



TOWN OF WEARE
PLANNING BOARD
ZONING BOARD OF ADJUSTMENT
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Office Hours:
Monday
thru
Friday
8 AM – 4:30 PM

**PLANNING BOARD
MINUTES
NOVEMBER 15, 2007
(Approved as amended 2/14/08)**

PRESENT: Paul Morin, Chairman; Frank Bolton, Vice Chairman; George Malette, Secretary; Craig Francisco; Tom Clow, Exofficio; and Neal Kurk, Alternate.

GUESTS: Erik Hagstrom; Robert DeStefano; Steven Whitley; Jeffrey Wright; Heather Buckley-Wright; Shannon Buckley-Wright; Cheryl Wright; Nicholas J. Tela; M.R. Dahlberg, LLS; Don Duval; Jan Snyder; Peter Ashworth; David Erickson; David Bell; John Flanders; Art Siciliano.

I. CALL TO ORDER:

Chairman Morin called this meeting to order at 7:00 PM at the Weare Town Office Building.

II. APPROVAL OF MINUTES:

NOVEMBER 8, 2007 MINUTES: Chairman Morin asked the board members if they were ready to act on the November 8, 2007 minutes. Chairman Morin stated that this gentleman has some sort of an objection with that. Mr. Wright responded, it is not actually the November 8th minutes but the minutes that were approved at that meeting. Chairman Morin stated that is not something that we are doing at this time. Mr. Wright stated that he was informed that the November 8th meeting was closed. Chairman Morin asked Mr. Wright to clarify the issue because he is confused because the only minutes the board has on the agenda to approve are the November 8th minutes. Mr. Wright stated that prior to that you approved the minutes from the last meeting on November 8th and he was told meeting on November 8th was closed. Chairman Morin asked which minutes. Mr. Wright stated the October 25th minutes. Chairman Morin asked, you said that meeting was closed? Mr. Wright responded, that it was closed to the public. Chairman Morin responded, no sir. Mr. Wright added, that was what he was informed over the telephone. Chairman Morin stated that you were informed incorrectly all of our meetings are open to the public unless we call legally to go into a closed session. Mr. Wright stated the minutes that were approved from a prior meeting to November 8th are inaccurate and he has the tapes to prove it. Chairman Morin stated that if you want to bring that up, you can schedule something with us and we can bring that up but that is not something that is on the

agenda tonight. Chairman Morin stated that was fine and we are going to start out with the hearings first tonight.

IV. PUBLIC HEARINGS:

ERIK HAGSTROM REVOCABLE TRUST – SUBDIVISION (CONTINUED HEARING), 422 FLANDERS MEMORIAL ROAD, TAX MAP 407-069:

Chairman Morin opened this hearing at 7:02 PM. Art Siciliano presented the application on behalf of his client. Chairman Morin stated that we have an application in front the board that has not yet been accepted as complete. Mr. Siciliano responded, that is correct. Chairman Morin asked Mr. Siciliano to, other than whatever comments you need to make, to try and concentrate on that up front. Mr. Siciliano stated that at the October meeting there were some outstanding items that he would like to go through. The first item was to demonstrate safe driveway access for the proposed lot. The lot will have proper sight distance if they remove the garage, which is why that was a question. The second item was the leach field locations. He did show a 4K area in the back. Mr. Siciliano stated that he did meet with the Conservation Commission on this plan and they wanted an alternative area for the leach field rather than in the back and running a septic line. Mr. Siciliano and his client have come up with an alternative area nearer the proposed house location. Those were the only two issues that he felt were needed to accept the application. Chairman Morin asked if there was a note on the plan about the driveway having to conform to the maximum 10% grade. Mr. Siciliano responded that he could add that. Chairman Morin stated that all the items 2-9 were previously granted a waiver which would carry over to the final review. Frank Bolton stated that in reviewing the October 25th minutes and on page 19 the Wright's had concerns about the wetlands and he wondered if they had been addressed. Chairman Morin asked if the question is that these other items brought up by the abutters or board members impacting the completeness of the application. Mr. Bolton responded, yes. Chairman Morin added that the application itself must meet the checklist and the whole point of that is to find out if we have the information necessary in front of us to begin the process of deciding if the plan before us has any merit or not, as we go through that it may be that more information may be required. The acceptance of the application gives the board the jurisdiction to determine if we have enough information to get the process started and that is what we are to focus on now. As far of Chairman Morin could see from the checklist that we have into consideration those items that have been waived other than a note on the plan regarding the driveway, which it is in our prevue to waive that requirement as long as we put them on notice that we are going to be looking for that note. Chairman Morin didn't see anything else outstanding in order for the board to start real question, answer and deliberation stuff. Frank Bolton moved to accept the application as complete; Craig Francisco seconded the motion. Discussion: Chairman Morin stated that before the board votes on this he did receive some correspondence on this point and he would like the board to be informed before a vote was taken. Chairman Morin read the majority of the letter dated November 15th from Attorney Jed Callen on behalf of Mr. John Flanders. The attorney

questioned if the application before board is a completed application and he pointed to sections of the subdivision regulations for his reasoning. The other issue is that the plat does not contain the seal and signature of Tom Carr, the certified wetlands scientist. The rest of the letter goes on to talk about other issues that are not items required for a completed application but could be discussed during the final review.

Attorney Steve Whitley interrupted and stated that he is present to speak on that letter and he would like the Chairman to read verbatim the entire letter. Chairman Morin asked Attorney Whitley to wait a moment and thanked him for letting him know he was present. Chairman Morin then asked the board if they had an issue to allow Attorney Whitley to speak on the letter but keeping it only to the first part where it pertains to the completeness of the application. The board allowed Attorney Whitley to address the board.

Attorney Whitley thanked the board and stated that he has additional copies of the letter for all the board members and the original for the file. Attorney Whitley stated that he was just going to summarize what the letter said. It is their feeling that the application did not have the required information to be considered complete because it didn't contain the Appendix 4 items and nor was the seal and signature of the certified wetlands scientist on the plan. Chairman Morin asked Attorney Whitley what items in Appendix 4 he was referring to. Attorney Whitley responded that not all the items represented are in the file. Chairman Morin responded that when it comes down to an whether we have a completed application or not is going back to everything that is on the checklist but when it comes down to things that are really of very minor concern, the question is whether it is meaningful in terms of your client to whether they were not provided full access and opportunity or if is this being fast tracked in way that it is unfair.

Attorney Whitley responded that the main item that they would like to bring to the boards attention is the last plan that they have didn't indicate test pits and he hasn't had a chance to review the most recent plan to see if it contains them or not. Chairman Morin asked if he was referring to their location. Attorney Whitley responded yes, correct or if they are even represented on the plan or not. Mr. Siciliano stated that they still have to obtain State Subdivision Approval but was not going to spend a great deal of time and money until the application was accepted as complete. Attorney Whitley stated that is the only specific one that he can point to right now among Appendix 4. Chairman Morin stated that the letter refers to a list of other items, different sections, is there anything subsitive in any of those? Attorney Whitley responded that the references to the subdivision regulations all require that all the Appendix 4 items be received in the file for the application to be complete. He was not sure if that was Chairman Morin was referring to or not. Chairman Morin responded that it talks about the signature of Tom Carr. Attorney Whitley stated that is right the last plan they have does not contain the signature and stamp and to his knowledge his client has not gotten the

notification 21 days prior to hearing that the materials have all been received and all comply with the subdivision regulations.

Chairman Morin asked Attorney Whitley if his client is supposed to receive notice that everything has been received or is your client supposed to receive notice that there is an application on that property to which he abuts. Attorney Whitley responded that he is not sure. Attorney Whitley continued, the last time his client went in to see on the documents on file. They asked for the most recent documents that have been submitted and they weren't given any of the appendix 4 items.

Chairman Morin stated that he needs to know specifically all of what you contend is outstanding in order make for a complete application. Chairman Morin stated I have the absence of test pits, what else do you have? Attorney Whitley responded correct. Attorney Whitley added the plan they have doesn't have the seal and signature of the wetlands scientist or licensed septic designer. Those are the only specific items related to the 21 day notice.

Chairman Morin asked Mr. Siciliano why he didn't feel it was necessary to do test pits. Mr. Siciliano responded that he knew he was going to have to do them at some point, as he has to apply for State Subdivision Approval.

Jeffrey Wright asked if he could speak. Chairman Morin stated that he does not want to go opening up the public hearing until after the board takes a vote. Mr. Wright stated it is in direct result of what you are talking about. Chairman Morin allowed Mr. Wright to speak from the podium. Mr. Wright stated that five days after the last meeting where we were all together he went to Naomi and got a copy of that plan and that copy of that plan is sitting in four sections the way Naomi copied it in his car and that seal from the wetlands scientist is not there. The matter is that it is not there, that means it is not complete and it wasn't there for him to pick up with the stamp on it. He had to call Mr. Carr.

Neal Kurk asked if the absence of a test pit does any way compromise the abutter's ability to understand the application or present reasonably objections or comment. Craig Francisco stated that the only issue he can see with the lack of test pits would be ledge close to the surface to where you wouldn't be able to get a septic system design. Close to the surface he means 18 inches and that is the only real issue with lack of test pits. Mr. Kurk added, so if there were test pits then the abutter's site indicated for the leach field is viable, without the test pits the abutters can not know whether it is viable or not, therefore if they want to comment on it that would be a very difficult position. Especially if the approval by the State would come after we approve the application. Mr. Siciliano responded that typically they show the test pit location but it is rare that the test pit data on a one lot subdivision is reviewed by the board. Frank Bolton stated that test pit is really the only issue we are down to because the test pits because the seal and signature to him is really not an issue. There is a 4K area shown on

the plan for each lot, just not a test pit. Chairman Morin stated that to him what this comes down to is the checklist is our tool. Our tool that we devised and we say we want a certain minimum amount of information presented otherwise we are wasting our time. If we don't have enough before us to really talk about in an informed sense about what it is that their applying for. That is the question that is before the board.

Neal Kurk stated that there is a reason for the checklist and why we wanted that. It seems to Mr. Kurk that if in other cases we didn't feel it was particularly relevant because there was plenty place or no one raised the issue that would be one reason in a particular case to ignore it. But where we know abutters are concerned about this and have raised the issue and presumably once the test pit results are available will attempt to use them to raise issues it seems to him that in this case we should be requiring that. In other words the normal practice doesn't apply to the situation, where an abutter has expressed a very significant interest in it.

Chairman Morin responded that he is not saying that we wouldn't require test pits and prove to us in a very limited area that a leach field is viable. He is not saying that we would be requiring that. He is saying is it needed for the board to get into this kind of discussion, we are simply voting on if we have enough information to get into those types of discussions. It would appear that it could be challenging and he would want to see information that it can be done.

The board voted on the motion to accept the application as follows: 3 in favor (Morin, Francisco and Malette) and 2 opposed (Bolton and Clow). The application is now accepted as complete.

Jeffrey Wright stated that he didn't feel the application was complete because the property only shows 200 feet of frontage where he should have 250. If that is the more stringent and he has less than that on both pieces of property, because now both pieces of property apply, then there can't be a subdivision. Second, in order to subdivide in the rural agricultural area you must have at least 5 acres. That means he has to have 10 acres of land there since both properties go into the rural agricultural zone. He doesn't. Thirdly, on the Weare tax maps, Mr. Hagstrom is paying taxes on 6.6 acres, where did he come up with 9. There is no documentation of those other acreages on the property ever being sold. Where did they come from? Mr. Wright stated that he has checked all the way back to 1911. That property does not exist on any deed that goes to Mr. Hagstrom. The fact of the matter is that deeds, on property lines, on maps by the Town the property that has been added to that acreage doesn't exist and doesn't belong to him. Nor is there any record from 1911 that it ever belonged there. So where did this mysterious 3 acres come from.

Chairman Morin asked Mr. Wright, so are you saying that some of the land that is shown on this tract belongs to someone else? Mr. Wright responded that what he

is saying is that some of this land on this map is not on any tax map that shows this. Chairman Morin stated that the tax maps are not a surveyed document. Mr. Wright responded that he can't find any survey from 1911 that shows any of this as part of this. Chairman Morin asked Mr. Wright if he has an idea that it may belong to someone else. Mr. Wright responded that he thinks it may belong to the people in the back like the Hazelton's. Mr. Wright is saying then why is he paying taxes for 15 acres of land when somebody is in here trying to subdivide paying taxes on 6.6 claiming he has all this land. Mr. Wright added, why I am paying taxes for the school for our children and when he is not paying taxes on the property he claims or owns. To him according to the Town by-laws you are supposed to protect the integrity of Clinton Grove. By allowing this to go through, by not having frontage you're allowing anybody to come in and buy property out of that area and subdivide it at there will. He has 15 acres and 430 feet of frontage, he is not required to have any, so why doesn't he just subdivide it and just ruin the area, this pristine area. To him this is ludicrous beyond redemption and the fact the board can sit there and say as a Planning Board that these items are required for a plan to be accepted and have items missing and say, we are going to waive them. He doesn't see how in good conscious that you can say you are protecting the people of this Town by waiving key areas of responsibility and it is wrong.

Peter Ashworth stated that there are a couple of things that he has said before and would like to reiterate. One of the reasons that the historic district has written by-laws is to safeguard the scenic historic rural open space and by subdividing it you are going to change that rural character. You are going to lose that open space and you are going to lose some of the historic value of the community. The second thing he would like to mention that section 30-B C.3 of the Clinton Grove Historic District Overlay talks about the demolition or removal of an entire building or structure shall require a thirty (30) day delay. They also require that the Building Inspector notify the Historical Society of the demolition permit. He believes that the owner of the property stated that the building was a functional blacksmith shop, to him that sounds like it would have some historic value and now they want to destroy it in order to put in a driveway. To him it doesn't make sense. If they are looking to enhance the area they should move it out of the area, so it would look better.

David Erickson, clerk of the Weare Monthly Meeting stated that he hasn't been at the monthly meeting and was wondering if they are an abutter. Craig Francisco stated that the Town of Weare is the owner of the cemetery and should have been sent a certified letter, probably to the Selectmen's Office and what department it would have gone to is up to the Town. He hasn't prepared any remarks for tonight but would like to have the opportunity to bring this back to the Weare Monthly Meeting to see how they would like to weigh in on this. They have a concern about the cemetery there.

Attorney Steve Whitley stated that he would like to add a couple things to the record about the sewerage and the well noted on the plan. He has a letter addressed to the Planning Board indicating that the future labeled as an existing well situated in the front of the proposed house location, and to the west of the original house is actually a cess pool for the house at 422 Flanders Memorial Road. Mr. Whitley added that his client recalls being in that area and having a very strong smell of untreated sewerage and speaking to what was discussed earlier, he would respectfully disagree with the board regarding 21 day notice about where test pits are because the sewerage and the treating of that is very important to the abutters. He wished the board would consider that in a different light.

Chairman Morin stated that you understand that the whole issue of getting information in 21 days ahead of time is for the board to decide if they have the information necessary to make a decision. Plus the board could have information that your client was not yet privy to or hadn't received. Attorney Whitley stated that he understands it is within the board's discretion, but to have a full and fair public participation adequate notice is required, but he understands what the Chair is saying. Also, the gentleman that got up and spoke about the sight line by the cemetery and Hodgdon Road, you can see to where the proposed house lot is going to be. The visual character of the area is written into the ordinance and would like the board to take that into consideration.

Heather Buckley a student at John Stark High School and one day she did notice that there was a yellow spotted salamander on that property and she does believe that they are endangered species. By building a house there or development it would put them in danger. How would you be able to protect and guarantee that their environment would be preserved. She didn't bring the pictures but she does have it on her camera at home.

George Malette stated that if you have seen endangered specie and have documentation you can contact New Hampshire Heritage Bureau and they can come out to take a look. Mr. Malette added that all of the subdivision plans are required to pay a \$25 fee to the Heritage Bureau to see if any endangered specie exists.

Chairman Morin asked if the Conservation Commission was aware of this. Mr. Malette stated no. Chairman Morin suggested that a letter be drafted to the Conservation Commission regarding this.

Jan Snyder stated that her concern is the cess pool area as well because obviously they have been in there years ago and she has been doing some reading and apparently they were made of stone and any they have problems with heavy equipment going in over the cess pools. Ms. Snyder read some information to the board regarding cess pools in general.

Art Siciliano stated that we did have All Clear come out and they are not sure what it is and they are willing to get rid of it or fill it in. They don't need it. Chairman Morin asked if there is any line going out there.

Erik Hagstrom stated that he had All Clear come out to inspect the site and the gentleman walked down to that well, which he always thought it was a well but because of the hearings and everything thinking it was a septic so they looked at it. They took the top off and it is full of water and they determined it is a well.

Jan Snyder continued stated that there has been no one living in the house for years but there is a red dye test that can be done to determine that.

The board looked at a letter from All Clear and discussed the septic location under the existing driveway.

David Bell stated that there is not too much more that hasn't already been said but with all the concern with the septic system or lack of one with the existing house it seems like a very important item to require a test and have a new system put in for the existing house and stop worrying about breaking up the lot and up putting a system in for a lot that is not even there.

Neal Kurk asked, so if the applicant would agree prior to approval at some point to put in a new septic system for the house at 422 Flanders Memorial Road there would be no further objections.

Mr. Bell responded that he is not saying that but he thinks that should be done first. The whole area concerns him because it seems like a wet area. He is not a scientist or even a septic designer but it just seems like a wet area.

Mr. Kurk further added, so imagine there is a new state approved septic system installed in the house at 422 Flanders Memorial Road, what are some of the other issues with this?

Mr. Bell stated that the lack of a septic system he would like to see more information.

Cheryl Wright stated that a tree barrier will require a lot of water and that her concern with a natural barrier, you can put up a fence and save some of the water. She looks out over the cemetery and it is very beautiful and putting a house there would destroy the entire look. She had a couple of questions about procedures. If there are waivers granted do they stay waived forever or do they come back as we go forward, like a water study or wildlife study. Chairman Morin stated that those waivers were granted to allow the application to proceed. It is not to say that information coming in might not cause us to reconsider that and then require that or some other form of study similar to that if it was necessary for the board. So no they are not permanently waived. Ms. Wright then asked what type of information would need to be required for those waivers to be invoked. Chairman

Morin responded that to him if we were presented with information that required further studying that would be fine but we just can't ask for studies that don't warrant it. Ms. Wright stated that her concern is the water table there. Their well almost went dry this past summer. They came very close to losing their well and that well has been in existence since 1805. If we have a dry winter and another house goes up there they don't have water.

Chairman Morin stated that in any subdivision it is hard for him to imagine that there is a measurable difference by one house lot being added to the surrounding wells. Ms. Wright responded that you are talking two families now. You have the existing house and a new house. The existing home is pretty large home and a family of two will probably move into that house. The water there is already strange as it is because we had somewhat of a drought season and if you add one or two more families it will have an impact. The wetlands right next to their home was dry this past summer, totally dry. The area was meant to be a Historic District.

Neal Kurk asked Ms. Wright so you are concerned about the affect on the historic cemetery that the intrusion of a new house might result in. Ms. Wright responded, the whole area not just the cemetery, the whole area. If you visualize looking out over the cemetery and see a house there behind it, it would not be in the best interest of the Town. There was never anything back in that area. All the buildings, even back when the Quaker Seminary was there, went all the way down Hodgdon and up Shady Hill. There have never been buildings back there, never. So that is going directly against what the history of this area, there has never been a building there.

George Malette stated that the last time that Ms. Wright was here brought to the board's attention that this lot may be in the wetlands zone area in Town and maybe Mr. Siciliano could address this. Chairman Morin stated that the wetlands are defined as those poorly and very poorly drained soils. Mr. Siciliano stated that they have delineated the wetlands and have shown the buffers. Mr. Malette stated that this has not been brought to the Conservation Commissions attention. Chairman Morin asked, the plan? Mr. Malette responded no to relate what is in the zoning book to plan. Mr. Siciliano stated that he came to the Conservation Commission and that wasn't mentioned. Mr. Malette stated that he sees a number of issues in the zoning book that the abutters have brought up and he wants to make sure they get properly addressed.

Tom Clow asked Mr. Siciliano if he could address the acreage issue that was brought up. Mr. Siciliano responded that before they presented two lots the frontage for this property is 437' and both lots comply with the frontage in the village district. Mr. Clow stated that Mr. Wright indicated that the tax map indicates a lot less acreage on the survey and he doesn't understand that. Mr. Siciliano responded that they did deed research and the tax map was not correct.

Chairman Morin asked if there was any further input from the public. Ms. Wright stated that the article she mentioned was 28.2.1 which basically deals with the intent and purpose of the ordinance. It is basically to protect the uplands and the way the natural resources, the travel ways, the ecological balances, potential water supplies and encourage low intensity uses.

Mr. Wright handed the board a letter indicating that Mr. Hagstrom is under investigation with NHDES on this property. Mr. Wright stated that he found this out when he went to NHDES to report the endangered species which are now sitting on a desk at Fish and Game. He stated that he felt the Planning Board was overlooking one fact and that is it states that in any sewerage system it needs to have type 1 ground and all that is wetlands. Mr. Wright stated that the fact of the matter is that you have a jurisdiction in the Clinton Grove District and Historical Overlay that has no frontage rules but states that if anything is done the more stringent applies. Mr. Wright discussed the 4K area in the back of the newly proposed lot. Mr. Wright stated that he believes that the Conservation Commission has told him that he can't use that because it crosses the wetlands. So where is the septic system for this new house going to go? Now, if the other is as they all believe a cess pool and not a well, he stated that before that Mr. Hagstrom posted his property private and no trespassing which has only been about a week ago, he actually went over there and looked into it and it was bone dry. He has never seen a well in his life with 8 holes running into it. If this is supposedly a cess pool and you collapse it, what happens to the old bacterial waste that is in there. Now you've not given it anywhere to come out of the ground, you take into the ground into their water supply. That is detrimental to his well being. They have an 18 foot hand dug well that has been there since 1805.

Neal Kurk asked Mr. Wright if he is contending that this plan is wrong and that either or both the house and the proposed septic locations are in jurisdictional wetlands. Mr. Wright responded, yes. Mr. Kurk stated that is it in the wetland or in the wetland setback. Mr. Wright stated that he is not sure because he can't go back there. The fact of the matter is that the man has his property posted, which is another question he would raise to the Planning Board, if this is part of the historical society and people are allowed to go on to look at historical sites. Chairman Morin interrupted and stated that it is private property. Mr. Wright then stated so the Quaker Academy should be posted private property and so should the post office and the cemetery. Mr. Kurk stated that the Quaker Academy is owned by the Town of Weare. Mr. Wright added it is still part of the historical district. Chairman Morin stated that it is private property regardless of the district it is in.

Mr. Wright continued, the other questions that he has is that through some investigation that he has found out there used to be a lot more chicken coops on that property. He can't find anywhere where there was any permit taken out to remove them. They are gone. He knows from years of living in Ireland and

raising chickens there are a lot of environmental problems with urine and solid waste. When you remove one of these things, one of the things you are required to do by Federal Law is that if there is contamination by the Environmental Protection Agency the contaminated soils has to be removed and returned to its original state. Chairman Morin asked if Mr. Wright was contending there is an EPA violation. Mr. Wright responded, yes I am.

George Malette asked Mr. Wright if when he went to NHDES if mentioned the issue of the chicken coops. Mr. Wright responded, actually no what he has done is he has contacted the EPA in Washington, DC and he is waiting for an EPA investigator to contact him within the next week to come out and do a federal investigation.

Peter Ashworth stated that there have been concerns raised about the water situation and adequate water supply. He felt that putting another house in that area would impact it. In the rural agricultural area if somebody would decide to have animals in either of the houses again which could happen would require a lot of additional water. Also if there are salamanders and turtles in the wet areas they also require a lot of water. All the water in the area could be compromised by the addition of another house.

Attorney Whitley stated that although his client has some objections to the plan, since the board has gone forward with the acceptance of the plan he would like to have the following conditions added to the plan:

- Certify whether the cement structure on the proposed lot is a cess pool or well or other and they would like to see type of evidence from All Clear of the camera work they did and all the data from that.
- No further development or subdivision of either of the subdivided parcels, based on minimum lot sizes and frontage requirements
- There should be no parking permitted within the front setbacks on either lot
- Require that any residence or other structure constructed on proposed lot 69.1 be designed and constructed in a manner and style “..compatible with the historic architectural character of the CGHOD..” including all the components thereof listed in SR Section 30-B, C1.2. This is critical because the proposed house would be visible from the cemetery, and the Clinton Grove Academy Building, which is listed on the State Registry of Historic Places. It is noted that applicant has made this commitment orally in previous public meetings; and would therefore likely not object to this being made a condition of approval.
- Pay particular attention to the issues of exterior appearance, outdoor lighting, and landscaping, as noted in SR Section 30-B, C.1.2, so that the view scape from the historic cemetery and Academy building is preserved and protected. Underground utilities, and berms or vegetative buffers would be appropriate. It is noted that applicant has made his commitment

orally in previous public meetings; and would therefore likely not object to this being made a condition of approval.

- Multi-family use is not allowed in the CGHOD pursuant to Article 30-B, C.9.7.
- The land shall not be used in any of the “Non-permitted Uses” listed at Section 30-B, C.9.1 through 9.10.
- Clean up the debris visible to the neighbors that has accumulated in the yard along the road as this creates a visual nuisance.
- When the existing garage is removed or relocated, as is necessary under the Zoning Ordinance side setback (Section 22.6.2), the debris must be fully removed, the old location replanted with native vegetation.
- Raze the existing chicken coops in the CGHOD, as they are a defunct usage, a potential fire hazard, and a visual blight that is inconsistent with the District. See Section 30-B, B, b. (Protect scenery and open space). It is appropriate that the shed on Flanders Memorial Drive be removed as noted on the Plat.
- Conform the exterior of the proposed house to the historic architectural character of the CGHOD, as stated in Article 30-B (C.1.2). This condition is appropriate because a portion of this subdivided parcel is located in the CGHOD and the Applicant has agreed to such a condition during previous public hearings.

Frank Bolton asked about the no development, does that mean he can't build a house on the new lot. Attorney Whitley responded nothing more than the house. Mr. Bolton then asked how long the chicken coops have been there. Attorney Whitley stated he wasn't sure of the year. Mr. Bolton stated that he feels the chicken coops would be consistent not inconsistent, which is a matter of opinion.

Neal Kurk stated that we have heard a lot of people get up and say there are a lot of technical issues with the subdivision, but only one person has said that technical issues aside this should be denied because it is inconsistent with the basic purpose of Clinton Grove Historical District. His question to Attorney Whitley is whose position are you taking, is your client saying that if we deal successfully with your substantive issues, which there are only two of them on the November 15th letter, then your client has no objection to this approval provided the conditions are placed on it. Attorney Whitley responded, yes. John Flanders then interrupted and asked to speak. Mr. Flanders thanked the board for their patience this evening. To answer Mr. Kurk's specific question, he believes to grant this subdivision would be contrary to the spirit and intent of the Clinton Grove Historic District. This was created in 2004 by all of the residents of that district. The board supported it and it passed at Town meeting. If the board agrees to approve this, which he disagrees with he would ask the conditions be added. Mr. Kurk added, he understands what Mr. Flanders is saying but so far you have only given us conclusions, “I believe that”. Could you give us some evidence on which we could base a decision, suggesting specific ways to the

extent that you can, where reference to 30-B, B, a-e that is in violation of the approval of something like this.

Jan Synder asked where we go from here. Does it go back to the Conservation Commission? Has the Board of Firewards seen this? Is the driveway location been looked at?

Chairman Morin stated that at this time he would like to have Mr. Siciliano come back up to further discuss some items. Chairman Morin closed the public portion of the hearing on this for tonight.

Chairman Morin stated that he has a couple of questions for Mr. Siciliano. Mr. Siciliano stated that he did meet with the Board of Firewards and they had a couple of comments. One was that they wanted the house sprinkled and a turnaround provided at the top of the driveway and the second was the driveway width needed to be 20 feet wide. Mr. Kurk asked if we allow a 20 foot swath through there, does that increase the visibility of the house from the road. Mr. Siciliano stated that most of that is lawn and there are very few trees, but he didn't think there would be any increased visibility. Chairman Morin stated that he doesn't know exactly if we have gotten the written comments from the Board of Firewards, we have not seen them yet. Mr. Siciliano stated that they only met on Monday night.

Chairman Morin asked, regarding the 125 foot setback from wetlands, what is the soil type there and does it go from 75 to 125. The next question regarding the cess pool, there were several issues raised regarding that. The board doesn't want to satisfy one question and have seven more lingering. How do you as the applicant's representative plan on addressing these. Mr. Siciliano responded, they will investigate what it is. Chairman Morin just wanted to inform Mr. Siciliano that something will be needed. Mr. Siciliano stated that he can get something from All Clear Septic in writing.

Craig Francisco he would appreciate Mr. Siciliano contacting the National Heritage Commission with regard to the turtles and spotted salamanders and you can do it on line and apply for \$20. He felt that Mr. Siciliano should go back to the Conservation Commission once he gets back that information.

Frank Bolton stated that he wondered if a site specific soils map be done to show the soils. He also added, in regard to the cess pool versus the well, he would like to see some further information. Mr. Siciliano stated that he could take some pictures. Mr. Bolton asked if you might be able to pump it to see what comes back into it. It should be further addressed. Mr. Siciliano stated that he is not sure why the board is pushing the issue other than to find out what it is.

Neal Kurk stated that this parcel falls into three zones, the rural agricultural zone, village zone and Clinton Grove overlay. We took the position that if a property

falls within two or more zones the more stringent rules have to apply. Does this plan comply with that? If not could the development occur and still, with a new plan that meets the strictest of the requirements for any zone in which any part of the property lie. Mr. Siciliano stated no because if you are using the strictest the frontage and area wouldn't work. Mr. Siciliano asked when he has to have plans in because he doesn't want to come on the 27th and listen to them not being submitted on time.

Frank Bolton moved to continue this hearing to December 27, 2007; Tom Clow seconded the motion. Discussion: George Malette stated that he would like to save some time to discuss the issue of the more stringent should or should not apply. Chairman Morin stated that would be something that would be decided during the final deliberation portion. The board wanted to possibly get some legal opinion, but it would be at the applicant's expense. Mr. Siciliano stated that they would like to discuss that issue at the beginning of the December meeting. Vote: all in favor.

ELIZABETH F. MAHMOT – SUBDIVISION, OAK HILL ROAD
(CONTINUED HEARING), OAK HILL ROAD, TAX MAP 412-242:

Chairman Morin opened this hearing. Don Duval, LLS was present. Mr. Duval stated that what you have before you, which are essentially the same that were presented before you last month. Mr. Duval has added a hatched area to the plan that depicts the 25' wetland buffer area. Mr. Duval explained that Monday evening he also attended the Board of Firewards meeting to go over this plan. He got an email today from the Secretary with the results of their decision and he has added the notes 17 and 18 to the plan. In a nut shell, note 17 states that the buildings would have to be sprinkled and note 18 talks about the driveway lengths, maximum grades and the installation of a turnaround because the driveways exceed the maximum lengths. These notes will inform any prospective buyer of these requirements.

Neal Kurk asked about a note about no further subdivision. Mr. Duval felt that there really wasn't a way to further subdivide because of the frontage and area requirements. Mr. Kurk asked about the possibility of two family or multi-homes.

Mike Dahlberg stated that if someone wants to do a multi-family house it would have to meet the soils minimum requirements per dwelling unit, per Article 14, table 1-1. Mr. Dahlberg stated that if someone wanted to put in a road, traffic would be an issue.

Tom Clow moved to accept the application as complete; Frank Bolton seconded the motion, all in favor.

Craig Francisco moved to approve the plan subject to correcting the map numbers in the map and lot block and to change the entry of the shared driveway so that

both lots are accessed from their road frontage; Tom Clow seconded the motion, all in favor.

BEVERLY TOWNES – CLUSTER SUBDIVISION, SUGAR HILL ROAD, TAX MAP #403-019: Chairman Morin opened this hearing. Mike Dahlberg and Arthur Townes were present. Chairman Morin asked Mr. Dahlberg if this was the first time this application is before the board other than in a conceptual fashion. Mr. Dahlberg responded, yes. Chairman Morin further added then the board is really going to concentrate on the completeness of the application only. Mr. Dahlberg stated that he represents Beverly Townes and she would like to further subdivide lot 403-019. Mr. Dahlberg appeared before the board in late summer to discuss this in a conceptual manner. They are proposing this as a non-conventional cluster. Mr. Dahlberg submitted a yield plan with a standard roadway that would allow them 4 lots. So the proposed layout is a non-conventional cluster with two lots have frontage on Sugar Hill Road and the other two lots will have access through the existing 50 foot right of way. They did meet with the Conservation Commission with this proposal. They agreed that they would accept the 13 acre conservation easement on this parcel. This open space connects to the previously approved open space that this board approved in 2005. There are two waiver requests. The first is the standard of waiving items 1-9. The second is draft of all proposed easements, deed restrictions, etc. which will be drawn up before final approval.

Frank Bolton stated that he is going to introduce something and he is not sure if this is the appropriate time. This is a design that is being presented and the options are to have it reviewed or just waive it. Mr. Bolton asked what zone it is in. Mr. Dahlberg responded it is in the rural agricultural zone with the conservation overlay. Mr. Bolton stated that the problem he sees that exists is this is a cluster proposal, article 30.4.2 indicates that the open space should consist of land with prime agricultural soils, etc. which will be discussed later. He didn't think that we should waive the design review, but was willing to listen. The board conducted a design review of the application.

Chairman Morin wanted to remind the board that comments made during design review are non-binding. Chairman Morin asked about the servicing of the new lots that would access by the already shared driveway, how is that going to be resolved. Mr. Dahlberg responded via a deeded right of driveway. The driveway would have to meet NFPA standards. They are proposing a shared driveway. Chairman Morin responded that our regulations only allow a common driveway for two. Craig Francisco stated that in a cluster you have to have 25 feet of frontage. Mr. Dahlberg stated that it doesn't say direct access frontage. Mr. Francisco asked how your driveway can access through your frontage if you have no frontage. Mr. Dahlberg responded that we discussed this at the conceptual stage. The Town wants to promote cluster, he is not sure how that should be handled we talked about this and there were no issues back then. Chairman Morin stated that he thought it was going to be a road. Mr. Kurk asked how

making it a private road makes that happens. Mr. Francisco asked who owns the frontage of the driveway. Mr. Dahlberg responded his client. Mr. Dahlberg stated that he could give each of the back lots 50 feet of frontage and leave 25 feet of frontage for the existing two lots.

Mr. Francisco asked about access to the open space. Mr. Dahlberg stated that it is going to be conservation open space easement and not open to the public. They have agreed to have a 10' strip access for monitoring purposes for the Conservation Commission. The landowner would retain ownership they are putting a conservation easement on this. The intention of this is just like the previous subdivision of this property in terms of restrictions, ownership and easement language. This easement is not a profit easement it is what Mrs. Townes wants to do.

Chairman Morin asked George Malette if he could give some input from the Conservation Commission. Mr. Malette stated that they like this layout. They really like the fact it was contiguous to the previous subdivision as well as other conservation land (Meadowsend Timber) that it abuts. They didn't see any drawbacks. The prime soils are only in the two lots that are in the front lots that are left. Mr. Kurk stated that he thought we were trying to preserve the open fields and not let happen what happened up at Holly Hill Subdivision on Flanders Memorial. This looks the same, putting the houses in the nice open field and letting the easement be on the woodland. Did the board consider putting the houses in the woodlands and keeping the field open? Mr. Malette stated that they did look at it but it wouldn't be contiguous to the already existing conservation area.

Tom Clow stated that in general he likes that concept, but who is going to keep the fields mowed and open. Is the Town going to be in the business of mowing? If we expand that concept on the easements of mowing, the forests are more easily manageable.

Arthur Townes stated that he lives here and a lot of the trees along Sugar Hill Road are dying because of the salt from the roadway.

Mr. Bolton stated that one of the things that occurred to him was that it is too bad this wasn't done together with the other one instead of two separate subdivisions. Mr. Bolton asked about the easement language on the previous lots. One of the options that could possibly exist is to have the whole area become one large block of a conservation easement. He is concerned with the different types of easements and deed restrictions. Mr. Bolton wondered if that could be looked at. Mr. Dahlberg stated that if the easement is violated the Town has every right to revoke the subdivision approval. Mr. Dahlberg stated that he would consider encouraging his client to possibly change the previous 10 acres of open space easement and include it with the 13 acres of this plan.

Mr. Bolton stated that the first plan was done as a conventional subdivision he felt this should be done as a conventional because there is no benefit to the cluster, you can't build in the wetlands. If this has such minimal value why don't you go with the traditional, maybe the traditional subdivision should apply for this one. Mr. Bolton stated that he wanted to go back on the discussion of the 6 acres of prime farm land. He felt the idea was to preserve the prime farm soils to the greatest extent possible. Mr. Dahlberg stated what he can do there is supply a building pocket on that lot.

Chairman Morin stated that what we would be looking for is how the driveway situation will be handled. Maybe see if the whole build out could be looked at and to make a whole block of continuous open space.

Craig Francisco moved to continue this hearing to December 27, 2007; Tom Clow seconded the motion, all in favor.

IV. OTHER BUSINESS:

OCTOBER 25, 2007 MINUTES: Craig Francisco stated that he would suggest to hold on to approving these minutes until the next meeting. They weren't listed on the agenda and an attendee who was no longer present had a question about minutes. The board agreed with Mr. Francisco.

NEXT MEETING: Chairman Morin stated that the next meeting will be held on November 29th and it will specifically be covering the 2008 proposed zoning amendments. Chairman Morin asked that anyone with changes he would like to have them sent to him ahead of time. Mr. Francisco stated that he will not be here at that meeting but will forward his changes to Chairman Morin.

V. ADJOURNMENT:

As there was no further business to come before the board, George Malette moved to adjourn, Frank Bolton seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Transcribed by tapes only