

**NORTH ATTLEBOROUGH PLANNING BOARD
REGULAR MONTHLY MEETING
THURSDAY, OCTOBER 1, 2009**

The North Attleboro Planning Board held its Regular Monthly Meeting on Thursday, October 1, 2009 at 6:30 P.M. in the Planning Board Office located at 43 South Washington Street, North Attleborough, Massachusetts. Board members Richard Peterson, Richard Thimot, Scott Weymouth, Richard Houle-chairman and Mary Burgess-town planner. Donald Cerrone arrived at 7:02 P.M.

Planning Board Business;

Voucher;

Janitor extra 45 minutes

Ms. Burgess, Considering I had to cancel Sun Chronicle because it was too expensive and apparently 4 hours overtime for janitor.

Old Business:

Site Plan: Royal Park Apartments Modification, East Washington St. Note: Final Action Due 10/13/09;

Applicant has provided updated plans addressing issues brought up at the site walk and Planning Board meeting.

Ms. Burgess, Reading in letter from Tilton 9/24/09 (insert).

Glen Ofcarcik-Tilton & Associates, Representing J & R Associates. Recall we made presentation at last meeting the proposal is for two additions 1 on south side of existing clubhouse, which would be fitness center, 1 on north side which would be maintenance shop and covered enclosure for entry ways along west and north side of existing clubhouse. As mentioned in my letter there were some technical issues, which we addressed we've included those in an updated site plan, which was submitted last Friday. Additional offsets to the proposal the modified landscaping, 40 scale view, updated locust map at 1" = 2000. We also included in the plan set updated through two weeks ago the floor plan, building elevations, first floor and second floor and proposed modification to building elevations. We had the site visit with four members of the Planning Board last Tuesday we walked and staked out location for proposed modifications. As Mary mentioned not quite as big as 1971 plan but per request of the Planning Board we did include an existing condition survey, which Tilton & Associates prepared in summer of 2008. It shows the entire complex at 1"=40 shows all the signage, all the lighting all landscaping all utilities, dumpster locations and none of the other features are going to be changed. With me tonight is George O'Neill from Gorman Richardson Architects he was unable to attend the site walk he has full set of architectural plans if board has any specific questions about the architectural aspect.

George O'Neill-Gorman Richardson Architects, I'm here if you have any questions about what we're proposing.

Mr. Ofcarcik, I think the only issue, which I think we touched on at site visit, as you're aware there is currently three floodlights mounted, 1 north 1 south and 1 west of the building. Those are going to be removed as part of the construction and from my understanding they will be replaced with wall mounted, which will shine more directly down to sturdy against the buildings and they will be reflected lights

in ceiling. Basically the only lighting is for security. Proposed amenities are only for the residence of complex not open to public.

Mr. Houle, You're still going to use the in that you showed us the way you were going to come in through the back while the construction is going on?

Mr. Ofcarcik, Yes we'll be coming in from the south side in that parking area and then into courtyard. Because of proximity of this entrance and because of the grades it is not conducive to bringing in equipment or supplies. Contractors will come into center court parking area in center of project and then materials will be brought in along sidewalk area and into the courtyard, which is all open and grass at this point.

Mr. Weymouth, Asking about grading.

Mr. Ofcarcik, All of existing grades is going to be matched the floor grades are going to be matched to existing building. There is existing catch basin northwest of proposed addition and southwest of the southerly proposed addition and all of the lawn would be regraded to make sure all runoff is directed to those catch basins. Basically the grading will remain unchanged. We have shown the landscaping, which is currently on north side of existing sidewalk will be removed and transplanted to south side of new sidewalk. Existing landscaping edge will remain and new sidewalk will be made into that. So basically landscaping removed and replaced and if tree is too big we'll leave it and just plant another tree.

Mr. Weymouth, Plan you're showing is different than plan we're looking at. Why is that?

Ms. Burgess, I don't know.

Mr. Ofcarcik, Dated 9/24/09 revision date.

Ms. Burgess, Linda put out old set.

Mr. Ofcarcik, Changes are basically on sheet 2 it has been modified to include additional 40-scale detail to 2000 scale locust map. Additional offset to west property line as Mary requested. There is offsets showing each of the adjoining buildings. Other three sheets in the set are updated first floor, second floor and elevation plans.

Mr. Weymouth, Sidewalks to be concrete?

Mr. Ofcarcik, Yes.

Mr. Peterson, I thought one of the things we were asking I thought plan you were going to provide us was going to show where drains were and all utility lines were.

Mr. Ofcarcik, It is on supplemental drawing. It is file I submitted only one copy. It shows catch basin that we looked at corner of catch basin it also shows the 30" and shows all the existing utilities electricity, gas, drainage, sewer, etc.

Mr. Houle, Do you think big weeping tree is going to have to go?

Ms. Burgess, No he just identified it on the plan.

Mr. Ofcarcik, Certainly our preference is to save that tree.

Mr. Peterson, Weren't we going to make some note about protecting it?

Mr. Ofcarcik, I think at site visit we talked about maybe rapping the construction fence around the drip line of the tree just to avoid stockpiling of materials or construction activity. We'd certainly be willing to take that as a condition of approval.

Ms. Burgess, Everything I had pointed out he did.

Mr. Houle, Are we waiting for any letters from anybody?

Ms. Burgess, No.

Mr. Peterson, Building itself right now doesn't hook to site drains there are not gutters on it?

Mr. Ofcarcik, There are no gutters, floor drains would be tied into sewer.

Mr. Peterson, Added roof isn't going to be a problem draining out on lawn?

Mr. Ofcarcik, It is going to draining out on lawn.

Mr. Weymouth, I'm little uncomfortable with not seeing grades of how this would work even notes spot grades.

Mr. Ofcarcik, Would it help if at time of construction we just provided called asbuilt foundation plan showing that grading works. I believe Mass Building Code requires grading within 10ft. of building be positive away from that direction so we would probably be providing that information to building inspector with copy to Planning Board.

Mr. Weymouth, Would help.

Mr. Houle, That would be okay with me.

Mr. Peterson, Make motion to accept the plans for clubhouse modification for Royal Park Apartments.

Ms. Burgess, With following conditions protect willow from construction debris, remove existing club lights at roof line and copy of foundation asbuilts.

Mr. Thimot, Second motion.

All in favor 4 to 0.

Mr. Ofcarcik, If I may be so bold as to just ask when board may intend to endorse those plans tomorrow, Monday, Tuesday. We're in process of filing for building permit application certainly we would appreciate anything to expedite them.

New Business:

Site Plan: SBA Towers, Inc., 346 Allen Avenue. Note: Final Action Due 10/16/09;

Install a 150' cell tower in an R40

Denied by zoning. Decision appealed and case settled

Court ordered building permit with in 30 days of submission of permit

Site plan was withdrawn without prejudice in March.

Ms. Burgess, Reading in application.

Ricardo Souza, Behalf of the applicant. There is some history to this application itself. First I would like to apologize for any confusion I know we were on agenda for last meeting and I was under impression I did not have to attend. Number of wireless carriers have been looking for way to provide coverage in this part of town. For number of years there have been lot of proposals this is last of the proposals by SBA Communication formerly known as Light Tower. SBA is public company based out of Florida but with operations here in Mass. Operating significant number of towers throughout the country. It will be constructing this proposed tower to accommodate the wireless antennae installations of number of carriers that have identified a gap in coverage. In particular the carriers are Verizon, Metro PCS and T Mobil. All three of those carriers have essentially committed to utilizing this tower in order to fill gap in coverage that they have in this part of town. In addition to that Print and Nextel were looking to fill gap in this same area about 2 ½ years ago to 3 years. They initially had a proposal to build structure in this part of town. This application was brought before ZBA after number of public hearings I think it was 3 or 4 hearings it was denied by ZBA. We inforced our rights under telecommunication act 1996 in Federal Court filed action and entered into settlement agreement with the town, which allows for the construction of the proposed tower at this location in

accordance with these plans that were approved by B of Selectmen under an agreement for judgment with Federal Court.

Ms. Burgess, I asked him to come in because every time a new carrier comes onto tower they have to come before us because they have cabinets and everything. If someone were to go on next time they'd have to present whole site plan to us because it would be with the settlement. I thought we should have copy of this on file and basically it is a standard cell tower. There is letter from engineer saying that it is structural sound like we usually get.

Mr. Souza, Thing that is non standard is it is going to be mono pine so we're actually going to build it so that it looks like pine tree. That is one of the efforts we made is to make it try to blend in with natural environment back there.

Mr. Weymouth, What is the material on structure itself?

Mr. Souza, Fiberglass pole itself is galvanized steel we'll build standard mono pole that goes up to 150' and then standard mounts with antennas then we will install fiberglass limbs onto mono pole itself to really try to hide the antennas. It won't look like standard mono pole it will look like perhaps pine just sticking up above the others in background. Another concession we made is we moved tower further back from originally proposed that was part of concessions we made with the town. It will not be visible directly from entrance of property there are line distances where the tower is going to be located. You enter property on Allen Ave. we moved it further back.

Ms. Burgess, It's actually now closer to C30 where it would be special permit use over there.

Mr. Souza, One of the issues was that as people were driving by there is opening with gate trees help to minimize the visibility of it. In addition to that the utilities from Allen Ave. all way to bend will be underground we're not putting up any poles in that initial entrance. As soon as it takes the turn they will be above ground. There will be outdoor shelters there is compound plan. Fenced compound, which will be constructed from the beginning and all carriers will have to install their equipment cabinets. These days many of the carriers are just using outdoor equipment cabinets. There are couple Verizon in particular and Nextel that utilize shelters. In building essentially computer equipment and radios that is all that is in there. There is nobody housed in there in fact there are no employees or personnel at these sites. There is usually technician visits about once or twice month.

Ms. Burgess, Do you have security camera and such?

Mr. Souza, We don't there is monitoring in the sense that shelters themselves are locked we can detect remotely if someone has accessed the shelter.

Ms. Burgess, You've secured the leasing with Snow Mass?

Mr. Souza, Yes we have leasing agreement it is long term lease. I have copy of agreement for judgment for your file.

Mr. Weymouth, Access drive is going to gravel entirely?

Mr. Souza, Yes.

Mr. Houle, Will there be any type of chemicals or anything stored in that building?

Mr. Souza, No we only utilize two utilities, which are power and telephone those are the only two utilities brought in. I do have to say Verizon often asks for generator but if in fact that is the case they will have to come before this board and zoning board to ask for that. Part of their standard protocol whenever they build out their network.

Mr. Houle, How does the 150' get determined the height of the pole?

Mr. Souza, Really based upon propagation the engineers will propagate all of their sites they have on air and there will be gap in coverage. Through computer model they will model out what coverage they will be getting at various heights. For example 120' will work for Metro PCS and by placing their antennas at 120' they will fill substantially that gapping coverage to be able to most coverage with the other sites. The problem however is that most of the carriers want to probably be at 120' so we can't build something at 120' because as soon as you go to 90' it doesn't work for anybody anymore and you need second tower. You want to build something that is tall enough to accommodate all of the carriers or as many of the carriers as possible. Based upon all of the need that we see out there interest in Verizon, Metro PCS, T Mobile, Sprint, Nextel it is only matter of time before AT&T I think takes hard look at this tower. When you see there is truly that much need by all of these carriers you have to build structure that is tall enough to accommodate all those heights. In addition to them just installing their antennas they also have to be 10' vertical separation between each carrier you can't get closer than that otherwise you start causing interference. Initially ZBA denied our application but then we were able to preserve our rights and we entered into settlement with the town.

Ms. Burgess, They denied it because it is R40 and it's not allowed use however they were able to prove that there is gap in the service and according with telecommunication act if you can prove that the tower is allowed to be there regardless of the zone.

Mr. Cerrone, Who did the negotiation how did they come up with settlement?

Mr. Souza, It is confidential but town was represented by council, as was B of Selectmen but negotiations with B of Selectmen.

Mr. Cerrone, I thought you were dealing with zoning board.

Mr. Souza, Right but the governing body for this town is B of Selectmen.

Mr. Cerrone, They got involved after zoning board decision.

Mr. Souza, Yes they have to.

Mr. Cerrone, So zoning board and people have no say after they made a decision.

Mr. Souza, I wouldn't say they had no say because they did attend meeting I was at.

Mr. Cerrone, I guess when you don't agree on something the selectmen take over that's what it sounds like.

Mr. Houle, Do we have anything from building dept.?

Mr. Burgess, No

Mr. Souza, I have just recently filed a building permit application and it is being routed now been signed off by couple of the agencies. I dropped off plans to Fire Dept., B of Selectmen have signed it. There is routing slip that typically gets signed by ZBA since they did not grant relief it is pursuant to a settlement the B of Selectmen have to sign off on it.

Mr. Weymouth, Settlement agreement allows them to just leap frog right to building permit?

Ms. Burgess, Correct. If you remember in your last package I sent letter to Roger Ferris once I read this decision saying you have to come to us. That is why they're here today but settlement does state that they will receive their building permit within 30 days of applying for it regardless.

Mr. Houle, That means we settled that way correct?

Mr. Cerrone, Who negotiated that kind of deal?

Ms. Burgess, Town council.

Mr. Souza, All I can say it is very standard.

Mr. Houle, You have to understand this board sitting here we're wondering how all this happen like this and it is not norm that we see.

Mr. Cerrone, Good luck to you guys you did what you had to do. If you don't like something just go to selectmen.

Mr. Houle, For the record they didn't go to selectmen they went to court and selectmen got involved.

Mr. Cerrone, How did it get to court so quick?

Ms. Burgess, It actually didn't go to court mediation it was settlement agreement so that they didn't have to go to court.

Mr. Souza, We did file in Federal Court and there was response and judge has heard our action but there was no trial. Federal action was filed in federal court.

Mr. Weymouth, Correct me if I'm wrong it leap frogs ConCom and everything?

Ms. Burgess, That was something I pointed out to town council that next time he goes and decides something that might want to give other people heads up. He admitted that it was an omission not intentional.

Mr. Souza, It is fairly complicated matter the telecommunication act.

Mr. Houle, Do we have any letters from neighbors did they have chance to voice their opinion?

Ms. Burgess, They did that is why it was denied. From after reading the decision that zoning board made it was based upon neighbor response not based upon the technology. Technically they should have granted it because they were able to prove that there is gap in communications and that a tower is needed here in order to provide communication to the town. They were able to prove that but zoning board met with lot of resistance from neighbors so they denied it.

Mr. Houle, Because of height of it 150'?

Ms. Burgess, No it is because nobody wanted it in their backyard it is residential neighborhood right behind the school.

Mr. Houle, If you basically can hop, skip and jump for lack of better term pass all the normal ways that boards that you would normally go through.

Mr. Peterson, I don't think it is that easy this is federal law it supersedes.

Mr. Weymouth, I think if it weren't for settlement agreement they would have to have gone through all the channels ConCom, site plan all of that.

Ms. Burgess, They did file with us in March for site plan review that plan was going well with zoning board they withdrew application because of that.

Mr. Houle, Then you decided to bring it to court state your case. That is not the problem it is just way it all ferreted it out to us.

Mr. Cerrone, We're going to put our signature on the plan not the selectmen.

Ms. Burgess, Not on site plan.

Mr. Weymouth, You don't have to put your signature on a thing nothing.

Mr. Souza, I tend to agree honestly I'm here as a courtesy I think agreement for judgment is fairly clear. One of the things we didn't do is just go to federal telecommunications act we did try to exhaust local remedies fact we have obligation to do that, that is why we filed the application. We met with zoning board number of times through lot of public hearings and we really did make an effort to do best we could to try and answer everybody's question.

Mr. Peterson, If the zoning board had allowed them to do that based on fact that telecommunication law says that we have to then it would have gone through normal channel.

Ms. Burgess, Yes it would have to come to us.

Mr. Souza, There is fast track on telecommunications act 1996 it was so important to congress that it does have fast track in federal court. Usually when you file an action in federal court it takes long time to get through that process but under telecommunications act is so important that we build a reliable telecommunication system based on wireless technology that congress felt that we needed that fast track.

Mr. Houle, It says here " the court has ordered town of NA through its agents or offices shall issue all necessary permits and approvals for facility person with judgment".

Mr. Peterson, We have situations like this come up on other things right?

Ms. Burgess, Usually that is when they're dealing with us.

Mr. Houle, I've been here 4 ½ years the first time I've seen this.

Ms. Burgess, This court also takes into consideration when you need zoning and stuff like that we're always considered. This was just an oversight and luckily you're not putting toxic waste dump.

Mr. Weymouth, If I understand you correctly the telecommunications act protects you from zoning if you show it is needed there but it doesn't necessarily protect you from going through ConCom NOI, site plan approval with planning boards provided however in this situation because of settlement agreement it does.

Mr. Souza, Yes it's pretty complicated in the end that if there is towns have right to regulate the placement and location of telecommunication towers they don't have right to prohibit you from providing the wireless service.

Mr. Weymouth, I understand that aspect of it but the act doesn't prohibit you, you're still required to go through necessary approval process within local communities except for this settlement agreement allows you to leap over.

Mr. Souza, That is right you are required to do what is called exhaust local remedies per use for use itself, which is what we did.

Mr. Houle, You just said this settlement agreement is private.

Mr. Souza, It is not necessarily private because it is in federal court if you went to federal court you could get copy of it. My discussions with town council and B of Selectmen that is private if you want to know what we discussed you should talk to your town council about that instead of me. Town council is your attorney I'm not your attorney.

Mr. Houle, Basically we're not voting on anything you're basically just telling us you're doing this.

Ms. Burgess, I would suggest that you vote on it because then the next person who comes to put cabinet on there.

Mr. Houle, I'm not going to allow a vote to be taken tonight.

Mr. Cerrone, I'm not.

Mr. Houle, I'm going to tell you why I have this before right now I have no idea what he just said what was discussed and if we're not suppose to know that it is fine. I have no idea what was discussed and now you don't have to go before anybody ConCom or anybody else and I'm not allowed to ask any questions or do anything. What I'm saying is it you want this board to do for you?

Ms. Burgess, I asked him to come in so we have site plan on file so that we don't have blank canvas out there. The next person that comes to locate a cabinet on that property doesn't have to recreate the wheel.

Mr. Cerrone, Maybe that is best way to do it when next person comes let him start over again.

Mr. Houle, It is not you or your company that I have problem with it is way it happen.

Mr. Souza, I have to tell you it is very common for once town because town acts as a body so once town board usually the ZBA but sometimes city council is listening to petitions for special permits. Once that body says no and provides a denial then our next recourse the only thing we can do is file federal claim and then once that federal claim in most cases goes and gets settled. They really do because telecommunication act 1998 is pretty rigorous with respect to what towns are supposed to do and what they're not supposed to do. It is very customary for us to enter into settlement agreement that looks just like that.

Mr. Houle, That says you can skip all the other boards.

Mr. Souza, Yes we go right to building permit.

Mr. Houle, So I guess anybody that wants to do that can do that from now on.

Mr. Souza, It is honestly not that easy very few uses or individuals have rights under telecommunications act 1996 that is federal law Very few people/developers or anybody like that has right under federal law. There are lot of aspects that go into this. We've been working on this application easily for 2 years.

Mr. Houle, Yet it never came over here.

Ms. Burgess, It has.

Mr. Cerrone, It was here before they withdrew it because they were in front of zoning board.

Mr. Souza, This application or a tower in this area was also heard by this board but in different location just down the street.

Mr. Weymouth, Were these plans provided to the town as part of your settlement negotiation?

Mr. Souza, Yes.

Mr. Houle, Its just not the norm.

Mr. Souza, Its not the norm I understand your position. Mary had discussions with Mr. Ferris I'm not sure what he was suggesting or recommending for this board how this board should act. I can't tell you what to do but I think the agreement for judgment is enough for us to go forward but as a courtesy we are here tonight.

Mr. Houle, Unless somebody appeals the judgment.

Mr. Souza, There is no appeal to the judgment we're in federal court.

Ms. Burgess, Town already settled.

Mr. Weymouth, Court order is pretty specific there really is nothing for this board to act on unless as Mary suggested we want to do something for cabinets in the future.

Ms. Burgess, My thought is just if this wasn't a court case would it be denied. Court case aside put it all aside.

Mr. Houle, But we'd have to hear from people and residents.

Ms. Burgess, This isn't a public hearing they wouldn't have been notified about it. Because it would always be site plan with they would not be notified this would be standard site plan just as it is in front of you now. That was my thought even though the court case says XYZ why wouldn't this get approved regardless of the court

case. They're not telling you to approve if you want to deny it you can deny it and go on record denying it but if this was just normal cell tower going up would it be denied that was just my thought process. It just seems like very straight forward cell tower.

Mr. Weymouth, Orders that no work on site shall begin prior to issuance of building permit that town of NA through its agents or offices shall issue all necessary permits and approvals for facility consistent with this judgment and order. Building inspector for town of NA shall approve the application for building permit within 30 days of receiving such application. If building inspector fails to approve such application it is deemed approved.

Mr. Houle, In settlement like this I have to ask how is this in best interest of town?

Mr. Cerrone, I have no idea especially for the neighbors.

Ms. Burgess, This is in best interest of town because we would lose the case in federal court. I'm saying it is in best interest of town because we would spend all the money going back to money you know it always comes down to that. We would spend all this money we'd have to hire outside council because you have specific council that does telecommunication act it comes down to fact that chances are the zoning board's decision would not be upheld.

Mr. Cerrone, You never know.

Mr. Souza, That decision whether or not it is in best interest of town at that stage once we have federal action it is in hands of B of Selectmen to make that determination.

Mr. Cerrone, There's not just one tower in town there are quite few towers so judge might say you have enough towers might be able to do something on other towers. You have redrock line of NA and Attleboro, one at Shell gas station, one at old Westcott, Landry Ave. 1 or 2.

Ms. Burgess, One in school bus parking lot.

Mr. Cerrone, You have one at Boro, I think there is another one somewhere else, one in Industrial Park.

Ms. Burgess, Snow Mass owns all this property it is corporation they own all that land over there.

Mr. Cerrone, How many feet away from other tower are you right on line NA and South Attleboro where subdivision is going in there?

Mr. Souza, I would have to look at that specifically only thing I can tell you is alternative site analysis was very extensive part of our presentation. We had to prove that we couldn't utilize other towers that are in town to fill this gap in coverage. You can see one tower doesn't do it otherwise everybody would just go on one tower.

Mr. Weymouth, In normal course can building inspector issue building permit on site plan structure without planning board site plan approval?

Ms. Burgess, No can't say it hasn't happen.

Mr. Peterson, I'm not an expert on any of this but I would think the way this is written it unfortunately takes the control away from the town with the purpose that if one board didn't approve it doesn't allow situation to come up for another dept. to stone wall the thing.

Mr. Souza, If you feel personally as if you won't want to approve it you can simply reference the agreement for judgment and say that it is only being acting upon pursuant to agreement for judgment.

Mr. Houle, You really don't need anything from us anyway basically this is more or less courtesy correct?

Ms. Burgess, But if you think about it the other way why would we deny this? That is only reason I had him come here because.

Mr. Weymouth, Use isn't our jurisdiction.

Ms. Burgess, It isn't.

Mr. Cerrone, We're breaking the law we're suppose to follow the use zoning.

Ms. Burgess, Yes but this is as if he got variance in essence he did get variance.

Mr. Cerrone, Boards are breaking the law.

Mr. Weymouth, Not this board.

Mr. Houle, If we voted on something we would be.

Mr. Weymouth, Whose voting what are we voting on?

Ms. Burgess, There is application in front of you, you can vote on this application regardless of the decision. I think having in on file would be important.

Mr. Houle, I just feel bad.

Mr. Cerrone, He's in a catch 22.

Mr. Houle, It is not you.

Mr. Cerrone, The way process went.

Mr. Houle, Maybe better way to do this we could have gone into executive session or something and we all would have understood before this came to us or maybe one of the selectmen could have told us.

Mr. Cerrone, Who is our liaison?

Ms. Burgess, If you were to vote on this vote favorably I would stipulate in the decision about court case however it still met the planning board's regulations for site plan review. I fell it does we can stipulate to that as well. I understand exactly what you're saying that politically this has not handled correctly but we're moving forward as if it was handled correctly and it has come down.

Mr. Houle, I'm worried about are we opening up Pandora's box by doing this?

Mr. Weymouth, When did you file for building permit?

Mr. Souza, I would say early last week so we're still within the 30 days.

Mr. Cerrone, He can get building permit he's all set what does he need us for.

Ms. Burgess, You have application in front of you.

Mr. Souza, One thing you can do Mary I don't mean to intervene but perhaps you could take it under advisement reach out to your town council and/or B. of Selectmen and make decision through Mary after that discussion.

Mr. Cerrone, We can table until we talk to town council.

Mr. Houle, I think that is sound advice.

Ms. Burgess, I can tell you what town council said.

Mr. Houle, Okay but the board would like to hear it or possibly from selectmen or both and maybe we can set up a meeting. Have you guys come in after that would that be fair enough?

Mr. Souza, It would be fair.

Mr. Cerrone, Or we could vote on it and you won't have to be here.

Mr. Souza, Yes I'm happy to communicate with Mary if you need me to be here I will be here.

Mr. Houle, At least we'll have idea of everything that happen. I think board will feel I feel same way that at least we'll have idea of what is going on and how it went.

Mr. Souza, I still think we're within 30 days like I said.

Mr. Peterson, I think that sounds good but bottom line is decision has already been made so I'm not sure what is the point in continuing any further. We have an application that according to our town planner says that it meets the requirements for planning so we could vote on that stipulating that we're acknowledging the judgment. Judgment has already been made. If we want to have meeting later on with B. of Selectmen or somebody to discuss how the procedure goes to ensure next time something like this happens we have better communication between different. Mr. Houle, Rich in all due respect I have couple questions I would like to ask selectmen or Roger on this and I think from what I'm hearing some of the other board members feel.

Mr. Peterson, Yes but I don't think it necessarily has to do with us holding up.

Mr. Houle, We're not holding anything up we can't hold him up.

Mr. Peterson, My point is we could get it off our plate this part of it.

Mr. Houle, I'm only one member on this board.

Mr. Cerrone, I agree with you Dick.

Mr. Houle, I would like to hear from Roger Ferris and/or one of the selectmen to have them tell me what is going on here.

Mr. Thimot, We don't know this guy with all due respect.

Mr. Weymouth, We can ask all the questions we want but fact of matter is it is out of our control

Mr. Houle, That is why he probably won't have to come back.

Mr. Weymouth, An option is we could approve the site plan and just make mention the reference to decision by the court we don't have to talk about plans don't have to talk about anything. Do we have to act on application before us?

Mr. Houle and Mr. Cerrone, No.

Ms. Burgess, I have to write a decision this is stamped in has date of final action.

Mr. Houle, We still might act on but I would like to have benefit of having town council tell us how this came to be and why this is in front of us. Right now we weren't even given that benefit and I think this board somebody should have come here and maybe discussed this little bit more.

Mr. Weymouth, Don't disagree with you. Does that mean we should delay our decision based on decision already made for us to the applicant?

Ned Cooke, Resident of NA. If the board is uncomfortable with taking action on it the by laws automatically approve the application if there is no action taken within 45 days just let it run out and it would automatically be approved without your action.

Mr. Houle, If someone wants to make motion if not we'll ask for little better of determination from town council and selectmen.

Ms. Burgess, I think what we would need to do is open line of communication so that it doesn't happen again specifically its already happen. This is out of hands specifically I think sitting down with the selectmen with town council and coming up with process so this doesn't happen again.

Mr. Cerrone, It never used to happen before.

Mr. Peterson, I'll make motion we approve application submitted for SBA Tower Inc. site plan approval.

Mr. Cerrone, Second for discussion.

Mr. Weymouth, Are you going to reference the court action that is it as reason for approval?

Ms. Burgess, Technically does it meet our site plan review? I know you're saying it doesn't matter.

Mr. Weymouth, Whose reviewed it?

Ms. Burgess, I have.

Mr. Cerrone, It doesn't meet site plan it doesn't meet zoning.

Mr. Houle, How does it meet the site plan Mary?

Ms. Burgess, Regardless of it he got his variance so to say. I said it meets site plan because he got his variance.

Mr. Houle, But it doesn't meet site plan clearly.

Mr. Peterson, Court order supersedes becomes the variance since he got the variance.

Mr. Cerrone, It wasn't court order it was a negotiation.

Mr. Peterson, It still was approved by the court.

Mr. Weymouth, We weren't allowed to do was to have any engineering review if we wanted or ConCom or board members themselves or anything.

Ms. Burgess, In all honesty if wetland protection act was involved in this then they would have to do something because that is also a federally mandated. So Conservation still has to sign off in one case saying and if not they still have to do NOI because that is a federal law that supersedes site plan review as well because it is wetland protection act.

Mr. Houle, I think we should hear the B of Selectmen and Roger once we have better idea of what is going on that is my feeling. We have second.

Ms. Burgess, You can take vote now and then even if it doesn't we can state the same reason that more information needed and stuff like that.

All in favor 1 to 4 abstain Richard Thimot, Richard Houle, Donald Cerrone and Scott Weymouth.

Ms. Burgess, Motion did not pass. I'll send letter to selectmen and town council requesting meeting regardless and enclose our decision with that and reason for it.

Mr. Souza, We will be in touch.

Form O: Theragenics/Needle Tech;

Modification to site plan of old Tyco Building

Proposed 20,000sq.ft. addition

John Lavin provided review proposal for the board

Town Planner review provided

DPW and ConCom reviews forthcoming

Ms. Burgess, Reading in application.

Mark Dibe-C&A civil engineer, Ned Cooke is present on behalf of the owner and applicant. Our go through existing condition on the site how it is now I'll go through our proposal and also will go into some of the upgrades that go along with the proposal. Existing site is 6 acre site it is former Tyco Building located on John Deitsch Blvd. to west is town of NA parcel there is some existing wetlands in the area on that parcel to north is another developed parcel and as well to east and south. There is existing building on the property, which is approximately 52,000sq.ft. all utilities are connected out it has associated parking that goes with the site. There is some existing drainage infrastructure most of the runoff existing drains to asphalt apron into catch basin and drains out into road drainage system. There is existing overgrown swale off back of pavement that handles the runoff and that connects out into drainage there is also all roof runoff is also tied into nearby

drainage. Our proposal for the project is a 20,000sq.ft. addition to northern end of the building. This addition is supposed to meet set backs of the zoning district. Associated with the addition is to repave the entire parking lot. There will be some and grading plan depicts it there is quite slope to this parking lot it will be slightly regraded we have proposed interlocking block retaining wall, which is no more than 4ft. high and has small footprint to be installed along the back parking area. I think my detail is exactly a versa lock given the height it doesn't need any back reinforcing or anything. It is basically just and 8" footprint.

Mr. Houle, Ratio of open space goes from what to what?

Ms. Burgess, It actually really doesn't change.

Mr. Dibe, Actually the entire project is falling under redevelopment project it is actually not increasing impervious area. As you can see majority of the addition is within existing parking lot and there is some further reductions of parking. Parking is being pulled away there is no longer employee lunch room and all impervious area the patio and things out in front are being removed so the entire overall site coverage is actually decreasing.

Ms. Burgess, Existing open space is 41% and required open space is 30. I had 41.0 to 3 that is my calculation.

Mr. Dibe, To cover some of the upgrades we've also proposed some upgrades to the site drain. Essentially very little treatment existing conditions provide of runoff majority of existing parking lot drains into single catch basin shallow it doesn't have any sump. The upgrades we're proposing there is existing swale with sub drain it is completely overgrown 20 or 30 years of sand from plowing things like that seem to be in that area. Along back we're proposing to completely remove the debris get that back up to functioning swale and sub drain. Also existing conditions all the runoff drains to a low point and concentrates and drains out at specific point. We're proposing to regrade slightly within a foot just so that runoff can sheet flow the entire length of drain, which will provide additional infiltration through the swale and into the pipe it is 6" sub drain and then it will head off into existing drain. We will concentrate at that bottom point and in today's events it just floods it is so backed up it almost floods into the loading area entire place floods out so we're proposing to improve that condition. Out in front we're proposing new deep sump catch basin to pick up portion of the front parking area as well as for remainder portion lower portion we're proposing vegetated filter strip and small rain garden, which would also have an overflow structure of deep sump catch basin, which is significant improvement over what is there now. Final thing we're essentially removing 20,000sq.ft. of parking area and replacing roof area is considered clean so in a way even though site coverage is essentially the same parking area is reduced. Parking calculations are provided we do meet number of spaces required there were just lot of parking spaces under the old use. We've resized they were significantly undersized as well we've shown plan that meets planning board requirements for parking spaces. That is essentially the site improvements all the existing utilities gas, sewer, water will remain aren't proposing any upgrades on those.

Mr. Houle, How about lighting?

Ned Cooke, The site lighting roof will remain the same it is good lights that shine toward the building from across the street. The existing lighting on the building is mounted to building and shines down and we would repeat similar effect on the addition.

Mr. Houle, Handicap accessibility is not going to change?

Mr. Dibe, We're actually adding two additional spaces there is two existing out in front.

Mr. Cooke, There are 4 that exists and we're adding two more.

Mr. Weymouth, Can you describe again along the westerly property line how that currently drainage works?

Mr. Dibe, What was proposed working the way it was designed all runoff would flow.

Mr. Cooke, There is low point and it drains there is supposed to be drainage structure into rock swale that is no longer there it has been plowed out or whatever.

Mr. Weymouth, How can there be a rock swale?

Mr. Cooke, Essentially swale has stuff that has been plowed into over last 30 years.

Mr. Weymouth, Is that rock swale on your property or town property?

Mr. Cooke, It is on ours.

Mr. Weymouth, Can't be very wide.

Mr. Dibe, It is 5 1/2ft. wide.

Mr. Cooke, It is not shown on existing drawing.

Mr. Dibe, There is literally almost no evidence of it existing.

Mr. Cooke, Swale is filled in and so flow has diverted around the infill and created its own stream.

Mr. Weymouth, Basically you're going to improve the discharge onto town property?

Mr. Cooke, No because the drainage swale is on our property and it goes down.

Ms. Burgess, It just points out that there is sub drain existing.

Mr. Cooke, And it does go into Conservation Commission headwall.

Mr. Dibe, Today there is essentially no evidence of it want to restore that. I've taken hard look at a catch basin or some sort of more formal loading dock is in that area no change of grade to get structure in there.

Mr. Weymouth, This is the asbuilt survey.

Mr. Dibe, We want to restore it as well as not drain down gutter and kick it out. We want to reslope it so it sheets off allows much greater filtration through the design of the structure.

Mr. Weymouth, Are we having Earthworks review this?

Ms. Burgess, I have asked Earthworks to give a proposal generally with site plans I ask for an amount and a proposal so that we can stay within everything. Proposals were \$2500 and outlines exactly what he is going to do. They did submit a stormwater report with the package so stormwater would be reviewed if board wants me to have John Lavin review it.

Mr. Houle, Does board feel stormwater needs to be reviewed?

Mr. Weymouth, I would personally feel better about it.

Mr. Cerrone, Yes.

Mr. Weymouth, If you scaled width of this channel if you will and then look at edge of pavement there is no way that matches this.

Mr. Houle, Point being Scott that it wasn't built correctly.

Mr. Weymouth, It doesn't look like edge of pavement that is shown on existing condition survey matches the design drawings. It is way more paving there is no 5ft.

Mr. Cerrone, How many parking spaces do they have?

Ms. Burgess, They have 235 and they're proposing 156.

Mr. Cooke, Understand that there were 235 8 x 18 spaces and we're going to 156 10 x 20 spaces.

Ms. Burgess, Front parking lot completely gone right next to the building.

Mr. Weymouth, Where this is town property adjacent to this I would feel much better if Earthworks reviewed it.

Mr. Peterson, Do we know sub surface pipe is there?

Mr. Dibe, We're not 100% sure.

Mr. Cerrone, Yes you have to have it reviewed.

Mr. Weymouth, There is easement on record that goes over town property with John Dietsch Blvd.

Richard Thimot left table at 7:55.

Mr. Weymouth, Mary do we have copy of the easement in the file?

Ms. Burgess, Final date of action is 10/16.

Mr. Cerrone, We don't have any comments from Public Works yet?

Ms. Burgess, No he said he was unable to review it but he will have it reviewed for our next meeting. We meet the 15th. and the 5th. of November.

Mr. Cerrone, We should have all the reviews by then so we can act that night and then if we need extension. Why don't we take it up the 15th. this way we can get all the reviews and have John Lavin if they agree to have John review the drainage.

Mr. Houle, I just hope we have everything we need because we only going to have one day left.

Mr. Cerrone, We can get extension that night if we need.

Mr. Dibe, If the engineers comments come in prior to the meeting is that something we would be able to look at and possibly address for that meeting?

Mr. Houle, We normally don't.

Mr. Cerrone, Usually we like to see what comments are we don't get it until last minutes ourselves.

Mr. Dibe, If there is something that we can look into possibly redesigning even if we have to and have something on hand we'd prefer that honestly but whatever the board.

Mr. Cerrone, We have to read it into the minutes.

Mr. Houle, Worse that is going to happen is we get an extension we will work with you trying to get things through here. I agree I think I would like to see it to. Has ConCom given us anything?

Ms. Burgess, They have filed NOI Conservation is going to wait for our stormwater review. The wetlands aren't directly effected but Shannon would feel more comfortable seeing our stormwater review prior.

Mr. Cerrone, Once we get copy from John give it to Shannon.

Ms. Burgess, Yes then she said she would write comment letter as well.

Mr. Cerrone, Can we have some grades of next door?

Mr. Peterson, I think that is good idea.

Mr. Weymouth, You're saying there is going to be 4ft. drop between edge of pavement.

Mr. Dibe, Reason being we could match existing grade of parking lot but it is 8ft. it is not real comfortable you want especially if you're redoing it all. That is maximum.

Mr. Weymouth, There is no protection for vehicles 4ft. drop in front of them.

Mr. Dibe, You'll drive up it will be wall up.

Mr. Cerrone, What about other side what protection is there to abutters?

Mr. Cooke, Trees and boulders.
Mr. Dibe, I can show the outline.
Mr. Cerrone, Yes give us some grades about 15 to 20ft. in.
Mr. Weymouth, You're not proposing any guardrail on top of that wall.
Mr. Dibe, No there is significant ...(inaudible) in between.
Mr. Houle, It is real drop vertical 4ft. drop?
Mr. Peterson, I think it is 4ft. for retaining wall.
Mr. Dibe, 4ft. maybe for 20ft. of 100ft. wall I can look at that.
Mr. Weymouth, Is your lot lower than adjacent lot or higher?
Mr. Cerrone, They're going to cut it.
Mr. Dibe, It is little bit lower but we're cutting.
Mr. Weymouth, So car drives into the wall car is not driving up.
Mr. Dibe, Then on other side there is buffer.
Ms. Burgess, Does it drop that much from 195 to 95 am I reading that correctly?
Mr. Cerrone, No it can't drop that much maybe 2 or 3ft.
Mr. Weymouth, You don't have to tie this back with any geotech?
Mr. Dibe, If it is 4ft. or less those interlocking block walls do not need any reinforcement.
Mr. Cerrone, We'll take it up next meeting this way we can get comments. It is up to them if they agree to have John Lavin our engineer review it.
Ms. Burgess, I believe they have they did submit a check.
Mr. Weymouth, Question to the board do we want to do site walk or anything?
Ms. Burgess, If they determine they want to take site walk I will let you know when we're coming.
Mr. Cerrone, Lets get this one out of the way one night this week.
Site visit 10/7 at 6:00 P.M.
Mr. Cooke, We have before the Conservation Commission the night before that on the 6th.
Mr. Cerrone, They're going to need the stormwater report from our engineer soon as we get copy give them copy. You might want to tell them you're waiting for us.
Continue until 10/15/09.
Form A: Irene M. O'Malley Trust;
Applicant wishes to eliminate the existing lot 9 and create a new lot 259 and 301
Lot 259: 35.4 acres, to be labeled unbuildable at this time
Lot 301 (Parcel A) is part of Abbot Run Estates V. Lot 301 (Parcel A) was 6,994 sq.ft. and was marked unbuildable. When created, 90' of frontage was granted through subdivision control
New Lot 301 will take land from Lot 259 and Lot 9 will be absorbed into Lot 259
New Lot 301: 90' frontage in R15; lot size is 15,842 sq.ft. and is located along Lincolnshire Drive
Meets ANR requirements
Ms. Burgess, Nobody is here but date of final action is the 14th.
Mr. Cerrone, Deny it nobody is here to present it.
Ms. Burgess, We can't deny it's not subdivision.
Mr. Cerrone, Nobody here to present the application.
Ms. Burgess, Unfortunately it doesn't stipulate that.
Mr. Cerrone, We've done it before Mr. Thimot used to say you have to have somebody to present we can't present it.

Mr. Houle, What do you have Mary just the plan?

Ms. Burgess, The original plan has 6,000 non buildable lot approved with the subdivision.

Mr. Cerrone, Where is retention pond? I signed it year was 2000. She still owns lot of land in back.

Ms. Burgess, Basically what she is doing or the trust is doing is creating buildable lot they still own the 35 acres and they're combining existing Lot 9 and 259 to be same lot. Proposing lot to be buildable lot by adding 9,000 sq.ft. there are 3 lots there is Lot 9, Lot 259 and then Lot 301. They're going to do away with Lot 9 combine it into Lot 259 it is their property.

Mr. Weymouth, Doesn't create any non conformity on other side?

Ms. Burgess, No Lot 259 is considered non buildable lot that is what they're marking it as.

Mr. Cerrone, Lot 259 has frontage on Hunts Bridge.

Ms. Burgess, Monticello and Hunts Bridge.

Mr. Weymouth, How is Lot 259 unbuildable?

Mr. Cerrone, You have Abbott Valley Run River so you have to be careful that is where one of the wells are.

Ms. Burgess, If they want to mark it unbuildable I don't see any reason. I think the other thing too is the way that this is built there are all these stubs. There is different map and parcel separated by the river.

Mr. Houle, This is all going to be one big parcel?

Mr. Weymouth, It is all part of Lot 259.

Mr. Peterson, Are there any Conservation issues?

Mr. Cerrone, They have to go to Conservation.

Ms. Burgess, If they apply for building permit they have to go to Conservation.

Mr. Cerrone, Do they have water tie ins?

Ms. Burgess, I'm assuming because there are houses.

Mr. Cerrone, I mean service they've got to cut the road. Did we get this road approved yet at town meeting?

Ms. Burgess, No it went to town meeting.

Mr. Cerrone, Do we still have bond on this?

Ms. Burgess, We have \$10,000 but they're dead the person who had it.

Mr. Cerrone, Person who did subdivision is not dead she sold it this person.

Ms. Burgess, These roads have not been accepted although we have everything in our file to have them accepted. There were couple things that Planning Board had but this was DPW and they are the reason why it didn't get accepted it. However there is letter in the file Gene Allen wrote saying it was fine. If you recall telephone poles are in the sidewalk and they said you can't have them in sidewalk anymore and DPW inspected it.

Mr. Cerrone, And mailboxes.

Ms. Burgess, In 2000 you could put phone poles in the sidewalk you look down Landry Ave. and you have hydrants in middle of the sidewalk.

Mr. Weymouth, This isn't creating any potential issue in the future?

Ms. Burgess and Mr. Cerrone, No.

Ms. Burgess, I have detail of retention pond.

Ms. Burgess, Lot 259 she could come in here tomorrow put line and then it would be next buildable lot.

Ms. Burgess, If they'd like it to be yes if it meets the requirements. Even if you have frontage you don't have lot depth they way it reads in the bylaw.

Mr. Peterson, Is there enough room to further the subdivision by putting road in between new boundary?

Ms. Burgess, If you read lot depth it's supposed to be taken more or less the center of the frontage back.

Richard Thimot returned to table at 8:13 P.M.

Ms. Burgess, It has to be 60ft. back. The way this is set up back when they approved it didn't they think it was going to continue?

Mr. Cerrone, They didn't want to come out Hunts Bridge eventually. Make motion to approve Form A for Irene M. O'Malley Trustee Lincolnshire Drive.

Mr. Houle, Lot 301.

Mr. Cerrone, Create new Lot 301, seconded by Rich Peterson.

All in favor 5 to 0.

Board taking 5 minute break.

Other Business:

Review Sign Bylaw for possible November Special;

Ms. Burgess, I did update the sign bylaw draft in hopes of getting it back on for November 5th. meeting if possible. Warrant closes October 5th. I did look for digital read a board definition the definitions are not good and I'm afraid if we did something with digital read a board other things could get in under it. At this time I don't feel comfortable with definition and plus every town prohibits them their definition is you can't have one.

Mr. Weymouth, Somebody could put manual read a board together but we're not going to allow them to do LED reader.

Ms. Burgess, I completely agree I just can't find good definition that I feel comfortable without loopholes. I talked with Don Johnson and he said I thought our sign bylaw was tight. I said no they found all these loop holes now. I'd like to avoid that but I want to keep researching it but I thought in the meantime.

Mr. Weymouth, If you give banks and gas stations the right to have numerical signs stating price, time and temperature why wouldn't you give other opportunities for people to have that same option?

Ms. Burgess, That was one of my questions signs that state just not to put exceptions for banks and gas stations. Signs that state time, temperature, whatever. When you start seeing gas prices why can't CVS advertise \$1.59 for their milk?

Mr. Houle, They do in South Attleboro.

Ms. Burgess, He's trying to allow it I don't know if anybody else wants to allow it. You're trying to make it look better.

Mr. Weymouth, Yes because if you allow a manual read a board sign and we do allow them. You're either going to eliminate them entirely or if you don't allow for the new technology to occur then you're still going to be stuck with manual read a boards.

Mr. Peterson, We put it up in front of Community School or Town Hall.

Mr. Weymouth, You're prohibiting the town from putting up sign to replace that manual read a board that has LED read out.

Ms. Burgess, I put this one forward for right now we can band flashing rotating animated mechanical all that so we don't get anybody else in because we have three now. Then once I can find good definition for digital read a board add that in.

Mr. Cerrone, Maybe we should do some more research.

Mr. Weymouth, You don't want to prohibit and upgrade.

Mr. Cerrone, No but you want to control it.

Ms. Burgess, After speaking with Michelle we went over it we did add something because we were thinking how do you prohibit Quan they just have a picture. We changed animate sign to say, which includes flashing, action, motion and non motion whether electric action, mechanical action, color, message change by way of pre arranged electronic or mechanical means. Signs that use alternate means of power included but not limited to solar and wind are considered electric. That was next thing we're not using electricity we're using solar power to do this.

Mr. Cerrone, Best thing to do get this in and then we'll come up with something I know it's tough.

Ms. Burgess, Right now we want to prohibit it in general.

Mr. Peterson, What do you mean by exterior or interior lighting?

Ms. Burgess, Some existing signs have the exterior lighting from the ground we don't want it to be red, yellow, orange we don't want it to be confused with anything else it can only be white only option left.

Mr. Cerrone, Mary you didn't give us the change on nursing home, assisted living?

Ms. Burgess, I haven't gotten to it.

Mr. Houle, Does somebody want to change anything in sign bylaw?

Ms. Burgess, I've talked with both Michelle and Rod about it and after hashing it out I think we prohibited just about every option you can have for flashing.

Mr. Cerrone, You have to have public hearing.

Ms. Burgess, Yes the warrant closes October 5th.

Mr. Cerrone, Submit it set up date for public hearing.

Mr. Peterson, Yes.

Mr. Cerrone, Do it same time if they got 100 signatures with Boch we'll do it that same night.

Ms. Burgess, That is what I'm hoping for.

Mr. Cerrone, Boch has to have 100 signatures to get on the ballet.

Ms. Burgess, Because it's a special.

Mr. Houle, So we know it is 20 of 9 and it cost us \$53 last week.

Mr. Cerrone, When we run out of money we'll go to Finance Committee.

Mr. Weymouth, That is what everybody else does why should we be any different.

Ms. Burgess, I agree I'm going to start spending money. This is my other thought too when they certify free cash at November meeting maybe we should allocate some it and try and get some for us.

Mr. Cerrone, If you still have money they're not going to give it to you.

Ms. Burgess, School Committee and Fire Dept. asking for more. They already put people back on.

Mr. Peterson, Before they had the money to do it. This is really petty but if we can go get some more money I think it is real inconvenience not necessarily for me because I leave here. I really think it is inconvenience to have to have board members come into town to get their packages every week if we have the money back to fund to have it delivered.

Mr. Cerrone, I have no problem.

Ms. Burgess, Our budget is so limited right now.

Mr. Peterson, All I'm saying if we had opportunity to get some more.

Mr. Cerrone, Same thing with janitor what I'm saying is you're trying to rush you have things you have to do. How are we going to run business? Run out of money go to Finance Committee.

Mr. Houle, We have to be here later that is just part of what we do but we can keep this going.

Correspondence;

Memo from BOH regarding floor drains;

Ms. Burgess, This floor drain regulation is the standard from the state & DPW tweaked it a bit. Floor drains do not effect us at all the only reason I was trying to help it was because we need floor drain bylaw for Aquifer Protection District. That helps us keep our permit our Zone 2 permit. I had been discussing it with BOH or health agent several times and he kept saying it is unfunded mandate I can't do it. I said what mandate is funded. Finally they have come up with they're actually moving forward with floor drain bylaw. This is basically a boiler plate.

Mr. Houle, Are they asking for something back?

Mr. Peterson, They kind of said they were.

Ms. Burgess, Then they said it speaks for itself.

Mr. Peterson, How are you going to do it with existing buildings, etc.?

Ms. Burgess, That is why he's saying it is unfunded mandate so who is going to enforce it.

Mr. Houle, He did say please comment upon and keepets.

Ms. Burgess, I have no clue what keepets is.

Mr. Peterson, It is like yiddish for talk and chat about it.

Hickory Woods Bid Proposal;

Mr. Weymouth, There is meeting on the 13th.

Ms. Burgess, That was the other thing Hickory Woods bid proposal. I was going to ask you guys if you wanted to pull that because we now have our court date it is in November. So we're not going to get any work done this season.

Mr. Cerrone, I thought it was on fast track.

Ms. Burgess, It is.

Mr. Houle, We voted as board to hole it up for three weeks maybe we should just wait until it comes in case something happens because it could happen.

Mr. Peterson, I agree.

Ms. Burgess, I was thinking so we could get nice tight package together and we can weigh all of our different options regarding certain things. We can take vote just so it is on record.

Mr. Peterson, Make motion we table bid process for Hickory Woods bid package until after.

Ms. Burgess, Pending future date because there is 30 days after the decision.

Mr. Weymouth, Second.

All in favor 4 to 0 to 1 abstain Donald Cerrone.

Ms. Burgess, In response to that I would like to send out a letter to neighbors of Hickory Woods letting them know what is going on and ensure them that DPW is still going to plow, fill any potholes and sand roads for winter time.

Mr. Houle, No problem that will keep them informed.

B of Selectmen Letter;

Ms. Burgess, This is our FY11 financial calendar.

Notice for Special.

Floor drain bylaw;

Mr. Peterson, Are we going to say anything to BOH?

Ms. Burgess, I haven't even reviewed it, it is boiler plate.

Mr. Peterson, Someone is going to have to go around to all existing commercial/industrial buildings in town.

Ms. Burgess, The thing about that bylaw is basically what happens now when we were talking about it building inspector has to inspect the restaurants regardless so they will already be inspected. For the commercial uses I have no clue how they're going to do it but it doesn't fall under our jurisdiction. They really should just give it to building dept. I'm not sure the health agent would go around.

Mr. Peterson, Not necessarily for us to comment because it doesn't relate to anything we have too.

Ms. Burgess, We were only put in this mix because I kept telling them to come up with one so I could get Aquifer Protection District all settled.

Mr. Houle, I think Rich might have good point maybe we should put comment to them as to what we think should be in there.

Mr. Peterson, It kind of does that. We're only concerned about having one because it relates to our Aquifer Protection. What they do in order to make it work really isn't our perview.

Ms. Burgess, I can review it and see if there is anything contradictory to our bylaws and they make effect our site plan review. I will read it through and do that.

Other Business:

Christina Estates;

Ms. Burgess, I met with electric dept. today regarding Butterfly getting pole put in we're moving forward with that. In course of the meeting Christina Estates came up because they are requesting temporary electricity above ground three or four poles on Delfast Monest.

Mr. Cerrone, What does plan say?

Ms. Burgess, Plan says underground.

Mr. Cerrone, Tell electric company.

Ms. Burgess, They agree because I said the plans call for underground. How are we going to make them take down those temporary poles?

Mr. Weymouth, You don't own those poles.

Mr. Cerrone, Plus over there Verizon owns the poles not even NA Electric.

Ms. Burgess, That is other thing you have to get Verizon. The electric dept. basically says same thing that our plans call for underground so they're sticking with us.

Mr. Cerrone, Tell Jay to tell them to go and ask Planning Board.

Ms. Burgess, They already have apparently they don't think they need temporary cul-de-sac and they don't have water and electricity but those two houses are sold.

Mr. Cerrone, I'd like to know who did all the sign offs.

Ms. Burgess, They haven't got CO's over there.

Mr. Cerrone, Who signed off on building permit?

Ms. Burgess, Rod did.

Mr. Cerrone, No the depts. When you get building permit.

Ms. Burgess, Everybody signed off on it except for electric.

Mr. Cerrone, Why did water sign off?

Ms. Burgess, They didn't.

Mr. Cerrone, They had to, to get building permit.

Ms. Burgess, They haven't gotten their street opening or water permit.

Mr. Cerrone, When I go for building permit I have to go through all the boards somebody signed off so it is their fault they shouldn't have signed off until they were sure the water was there. We have too many rules nobody knows how to follow these rules. They don't have water in case of fire what do you do now.

Ms. Burgess, The thing is you notice they just check off the ones they want you to sign off. There are people who come in here for individual houses that only need Conservation, etc. new lots. You have to have BOH sign off, tax collector sign off and Conservation has to sign off that is it they put X's next to people that need to sign off.

Mr. Cerrone, That's not our problem.

Mr. Houle, Electricity we're totally against above ground simple as that.

Ms. Burgess, Also I believe I didn't have time to check the records it has been almost two years since that binder went down.

Mr. Cerrone, I think you're right.

Ms. Burgess, Our condition of approval is topcoat has to be done within two years. I was thinking that maybe we should consider rescinding our decision until they come to us with temporary cul-de-sac. I told Rod not to issue anymore building permits two okay, four not okay without turn around three not okay you need emergency vehicle turn around. They're not going to come in with temporary cul-de-sac they're not going to do anything. I'm thinking that maybe we should consider taking action.

Mr. Peterson, They couldn't proceed with road because the Army Corp and bridge.

Mr. Cerrone, When they came in I told them they said they were still going to bridge when I already knew the bridge wasn't going. I said to them any changes we're going to open up public hearing again and that is what we're going to do. They said we'll do whatever we have to do I said I don't care what you have to do we're going to open up that hearing again. Now once we opening up hearing we're going to follow new rules and regulations no more of old regulations.

Ms. Burgess, I want to write them letter saying we need temporary cul-de-sac.

Mr. Cerrone, I told them they were pain in the ass to deal with from day one if you recall. They put us in corner you have to vote on this tonight because of this and this because of bank and financing.

Mr. Peterson, Even the night we had the meeting and you brought that up they were playing the same thing I have to have it done tonight.

Mr. Cerrone, That is why I said that night I said we're going to reopen the hearing now that we have to reopen I'm going to tell them right out we're going to start with new regulations.

Ms. Burgess, There is only so far we can go with that because they have already registered the subdivision plan. You can deny the modification but rest of you can't. If they come in and say we want temporary cul-de-sac we can say no to that.

Mr. Cerrone, They're coming back with big change.

Ms. Burgess, Big change is going to be new entrance.

Mr. Cerrone, That's right so we're starting public hearing over again.

Ms. Burgess, Then there is going to be traffic and everything else.

Mr. Cerrone, Now he has to follow new rules.

Ms. Burgess, Apparently the Army Corp. of Engineers denied them their crossing and they're appealing it so now they're telling everyone it is still in the works. I can't remember who told me and Shannon that they got denied and they're appealing it. They're crossing wetland stream but problem being is they have to fill wetlands and they're at their 5000 capacity and they need to fill wetlands on Phase V or something that needed more because then they will have to put bridge in Phase V I think.

Mr. Cerrone, There was bridge they wanted to put and Public Works said we're not maintaining that.

Ms. Burgess, Half million dollar bridge.

Mr. Weymouth, The 5000 sq.ft. when you're crossing.

Ms. Burgess, But when they build and disturb the culvert they're trying to preserve stream and I guess there is another wetland next to it or something they have to fill in order to put culvert in order to run all the utilities.

Mr. Weymouth, Why does Corp. have jurisdiction?

Ms. Burgess, It is because archeological and natural heritage.

Mr. Weymouth, So it is more than just crossing.

Mr. Cerrone, Indian grave.

Mr. Houle, What triggers that?

Ms. Burgess, They have endangered species all wetlands and streams and Indian burial ground so they have lot over there they basically hit everything so Army Corp. comes in. It is size of subdivision that triggers Army Corp. generally.

Mr. Cerrone, You might want to send memo signed by chairman to building dept. don't issue anymore building permits until they have water so we'll cover ourselves.

Ms. Burgess, And electric.

Mr. Cerrone, Until fire hydrants are working.

Ms. Burgess, I was going to write letter stating basically your two years is up that you need temporary cul-de-sac that you're not going to get anymore building permits because it is fire hazard without water and working hydrant. With regards to proposing temporary above ground utilities that is not consistent with your approval therefore we will not allow for this to happen.

Mr. Cerrone, You might want to get letter from fire chief.

Mr. Peterson, Can we say those things?

Ms. Burgess, Yes.

Mr. Peterson, They don't come under our perview do they?

Mr. Cerrone, Have fire chief write to us saying there is no water and no fire hydrants then we'll send it to them.

Mr. Peterson, Bring it to other peoples attention.

Mr. Houle, What are you going to write to building dept.?

Mr. Cerrone, After you get letter from chief.

Ms. Burgess, I also already told Rod he's stalling the permits if anymore come in he's going to stall them until I can come up with something.

Mr. Cerrone, Call the fire chief.

Mr. Houle, Put it on our letterhead and I'll sign it.

Contract for bids;

Ms. Burgess, I have reviewed contract for lowest bidder all numbers, etc. I've written memo to you guys basically stating the amount, the contract. In your packet you'll find the cover letter is just canvas and recommendation it just states who we received the bids from and obviously the recommendation is for Myles Excavating. There is difference in price of \$7,840 he included something twice. His original amount was \$41 + \$2000 + \$2800 for the alternate. I wrote this assuming that you wanted alternate the looming fee and engineer doing detention basin. It came out including two alternates to \$38,016.15. Just to keep ball rolling I wrote award letter if board decides to award tonight.

Mr. Cerrone, Did town council review the contract?

Ms. Burgess, This is actually a town council created contract that DPW uses for the same thing.

Mr. Cerrone, You should still run it by town council because we always did before.

Ms. Burgess, Town council has to sign it so basically I was going to ask him to review it and then sign it. I did bid package checklist for everybody, which I did all the references and basically he's certified with 4 out of the 5 towns to work in those towns. His equipment has been inspected and his work, etc. He is in process of being certified with NA he got okay from Steve and everybody else if board decides to approve it.

Mr. Houle, Has proper insurance everything else is okay?

Ms. Burgess, Yes. What I did on last sheet was I created bid sheet this is how I broke down and found the error. There were no errors on first page, on second page where I put asterisk he had multiplied wrong 18 x 50 is 900 and he had 960 that was changed. Other big change was to #6 he had put down two numbers because he went by the amended version where it says change this to this he put both numbers in for that and that is how he came up being off so much. Then final page is final calculations.

Mr. Weymouth, What is his payment schedule?

Ms. Burgess, It is installments as per contract agreement, which is the bid package that says you have to get planning board approval sign off. When he's done doing landscaping the planning board goes out looks at it and gives him that item.

Mr. Weymouth, It is as complete.

Mr. Cerrone, We have to have sign off from John Lavin. We can vote on it subject to having town council review it. When can it get going on this?

Ms. Burgess, He wants to get going immediately.

Mr. Weymouth, Make motion to award the bid to Myles Excavating for \$38,016.15.

Ms. Burgess, That is with both alternates too and we still have \$7500.

Mr. Peterson, Second motion.

All in favor 5 to 0.

Ms. Burgess, I'll get this started get the award letter. I have already checked out all of his I called the insurance co. called the surety co. called everybody he is completely in compliance. I only have one original I need two originals one for our file and one for town council file.

SRPEDD;

Ms. Burgess, I met with them on Tuesday to discuss couple things. First and foremost I've made copies of the economic development portion of the master plan that they're completing for us. They do not get paid unless we accept it this is just partial and they said we could accept it as draft form. Here is partial draft there is

more to come but they wanted to come in October 15th. at our meeting and discuss this portion of it.

Mr. Houle, This has to do with grant also?

Ms. Burgess, Yes the planning board has to accept the draft by December 30th. or they don't get paid. We were awarded DLTA grant. They were hoping members could read it and write down any questions they may have to they can address them and then they can go for final draft. They also said they would come in for public hearing because you said wanted to have public hearing before we accept the economic development portion.

Mr. Weymouth, This is basically just factorial information it is not recommendations or anything like that.

Ms. Burgess, No they haven't done recommendations yet.

Mr. Houle, We should still have open hearing.

Ms. Burgess, Technically we don't have to technically the master plan doesn't even have to be accepted anyone but the planning board.

Mr. Cerrone, Usually you want to get comments from all the boards.

Ms. Burgess, What I was going to do when we set the public hearing date was put copy of final draft in everyone's box so they have it and read it and can comment. It is a sleeper but if there is anything you see that maybe irregular something you want to add. You're right it is basic but obviously they want you to make sure it is okay before they start doing final. Other thing we were talking about was zoning map and putting aside rezoning of Rte.1 because I think that kind of got us stalled from getting the actual map done last time. We're considering taking different task and just addressing all the split lots changing all the split lots and then having map presented to town meeting, public hearing and all that stuff by next June. When I say split lots identify the 300 split lots see if changing the zoning will make them non-conforming or such.

Mr. Cerrone, Which zone all zones?

Ms. Burgess, I suggested that we just do residential right now but there are some commercial that do have split zones that abut residential. Identify, list, use everything like that and then see.

Mr. Cerrone, I'm split zone if I come to NA through Plainville my driveway will be in Plainville little portion then I have R15 then I have R20. Rear of my property R15.

Ms. Burgess, You would rather that be changed R15 right?

Mr. Cerrone, If you look at 69 map they changed it for a reason because Bayberry was having problems then with septic that was R15. They changed it because there was no sewer there. Now you almost could go back to what it was originally. If you look at way big plan is.

Mr. Houle, There is high water table in that whole area.

Mr. Cerrone, But you needed sewer that is why they changed it to R20 they were having problems when it was R15 they changed zone to R20.

Mr. Peterson, If you change these lots how do you go about clearly delineating where zone line is?

Mr. Cerrone, Lot line that is way to do it. I could be like Boch you tell me what you want to do I'm in middle what do I do R15? You put the board in a situation and I might not like your answer and I go to selectmen.

Ms. Burgess, That is way I want to do it then we can talk about rezoning later. After we get master plan and see what we need more of. What we had originally

done was we were going to rezone Rte.1 then we went through that whole project and then it got side tracked. Problem with commercial is some residential is in commercial you might run into problem where trailer park doesn't want to be residential they want to be commercial or something like that. You run into difficulties but I have no problem just going to lot line and contact people and now they don't have to deal with it. We might get some resistance but I don't expect to get 300 people resisting.

Mr. Cerrone, I would rather know what my zone is this way if I come in front of a board.

Mr. Houle, You're just doing residential right now?

Ms. Burgess, I will look at the commercial I don't think there are many split lots in commercial. Like I said trailer park there are couple instances where it could get dicey that we may have some complaints. I'd rather have two complaints I'm not going to get 300 complaints. Other thing that SRPEDD is going to do is give us legal description of whole zoning map to be accepted at town meeting. Then we'll have the GIS base zoning map.

Mr. Houle, This is all part of the grant, which is going to be paid for?

Ms. Burgess, This is actually municipal assistance the 20 hours municipal assistance we get and additional 20 hours from Dick. Right now that is where we stand with that. October 15th. meeting SRPEDD is coming. November 5th. they're going to come back with another version they will e-mail it to us head of time so it will be in our packages for November 5th. discuss next draft addition and then they were talking about possibly doing public hearing sometime end of November beginning of December. All you have to do is accept the draft and they get paid by December 30th. Also I applied for another technical assistant grant through Southcoast rail because we are in the region we qualify for certain grants. I apologize for not letting you know head of time. Apparently it was sent here Sept. 9th. but to the selectmen it doesn't come up to planning dept. When Gregg was here he said he thought it closed today or tomorrow. I had to put something together in order to get consider. It goes to the chief officer and selectmen are the chief officers that FEMA thing went to Mark it didn't come to us. They should have sent it up. Gregg said they are really hot on housing right now they really want to do housing research and stuff so I put it for the housing portion of the master plan. Second priority was housing production plan, which is actually more detailed than the housing portion of master plan. They're going to award that mid October.

Dorey Estates;

Ms. Burgess, I'm contacting James Paving to do Dorey. I have to contact Mrs. Cash I'm going to get estimate and then I will talk to here.

Mr. Cerrone, Mary if you could get draft for nursing home for next meeting this way if we have to hold public hearing once the board discusses it.

Ms. Burgess, I will send out award letter tomorrow he has until Monday to reply he wants to get right on it so as long as I have all my paperwork and town council reviews the contract we should be all set.

Mr. Peterson, Make motion to adjourn, seconded by Scott Weymouth.

All in favor 5 to 0 adjourned at 9:18 P.M.

Respectfully Submitted,

Attach Agenda to Minutes.

