



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

MERRIMACK PLANNING BOARD

APPROVED MINUTES

TUESDAY, JUNE 18, 2013

Planning Board members present: Robert Best, Alastair Millns, Tom Koenig, Michael Redding, Lynn Christensen, Stanley Bonislowski, Desirea Falt, and Alternates Nelson Disco and Matthew Passalacqua.

Community Development staff: Community Development Director Tim Thompson, Planning and Zoning Administrator Nancy Larson, and Recording Secretary Zina Jordan.

1. Call to Order

Robert Best called the meeting to order at 7:30 p.m.

2. Planning & Zoning Administrator's Report

None.

3. Public Presentation of the Master Plan

Chairman Best thanked Nelson Disco for Chairing the Master Plan Steering Committee and thanked all those who served on it.

Gordon Leedy, Managing Director Land Development/Certified Planner, Vanasse Hangen Brustlin, Inc., (VHB) stated that the Master Plan is a guidebook for policy for the next 10 years. It was produced over a three Fiscal Year period and can be seen on both the Town and Master Plan websites. He and Ralph Wilmer, Certified Planner, VHB, listed, explained, and summarized the chapters.

The first chapter identifies the following trends: aging population, change, household size, rising cost of energy, technological advances, globalization, changes in transportation, sustainability, and public health. Gordon Leedy read out the vision statement. The chapter on land use and community design states that the Daniel Webster Highway Corridor is the most developed area in Merrimack and influences future growth opportunities. The Plan aims to strengthen Merrimack's "villages": Reed's Ferry, Town Center, and Thorntons Ferry. The chapter recommends allowing/encouraging mixed use, better access management, higher density development, providing traffic calming, pedestrian and bicycling amenities, improving streetscapes, enhancing access to the river, and preserving/enhancing the rural aesthetic of existing neighborhoods.

Ralph Wilmer presented housing recommendations: mixed use housing where appropriate; a zoning ordinance to respond to the Workforce Housing Law; accessory apartments, especially for seniors; smaller lot sizes; and creating incentives for open

space residential development. He presented the economic development recommendations. Consider performance-based zoning, a Tax Increment Financing District, and Community Revitalization Tax Relief incentives. Natural resources and open space recommendations include: accomplish the objectives of the Biodiversity Conservation Plan, reduce imperviousness in site design, amend site plan and subdivision regulations in order to minimize disruption of natural vegetation, use native plants, limit de-icing compounds, and properly use pesticides and insecticides. Other chapters are historic resources recommendations, utilities and energy, community facilities recommendations, transportation recommendations, and plan implementation listed by timing and responsible party.

Gordon Leedy thanked the Master Plan Steering Committee, which was extraordinarily dedicated and provided invaluable information and recommendations. Nelson Disco thanked the committee, who met monthly for 3+ years. The next step will be a public hearing. He suggested adding a table of contents, an index, an appendix of referenced documents, and a cover page. Ralph Wilmer said photos, maps and an acknowledgement page would also be added. Nelson Disco said that VHB did a fantastic job and resolved conflicting inputs. Chairman Best thanked all members, volunteers and staff. Ralph Wilmer agreed to post tonight's presentation on the two websites.

4. Old Blood Properties, LLC. (applicant/owner) – Review for Acceptance and consideration of Final Approval of an application proposing a re-subdivision of land resulting in the creation of one additional lot, located at Old Blood Road, in the R-1 (Residential) District. Tax Map 5B, Lots 003 & 003-1. This item is continued from the May 21, 2013 meeting.

Ken Clinton, Meridian Land Services, said this is a single-lot conventional residential subdivision with a Class 5 gravel road to the south and a Class 6 road to the north. The two existing lots, 003 and 003-1, will become one lot to front on Old Blood Road. The road was re-aligned for 2 three-lot subdivision across Old Blood Road. The adjacent land to the west would become a 72-lot cluster development; it has not yet been built (or approved). The new lot has nothing to do with the cluster, although it comes from the same parent property. It uses some of the property that led to the yield plan, so the cluster will have one less lot when it comes to the Planning Board.

Old Blood Road improvements are now underway. It is fully functioning but is not finished. There are over 100,000 square feet of contiguous upland area in the proposed lot. The subdivision frontage will be on Old Blood Road. In addition to reducing the cluster by one lot, the developer agreed to staff's recommendation to increase the road width to 24' paved with 2' shoulders on the side.

Ken Clinton argued that providing sidewalks is not applicable for the following reasons: The road is neither a collector nor an arterial road. It was a previously approved road that is not part of the single-lot subdivision. The open drainage was approved and does not accommodate the extra width necessary for a sidewalk. The original three-lot subdivision has a sidewalk waiver. The hammerhead is really a "T", but one can drive through it and the "T" is not in the right-of-way. It makes no sense to reconfigure the ending of the right-of-way and connect it with Old Blood Road for a

more conventional hammerhead design. The applicant will have to get a discontinuance from Town Council at an upcoming meeting, since Town Council accepted the previously dedicated right-of-way.

The applicant agrees with staff's conditions except for #6 (to provide a sidewalk) and #7 (he has already agreed to provide a 24'-wide roadway) and technical condition #5 (setback/monumentation). He disagrees with #5 because the future cluster subdivision is reflected on the plan and the side property line will eventually become frontage. The applicant will voluntarily comply with the 50' front yard setback requirement in the interim. Ken Clinton showed where iron pins would be set. He does not know the exact location of the future cluster right-of-way. If the road is constructed later, monuments would be disturbed, but the bond covers their installation. He proposes to set iron pins now and stone bounds later. As to technical condition #10 (monumentation), any monuments would be disturbed and the applicant must pay to reset them. He prefers to delay setting stone bounds until Certificate of Occupancy rather than at plan signing.

There will be no increase in drainage, pervious surface or the wetland. The only difference will be the road orientation and configuration.

Nelson Disco asked whether the Zoning Board of Adjustment (ZBA) agreed to the yield plan. Tim Thompson said it agreed to the number determined by the Planning Board. In August 2011, it granted a variance for the extra 6-7 lots. Nancy Larson said the reduction is from the total number of lots in the yield plan. Adding lots would pose a problem, but removing one lot would cause no conflict with the variance or the yield plan because it would result in a less intense development. Tim Thompson stated that 6-7 extra lots is a cap; anything less complies with the variance. Attorney Michael said the variance is based on 5-6 more lots in addition to the number in the yield plan. Town consultants will look again at available land to support the density.

Tom Koenig asked about crossing the un-named Class 6 right-of-way to Old Blood Road. Attorney Michael said it used to service land on both sides when they had different owners. Now that the applicant owns it all, there is no need for that road. The unnamed road is a Class 6 road that goes nowhere, ends on the applicant's land and services nothing. The applicant owns the fee subject to a public easement. There is no reason for it to be part of a public road system. The applicant is going to ask Town Council to discontinue it. Part of Lot 3 will be used to create Lot 2. Chairman Best asked what would happen to the area if the road became Class 5. Ken Clinton said that the triangular area to the south is a temporary access easement only and will be discontinued.

Nelson Disco said the road in the larger (future) development should eventually connect to Madeleine Bennett Way. Ken Clinton said that the plan is to connect them in the upcoming cluster subdivision. Attorney Michael said the Planning Board consensus was that the road should go through to Madeleine Bennett Way.

Staff recommends that the Board vote to accept the application, as it is substantially complete and contains sufficient information to invoke the Board's jurisdiction and to allow it to make an informed decision.

The Board voted 7-0-0 to accept the application for review, on a motion made by Alastair Millns and seconded by Lynn Christensen.

Alastair Millns supported a sidewalk waiver because the road would be 24' in width. Chairman Best said the parcel justifies a waiver. Legally he prefers that the applicant request a waiver rather than the Planning Board not discussing it. He supports a waiver based on the criterion that specific circumstances relative to the site plan or conditions of the land in such site plan indicate that the waiver will properly carry out the spirit and intent of the regulations.

The Board voted 7-0-0 to waive the requirements of Section 4.20.2 – Pedestrian Ways and Sidewalks – of the Subdivision Regulations, by a vote of 7-0-0, on a motion made by Lynn Christensen and seconded by Desirea Falt.

There was no public comment.

Nancy Larson suggested eliminating Condition #6 (sidewalk), revising #7 (updated road bond), adding language to #3 (deed for drainage easement) and #4 (discontinue un-named Class 6 road) and adding new Condition #8 (road bond). She did not want to delete Technical Condition #10 (monumentation timing) concerning iron pins that are required by the subdivision regulations. Tim Thompson said iron pins could be certified before plan signing and stone bounds before Certificate of Occupancy. Nancy Larson said that #5 (setback/monumentation) just shows the 50' setback along the northwest property boundary assuming first the cluster will be approved in the future. She would prefer to retain #5 relating to a trigger point requiring the 50' setback, but is willing to change the timing. She and Ken Clinton will reword technical comment #5. Tim Thompson said Ken Clinton was convincing about setting iron pins until the road is constructed. Nancy Larson asked that it be noted on the plan.

Staff recommends that the Board vote to grant Final Approval to the application, with conditions to be fulfilled within six months and prior to plan signing, unless otherwise specified.

The Board voted 7-0-0 to grant final approval, with conditions to be fulfilled within six months, with the following conditions, on a motion made by Alastair Millns and seconded by Michael Redding.

1. Final plans and mylars to be signed by all property owners. The Licensed Land Surveyor and Certified Wetland Scientist shall also sign and seal final plans and mylars;
2. The applicant is responsible for recording the plan (including recording fee and the \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) and any related documents at the Hillsborough County Registry of Deeds. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department;
3. A draft copy of the deed language (if additional right-of-way dedication is proposed) as well as draft language of the proposed drainage easement to be submitted to the Community Development Department for review and approval by the town's legal counsel (legal review shall be performed at the applicant's

- expense). Said documents shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant;
4. The applicant shall obtain Town Council approval for the revisions to the discontinuance of Old Blood Road as well as for the discontinuance of the “Un-named Class VI R.O.W.” depicted and noted on the plan;
 5. Satisfactorily address any forthcoming comments to be received from the Fire, Public Works, Building and Fire Departments;
 6. Prior to issuance of a Certificate of Occupancy for Lot 1, a bituminous concrete binder course and street bounds in accordance with Section 4.18(a) on the roadway providing legal road frontage for the lot (250 ft. along Old Blood Road) must be completed;
 7. Submission of an updated Performance Road Bond to the Public Works Department for review and approval, incorporating additional necessary improvements to Old Blood Road as they relate to the one-lot subdivision. The new Performance Bond is to replace existing bond in place for the Prince/Old Blood three-lot subdivision (Irrevocable Standby Letter of Credit #68021211 for Old Blood Road Properties, LLC/R. Prince);
 8. Address planning staff technical comments.

Planning Staff Technical Comments

1. The applicant shall provide a recordable sheet of the subdivision plan meeting the requirements of the Hillsborough County Registry of Deeds;
2. Recordable plan sheet to include proposed lot area with zoning requirements;
3. Plan to be revised to include the language “contiguous upland area” after 100,000 S.F. in the Zoning Classification note #3 on sheet 1, and correct the apparent typo of the amount of contiguous upland area for the lot as shown on Sheets 2 and 3 (which only indicates 10,134 square feet of contiguous upland);
4. Metes and Bounds legal description from Plan Reference #2 (Prince/Old Blood Road HCRD Plan #36613) for Old Blood Road to be added to the recordable plan sheet;
5. Staff recommends that the plan be revised to include a note clearly explaining the trigger point for the 50 ft. front yard setback requirement along the northwesterly property boundary (to reflect the future extension of Old Blood Rd. as shown on the 66-lot yield plan reviewed by the Planning Board at their meeting on February 7, 2012). A note also to be added to the plan stating that iron pins along the northwesterly property boundary to be replaced with stone bounds upon extension of Old Blood Road (or other named street), along the northwesterly property boundary of Tax Map 5B, Lot 003-2;
6. Applicant to receive, in writing (e-mail is sufficient) from the Assessing Department, a Map and Lot number to assign to proposed Lot 1 and the plan shall be revised accordingly;

7. Note 1 referencing roadway and infrastructure improvements to be revised go include HCRD Plan numbers and any other descriptive information as to location of said drawings for retrieval purposes;
8. The applicant shall modify the plan to include a note regarding the requirement to obtain a Right-of-Way (R.O.W.) Permit from the Public Works Department prior to conducting any work within the public R.O.W. of Old Blood Road;
9. After consultation with the Fire Department, provide final street numbering for Lot 1 on the final plan;
10. Written confirmation to be provided by a Licensed Land Surveyor to the Community Development Department certifying that all monumentation has been set in accordance with the approved plan. Revising the final plan to indicate monuments as “set” would satisfy this requirement;
11. The plan shall be revised (if applicable) to list and fully describe any waivers granted by the Planning Board.

5. Meridian Land Services (applicant) & Carl A. Quimby Revocable Trust (owner) – Pre-Submission Hearing to discuss the road layout design for a proposal to re-subdivide a grandfathered (but not yet fully constructed) subdivision into 13 single Family residential lots, located at 164 Amherst Road, 8 Pollard Road, and an unnumbered parcel in the R-1 (Residential) by zone, and Aquifer Conservation Districts. Tax Map 4B, Lots 146, 146-1 and 152-1.

Ken Clinton, Meridian Land Services, noted that, in March 2013, the Planning Board and Legal Counsel said this is a grand-fathered viable subdivision and the ZBA granted a variance for the frontage of five lots on two cul-de-sacs. The subdivision does not meet all modern subdivision criteria, especially regarding road construction. Since March 2013, the applicant has worked hard to be ready to reconfigure the road to serve 13 lots. At this meeting, the applicant wants Planning Board confirmation that it is reasonable to pursue the five road design criteria/requirements or whether a waiver is necessary. It is a partially built road from the partially constructed Wildwood Acres Subdivision.

Note: the italicized portions below addressing the five road design discussion points are quoted verbatim from the Staff memo.

Maximum Slope of Road Under Section 4.12(b) of the Subdivision Regulations – Allowed: A maximum slope of 6% over 800 feet or 8% over 600 feet; Proposed: 8% for 150 feet and 9.5% for 750 feet. The Regulation does state, however, that “Variations from these grades may be permitted by the Board where advisable based on topographic conditions and the feasibility of development of the parcel in question.” Staff recommends that the Board determine whether or not a waiver is technically required, given the allowances for variations. Any variations, however, must of course still be approved by the Board but possibly not by way of a formal waiver request. The Fire Department says this is an acceptable subdivision for construction with two conditions: install hydrants and a cul-de-sac to be named. The Public Works Department (PWD) says that, given the existing terrain and houses, the proposed

slopes are acceptable. Tim Thompson asked the Board's comfort level with the proposal and whether it falls within the variation and does not require a waiver. Chairman Best opined that it would be better to vote on a waiver in order to prevent someone from appealing later.

Maximum Cul-de-sac Length Under Section 4.12© of the Subdivision Regulations – Allowed: 1,200 feet. Proposed: 1,461.2± feet. Staff recommends that the Board discuss how this requirement should be applied with multiple cul-de-sacs. The 1,461 feet is measured from Amherst Road to the end of the un-named spur cul-de-sac off of Pollard Road. If the length of the spur cul-de-sac is measured from its intersection with Pollard Road, the waiver request is then based on the proposed length of Pollard Road (approximately 1,298.60 feet) since the spur cul-de-sac only measures approximately 561.18 feet from the intersection with Pollard Road. PWD says it has no issue.

Maximum Slope of Road Approaching an Intersection Under Section 4.12(d) of the Subdivision Regulations – Allowed: -2% for 50 feet. Proposed: +2% for 50 feet. According to the project narrative, the existing Pollard Road approach to Amherst Road is at approximately 5%. The proposed road design would reduce this grade to 2% for 50 feet, decreasing the level of non-conformity and thus, improving safety. PWD agrees with this approach if the flow of water is controlled from running into Amherst Road.

Minimum Sight Distance Under Section 4.12(d) of the Subdivision Regulations – Required: 200 feet for local streets or 300 feet for collector streets. Provided: 390 feet looking east along Amherst Road and 360 feet looking west along Amherst Road. The Subdivision Regulations list Amherst Road as a minor arterial street and not a collector street. Based upon the sight distance information provided by the applicant, it appears that the sight distance exceeds that required and therefore, a waiver request may not be necessary. Staff recommends that the final set of engineered subdivision plans submitted to the Planning Board include a sight distance plan & profile (triangle) in both directions to demonstrate that an unobstructed line of sight within the right-of-way exists looking east and west along Amherst Road. PWD agrees with staff that no waiver is necessary, since the site distance is over 300' in both directions.

Maximum Grading of Side Slopes Under Section 4.18(b) of the Subdivision Regulations – Allowed: 2:1 maximum side slope in a cut section. Proposed: 1:1 maximum side slope in a cut section in anticipation that ledge will be encountered in certain areas. Should the Board ultimately vote to grant a waiver to allow a 1:1 side slope in a cut section at the time of formal application, Staff recommends that the motion clarify that it is limited to ledge cuts only.

The applicant wants to make the pre-existing subdivision as conforming as possible.

Michael Redding asked the applicant to be sure to incorporate velocity and capacity in the maximum slope of the road. He said it meets the waiver criterion that specific circumstances relative to the subdivision or conditions of the land in said subdivision

indicate that the waiver will properly carry out the spirit and intent of the regulations. Chairman Best said the point is to control runoff. Nelson Disco said the same issue would apply to several driveways in the subdivision. Water must be addressed at that time. Ken Clinton replied that all driveways are at 10%, but some may need waivers.

Michael Redding asked why the town limits maximum cul-de-sac length to 1,200'. Chairman Best explained that it has to do with the length of a fire hose. It can be longer if there are hydrants. Attorney Michael added that water availability used to be an issue. Since this subdivision will have town water and hydrants every 500', cul-de-sac footage is less critical. Nelson Disco said the length also has to do with emergency vehicle access. Tim Thompson said that 1,200' is the standard cul-de-sac length in many NH communities. The waiver would be for 1,298' from the Pollard Road extension rather than 1,461'. Nancy Larson said she always bases her decision on the length of the primary roadway to the end of the cul-de-sac. She explained that the regulations do not state how to interpret cul-de-sac length. Tom Koenig suggested asking for a waiver for the longer 1,461' length of cul-de-sac (as measured to the side spur cul-de-sac). Chairman Best liked the applicant's conservative approach to maximum road length. Michael Redding stated that a waiver is specifically required. Alastair Millns agreed with Chairman Best's reasoning that it would be better for the Board to vote on waivers for four requirements. Minimum sight distance is no longer an issue.

Nancy Larson asked if the drainage would be open or closed. Ken Clinton said mostly closed, with a possibility of some open drainage on the south side of the intersection of the spur and the main road. Nancy Larson suggested discussing the catch basin at Amherst Road with PWD. Public Works is concerned that a positive slope leading to the intersection with Amherst Road could cause runoff to bypass the catch basin if covered with leaves.

Nelson Disco asked about double frontage lots. Nancy Larson referred to her previous memo stating that they would require a waiver. The applicant does not want to discuss that item with the Board this evening. Double frontages are prohibited, but the final design may eliminate them. Chairman Best noted that there would never be vehicular access on Amherst Road, other than via Pollard Road.

Public comment

Shannon Duval-Grooms, 5 Pollard Road, currently has a drainage issue. Lot 13 comes up to her home and driveway. She asked how it could be fixed and is concerned that road salt would affect her well. Chairman Best said the Board would review those issues when it sees a detailed drainage plan and the consultant comments. Nelson Disco said the Groom's driveway would cross Lot 13 and asked how that would be handled. Ken Clinton replied that he discussed five options with Shannon Duval-Grooms and is committed to improving her access once he gets an understanding from the Board of road design at this meeting.

Chairman Best would approve a waiver of maximum slope of road, noting that it would be below the maximum slope permitted for handicap access. He would also approve a waiver of maximum cul-de-sac length because the Fire Department supports if there

will be hydrants. Desirea Falt agreed to Tom Koenig's suggestion to ask for a waiver for the 1,461' length. Chairman Best said the issue with maximum slope of road approaching an intersection is water flowing onto Amherst Road and freezing. Tom Koenig said the issue is that drainage should catch all the flow from the hill to the road. Ken Clinton agreed. He explained that not all water would go to the same place; it would be segmented and diverted. Chairman Best would approve a waiver of maximum grading of side slopes because PWD said they are stable. He cited the waiver criterion that specific circumstances relative to the subdivision plan or conditions of the land in such site plan indicate that the waiver will properly carry out the spirit and intent of the regulations.

6. Brighter Horizons Environmental Corp. (applicant) and James Longa & Son, Inc. and James E. Longa Revocable Trust (owners) – Review for Acceptance and consideration of Final Approval of a waiver of full site plan for an application proposing partial reclamation of a sand and gravel pit located at 17 Twin Bridge Road in the I-1 (Industrial) & Aquifer Conservation Districts. Tax Map 5D-1, Lot 010 and Tax Map 5D- 4, Lot 074-1.

Chairman Best complimented the applicant on the additional information that was provided for this meeting.

Attorney Greg Michael, Bernstein Shur, said that the Merrimack Conservation Commission (MCC) had the same concerns as the Planning Board. At its April 2013 meeting, the Lower Merrimack River Local Advisory Committee (LMRLAC) supported the proposal. They asked for possible trails and further use of the conservation area, but that is not tonight's subject, which is about site reclamation. On June 17, 2013, the applicant again met with the MCC to update them about various permits and staff comments. They are favorably inclined. The permits/reviews required for reclamation activities are: Shoreland Permit by Notification, Review by LMRLAC, Certification of Waste-Derived Products through the NH Department of Environmental Services (DES) due to the use of urban fill soils for the proposed reclamation, National Pollutant Discharge Elimination system (NPDES), and Town of Merrimack Stormwater Management Standards to address land disturbances greater than 20,000 square feet. Part of Phase 1 is to restore the 8-acre grand-fathered Longa pit to a level area. Drainage will stay on site.

Rich Niles, Water Resources Project Manager, AMEC Environment and Infrastructure, Inc., said he provided a greater level of detail, but he made no changes to the project. The operations plan is the guidebook for how things will happen at the site and will accompany engineering drawings. He overlaid all the plans and changed the grading approach. Rich Niles showed how the proposed grades match the abutting land and described the elevation. The relatively flat land is at a 1% grade. A major change is that, in a 100- year storm, the depression could hold all the water on site. Rich Niles provided details about sequencing of fill. Because the Sewer Department is concerned about the washed out area and not disturbing the embankment, a separate Sewer Interceptor Protection Plan will be submitted.

Rich Niles will apply to the NH Department of Environmental Services (DES) about waste testing and tracking soil. The plan is similar to what was previously presented

to the Planning Board. Permits will be incorporated into the operations plan. He will also file an EPA Construction Permit and a Merrimack Disturbance Permit. Rich Niles suggested that CLD review stormwater calculations after the Town grants the permit, since those are the numbers that will be on the new permit applications. The applicant agrees to the staff conditions. Rich Niles asked whether the Board wants a revised plan and whether he must address LMRLAC and MCC comments (#7).

Staff recommends that the Board vote to accept the application, as it is substantially complete and contains sufficient information to invoke the Board's jurisdiction and to allow it to make an informed decision.

The Board voted 7-0-0 to accept the application for review, on a motion made by Alastair Millns and seconded by Stanley Bonislowski.

Nelson Disco complimented the excellent plan and was impressed with the amount of detail. He asked who from the Town would monitor the process. Attorney Michael said Phase 1 would take two years. The applicant must submit soil samples to the State. He wants to make a fully developable site with no restrictions for industrial, commercial and residential uses. The State allows using a former hazardous waste site for development. Alastair Millns suggested doing what was required of the Merrimack Premium Outlets: that the applicant must keep detailed records and report any deviation and that the Town has the right to inspect the site. It is the applicant's responsibility that the operations plan has triggers to tell the Town if there is a rejection note or any deviation from the operations plan rather than have the Town supervise the work. Rich Niles said that, if there were a deviation, the plan requires rejecting the load. Although he could notify the Town, the DES permit will have conditions, perhaps including regular reports. The applicant must comply with the permit. This project is different from the usual. There will be many minor deviations that need not be reported. Chairman Best noted that rejected material and using material that should not be used are accommodated in the plan. A violation would be something the plan does not state how to correct. Alastair Millns suggested submitting a copy of the reports to the DES to the Town as well. Chairman Best stated that it is routine. Nelson Disco asked for the volume of material to be brought in at this phase, which Rich Niles said is approximately 0.5 – 0.75 million yards.

There was no public comment.

Staff recommends that the Board grant the waiver of full site plan review.

The Board voted 7-0-0 to waive full site plan review, on a motion made by Alastair Millns and seconded by Lynn Christensen.

Alastair Millns suggested that the Town be given a copy of the DES permit. Tim Thompson said that is the last step in the Planning Board final approval process. Michael Redding asked what information the applicant must provide for such a permit. Rich Niles replied that materials brought on site from outside rather than bought from a clean gravel pit must be suitable for fill and that site conditions must be improved. He described the permit process.

Michael Redding was concerned about whether there would be enough control for such a large amount of fill. Rich Niles explained that an environmental consultant

would perform a review before accepting material, noting that his own title is Water Resources Project Manager. He must provide very detailed information. The process is controlled. What else can the applicant provide the town besides complying with the permit? Clean material will meet standards. Drinking water and groundwater will be protected. There will be no residential exposure. DES may impose additional requirements. There is no set standard for this type of operation. What is proposed is more protective than DES policy. Everything coming onto the site will be tested. Michael Redding said he did not know the consequences to the environment of bringing in 750,000 yards of material; it is a gray area. He wants more assurance about standards. Rich Niles said the applicant wants to bring in material that is as clean as possible. He repeated that DES may tighten standards and there is no model for what is proposed. DES says that this project is the most appropriate for this site, which involves a landfill, a river, a railroad, and is in the Aquifer Conservation District.

Michael Redding wanted to see any new information DES produces before he would grant Board approval. One issue is the fact that New Hampshire does not have an anti-degradation policy (impact on groundwater). Rich Niles said he would address any DES issues. More information is available about the river, the Wellhead Protection Area, and the well recharge area. The Planning Board is basing approval on things yet to be determined. Rich Niles gave an example of a similar application. Michael Redding agreed that the State has the ultimate decision on a project and may change the operations plan.

Tim Thompson suggested a compliance hearing before final signature. Chairman Best said he does not have the scientific knowledge to make a judgment. Michael Redding said the Board might not agree with the DES decision and needs the option to make conditions. Chairman Best suggested that CLD review the DES application. Stanley Bonislowski was uncomfortable giving final approval because the Board cannot understand DES comments. He wanted Michael Redding's opinion. Chairman Best said that would happen at a compliance hearing. Nancy Larson noted that the applicant would also have permits. She suggested that a condition of approval be receipt of final State permits. Chairman Best said that, since this is uncharted territory, the Board might not agree with DES. Nancy Larson stated that is after receipt of the permits that the plan would be signed. She asked whether the Board has jurisdiction over a State agency. No Town regulation/ordinance addresses the type of fill that can be used, so the Board has limited jurisdiction. Chairman Best asked whether the Board could consider the overall impact of the project. It needs a scientific basis, e.g., CLD review. Tim Thompson said that CLD does not have the expertise. Alastair Millns opined that it might come down to Michael Redding vs. DES. Michael Redding said this is an opportunity and fills a need as long as environmental protection is demonstrated. Attorney Michael said Merrimack Village District (MVD) knows groundwater standards and can review a State or DES permit. He said that Michael Redding is asking whether a permit is too lax and has high enough standards. Desirea Falt asked whether the plan could be evaluated in the future to learn if it worked. Attorney Michael noted monitoring wells in the area and wondered how else to monitor the project.

Rich Niles said the question is not how to monitor the project; rather it is what standard to use. That is the primary topic of discussion with DES. He repeated that they have no standards to apply to this project. Reusing these materials provides economic and environmental protection. It is an appropriate place to put material that is not wanted elsewhere, e.g., a playground. Material like this is used all the time and never tested. A DES regional review committee has been looking at what is the lowest acceptable level. That is why DES advises the applicant to submit this application. It is an economically feasible way to restore the site.

Stanley Bonislowski asked whether Robert Best and Alastair Millns could sign the plan if the Board gives conditional approval. Tim Thompson said that is the typical process. Stanley Bonislowski said he would be more comfortable if Michael Redding reviewed the reports. Chairman Best said the purpose of a compliance hearing is to review whether the applicant met the conditions the Planning Board set. Its only condition is getting the DES permit. The Board does not know how to set scientific conditions, nor does DES. What else could the Planning Board review at a compliance hearing without setting specific conditions? The Planning Board has no basis to decide what else the applicant must do. Perhaps a condition could be to require MVD review/monitoring of wells. Rich Niles noted that the project is outside the Wellhead Protection District, so it is not appropriate for MVD review. Nancy Larson added that MVD reviews only activity in the Wellhead Protection District. Rich Niles said the DES would not let this get through easily. The applicant must make the case that the project should be permanent. DES may require some type of monitoring.

Rich Niles stated that there could be no groundwater impact. It is appropriate for the Planning Board to have peer review and comment to DES during the 60-day comment period. He does not want the Board to be uncomfortable with the DES permit at a compliance hearing. Chairman Best said DES does not always take a municipality's input to heart. The applicant must know what standard to meet at a compliance hearing. If the Planning Board does not have the ability to set a standard, there is no reason for a compliance hearing.

Attorney Michael stated that the Planning Board must decide whether a DES permit is sufficient. The Board must respect the DES permit process. He asked what would make the Board comfortable.

Chairman Best said the DES process contains more science than he can apply. The ball is in their court. What else can we do? Review the monitoring well report? When Alastair Millns asked whether Michael Redding could write the water-testing standard, Mr. Redding said he could not. Chairman Best said MVD and EPA set the standards. The Planning Board cannot develop its own standards. Stanley Bonislowski said that means the Board must go along with DES. His concern is that everyone will learn from Merrimack's mistakes.

Chairman Best said the plan is worth approving. The existing conditions are not as good as the end result will be. The site will improve as a result of the project. Michael Redding asked whether the Board could rely on DES scientific standards for control over materials and environmental protection yet still be able to make judgments on a local level. Would we have an opportunity to add to the DES permit? Attorney

Michael said that is somewhat problematic. The goal is to do it right and repeatedly test the soil to comply with the State DES standard. It does not get better than that. The applicant is getting the appropriate permits.

Robert Best said what would happen with 750,000 yards of material is the unknown. Rich Niles stated that, just because the Planning Board has not reviewed a project like this before, it wants assurance that the project will be done right. He has outlined as much detail as possible. He will not accept inappropriate fill material. He asked whether the Board wants a quarterly report or a copy of the weekly inspection report. Michael Redding suggested that the Board see the DES permit application. Chairman Best did not want the Board to second-guess DES.

Alastair Millns said the issue is whether the Board trusts AMEC and DES.

Nancy Larson suggested additional wording for conditions #5 and #7 relative to stormwater review and review by the Souhegan River Local Advisory Committee (SORLAC).

Tim Thompson said that, since complex state permits are involved, staff recommends that the Board vote to grant Final Approval to the application, with conditions to be fulfilled within one year rather than the usual six months and prior to plan signing, unless otherwise specified.

The Board voted 5-1-1 to grant final approval, with the following conditions to be fulfilled within one year, on a motion made by Alastair Millns and seconded by Lynn Christensen. Michael Redding voted in the negative and Stanley Bonislawski abstained.

1. A note to be added to the plan stating that, prior to commencement of reclamation activities within Grids A-2 through A-5 and B-2 to B-5, grid cells shall be marked in the field and inspected to the satisfaction of the Public Works Department, Wastewater Division;
2. Final reclamation plan to include erosion/sedimentation control and slope stabilization notes, including the sequence for filling of grids;
3. Community Development Department to receive in writing (e-mail is sufficient) confirmation from the Public Works Department, Wastewater Division that they have reviewed and approved the Sewer Interceptor Protection Plan and are in agreement with the methods described in Section 6.4 of the “. . .Partial Reclamation Operations Plan”;
4. Community Development Department to receive written confirmation (e-mail is sufficient) from the Merrimack Fire Department that the proposed Emergency Spill Response Guideline is satisfactory. Applicant to make any necessary changes to the Guideline as required and re-submit to the Fire Department for review and approval;
5. Prior to review and approval of the Stormwater Management Plan by the Community Development and Public Works Departments, the final stormwater analysis to be submitted to CLD for review and approval (at the applicant's expense);

6. All permit numbers to be added to the final reclamation plan and Operations Plan;
7. Final review comments received from the Lower Merrimack River Local Advisory Committee (LMRLAC), the Merrimack Conservation Commission (MCC meeting of June 17, 2013) and Souhegan River Local Advisory Committee to be satisfactorily addressed;
8. All permits granted to be noted in Appendix G, including expiration dates as applicable. Any changes required as a result of permit reviews are to be incorporated into the final Operations Plan and a copy of final sign-off from each of the permitting agencies be forwarded to the Community Development Department for confirmation;
9. All record plans (including HRCD Plan #'s) used in the development of the partial reclamation plan to be added by reference to the reclamation plan;
10. Address Planning Staff Technical Comments.

Planning Staff Technical Comments

1. Clarify the following notes in the document entitled “. . .Partial Reclamation Operations Plan”:
 - Section 1.0, Pg. 1-1: Clarify between “Site” and “Reclamation Area”. Both are claiming to share the reference of “Site”, but it appears that one reference to “Site” applies to the greater Longa “proper” (approximately 81 acres) which includes a parcel not subject to the proposed reclamation plan (Map 5D-2, Lot 010). A second reference appears to refer to the approximately 10.85 acres of proposed reclamation area (Map 5D-4, Lot 074-1 & Map 5d-1, Lot 010);
 - Section 3.3, Pg. 3-2: Clarify that the base flood elevation of 118 ft. for the southern portion of the proposed reclamation area is for the 100-yr. flood plain;
 - Section 6.4, Pg. 6-4: Correct, if necessary the reference to SMH 95 & SMH 96 with respect to replacement of the sewer utility as a result of the 2006 flood;
2. Add a detail to the plan illustrating that slopes greater than 3:1 (horizontal: vertical) will be stabilized with an erosion control blanket or straw mat;
3. Tax Map 5D-1, Lot 010 and Tax Map 5D-4, Lot 074-1 to be added to the final reclamation plan.

7. Discussion/possible action regarding other items of concern

None.

8. Approval of Minutes – May 7, 2013

The minutes of May 7, 2013, were approved as submitted, by a vote of 7-0-0, on a motion made by Desirea Falt and seconded by Alastair Millns.

9. Adjourn

The meeting adjourned at 11:07 p.m., by a vote of 7-0-0, on a motion made by Alastair Millns and seconded by Lynn Christensen.