



# TOWN OF NORTHBOROUGH PLANNING BOARD

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Approved 12-14-10

## Planning Board Meeting Minutes November 9, 2010

**Members Present:** Rick Leif, Michelle Gillespie, Leslie Harrison, George Pember

**Others Present:** Kathy Joubert, Town Planner; Bill Farnsworth, Inspector of Buildings/Zoning Enforcement Officer; Kay Doyle, Kopelman & Paige, Santo Anza, S.A. Farm; Andrew Liston, Thompson & Liston; Atty. William Mason, Scott Miller, Newbridge Construction; Jesse Johnson, David E. Ross Associates, Inc.: Kevin McCormick, Ken Nichols, Jim & Kris Black, Donna Finnegan, R. Aldenberg, Josh Aldenberg, J. Gorham, P. MacDonald, Robert Rosenberg, Russ Lang, Greg & Eileen Ward, Don Hamman, Jessica & Matt Orsi, Bob Frank, Bonnie Lang, Geoff Sugarman, Marilyn Rosenberg, J. Matthews, Penny Black, Paul Bergquist, Donna Morris, Margaret Bush, David Backus, Bill Walter, Paul Berquest, Howard Yu, Brian Spadafora, Jim Shore, Hannah & Rick Jussaume, Howie Stone, Nancy Lepore, Gerry & Lesley Gustafson, Jo-Ann Sullivan, Srisaang Sahaskmontri, Jodie Martinson, Diana Adams Woodruff, Sandra Di Chaurette, R. Gabriel, Dawn & Richard Rand, J. E. Kelly, Emerson Chandler, Steve Bernacki, Matt Gillis, Sheryl Sholock, Lisa & Andrew Lawrence, Hank Jakiela, Severino Luna, Warren Lugo, Brian Harris, Fernando & Anabita Morias, Karen Bernacki, Beverly Ann Kelly, Elaine Longfellow, Michael Sholock, Bill Halter, Richard Kane, Jim & Gigi Casella

Chairman Leif opened the meeting at 7:00 pm.

### Review of Preliminary Sketch Plans for Stirrup Brook Estates II

Applicant:	Newbridge Construction
Engineer:	David E. Ross Associates, Inc.
Date Filed:	October 8, 2010
Decision Due:	Not Applicable

Scott Miller, Newbridge Construction and Jesse Johnson, David Ross Associates, Inc., presented two preliminary sketch plans for Phase 2 of Stirrup Brook Estates, 103 Bartlett Street.

Mr. Miller presented plans showing different options for the proposed second phase of Stirrup Brook Estates on a nine-acre parcel off Bartlett Street. The applicant's preferred plan proposes restricted clearing and will include seven large lots on 7.5 acres, ranging from 21,000 square feet to 30,000 square feet, and an existing residence that will remain. Two acres of the parcel will not be cleared. There are no wetland considerations. Natural Heritage has done an initial review and the plan shows a protection radius for endangered species on the parcel.

Mr. Miller stated they are proposing to extend the existing cul-de-sac off Stirrup Brook Lane by 400 – 500 feet, as allowed, rather than create a new road off Bartlett Street. Testing for septic has been done and all the lots have passed perc tests.

Mr. Leif asked who will own the property being maintained behind the lots that abuts the high school. Mr. Scott stated the individual lot owners will own it, but there will be demarcation for Natural Heritage so the homeowners will know where the area is that can't be touched.

Attorney Richard Gabriel stated the owners of the existing home on the parcel, which is not part of the project, have a potential buyer who wants to restore the home.

Mr. Miller stated drainage from Stirrup Brook Lane enters in the cul-de-sac and flows into a forebay detention pond, which was built oversized to take drainage from the roadway, cul-de-sac, houses and limited amount of cleared area. The drainage plan has been submitted to the Town Engineer and he has agreed it looks like the detention pond will work.

Mr. Miller stated water service will be from an existing water main in Stirrup Brook Lane, and water mains have been tested on the lot. Existing transformers and junction boxes for utilities are located off the right-of-way of Stirrup Brook Lane. They will be seeking a waiver to off-set the center line of the proposed cul-de-sac in order to bring utilities lines to the subdivision. The proposed radius of the cul-de-sac would be twenty feet, rather than thirty feet, which would still allow a sufficient turning radius for emergency vehicles. Mr. Scott stated they will talk to the Fire Department and Department of Public Works (DPW) about it.

Mr. Leif stated the board will expect letters from the DPW and the Fire Department stating they have reviewed the plans and are satisfied.

Mr. Johnson asked if overall open space, rather than a designated single lot, would meet the requirement for open space. It would be 40,000 continuous square feet of land, but not a typical rectangular-shaped lot.

Mr. Leif stated they have been trying to strengthen maintaining open space in subdivisions. The board would need to understand how they will still meet the requirements in some other way that is reasonable and usable. The board doesn't want little pockets of meaningless open space.

Mr. Miller asked if it would be favorable if they met the minimum area and kept a perimeter around the lot.

Mr. Leif replied it would be.

Mr. Johnson stated the rest of the project meets all guidelines and regulations. All proposed lots are over the minimum required lot area of 20,000 square feet.

Ms. Joubert stated staff has met with the Applicant and the engineer about the continuation of the Stirrup Brook Estates subdivision. They also talked to the owner of the company about linking it to the Algonquin Regional High School (ARHS) and he has been in contact with the high school administration about increasing pedestrian accessibility to ARHS.

Ms. Joubert explained the next steps in the process are that the Applicant submit a definitive subdivision plan, then a public hearing would be scheduled and notification would be sent to abutters.

Mr. Leif asked Mr. Litchfield, Town Engineer, if he concurs with Mr. Johnson on the detention basin. Mr. Litchfield stated the detention basin is oversized and he has asked Mr. Johnson to check the pipes to see if they can hold the water. Mr. Litchfield stated it seems like a good option.

Mr. Pember asked if there is some way to get a sidewalk link, or if a sidewalk would be proposed along Bartlett Street. He asked if the high school staff has seen and commented on the plan.

Mr. Miller explained they have reached out to the principal to set up a meeting. The existing sidewalk comes out of a pre-developed neighborhood. They would try to create a 5-foot easement to continue the sidewalk and have the school paint a walk as a continuation to that sidewalk.

Bill Farnsworth, Inspector of Buildings/Zoning Enforcement Officer, stated he had had a conversation with the ARHS facility manager today and in that regard he is going to get further definition from the school. They are concerned with their liability and, at this point, his recommendation is not to do it. If the sidewalk was on the Applicant's side, there would be a better feeling. Crossing school property is the concern.

Ms. Joubert stated staff will continue discussions with Mr. Miller to determine what makes sense.

Ms. Gillespie stated there are a lot of dead trees from clearing for the fence and the road. It would be nice to have them cleaned up. Ms. Joubert stated the fence may not be on the property line, so it would have to be determined who owns the trees.

Mr. Johnson said the fence is off their property by five feet.

Mr. Pember asked for Mr. Litchfield's opinion, from a traffic standpoint, about the different driveways as opposed to the long roadway.

Mr. Litchfield stated it is always better to try to minimize curb cuts off busy roads. One common driveway to access two lots is better than the roadway coming off the more roads.

Mr. Miller stated it is more of a common entrance, but the driveways will be deeded separately. It gives the appearance of one driveway. They will preserve the existing wall to preserve the look. The current Stirrup Brook Estates has seventeen. He built fourteen and three were there. The address now is Stirrup Brook Lane.

Ms. Gillespie asked about the number of lots. Mr. Miller stated the Planning Board has the right to turn down the maximum number possible, which is fourteen lots. However, the Applicant wants to kept the existing homestead and has no interest in building out the property.

#### **Review of Site Plan Approval for 429 Whitney Street**

Applicant:	429 Whitney Street Realty Trust
Engineer:	Thompson-Liston Associates, Inc.
Date Filed:	October 1, 2010
Decision Due:	December 30, 2010

#### **Review of Site Plan Approval for 432 Whitney Street**

Applicant:	429 Whitney Street Realty Trust and 0 Whitney Street Realty Trust
Engineer:	Thompson-Liston Associates, Inc.
Date Filed:	October 26, 2010
Decision Due:	January 23, 2011

Mr. Leif explained the purpose of the meeting is to review the site plan of the land grading and clearing on the properties. The Applicant has come before the Planning Board to present this information. The Planning Board is aware there are a lot of other concerns about the project and a Zoning Board of Appeals meeting has been scheduled for a date in the future. Tonight's meeting is for the Planning Board to review the site plan only as it pertains to grading and clearing. If additional information is needed, the meeting will be continued. Mr. Leif stated this is not a public hearing and he is not required to take input from the audience. However, he will take input from the audience only if it is about land clearing and grading, which is what the board can legally discuss.

Attorney Kay Doyle, Kopelman & Paige, stated the Applicant has cleared in excess of 20,000 square-feet of land and is required by the town to come before the Planning Board for site plan. This meeting will focus on design and performance standards in regards to clearing on the site. Conformance of the use of the site will not be the subject of this meeting.

Ms. Joubert noted the meeting was being taped and broadcast live on the Town's cable TV station. She asked all those present to sign the meeting sign-in sheet.

Applicant and property owner, Santo Anza, 429 Whitney Street Realty Trust and 432 Whitney Street Realty Trust; Andrew Liston, Thompson-Liston Associates; and Attorney William Mason, were present. Mr. Liston noted they are withdrawing their site plan application for 432 Whitney Street because it is incomplete. He proceeded to present a plan showing the 15.7-acre parcel at

429 Whitney Street, and explained it fronts on Whitney Street and is bounded by the railroad, the Commonwealth of Massachusetts, and lots developed for commercial purposes by Cabot, Cabot & Forbes. Mr. Liston stated he has visited and walked the property. The subject area, shaded on the plan, is in the process of being stabilized. Mr. Liston noted the plan presented was not done by his office.

Mr. Mason, representing 429 & 432 Whitney Street Realty Trusts, of which Santo Anza is the trustee. He explained the property at 429 Whitney Street cannot be approached without trespassing on commercially-owned or state-owned abutting parcels, except for the front access from Whitney Street. There are no private abutters to this property and that was an important factor for Mr. Anza when he decided to purchase the property in 2009. There are no buildings on the site, and no parking lot, exterior lighting or public utilities. Mr. Anza purchased the property in August 2009 and filed a Notice of Intent (NOI) with the Conservation Commission on August 31, 2009. The Conservation Commission issued an Order of Conditions (OOC) for the property on October 5, 2009 and on October 19, 2009 a citizen's group appealed the Order of Conditions. On December 3, 2009 the Department of Environmental Protection (DEP) conducted a site inspection. On December 14, 2009 the Conservation Commission requested additional information, including delineation of wetlands on the property and the riverfront area associated with Coolidge Brook, in relation to the existing dirt driveway. On December 23, 2009 the DEP received the owner's 2002 plan in response to their request, and the DEP accepted the wetland delineation on the plan as accurate. DEP inspections of the stream on the site found the water to be clear with no measurable turbidity. Mr. Mason stated the owner requested DEP's permission to abandon the dirt driveway and relocate the driveway to a shaded area away from the wetlands, and DEP approved the request. Testing of soil conditions before fill was brought onto the property showed no contamination. A detailed analysis of fill brought to the site was provided to DEP, and they approved the project subject to conditions in Exhibit A of the Superceding Order of Conditions signed by Philip Nadeau.

Mr. Mason stated the owner agreed to submit to the Planning Board an application for limited site plan approval for clearing and grading on the site at 429 Whitney Street. A subsequent plan for site plan approval for 432 Whitney Street was submitted, but is being withdrawn because the delineated wetlands are not shown on the plan yet.

Mr. Mason noted a review letter from Fire Chief David Durgin, dated October 15, 2010, states he has no comment on the site.

Mr. Mason stated Mr. Anza, SA Farms, was issued a certificate by the town for livestock on the property. He read the site plan requirements from the Northborough Zoning Bylaw.

In regard to grading, Santo Anza stated clearing was done to bring grades up. There had been questions from the board and residents as to the materials that were brought onto the property. He has available the analysis of the soils. It was necessary for the project to have a hard flat surface on which to operate. Fractured ledge from a job site in Worcester allowed them to take it to a grade that would result in no runoff from the agricultural use. He explained he built a leaching bin into which runoff from livestock will drain. He stated he has excavated

and removed trailer-loads of illegally dumped items, including tires that were placed there years ago when an industrial park across the street was built. These items were brought to his attention by the DEP when he took possession of the site.

Mr. Anza stated the property is surrounded by industrial uses and the huge buffers were a consideration when he purchased the property. He stated he recognized the noise has been an inconvenience, but long-term, the use will off-set any noise inconvenience by any industrial building that could have been built on the site. He stated he understands the concern is that the final use may not be agricultural, but the fractured ledge on the site cannot support buildings. The soil will never be compactable, and so could not be crushed to make pads for buildings. There can be no industrial park on the property.

Kathy Joubert, Town Planner, noted the sections of the Zoning Bylaw that apply to site plan approval, as follows:

- 7-03-050A(1)(d), Site Plan Approval, Clearing and Grading (Page 10)
- 7-09-010, Applicability, more than 20,000 square feet of has been cleared (Page 80)
- 7-09-020C(5)(A)(2) - Site design standards, General requirements – landscape buffers with industrial use, which is clearing and grading in this case
- 7-05-040 Environmental standards (Page 44) – The applicant noted there has been quite a lot of questions surrounding noise from the site. It's not constant. This section limits noise from construction activity on an industrial site to from 7 am – 7 pm, prohibited on Sundays and legal holidays.

Ms. Joubert noted that, as far as the requirement of a landscape buffer, the entire property is open space. The site plan does not include any permanent buildings that are going to be built on the site. She asked the board members if they would require a 50-foot buffer in this case. She explained it has been discussed by staff that the construction activity is allowed as long as it meets the 7 am – 7 pm time period.

Mr. Leif asked Mr. Anza if he had any plans to do grading and filling on any other part of the property.

Mr. Anza replied that, other than for the road going through, most of the front of the property is wetlands and will not be touched. Some activity has been started outside the wetland buffer. In the back there is still some debris that the DEP wants to be excavated out. A 200-foot buffer will remain. On the plan, only the dotted area is fill area and the rest will remain open. No other part of the property will be used.

Mr. Anza stated he has three years in which to accomplish what he wants to do. He thought he could do it in eighteen months. At this point he has seeded part of it and there is a spot filled with top soil versus rock. The material came in at different times so there is a stock pile of loam with a screener, and organics will be brought in. A large portion will be seeded and livestock

pens are there. He stated he has worked with ASDA to come up with along-term farm plan to incorporate the wetlands. Approximately 80% of the site is at grade and 20% is left to be finished.

Mr. Litchfield stated the vegetated slope seems very steep.

Mr. Anza stated that, right now, it is straight rock. He stated he plans to vegetate it in the future.

Mr. Litchfield stated he is concerned the plan doesn't show proper detail and recommended the board gets clarification. He added he normally asks for a 3:1 slope, but it looks like what Mr. Anza is doing is quite stable.

Mr. Leif asked Mr. Anza if he has a date in mind as to when the remaining 20% of the site will be completed.

Mr. Anza explained material needs to be processed, but the issue is finding the proper material to go it into the hole. He stated he has to be very careful of what he puts on the site and has turned down hundreds of thousands of yards of material that wasn't suitable. Mr. Anza stated he anticipated this would be almost a brownfield, but when it was tested, he found it surprisingly clean, which made it more difficult to find fill that was cleaner. He stated it should be done and screened within 35 days. Even though winter is approaching, there is still digging going on. He has some possible fill, and analysis is going on. Mr. Anza explained the DEP has issued him an Order of Conditions that is good for 3 years. Grading and filling will probably be done in less than 6 months.

Mr. Leif noted one of the quickest ways to alleviate the concerns about noise would be to finish it as soon possible.

Ms. Joubert asked if it would be between 30 and 45 days.

Mr. Anza responded that to get the loam moved, he shut down the screening operation and the noise, and excavated and tried to build earth berms. Then he half-agreed to stop that activity and come before the Planning Board. The screener will eventually go away but he has to process whatever material goes on top. The other screener on the site will be used to screen the granite out of the back portion of the lot and will be out in another week. The screener by the chain-link fence will be down in 60 days, weather permitting. He noted the DEP wants them to continue to take debris out of the wetlands on the property.

Ms. Harrison inquired about the material that was brought in to fill the site and why a building could not be built on it.

Mr. Anza stated the stone was blasted out of the Umass Medical site on Plantation Street in Worcester. It contains naturally occurring arsenic, but less of it than what is on the property right now. In order to crush it, it has to be pounded for a long time. Over the years the fines

will leach through with the water and will be constantly maintained. It will look like straight rock. A barn could be put on a slab, but no industrial building, because the stone will shift for a long time.

Review Standards, 7-09-010

Mr. Leif asked Mr. Litchfield if Mr. Anza is protecting wildlife. Mr. Litchfield stated the Conservation Commission determined that if Mr. Anza worked outside of the buffer zones, then he would not be subject to those regulations and an Order of Conditions was issued by the DEP.

Mr. Leif asked Mr. Litchfield if Mr. Anza is protecting the root zone. Mr. Litchfield stated he is protecting it during construction.

Mr. Leif asked Mr. Litchfield about erosion, sediment control and revegetation. Mr. Litchfield stated he would normally be looking at these through the Conservation Commission. Outside the buffers there are no erosion controls. Runoff on the site is not going off the site, the rock is stable and the piles are contained in an orderly fashion. Mr. Anza is progressing and there is no erosion along the sides.

Regarding monitoring inspection, Mr. Litchfield stated the Board could ask for an operation and maintenance plan for stabilization of the slope. Material on the site is pretty stable. He stated he has been out to the site several times with the Conservation Commission and staff members, and it seems to be progressing in a manner not susceptible to erosion.

Design Standards, 7-09-020C(5)(A)(2)

Mr. Leif explained this section requires an open space area of at least 50 feet in depth for any industrial use abutting a residential district in order to mitigate impacts of the industrial use. In this case, the required buffer is 50 feet. The industrial use is the grading right now, the final use of land is agricultural and the entire site will be open.

Ms. Joubert stated the entire property is open space, and as far as the landscape buffer, the property will end up being a finger of industrial land that's surrounded by residential zones, including the railroad, MWRA land and residential land. Both the railroad and the MWRA properties are in residential districts. Ms. Joubert suggested the Board might want to discuss whether or not a 50-foot buffer belongs on a lot that is open space.

Mr. Leif confirmed the red area on the plan around the entire boundary of the property is where the buffer would be.

Mr. Anza stated the building inspector has identified the use as agricultural, which is exempt from landscaping. For this meeting, due to the land clearing of over 20,000 square feet, the site is being considered an industrial use. Trees aren't going to work for the agricultural use, but if pasture grass is considered landscaping, that would work.

Mr. Farnsworth stated the request for a zoning determination was for the raising and keeping of livestock on the property, and he determined that description was an agricultural use.



Mr. Anza stated this property clearly meets the requirements of an agricultural use.

Ms. Joubert explained that, further in the same section, it states if there is not enough buffer area, the required area may be decreased or a fence may be considered. If the Board did want a buffer, the applicant could return to the Board when the site is actively in use to have the requirement changed.

Ms. Harrison inquired as to what type of fence was at the top.

Mr. Anza stated there is a tremendous buffer between the property and the neighborhood. There is also the aqueduct and MWRA property, which are not residential uses.

Ms. Gillespie suggested the Board could include a condition that the applicant will come back for modification to the site plan in the future.

Ms. Doyle stated it doesn't need to be a condition. To the extent there is a more intrusive use going on right now, the Planning Board could require one type of buffer and when the use of the property changes, the applicant could come back and could prove he is exempt.

Mr. Pember asked for clarification of a buffer. Ms. Joubert stated it can be plantings or a fence. Mr. Pember noted he could not see any of the neighbors' houses, and asked why Mr. Anza would need to plant a buffer if the neighbors' houses cannot be seen.

Mr. Leif explained that the purpose of the requirement is when industrial use abuts residential use. It doesn't have a lot to do with clearing and grading. He suggested they confine their comments to balance the land clearing and grading to make sure this is finished in a timely manner and properly done. This buffer requirement is apart from what the Board is looking at with the site.

Mr. Pember stated the Board needs to see detail of the slope, which Mr. Litchfield had pointed out, and what is planned for that.

Ms. Joubert asked Mr. Anza how the site will be maintained after the filling is completed.

Mr. Anza stated that once the livestock is on the property, a tackifier will be used to spread material.

Ms. Harrison asked for an explanation of tackifier. Mr. Anza stated it like a glue that makes compost stick to rock. It can be added to hydroseed or compost and it will stick to a 90-degree angle.

Ms. Harrison asked about the berries Mr. Anza will be planting.

Mr. Anza stated he has planted 210 gooseberries and red currants on one are of the parcel.

Mr. Leif opened the meeting up to questions/comments from the audience:

Howard Stone, 257 Rice Avenue, stated there is no roadway or driveway plan laid out on the plan. He stated Mr. Anza has a tree-stump and mulching business, also.

Mr. Anza stated the road is already done, but obscured by the dots on the plan. The Board has walked it. It is in place and permanent – completely done.

Michael Sholock, 336 Whitney Street, asked if the town knows that the fill already brought on the site is what Mr. Anza said it is. He also asked who is monitoring the site.

Mr. Leif stated that is not within the jurisdiction of the Planning Board, but rather a DEP or Board of Health concern. He stated Mr. Litchfield was on the site to manage erosion control through the Conservation Commission. Inspections have been done that involve the jurisdiction of the Conservation Commission and the Order of Conditions they issued. Going forward, the bylaw will be followed for the remaining 20% to be completed. He asked Mr. Litchfield if anything will be done to 80% filled in retrospect.

Mr. Litchfield stated it mostly involved Mr. Anza providing staff with data and then staff confirms the data is correct.

Mr. Farnsworth stated there has been an LSP person on-site, coordinated with the DEP and the Board of Health. Information has been provided to both.

Mr. Anza stated Mr. Sholock's question is valid. He explained that, since the beginning of the project, he has been submitting test results from the generator to the Board of Health and Town Engineer. Most fill has been from state or town-associated projects. Mr. Anza stated he has to have assurance that the fill is going where it is supposed to go. All trucks are scaled at Kimball's to make sure the same truck that leaves is the one that's signed into his project. It's a paper trail that DEP and LSP requires for everything that comes on his property.

Scott Wellman, 67 Coolidge Circle, asked about a business license issued by the town.

Mr. Leif stated that is not what the Board is reviewing tonight. The reason the meeting is being held tonight is because of the amount of clearing he has done, and it was determined he needed to apply for site plan approval, and he did.

Ms. Doyle stated the Planning Board has before them technical issues with grading the property. The Zoning Board of Appeals (ZBA) will hear the appeal. This meeting tonight is about issuing a site plan approval with appropriate conditions, because it was determined the clearing and filling was not incidental to the agricultural use.

Bob Rosenberg, 74 Coolidge Circle, presented an aerial photo of the site, showing what he said is being brought in to the site. He stated the fill is different from what is represented on the

plan. He pointed out parts of site in the photo and stated that the 80% of the fill that has occurred has been in an area that has violated the town's groundwater bylaw. It's a huge volume of material extending out from a stake he pointed out in the photo. Mr. Rosenberg showed two more plans with the stake. He stated the fill is well over 12-15 feet and in some places, 20 feet, and Mr. Anza's plan is a misrepresentation.

Ms. Doyle responded if this is the case, it would be up to the Zoning Enforcement Officer and would go before the ZBA. She stated Mr. Rosenberg was the one who appealed to the ZBA. ZBA is the board that has the jurisdiction. Ms. Doyle stated the applicant could address the issue of whether or not the plans represent the filling.

Mr. Anza stated the plan he presented to the Conservation Commission shows where the groundwater line is. He stated he is not prepared to discuss it. The district line is the one that was accepted long before he bought the property.

Mr. Rosenberg stated the line is off by a large degree from what is shown on the plan.

Mr. Liston stated Groundwater Protection Overlay Districts are shown on town's plan.

Ms. Joubert stated the only time a line was contested it went to court. Town maps are what they are based on hydrological surveys. The Board cannot address which party is correct. The applicant is asked to identify where the Groundwater Protection Overlay District lines are on their plans, and they use the town maps.

Mr. Leif asked Mr. Litchfield if there are restrictions based on groundwater overlay districts as to where filling can and cannot happen.

Mr. Litchfield stated it is not the case. As the Town Engineer, he works with the Groundwater Protection Overlay District and, from his point of view, there is nothing that he is aware of that restricts grading and filling in a groundwater area. There are only restrictions on excavation.

Mr. Leif stated he doesn't know what Mr. Rosenberg was referring to as to encroachment into a groundwater area, but encroaching into the resource areas has been reviewed by the Conservation Commission.

Ms. Joubert stated people work in groundwater areas all the time.

Mr. Rosenberg referred to one of his pictures, stating it represents the ramifications of not having a buffer. He stated the fence Mr. Anza refers to is not on his property, and rocks from Mr. Anza's property are now on another property.

Nancy Lepore, 388 Whitney Street, asked how much loam and planting constitutes finishing off of the grading.

Mr. Leif stated the bylaw doesn't specify that because, in this case, it involves a big field that is being developed

Hannah Jussaume, 2 Coolidge Circle, said she saw a truck filled with hot top getting ready to go on the site. She asked if that is allowed as fill. She also asked what they are going to do about the 80% that has already been filled.

Mr. Leif stated what the fill is comprised of is not in the Planning Board's jurisdiction. The Board is only looking at how the grading will be done for the last 20% of the area.

Donald Hamman, 20 Morse Circle, questioned whether or not the Planning Board meeting should be deferred until the ZBA hears the appeals.

Mr. Leif stated all they can determine here is that the grading and filling is done to meet the bylaw and will be done at a certain time to be determined.

Gina Babcock, 54 Coolidge Circle, asked why fill is being taken off-site.

Mr. Leif stated it is not within the jurisdiction of the Planning Board.

Ms. Joubert stated cobblestone and granite is leaving the site. As far as anything else goes, Ms. Babcock would need to ask the applicant.

Mr. Leif stated the Board can determine when the applicant is going to be done. This is their avenue of enforcement.

James Casella, 70 Coolidge Circle, stated his attorney has filed an appeal with the ZBA in which he claims the filling activity is illegal. He asked what is the purpose of having the Planning Board review the case if the ZBA determines it is illegal.

Ms. Joubert stated the application was filed with the Planning Board and the Planning Board has a certain amount of days to hear the plan and file a decision per Massachusetts General Laws. The Planning Board is required to review the application.

Fran Bakstran, 76 Cedar Hill Road, stated if the applicant had come before the Board before he started filling the 20,000 square feet, the Board would only have had say over how the fill was placed. The zoning bylaw applies to grading, filling and the time frame.

Ms. Harrison stated that Mr. Litchfield has been involved in the project from its beginning and confirmed with him that it would have been part of his purview.

Mr. Litchfield responded that erosion control is under his purview as it relates to the Conservation Commission.

Mr. Wellman stated it is a noisy operation

Mr. Leif stated the Board can control the time frame of when its done daily and the time the project will be finished.

Jeff Faulconer, 82 Coolidge Circle, asked if the grading and filling on the site will stop until the Board comes to a decision.

Kevin McCormick, 17 Stone Drive, asked if the Board should wait to make their decision until they know if the plan is accurate.

Mr. Leif stated the Board has to determine if they have enough information to reach a decision. The meeting could be continued or the site plan approval could be issued with conditions. He stated items that need to be reviewed are the size of the slope and what is going to happen there, as questioned by Mr. Litchfield. Also they need to determine whether or not the plan submitted is accurate. The applicant needs to provide that information to the Board.

Ms. Joubert stated none of the staff members has found the plan to be inaccurate to the best of their knowledge.

Mr. Farnsworth stated the plan is dated June 2009. The Board could ask the applicant's engineer to go to the site and verify it to today's date, and then submit it as an asbuilt plan.

Ms. Harrison stated she would like to know what the staff would have done if the process had started normally.

Mr. Pember stated his concern is the area around it and what the slope is going to be. Then we can determine what action we are going to take. The Board needs another plan with details, because the current plan does not show the slope or the setbacks. If someone's going to show it on the plan, it should show the area on the plan that is going to be finished.

Mr. Anza stated he came in late in the game and intended to have a snapshot in time, but there was some urgency and he could not get anyone to do it for the meeting.

Mr. Liston stated he cannot answer how long it will take to get the information.

Mr. Anza stated he would also want to verify with the neighbors what has been filled. He believes they are seeing in the plan the area where the road was moved over. It shows it on the Order of Conditions plans. It is not vegetated because the road was moved over there. It looks different from the air than it does when someone is walking it. Mr. Anza stated Mr. Rosenberg's photos are probably accurate. The Conservation Commission has been on the property from the beginning and it had to be determined whether or not it was an agricultural use. He explained he was asked by town counsel to go before the Board. He stated he thinks the Board's jurisdiction would've been the same if they had started out at the beginning of the project.

Mr. Leif stated he agrees with Mr. Pember that the Board needs a new plan.

Mr. Anza said he anticipated it.

Ms. Gillespie stated she wants to see an end date for the project. She asked the applicant to review his dates and see if he can fulfill them.

Ms. Joubert clarified what the Board wants and needs.

Mr. Litchfield stated the Board needs an as-built plan showing the existing conditions – what is out there now - so they can determine if the slope along the property line is going to be handled. In addition, it should show details as to how they are going to treat the slope around the edges, vegetation, stabilization and erosion control issues that need to be addressed by the applicant.

Ms. Joubert stated the upcoming meeting dates are December 14<sup>th</sup>, January 4<sup>th</sup> and January 18<sup>th</sup>. Mr. Liston said the January 18<sup>th</sup> date is best, and he will try to submit it two weeks in advance.

Mr. Leif asked if the Board can determine that nothing can be done to the 20% left to fill until their decision has been made.

Ms. Doyle stated that, to date, he has been continuing to work while this process has been going on. It would be up to the building inspector as to whether or not Mr. Anza can continue. Essentially, the Zoning Bylaw requires someone to go through this process before they start their project. The applicant contends, and continues to contend, that this is incidental to the agricultural use. The Planning Board can state its preference, but it is up to the building inspector to issue a cease and desist if he chooses to do so. The applicant felt he was exempt, but he agreed to go through the process.

Mr. Leif told Mr. Anza that it is up to him as to how he wants to proceed, as it appears the Planning Board does not have the authority to stop him.

Ms. Harrison asked the applicant if he would show where the 50-foot buffer would be on the plan so they will not have to speculate.

Mr. Anza agreed to do that.

Mr. Liston stated he will find out if he can do a fly-over and get the new plan to the Board within two weeks of the January 18<sup>th</sup> meeting. He explained it has to be done after the leaves drop and before the snow.

Ms. Joubert suggested putting it on both meeting agendas in January and then it could be continued if the plan is not ready by the first meeting, which would be January 4<sup>th</sup>.

Mr. Anza stated he will submit a letter requesting extension of the decision date.

Mr. Anza stated he wanted to add the 432 Whitney Street site back into the site plan approval process. He will make sure both properties are included in the extension letter he will be submitting.

### **160 Otis Street Bond Reduction**

Nick Abraham, owner of the storage facility at 160 Otis Street asked for a reduction of the Earth Removal Bond required as part of the site plan approval. Three buildings were approved and only one has been constructed. Mr. Litchfield suggested a reduction of \$4000. Ms. Gillespie moved to approve a bond reduction of \$4000, Ms. Harrison seconded the motion and the vote was unanimously in favor.

### **Approval of Minutes**

The minutes of September 7, 2010 were approved as amended.

The minutes of September 21, 2010 and October 5, 2010, were approved as written.

The August 17<sup>th</sup> minutes will be resent to the Board for their review before approving at the next meeting.

The meeting adjourned at 10:00 pm.

Respectfully submitted,  
Debbie Grampietro  
Board Secretary