Officer, to New

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1 **MISCELLANEOUS BUSINESS, cont.**

2  
3 Boston Planning Board, re: Home Business documentation pre-zoning, 119 Laurel Lane,  
4 for the Board's action.

5  
6 The Planning Board Assistant noted that the Building Inspector received a complaint  
7 regarding the owner of 119 Laurel Lane conducting a metal salvage business on his property.  
8 She noted that the Building Inspector had asked the Coordinator if there was a site plan for a  
9 business on the property, which there was not. However, it was known that some kind of  
10 business had been operating there for a very long time and an option was to ask the owner to  
11 provide some kind of proof that the business had been there prior to the Town's re-zoning in  
12 1990. The Planning Board Assistant stated that Mr. Beers had provided the Building Inspector  
13 with the certificate of his approval as a bonded automobile dealer from the State from 1982 as  
14 the proof. She noted that the Building Inspector wanted the Board to consider if this was  
15 sufficient evidence of the business so that Mr. Beers could continue the business at his residence.  
16 She noted that the parking of the tractor trailer on the roadway was being dealt with separately.

17 Dwight Lovejoy asked if Peter Beers had always been at that address. The Planning  
18 Board Assistant noted that the certificate from the State said 119 Laurel Lane. Don Duhaime  
19 asked if proving any kind of business was all that was required and pointed out that the  
20 certificate said "automobile dealer" not scrap yard. The Planning Board Assistant stated that it  
21 was up to the Board to make that decision. Dwight Lovejoy asked if this could be adjourned  
22 until he had the opportunity to go up and look at the property. The Planning Board Assistant  
23 stated that the Town had to get back to Mr. Beers as to whether or not additional information  
24 would be needed or if this was enough. She noted that the rule had always been that if a property  
25 owner could prove by documentation that they had a business prior to zoning then they would be  
26 grandfathered. She stated that the question in this instance was whether or not this information  
27 was enough to provide that he was grandfathered to do metal salvage on the property.

28 Dwight Lovejoy stated that he would be comfortable saying that the documentation  
29 provided was adequate in this scenario but it was illegal to park in a Class VI road. Don  
30 Duhaime and Dean Mehlhorn agreed.

31 The Acting Chairman noted that the Board's consensus was that Mr. Beers had submitted  
32 suitable documentation to verify that he predated zoning and that he had a business prior to  
33 zoning similar to the business he was conducting today.

34  
35 Dean Mehlhorn **MOVED** to adjourn the meeting at 9:45 p.m. Dwight Lovejoy seconded  
36 the motion and it **PASSED** unanimously.

37  
38 Respectfully Submitted,

39  
40 Nic Strong  
41 Planning Coordinator

Minutes Approved:  
03/22/2011