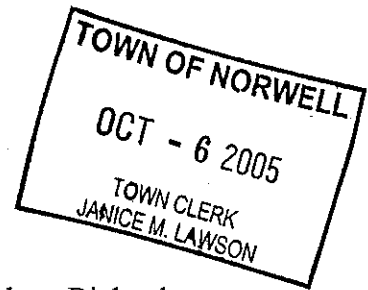


Norwell Planning Board Meeting Minutes  
September 21, 2005 Regular Session



The meeting was called to order at 7:04 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. Draft Agenda. 7:04 p.m.**

Member Ianiri moved and Member Joseph seconded that the Board approve the draft agenda. The motion was approved 5-0.

**DISCUSSION. Minutes. 7:05 p.m.**

September 14, 2005 Minutes.  
September 17, 2005 Minutes.

Member Ianiri moved and Member Turner seconded that the Board vote to approve the September 14, 2005 and September 17, 2005 minutes. The motion was approved 5-0.

**DISCUSSION. Bills. 7:07 p.m.**

Return Review Fees:	10 Cingular Wireless Site Plan Project	\$3,596.82
Office Supplies:	Corporate Express (Date Stamp)	\$ 59.10

Member Ianiri moved and Member Joseph seconded that the Board vote to return the outstanding balance in the review fee account, as set forth above, for the 10 Cingular Wireless Site Plan Project, to the applicant, as the project has terminated and to pay Corporate Express \$59.10 for a date stamp. The motion was approved 5-0.

**DISCUSSION. 630 Main Street. 7:07 P.M.**

The Planner informed the Board that Attorney Walter Sullivan, Sr. has inquired about a potential ANR Plan for 630 Main Street, with the potential of using the provision in G.L. c.41, §81L that allows a division that results in at least one substantial building on each lot that existed prior to the effective date of the Subdivision Control Law in Norwell.

The Planner had an informal meeting with Attorney Sullivan, at his request, and the Planner reviewed each provision of the applicable regulations with him, including the requirement that a note be added to the plan announcing that zoning requirements must be satisfied before a conveyance takes place in reliance upon a division permitted based upon the specific provision of §81L that Attorney Sullivan at issue. Attorney Sullivan

had an issue with the requirement set forth in the regulation. As a result, the Planner, after consulting with the Chairman, consulted Town Counsel, who then had discussions with Attorney Sullivan.

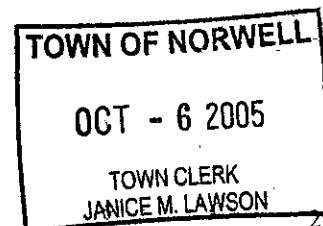
On the afternoon of Thursday, September 15, 2005, Attorney Sullivan delivered a letter to the Planner, together with 10 copies of a draft ANR Plan, and requested a meeting with the Planning Board and Town Counsel: "to discuss and resolve before the formal submission" of the ANR Plan the issues that may be raised by the ANR Plan. The Planner discussed this request with Town Counsel on Friday, September 16, 2005 and Town Counsel advised against the provision by the Board of any advisory opinion or ruling regarding a matter and indicated that he would discuss that view with Attorney Sullivan.

On September 21, 2005, Attorney Sullivan telephoned the Planner and repeated his request for a meeting. The Planner agreed to present his request to the Board, but related to Attorney Sullivan that Town Counsel had recommendation against such a meeting or the provision of any type of advisory opinion. The Planner also informed Attorney Sullivan that no member of the Board had seen the draft plan as yet, nor had the Board discussed his draft proposal. No application or application fee have been received as yet. Attorney Sullivan reiterated during the telephone conversation that the draft plan copies provided on September 15, 2005 were for background purposes and were not a formal submission for action.

The Board discussed Attorney Sullivan's request for a meeting to try to resolve any issues relating to an ANR Plan before the plan and an application are submitted. Member Ianiri noted that there appears to be nothing to discuss with Attorney Sullivan and voiced his view that the Board should wait for a formal submission of an ANR Plan and an application. The other members agreed.

Member Ianiri moved and Member Joseph seconded that the Board voted to refuse Attorney Walter Sullivan, Sr.'s request for an informal meeting to discuss issues relating to a potential ANR Plan before the Plan and an application are submitted to the Board. The motion was approved 5-0.

The Board discussed whether any disposition of the draft ANR Plan is required. The Planner noted that Town Counsel advised that, if a constructive endorsement were a potential, then the conservative approach would be to act on the plan to prevent a constructive endorsement. The Planner noted that Attorney Sullivan has expressly stated, though, in writing and verbally, that no submission was intended by his applicant. The Board determined that it would wait a week, to see if an actual application and plan are received and, if so, then, when acting upon the actual application and plan, the Board could formally note that, to the extent that any prior submission occurred, it would be denied for failure to provide an application, an application fee and the necessary documentation to support it.



Member Ianiri moved and Member Joseph seconded that the Board find that no submission of an ANR Plan has occurred for 630 Main Street and that, therefore, no action is necessary or possible at this time. The motion was approved 5-0.

**DISCUSSION. Pinson Lane. Surety Reduction Request. 7:10 P.M.**

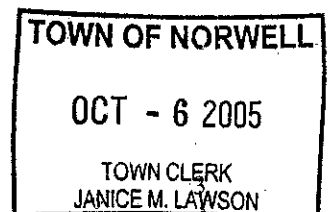
Developer John Tedeschi was present, with Attorney Steven Guard. All members were present.

A package, consisting of the decision approving the project, the restrictive covenant signed by Mr. Tedeschi, the surety instrument, the Coler & Colantonio, Inc. surety reports for 2005, the Board's May 11, 2005 minutes, relevant e-mails, an updated surety checklist prepared by the Planner and a copy of the assessing map excerpt for the property, was distributed by the Planner to all present. The package (except for the e-mails and the September 21, 2005 surety review report and the minutes) was provided to Mr. Tedeschi by the Planner following the August 31, 2005 site walk.

The Planner reviewed the status of the project and the surety reduction request. The subdivision was approved in 1999. The endorsed plan depicts a drainage design element that ties into the Town's Parker Street drainage system. The decision approving the plan required "resolution of the Planning Board's engineers comments...set forth in a letter dated June 21, 1999...." A covenant, signed and recorded by Mr. Tedeschi, recites that he shall "correct any surface drainage problems caused or aggravated by the roadway cut and...correct any drainage problems caused by drainage from the proposed road onto adjoining streets."

During the Winter of 2005, Mr. Tedeschi requested a surety review. The Town holds \$106,000 in surety. On May 11, 2005, the Planning Board met with Mr. Tedeschi to discuss surety issues and review the April 2005 Coler and Colantonio surety report. At the May 11<sup>th</sup> meeting, the Board discussed a number of outstanding issues with Mr. Tedeschi, including the failure to provide the required no activity easement, street lights, homeowners association, contribution to the Pedestrian Enhancement Fund and to correct drainage problems arising from the elimination by the Town of the drainage trench in Parker Street into which the plan proposed to drain overflowing stormwater. Mr. Tedeschi does not have permission to drain into the Town's drainage system. On May 11<sup>th</sup>, the meeting concluded with the Board directing Mr. Tedeschi to research the missing items and to discuss with the Town the potential of purchase of a right for the project's drainage to tie into the Town's drainage system.

On August 31, 2005, the Planner, Mr. Tedeschi and Highway Surveyor Paul Foulsham met at the site to discuss the drainage issues. Later that day, the Planner compiled copies of the decision, the covenant, surety documents and a surety checklist prepared by the Planner and provided them to Mr. Tedeschi for his further review and told him that the surety issue would be scheduled for a discussion with the Board on September 21, 2005.



Chairman Graham asked Mr. Tedeschi to review his progress, since May 11<sup>th</sup>, regarding the missing items and drainage issue identified on May 11, 2005.

Mr. Tedeschi stated that he has discussed the drainage issue with Highway Surveyor Paul Foulsham on August 31<sup>st</sup> and again today. The Highway Surveyor told Mr. Tedeschi today that the Highway Department is neutral on the drainage issue. But, Mr. Tedeschi noted that he did not discuss a potential drainage easement from the Town with the Highway Surveyor because tonight is the first time that Mr. Tedeschi has heard that there is a suggestion that he should explore purchasing such an easement. Member Graham noted that the Board raised the easement issue with Mr. Tedeschi during the May 11, 2005 meeting. The Planner noted that she discussed the easement issue with Mr. Tedeschi as well subsequently.

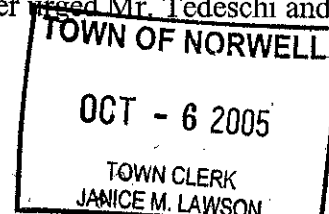
Mr. Tedeschi stated that he feels that he is being penalized because the Town eliminated the drainage trench for Parker Street. The trench was in existence when the subdivision was approved and he relied on it. Mr. Tedeschi agreed with the Board that the project was approved in 1999 and the Parker Street drainage trench was eliminated in 2002 or 2003, before work on the drainage basin for the subdivision was completed.

Attorney Guard stated his opinion that the Town should not be able to revoke its permission allowing Mr. Tedeschi to tie-in to the Town's drainage system. Attorney Guard stated that he reviewed the drainage easements provided by Mr. Tedeschi to the Town and opined that the easements, from Mr. Tedeschi to the Town, provide the right for the Town to allow Mr. Tedeschi to tie-in to the Town's system.

Chairman Graham noted that the easements that Attorney Guard referred to run from Mr. Tedeschi to the Town and not from the Town to Mr. Tedeschi. The issue is that Mr. Tedeschi does not have an easement from the Town that grants him the right to tie the subdivision's drainage system into the Town's drainage system. If Mr. Tedeschi had no right to rely upon the Town's drainage system in designing his project, then the Town had no obligation to maintain the drainage trench in Parker Street or to allow Mr. Tedeschi to tie in to the Town's drainage system, either then or now.

The Board discussed the difference with Attorney Guard between a revocable implied license and a permanent easement and noted that, in any event, the Planning Board had and has no right to grant an easement or even a license to anyone to allow anyone to tie a private drainage system into the Town's system. Approval of a subdivision plan does not create or imply such rights.

Engineer Chessia noted that the drainage system has not been and now cannot be completed as designed and approved because the drainage trench shown on the approved plan does not exist. As a result, the design of the project's drainage system must be modified. The Board noted that such a modification would require, at a minimum, a field change, based upon an engineered plan. There would have to be a decision made as to whether a public hearing would be required. The Planner noted that the drainage basin is located on Lot 1 and Mr. Tedeschi has sold Lot 1. The Planner urged Mr. Tedeschi and



his counsel to review any easement held by Mr. Tedeschi, regarding the drainage basin on Lot 1, to make sure that, if and when a modification proposal is brought forward, all necessary parties have provided assent to the modification.

Mr. Tedeschi stated that he believes that this should be a "grandfathered situation" and that he is appalled that the Planning Board will not return his surety. He stated that he believes his project is completed and he has been waiting for his money to be returned and is angry at the delay.

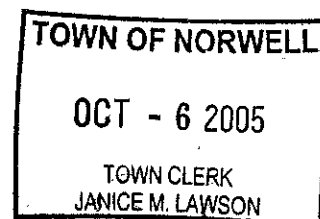
Chairman Graham noted that, as to the delay complaint, all of the issues being discussed tonight were raised by the Planning Board with Mr. Tedeschi on May 11, 2005 and that Mr. Tedeschi has not addressed any of the issues. Member Graham noted that if Mr. Tedeschi had obtained a drainage easement from the Town in 1999 or completed the project, as designed and approved in 1999, before the Town's drainage system was changed in 2002 or 2003, he probably would not be faced with this issue.

Member Turner noted that, when the subdivision way and drainage basin were under construction, she attended a site walk for the project and it was noted then that there were problems with the construction of the basin (failure to provide proper access around the top rim, etc.) and those issues still have not been addressed. In addition, other items required under the decision (street trees and street lights, etc.) still are outstanding and have not been addressed. As result, she noted her objection to Mr. Tedeschi's assertion that the project has long been completed and that he has been wrongly required to wait for the return of his surety funds.

Member Graham noted that the surety amount required to complete the drainage and other required items represents a moving target. It cannot be accurately ascertained at this point and will not be ascertainable until after a plan modification is proposed and approved and until after the proper permission to drain into the Town's system is obtained. Member Graham noted that the Selectmen may agree with Mr. Tedeschi's argument, that the Town is somehow at fault for not having objected in 1999 to the tie-in proposed by the approved design. If so, the Selectmen may be willing to agree to an easement, but it would appear that Town Meeting approval also would be required. The other members agreed.

Engineer Chessia noted that he cannot design a modification for the drainage system; but, if a drainage easement to the Town's system is provided, it would appear to be relatively easy to design a connection from the drainage basin to the Town's system.

Mr. Tedeschi and his counsel agreed to explore the easement issue with the Board of Selectmen and the Highway Surveyor and the research the other outstanding issues, including street trees, which were not waived, before returning to the Board.



**PUBLIC HEARING. Cowings Lane Definitive Plan 7:40 p.m.**

All members were present. Present for Applicant Cowings Lane, LLC were Eugene Mattie, the manager of Cowings Lane, LLC, Professional Engineer Joshua Bows and Senior Project Manager Jack O'Leary, both of Merrill Associates, Inc.

Clerk Barry read the public hearing notice to open the public hearing.

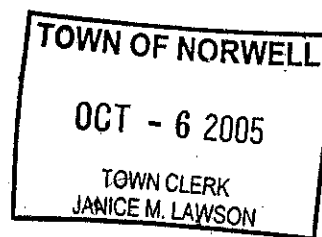
Chairman Graham gave an overview of the subdivision process used by the Planning Board to make its decision as required by state law and local regulations. He explained the public hearing continuation process and that the only notice that would be given would occur at the end of each iteration of the hearing, but members of the public may inquire of the Planning Office as to the date that the hearing is continued to, if they wish. He explained that the issue before the Board is whether the plan conforms to the requirements of the Board's regulations. If it does and no waivers are requested, then the applicant would be entitled to approval. If it does not, then the Board will discuss any potential waivers and determine whether it is in the public's interest to grant the waivers. He noted that the procedure that the Board will follow is for the applicant to make a presentation, followed by a presentation by the Board's engineering consultant, followed by questions by the Board and then followed by questions and comments by the public.

Clerk Barry announced the correspondence received. The Planner noted that a revised application was received today and it was duly signed by the trustees of the two trusts that own the land and the manager of the applicant LLC and the LLC is registered on the Secretary of State's website, as is the manager who signed the application.

Applicant's Presentation. 7:50 p.m.

Project Manager O'Leary gave a brief overview of the project, noting that it would create 7 lots and restrict 11 acres of land in a conservation trust and that the approach is to have fewer houses, a shorter road and to minimize the impact on the environment. He noted that the preliminary subdivision plan has been approved. He noted that an engineering meeting has been scheduled for September 30, 2005, to review the comments made in the peer engineering review performed by Coler & Colantonio, Inc.

Engineer Bows reviewed the technical aspects of the plan. He stated that the lots are being designed so that no mounded septic systems will be required. He noted that a waiver of the dead-end street limit is requested and that the applicant will apply for an Order of Conditions from the Conservation Commission. A NPDES Permit will be required and that one will be obtained. He noted that the proposed street trees would consist of 25 Cleveland Pear trees.



Planning Board's Engineering Consultant's Presentation. 8:00 p.m.

Engineer Chessia reviewed his September 14, 2005 report and explained that the format required by the Board requires his report to review the plan for compliance with each and every regulation. So, a lengthy report does not indicate that there are insurmountable problems with the plan, only that there are many regulations that must be complied with and that must be discussed.

Engineer Chessia noted that many of the issues set forth in his report can be addressed through relatively simple revisions to the plan, but that some of the additional information that must be provided may take some time to compile and supply. He noted that the major issues are as follows.

- Construction Plan.

The applicant needs to provide a construction plan. It is appropriate for an applicant to wait until after the beginning of the public hearing to provide the plan (until after some of the waivers are discussed). But, at this point, the applicant needs to provide the plan to allow an effective review to progress.

- Traffic Study

The project is relatively small and there probably is such a minimal impact on traffic from the 6 new houses that there is no need for a level of service analysis; however, the sight distance evaluations should be provided.

- Waivers

The list of waivers requested is incomplete. The applicant should make sure that the waiver request is cross referenced with the regulations, as a waiver request may implicate more than one provision in the regulations.

- Hydrology Concerns

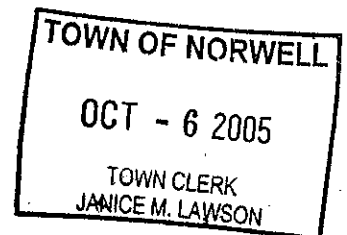
The house locations and proposed grading must be provided to allow proper evaluation of the drainage divides.

- Infiltration Trench

The proposed infiltration trench appears to be inadequate.

Planning Board Member Questions and Comments. 8:15 p.m.

Member Turner asked how the conservation area would be restricted. Mr. Mattie stated that there are two non-profits that are interested in taking the donation of the land. He



does not intend to do a restriction with the State as the approval process takes too long. Also, access to the public is not proposed.

Member Ianiri noted that he would want to make sure that conservation trust that takes the land has a process in place to annually inspect the land to make sure that no encroachment or dumping occurs. Mr. Mattie stated that he had no problem with that, provided that the land remains private.

Member Ianiri asked about the drainage issues. Engineer Bows stated that he has reviewed the Coler & Colantonio report and believes that all of the drainage issues can be addressed. He believes that the design already satisfies Stormwater Management Policy.

Member Ianiri urged the applicant to request permission from the abutters to allow access so that the drainage issues can be fully evaluated and addressed.

Member Joseph asked about the status of the wetland line. Engineer Bows stated that the applicant has not filed with Conservation yet, but will soon. She asked about the lot line configurations for the conservation parcel and Mr. Mattie stated that the lines are driven by the donation requirements.

Member Joseph asked if either the drainage access for the drainage basin or the drainage basin overflow would create a point source for the wetlands in the back of the property. Engineer Bows stated that they would not.

Member Graham noted that the applicant should discuss the access way with the Conservation Commission. Since the access way would be near a wetland, the Commission may want the way paved to avoid gravel moving into the wetland.

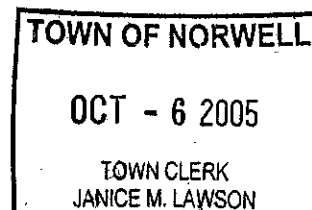
Member Joseph noted that she is concerns about the flat nature of the cul-de-sac and wants to make sure that ponding is avoided. This is a recurring problem with projects that have been approved. She wants to see the 1% slope requirement upheld for the pavement and for the berms.

Member Joseph noted that she is not in favor of 26 trees of the same species as blight can wipe them out and she recommended that the strength of the trees proposed be researched carefully, so that they will last. She noted that the landscaping plan has inaccurate Latin names and that this should be corrected.

Member Joseph noted that she believes that Sheet 12 sets forth an improper haybale detail cross section and does not allow for soil collection.

Member Joseph noted that the plan does not depict the required 18-inch berms.

Member Joseph stated that the planting notes should be clarified as to whether there will be a landscape architect. If so, the sheet should be stamped. Detail should be provided as to whether the site is moist or dry.





Member Joseph asked about construction sequencing and how drainage would be addressed during construction. Engineer Bows stated that a construction plan will be provided and that there will be a temporary drainage basin. It is proposed to be located within the site of the final basin, just not to full grade. Then it will be cleaned out and finished. Engineer Chessia noted that he does not recommend that this procedure be used as the temporary basin should be higher up and then the final basin can be finished and planted and be established before it is used. If the basin is on line before the plantings are established to stabilize it, it is almost impossible for the plantings to take. Mr. Mattie objected to the idea of taking down trees to provide for a temporary basin. Engineer Chessia explained that he is talking about an area that would have to be cleared anyone. Mr. Mattie agreed to explore that proposal.

Member Joseph asked how many trucks would be required for the cut and fill and whether a condition to avoid trucking during school bus hours could be negotiated. Mr. Mattie said that he would think about this.

Member Joseph noted that the notes on Sheet 15 are inconsistent. If there is not a construction trailer on site, how will the plans be maintained at the site.

Member Barry asked if the existing home will remain. Mr. Mattie explained that it could remain for a year and then there is a question as to what will happen to it.

Member Barry asked that the infiltration trench be explained.

**Waivers. 8:40 p.m.**

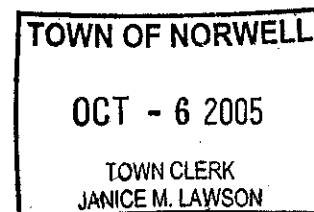
The Board discussed the requested waivers and gave a sense, but not final votes, as to whether specific waivers are acceptable.

Dead-End Street Maximum of 550 Feet. §7B.1

The applicant sees a waiver to allow the dead-end to be 635.16 feet. Member Graham stated that he would be disposed favorably toward the request, based upon the public interest served by preserving more than half of the available land, thus protecting the water supply, conservation interests and keeping the density of the lots to be served by the roadway to a minimum. The other members agreed that the requested waiver appears to be in the public interest, for those reasons.

Centerline requirements. §7A.8

Engineer Chessia opined that the requested waiver appears unnecessary. Member Joseph indicated that she wanted to defer discussion of this item until after the sight distance data an evaluation are provided.



Sidewalks. §7C

The Applicant wants to eliminate sidewalks completely.

Member Barry stated that he would want to see a sidewalk on one side of the street and around the cul-de-sac. Members Graham, Ianiri and Joseph agreed. Member Turner stated that she would like to see a walking path on the adjacent easement area. Mr. Mattie stated that there is no legal right to do so.

Mr. Mattie asked whether the Board would allow a flat, grassed sidewalk to assist with the conservation-minded approach of the subdivision. Member Joseph responded that, if that were proposed, there would have to be specific maintenance costs that were expressly assigned and provided for as maintenance would be expensive. Member Joseph noted that Mr. Mattie may wish to research the idea of grass pavers.

Catchbasins every 200 feet. §7C.

A waiver is requested to reduce the required spacing. Engineer Chessia recommended that the discussion on this item be deferred until additional information is available.

Topography Detail. §7A.25.3

Engineer Bows noted that the data requested can be provided for the front of the development and that he would adjust the waiver to be a partial waiver for the back of the project, which will not be disturbed.

Soil Evaluations for roadway location. §6.4.4-22.

Engineer Chessia recommended that testing of the roadway location be done. It is important to know what is under the road. Member Joseph noted that she opposes the requested waiver.

Engineer Bows requested that the testing not be required until construction. Member Graham noted that all data must be provided before the public hearing is closed.

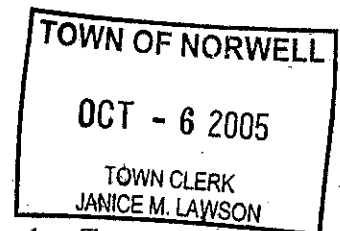
Features. Contour Details. §6.4.4.15, 20a and 20c

Member Joseph requested that the discussion regarding these waivers be deferred until after the additional topographic data is provided.

Width of Pavement. §7A.4

The Applicant seeks a waiver from 26 feet to 23 feet.

Member Ianiri stated that he does not have a problem with 23 feet. Member Turner stated that she does not have a problem with 23 feet, provided that a full cul-de-sac with



26 feet of paved width is provided, to guarantee that emergency vehicles can turn around. Member Joseph noted that she would prefer a 24-foot wide road. Member Turner noted that the full impact of the pavement issue cannot be decided without discussing the final determination on the sidewalk waiver request.

Vertical Granite Curbing. §7A.20.

Member Graham noted that he is not sure that he could vote to grant such a waiver. Member Barry stated that he would oppose such a waiver. Member Joseph stated that she wants the granite at the entrance and cul-de-sac as required in the regulations. Member Ianiri indicated that he wished to seek granite in the required places, including at curves and slopes. Member Turner stated that granite should be required at the entrance and for all curves and slopes and at the cul-de-sac.

Tree Setback. §7H.5

The Board noted that it has been asking for a ten-foot wide tree planting easement, outside of the right of way. This prevents conflicts with the utilities. Mr. Mattie said that he did not want to have to cut trees to put tree in and that he wanted to coordinate the trees with the stonewalls that are to remain. Engineer Chessia noted that the existing woods could be left alone and then the required trees could be put elsewhere. Member Turner noted that she would want to see the trees that are in place that are going to remain be selected and noted on the plan so that they are not cut later.

Traffic Impact. §6.4.7

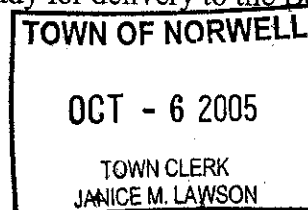
The members indicated that they would be inclined only to require that the sight distance data be required to make sure the 85<sup>th</sup> percentile ASHTO standard is satisfied and that the LOS data likely would be waived.

**Public Comment.** 9:10 p.m.

Mr. Christopher Dye of 232 Summer Street. Mr. Dye noted that he formerly lived at Ford's Crossing and the Town plowed the sidewalk, but the children still played in the street. He commended Mr. Mattie for all of the green space that is proposed to remain in the project and for the understated look that is proposed as no grand entrance is planned, etc. Mr. Dye stated that he fully supports the proposal.

Mr. Paul Narkiewicz of 194 Summer Street. He noted that he would like to reduce the current flooding onto his land. Member Graham noted that the post-development stormwater runoff cannot exceed the pre-development runoff. Member Ianiri noted that a developer has no obligation to fix an existing problem, but has the obligation not to make an existing problem worse.

The Applicant indicated that a continuance to allow a revision of the plan is requested. Engineer Bows indicated that he could have revisions ready for delivery to the Board and



Engineer Chessia by October 19<sup>th</sup>, in time for a continued public hearing on November 9, 2005. The deadline for final action is December 30, 2005; however, the Board saw no need for a continuance at this point.

Member Ianiri moved and Member Joseph seconded that the public hearing for the Cowings Lane Definitive Plan be continued to November 9, 2005 at 7:30 p.m. The motion was approved 5-0.

**DISCUSSION. Stormwater and Cluster Subdivisions. 9:20 p.m.**

The members discussed the need to set up a Saturday workshop, rather than try to discuss planning issues late in evening. The members agreed to meet on October 22, 2005 at 10:00 a.m. for a few hours.

**DISCUSSION. Adjournment. 9:25 p.m.**

At 9:25 p.m., Member Turner moved and Member Ianiri seconded that the Board vote to adjourn. The motion was approved 5-0.

I certify that the above minutes were reviewed and approved by majority vote by the Planning Board on October 5, , 2005.

  
~~Richard Parnell Barry, Clerk~~

*Bruce W. Graham, Chair*

