

Norwell Planning Board Meeting Minutes
March 30, 2005 Regular Session

The meeting was called to order at 7:00 p.m. Present were Board Members Richard Parnell Barry, Bruce W. Graham, James M. Ianiri, Karen A. Joseph and Sally I. Turner and Town Planner Ilana Quirk.

DISCUSSION. Holly Berry Subdivision Surety Release Request. 7:00 p.m.

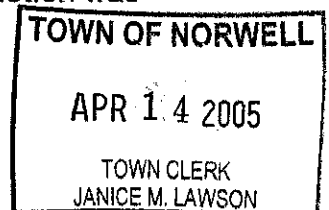
The Planner reviewed the status of the project and reviewed a memo dated March 30, 2005.

The Town is holding a money surety deposit of \$185,500.00. Coler & Colantonio submitted a revised surety review report today, stating that the total estimated cost of remaining work is \$143, 500.00. The Board reviewed the problems that exist at the site with Mr. Michael Solimando. The erosion and sedimentation control measures are inadequate and are failing and recently caused silt to move into the wetland on the property. Conservation has stated that a violation notice is being sent. The stockpiling of soil is being maintained in violation of the Construction Plan and the NPDES permit. The utility pole has not been removed from the center of the roadway. A large boulder is being stored near the drainage system at the corner of Grove and the subdivision way. Part of the drainage structure has material that washed into it.

The Board asked Mr. Solimando to address the outstanding issues and noted that a significant rain event is expected this weekend and the site should be cleaned up before then. Mr. Solimando stated that he would try to sweep the road and stated that, by Friday, April 1, 2005, he would restore the hay bale fencing, surround the soil at Lot 3 with filter fabric, replace the filter fabric in the catch basins and notify the lot owners that they need to take steps to control runoff and ask them to install crush stone at the foot of the driveways.

Mr. Solimando stated that the rock at the foot of the roadway will be half buried and then landscaped and have the name of the project placed on it. He intends to clean up and finish the project with the next four weeks. The pole removal should occur by the end of next week. The utility company is waiting for him lay more conduit. Mr. Solimando asked why the surety estimate has a \$5,000 inspection hold back when he is maintaining \$5,000 in a separate review fee account. It was explained that money is in the event of a default and that it cannot be touched until there is a default. When there is a default, there usually is no money left in the review fee account.

Member Ianiri moved and Member Barry seconded that the Board voted to return \$42,000.00 from the surety money deposit to the Applicant. The motion was approved 5-0.



DISCUSSION. Board Signatures. 7:20 p.m.

Member Turner raised the issue of signing decisions. She understands that this is not statutorily required, but thinks that it would be better for at least three members to sign each decision. She understands that it is required that at least three members endorse a subdivision plan.

Member Graham noted that he has no objection to members signing a decision if they wish, but that a decision was made not to require everyone to sign a decision, because it is just too onerous for people to leave work to sign a decision to satisfy a constructive approval deadline that is approaching. Since it is not required, he does not wish to do it.

The Planner noted that the Board can go back to the old custom of everyone signing the decision, but, if that is the case, the Board must insist on longer extensions of the deadlines for final action to avoid constructive approval problems. Members Graham and Ianiri noted that they would prefer not to have to come in to sign. The Board decided to continue with the practice of having the Clerk certify the Board's decisions.

DISCUSSION. Minutes. 7:25 p.m.

- March 23, 2005 Minutes
- March 24, 2005 Minutes
- March 29, 2005 Minutes

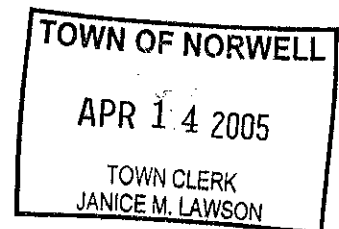
Member Ianiri moved and Member Barry seconded that the Board vote to accept the March 23, 2005, March 24, 2005 and March 29, 2005 minutes. The motion was approved 5-0.

DISCUSSION. Bills. 7:25 p.m.

Member Ianiri left the meeting to attend a joint meeting of the Board of Selectmen and the Community Preservation Committee.

Member Barry moved and Member Turner seconded that the Board vote to approve the following bills:

Monadnock Water:	\$ 5.00
Office Supplies:	\$ 29.28
Patriot Ledger:	\$172.96
Planner (Film):	\$ 9.15



The motion was approved 4-0, with Member Ianiri absent.

DISCUSSION. Trunnel Estates Modification. 7:30 p.m.

The Board discussed Engineer Chessia's request for direction as to how detailed the report on the Trunnel Modification application has to be. The Board directed that the report just address those regulations that are implicated by the proposed changes to the plan. Those changes will include drainage, driveway construction and landscaping requirements. Member Joseph reminded Engineer Chessia to address the existing landscaping requirements that may have to be changed as a result of the proposal.

PUBLIC HEARING. Joshua's Landing. 7:40 p.m.

Member Ianiri rejoined the meeting at 7:40 p.m. All members were present. Engineer John Chessia of Coler & Colantonio was present for the Planning Board. Engineer Michael Carter of GCG Associates, Inc. and Mr. Donald E. Shute of 41 Fox Hill Lane were present for the Applicant.

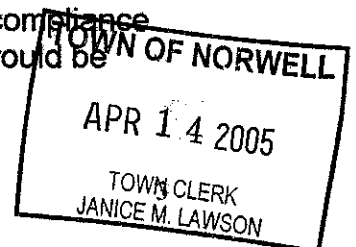
Member Barry read the public hearing notice to open the public hearing and announced correspondence and submittals received since the last meeting, including the most recent plan submittals (dated February 28, 2005 and received on March 9, 2005), the Coler and Colantonio report of March 23, 2005 and the Fire Chief's Memo.

Member Graham emphasized to Mr. Shute and Engineer Carter that a lengthy review process is not what the Board wants. The hope is that the hearing will close this evening or, at the latest, after the next meeting. He reminded Mr. Shute and Engineer Carter that any revised plans must be timely received so that they can be reviewed and a report obtained in time for the Board to consider it before the next meeting.

Engineer Carter presented the revised plans. The road was moved to be directly opposite Trout Brook Lane. This was to avoid the 200-foot river front buffer and to try to provide proper sight distances; however, the traffic report is not ready yet and the full information about sight distances, therefore, is not available yet. The traffic report will provide the 85th percentile speed information.

Engineer Carter presented the latest compliance plan (dated March 7, 2005), which was provided to justify and support the requested waivers. He noted that the plan shows a looped roadway, providing two exits onto Norwell Avenue, and would avoid the request for a dead-end street waiver. He stated that that the applicant could achieve 10 lots under this plan, rather than the 8 that are requested on the definitive plan. He noted that the compliance plan would create two curb cuts on Norwell Avenue, which he does not think is as safe as only one curb cuts, and would create a great deal more impervious surface.

Engineer Chessia noted that it is his opinion that the March 7, 2005 compliance plan is not feasible. He stated that the second loop of the roadway would be



within the 200-foot river buffer and that it would go right through the electric poles. He noted that the pole that would have to be moved is an angled pole that connects to a pole across the street. In his experience the utility companies are very reluctant and often cannot move an angled pole, because they have to match the easement across the street. If that is the proposed option for the compliance plan, the applicant should provide documentation from the utility company to show that the pole can be moved.

Mr. Shute noted that he has had utility poles moved before and it was just a case of paying the cost to do so. To get the extra lots in question, it would be worth it to spend the money. He acknowledged, though, that he was not sure if an angled pole could be moved.

Engineer Carter noted that, in response to Engineer Chessia's March 23, 2005 comments, he prepared a sketch plan that he believes will eliminate the 200-foot River Buffer problem and would avoid the issue of the poles. He agreed to provide a detailed plan for further consideration. Engineer Chessia stated that he would have to review an actual plan.

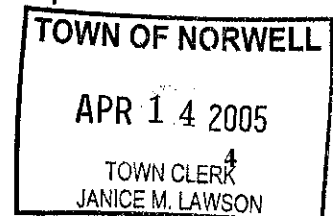
Engineer then addressed drainage issues. He noted that the "soils are not great" at the property and the applicant had to perform more deep hole testing. He analyzed the 500 acres that make up the relevant drainage area for the culvert in question. He asked to meet with Engineer Chessia to discuss the elevations that should be used to support the assumptions included in the drainage materials.

Engineer Carter noted that Engineer Chessia has questioned some of the underlying factual assumptions that were relied upon in the drainage materials. Engineer Carter stated that he is confident that the questions can be satisfactorily addressed.

Engineer Carter noted that the drainage issue is the amount of volume of water that must be held and the length of time that it will be held and the rate at which it will be released. It is a balancing act and he will work to get the right balance.

Member Joseph asked that the issue of the 2-year storm event runoff be discussed. Engineer Chessia stated that, as designed, there would be an increase that would not be allowed. Engineer Carter replied that he can address the concerns and get the project to the required point of zero impact under the DEP Phase II requirements.

Engineer Carter stated that the Traffic Report would be ready tomorrow and discussed the sight distances shown on the materials so far. Member Joseph asked Engineer Carter to present the sight distance plan sheet. Engineer Carter presented the sheet and explained that the sheet is based upon the posted speeds for Norwell Avenue. The Traffic Report will provide the 85th percentile speed soon and he will revise the sight distance sheet.



The Board asked Engineer Chessia to present his March 23, 2005 report and summarize the intractable issues, versus the issues that appear to be resolvable.

Engineer Chessia raised ownership issues as to the adjacent parcel which would add a driveway onto the subdivision way. The Board discussed whether the new parcel should be added to the subdivision or not. Mr. Shute stated that this parcel was sold to Mr. Peter Dillon, who is willing to have the driveway relocated and will provide a letter to that effect. The planner agreed to explore with the Building Inspector whether Mr. Dillon's lot would provide legal access if not part of the subdivision, i.e. if an easement over the non-buildable parcel was sufficient. It was noted that if more land is added to the subdivision, it will have to be readvertised.

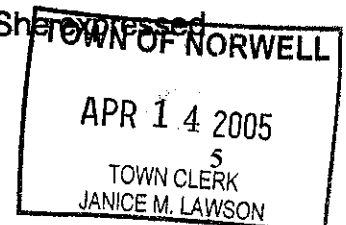
The Planner noted that Mr. Shute needs to address who the applicant and the owner(s) of the property are. The application says one thing, the subdivision plan states something different and the assessing records say a third thing. Mr. Shute responded that the property has been the subject of many conveyances and that the property has been conveyed yet again to two different trusts. Neither of these trusts is an applicant or an owner who has assented to the application. The Planner noted that Mr. Shute needs to provide an affidavit as to the current ownership of all of the relevant land and then will need to amend the application and the plan to make sure that the information provided is accurate and that the proper assents to the application have been provided. Mr. Shute stated that he would provide this information. An incorrect assessing reference on the plan was noted and Engineer Carter stated that this would be corrected.

Engineer Chessia reviewed the drainage for the project. He noted that the design of the basins provides for a 1-inch weep hole. He gave the opinion this is an unacceptable design as it is too small to maintain and will plug up. Member Joseph asked about the minimum size permissible and Engineer Chessia said that it must be big enough not to be clogged by a tennis ball or a soda can, at least. He noted that more contours at the placement of the pipes are necessary to make sure that the proper pitch is achieved to allow drainage to occur and allow the basins to dry out.

Member Barry presented a series of written comments and gave a copy of his comments to Engineer Carter and to the file. (A copy of the comments is attached hereto.)

Member Ianiri noted what a tight fit the compliance plan seems to be and noted that it is important that the compliance be feasible. He noted also that he does not like the idea of two curb cuts onto Norwell Avenue.

Member Joseph noted that she agrees with all of Coler & Colantonio's comments. There would have to be a new scenic road hearing. She expressed



concern about the rate of run off and the need to comply with DEP Phase II Stormwater Policy. She expressed dismay that many of the details in the plan are not correct. Engineer Carter asked for examples and Member Joseph stated that the symbols don't match, there are no match lines, there are contours that just disappear, the existing utilities for the existing homes are not fully detailed, the plan references the "Town Engineer" and Norwell does not have a town engineer. Engineer Carter noted that the 134-contour just disappears and he will fix that. He will provide the vertical datum and other information as well.

Member Turner noted that she has logistical concerns regarding the relocation of the septic systems and asked whether they have been used. Mr. Shute stated that the houses are heated and were hooked up to water, but that the water has been shut off for the winter. The workers on site have been provided with a porta potty, so they should not have used the bathrooms. The houses have never been occupied.

Member Turner asked about the water easement proposal. The Water Department's request for an easement was reviewed. Mr. Shute stated that he wants to provide what has been asked for.

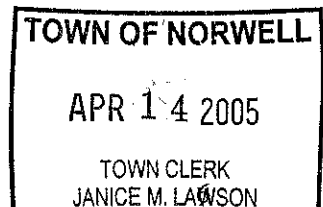
Mr. Lewis W. Clark of 129 Mt. Blue asked where the new water easement would go and where the new septic systems would be. The water easement location will be determined at a later date and the Board of Health will have to review the septic locations.

Mr. Ernesto Garzon of 117 Norwell Avenue asked about the traffic report and whether the Fire Chief has commented on the plan and the length of roadway. He was told that the Traffic Report should be ready by the next meeting and the Fire Chief has stated he has no concerns with the plan.

Member Joseph asked that the Board discuss waivers briefly.

Member Joseph noted that she is not in favor of waiving the requirement that trees greater than 24-inches in caliper be shown on the plan, as to the roadway layout. The Board agreed that this waiver is never given. Engineer Carter stated that the plan would be revised to comply with this requirement and the request for a waiver withdrawn.

Member Joseph noted that she is not in favor of waiving the scale requirements. Member Graham noted that Engineer Chessia needs the detail asked for. If the applicant wishes to provide one large plan and then two smaller plans at the correct scale, then that is acceptable. Engineer Carter stated that the plan would be revised to comply with this requirement and the request for a waiver withdrawn.



Member Joseph noted that silted water is running off the site and asked Mr. Shute what he plans to do about that. Mr. Shute stated that he would fix the problem. Member Joseph noted that a major storm event is expected this weekend. Mr. Shute stated that he would get things under control.

Engineer Carter stated that the applicant wants more time to revise the plans. He was asked how much time he would need and asked to be realistic. Engineer Carter stated that he would need a month to prepare the plan.

Mr. Shute and the Board discussed an extension of the deadline for final action. Mr. Shute provided a written request to extend the deadline for final action until August 5, 2005.

Member Ianiri moved and Member Barry seconded that the Board vote to approve Mr. Shute's request that the deadline for final action on Joshua's Landing be extended to August 5, 2005. The motion was approved 5-0.

Member Ianiri moved and Member Barry seconded that the public hearing on Joshua's Landing be continued to July 6, 2005 at 7:30 p.m. The motion was approved 5-0.

A draft decision, dated March 30, 2005, prepared by staff, was distributed to the Board and to Mr. Shute and Engineer Carter.

PUBLIC HEARING. Turner's Way. 8:55 p.m.

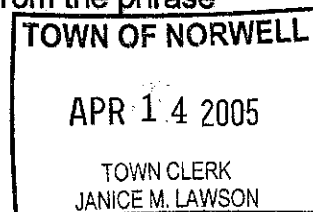
All members were present. Member Turner recused herself and left the meeting.

Member Barry read the public hearing notice to open the public hearing and announced correspondence and submittals received since the last meeting.

Applicant David Turner stated that he believes that the plan is finished. Engineer John Chessia stated that he has no comments to bring to the Board's attention, except that the typo regarding the layout bearings must be corrected on the final plan.

Member Joseph noted that she has corrections that she wants to see made on the final plan. She wants the plan set to be renumbered so that the Construction Plan is part of the plan set and so that the plan set sheets are all consecutively numbered. The correct note, that 6-inches of loam, rather than 4-inches of loam, shall be provided has not been taken care of and should be on the Mylar on Sheets 11 and 12.

The Board reviewed Town Counsel's comments on the Homeowners Association Trust. The Applicant will remove the word "authorized" from the phrase "authorized agent."



Applicant Turner stated he had nothing further to present.

Member Ianiri moved and Member Joseph seconded that the Board voted to close the public hearing. The motion was approved 3-0, with Member Barry ineligible as he missed one meeting and with Member Turner absent.

Staff distributed a draft decision, dated March 30, 2005, to the Board members and to Applicant Turner.

DISCUSSION. Pending Draft Decisions. 9:15 p.m.

John Neil Drive Extension Subdivision Deliberations.

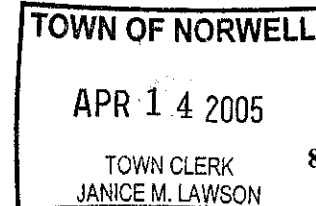
All Board members were present. The Board discussed the March 30, 2005 final draft prepared by staff. A March 25, 2005 draft was distributed previously that incorporated all of the votes taken by the Board on March 23, 2005. The March 30, 2005 draft corrected a few typographical errors that Member Joseph found in the submittals section of the March 25, 2005 draft. None of the corrections changed the meaning of any sentence.

Member Joseph went over three sections in the findings of fact section of the March 25, 2005 that she thought might need correcting. Under the finding for Regulation §3.1.3 for ZBL §2433, Finding 3.C, the word "not" was missing from the requirement that Lot 3 'not be built upon until the as built for the drainage basin is finished.' The Board agreed that this was a typo and agreed that it should be corrected.

Under the findings for §4.7.2 and §4.11.1.A, Member Joseph stated a concern that the stations of the roadway referred to in the March 25, 2005 Draft may not be accurate. The Board discussed this issue and determined that the references to the specific stations should be removed from the relevant motions and findings to avoid confusion, as they are not necessary.

Under the conditions for approval, in the March 25, 2005 draft, Member Joseph noted that she was concerned under Condition 4.A that the option of silt sacks should be added. The Board discussed this issue and determined that this option is already allowed under the condition as drafted. The request for the change was withdrawn.

Member Joseph noted that she wished to discuss the finding made on March 23, 2005 under Regulation §4.20 as to drainage. She stated that she potentially wanted to reconsider whether the decision should be a conditional approval or a denial, since the Board found, under §4.20, that the Applicants did not meet their burden to establish that the drainage would work. Member Graham stated that



he had this concern as well and asked the Planner about the procedural aspects of granting a condition approval where the Board wants new information.

The Planner noted that the Board found that the application and plan do not comply with the requirements of Regulation §4.20 for the reasons stated in the February 17, 2005 Coler & Colantonio technical report. The February 17, 2005 report states, in part, that more information would be necessary from the applicants in order for them to satisfy their burden of proof that the drainage system would work. This is a Coler & Colantonio comment that has existed from the beginning, meaning since at least September of 2003.

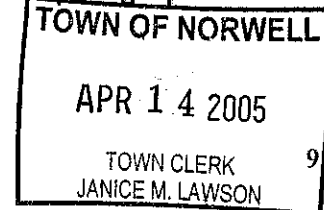
In general, once a public hearing is closed, a board cannot take accept new testimony and make a subsequent adjudication on the new testimony that would influence or change the Board's decision. The Board certainly can impose conditions of approval that must be carried out on a revised plan set, provided that the conditions are basically ministerial in nature. For instance, the Board can impose conditions requiring that the applicant list the conditions of approval on the plan, change the loam specification from 4 inches to 6 inches of loam, etc. A problem arises though, if the Board states that it needs more information from the applicant in order to determine whether the approval is proper. All information to support the Board's decision to grant or deny approval should come into the Board through the public hearing process, so that everyone is informed as to what information is being considered.

Once the Board grants an approval, it should be final in nature and not rest on new testimony that must be received later to support it. If there is an approval vote and then new evidence (which should not be accepted) is received and considered and the Board determines that the new evidence warrants a denial because the evidence does not support an approval, then the Board would be faced with trying to continue the public hearing process during the endorsement phase.

If the Board wishes, it could review the findings that it made under §4.20 as to drainage and determine if the drainage requirements have been satisfied. If so, and no new information were necessary, then that would be fine. If the Board determines that it does need more information and more engineering review to support an approval, then the Board should take that into consideration.

Before finishing the discussion on drainage and possible reconsideration of the decision, the Board finished reviewing the rest of the March 30, 2005 decision.

Member Ianiri moved and Member Joseph seconded that any approval and endorsement of the February 10, 2004 Subdivision Plan, as revised through February 5, 2005, that may be granted shall be subject to the terms and conditions of approval set forth in the March 30, 2005 draft as paragraphs 1-47.



The motion was approved 5-0. (N.B. This was a duplicate of a motion taken on March 23, 2005.)

The Board continued to discuss the drainage issue and the procedural problem inherent with wanting more information to support an approval of the project after the public hearing has been closed.

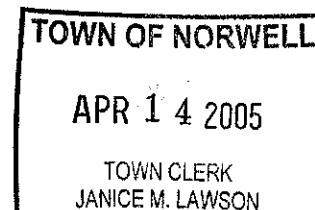
Member Turner reviewed the February 17, 2005 Coler & Colantonio report as to the outstanding drainage issues and asked who pushed to close the public hearing, rather than give the applicants another chance to revise the drainage submissions. The Board discussed the fact that the applicants specifically asked that the hearing be closed and that the Board asked the applicants specifically asked if there was anything new that they wanted to present to the Board and they responded that they did not. The Board members noted that the public hearing was kept open for two years (since April 7, 2003), and that 18 meetings were held as part of the public hearing and many continuances were granted by the Board to the applicants for the express purpose of allowing the applicants more time to revise the plans.

Member Turner noted that the applicants had to change engineers mid-stream. The Board member discussed the fact that the new engineer submitted her first plan during February 2004, more than a year ago, but the drainage problems still were not resolved. The Board members discussed the need for the Board to close public hearings more quickly and not drag things out. Member Ianiri stated that he thought that every effort was made by the Board to afford due process to the applicants and that the Board went above and beyond what was required to give the applicant so many chances to provide the necessary information and he is very disappointed that the information still was not fully provided. Member Graham noted that, at some point, the Board has to close the hearing and deliberate on what has been provided and make a decision.

The Board members reviewed the February 17, 2005 drainage comments from Coler & Colantonio, which state in eight places that outstanding comments previously made regarding drainage issues still had not been addressed satisfactorily.

Member Joseph moved and Member Ianiri seconded that the Board reconsider the Board's vote of March 23, 2005 to grant an approval, with conditions, for the project. The motion to reconsider was approved 4-1, with Member Turner dissenting.

The Board continued to discuss the drainage issue and that drainage is always the most critical issue in any subdivision project in Norwell. The Board discussed its great reluctance to deny the project. Member Turner noted that if the project is denied, the applicants would have to reapply under the new subdivision regulations.



Member Joseph moved and Member Ianiri seconded that the Board voted to deny definitive subdivision approval to the February 10, 2004 Subdivision Plan, as revised through February 2005 for John Neil Drive Extension, for the reasons enumerated in the March 30, 2005 draft, (as amended on March 30, 2005) as to the ways in which the Subdivision Plan does not conform to the Board's regulations.

The motion was approved 5-0.

DISCUSSION. Insurance Issues. 10:00 p.m.

Member Graham noted that he received a telephone call from Ed Dunford of the Board of Assessors, regarding employee car insurance issues. The assistant assessors use their cars to perform property valuations and there have been two accidents in the last year and a half. The Board of Assessors is looking into setting a policy for the Town as to what, if any, reimbursement will be provided to employees for the cost of additional insurance coverage or the cost of deductibles that must be paid. Member Graham reviewed the pros and cons of different approaches to a policy. An employee should have business coverage, which costs around \$97.00 a year. An employer should be even handed in dealing with employees and should avoid the potential of multiple claims and great exposure to liability. There was a discussion as to whether the mileage reimbursement should be assumed to include insurance and damage costs. Member Graham thought it does include this. Member Barry thought that it does not.

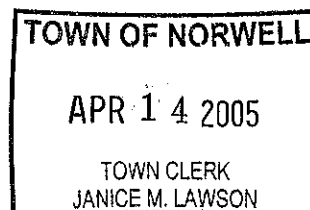
Member Graham said that he would work on helping to establish the policy and keep the Board posted as to the progress on this issue. He noted that, no matter what happens, every employee should be fully informed and aware of the issues, at the point of hire (i.e., that the a car is required and that the employee is responsible for maintaining the necessary business coverage and, if it is the policy that is established, for paying the cost of any deductible.

DISCUSSION. EXECUTIVE SESSION. 166 South Street. 10:10 p.m.

The Town had received a new Notice of Intent to Sell 166 South Street under G.L. c.61A and requested comments from Town Boards.

Member Ianiri moved that the Planning Board go into executive session, not to return to open session, for the purpose of discussing a potential acquisition of land. The motion was approved 5-0, with a roll call vote as follows:

Member Barry: Aye
Member Graham: Aye
Member Ianiri: Aye



Member Joseph: Aye
Member Turner: Aye

DISCUSSION. Adjournment. 10:15 p.m.

The Board adjourned at 10:15 p.m.

I certify that the above minutes were reviewed and approved by majority vote by the Planning Board on *April 13*, 2005.

Richard Parnell Barry
Richard Parnell Barry, Clerk

TOWN OF NORWELL
APR 14 2005
TOWN CLERK
JANICE M. LAWSON