



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

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MERRIMACK PLANNING BOARD

APPROVED MINUTES

TUESDAY, SEPTEMBER 24, 2013

Planning Board members present: Robert Best, Alastair Millns, Tom Koenig (arrived 7:35 p.m.), Michael Redding, Lynn Christensen, Stanley Bonislowski and Desirea Falt.

Planning Board members absent: Alternates Nelson Disco and Matthew Passalacqua.

Community Development staff: Community Development Director Tim Thompson, Assistant Planner Donna Pohli, 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

Chairman Best announced the Merrimack Business Expo and Merrimack Rocks scheduled for September 28, 2013, when Pete Gagnon, a 40-year Planning Board member, will be honored for his lifetime contribution to Merrimack.

Tim Thompson reported that the Master Plan is being reconciled, paginated, indexed, reformatted and redesigned. Hopefully the final version will come to the Board at the October 15, 2013, meeting. If not, then it will be at the November 12, 2013, meeting.

Tom Koenig arrived at 7:35 p.m.

Item 6, XTL, Inc., was taken up before Item 3, Northview Homes.

6. XTL, Inc. (applicant) and Sam A. Tamposi, Harold Watson, Benjamin M. Bosowski, Jeffrey & Jessica Clegg (owners) – Discussion and possible action regarding a request for an extension of six-month limit for compliance with conditions of final site plan approval granted by the Planning Board on April 2, 2013 to construct a 182,950 SF warehouse facility located at Mast Road in the I-1 (Industrial) & Aquifer Conservation Districts. Tax Map 2D, Lot 021.

Chairman Best explained that, since this is a technical rather than a substantive item, he would chair for the discussion, but he would not vote.

Katie Weiss, Bedford Design Consultants, explained that the subdivision must be finished before doing the site plan process. Tim Thompson added that the extension is to allow time for the conversion from a private drive to a public road and to incorporate the changes into the site plan. Katie Weiss assured the Board that another extension would not be necessary.

At the applicant's request, the Board voted 5-0-2 to grant a six-month extension, on a motion made by Alastair Millns and seconded by Stanley Bonislowski. Robert Best and Alastair Millns abstained.

- 3. Northview Homes & Development, Inc. (applicant) and Carl A. Quimby Revocable Trust & Larry Kittle (owners)** – Consideration of Final Approval of an application proposing to consolidate and re-subdivide three lots into thirteen lots, located at 164 Amherst Road, 8 Pollard Road, and an unnumbered parcel in the R-1 (Residential), and Aquifer Conservation Districts. Tax Map 4B, Lots 146, 146-1 and 152-1. **The application also proposes a lot line adjustment between 166 Amherst Road (Tax Map 4B, Lot 145) and 164 Amherst Road (Tax Map 4B, Lot 146). This agenda item is continued from the September 10, 2013 meeting. The applicant has requested to be continued to the October 15, 2013 meeting.**

Tim Thompson explained that the plans must be revised according to CLD comments in order to have a productive Planning Board meeting without requests for more continuances. The cause for the delay is that the escrow was not established when the applicant submitted it because the town had to get the CLD estimate first. CLD comments were not received until September 18, 2013.

Stanley Bonislowski suggested that the Planning Board consider one month rather than two-week postponements. Chairman Best said the Board should review what is practical when setting dates.

At the applicant's request, the Board voted 7-0-0 to postpone this item to October 15, 2013, in the Matthew Thornton Meeting Room, at 7:30 p.m., on a motion made by Alastair Millns and seconded by Desirea Falt.

- 4. YMCA/Melton Associates** – Consideration of Final Approval of a site plan application for a proposed 57-unit Elderly Housing development, Community building & related site improvements in the R (Residential) District, located on D.W. Highway, between Island Drive and Angelo Drive. Parcel is located within the Aquifer Conservation District, the Flood Hazard Conservation District, and the Shoreland Protection District. Tax Map Parcel 4D-4/043-1. **This agenda item is continued from the September 10, 2013 meeting.**

Attorney Thomas J. Leonard, Welts, White and Fontaine, said the Board approved the plan on February 6, 2007, and the applicant addressed its comments on July 9, 2013. There were three primary issues.

1. "Robust" protection of Horseshoe Pond. In his August 5, 2013, letter, Robert Prokop, Wetland Scientist, Wetland Consulting Services, stated that fertilizer containing phosphorus would be used only until the lawn is established and that no herbicides or pesticides would be used except in extreme circumstances. The no-cut zone was expanded. There will be native plantings. Robert Prokop submitted a turf and water quality management recommendation. All the above will be included in the condominium documents. Staff concerns were satisfied. Robert Prokop's letter states that phosphorous is needed for roots. A low phosphorous fertilizer would be used only before the lawn is established and for shrubs and trees. It would be a slow release fertilizer with no impact on the wetlands. In response to Alastair Millns, Attorney Leonard said the expert does not guarantee that. The concerns of the Merrimack Conservation Commission (MCC) and the Lower Merrimack River Local Advisory Committee (LMRLAC) were addressed.

Lynn Christensen asked how long the "temporary" use of phosphates would last. Attorney Leonard restated that zero phosphates would be used once the new lawn is established, which would be one month.

Alastair Millns asked if one could avoid introducing phosphates when laying sod. Attorney Leonard repeated that phosphates are necessary to establish roots. That also applies to sod. Desirea Falt said that one could not track how much phosphate is already in the sod. Bernard Plante stated that perhaps two acres of an 8.4-acre parcel out of a total of a 2,050 acre watershed is not much grass. Because of the drainage and containment systems, there will be a very small effect on the Pond, which is upstream.

Desirea Falt asked whether the turf and water quality plan is integrated in the approval. Attorney Leonard said it is a staff condition to which the applicant agrees.

Stanley Bonislowski said it takes years for grass to develop fully. Chairman Best noted that the developer agreed to the staff conditions. He asked what would happen to the plan when the homeowners' association takes over. Attorney Leonard said requirements and standards would be in the declaration and by-laws. Sheet L-2 states that "No Cut" and "No Fertilizer" markers/placards will be installed at 50' intervals and set forward from the limit of tree disturbance to the rear of the townhouse units, as recommended by MCC and LMRLAC. The project is not yet registered as a condominium with the Attorney General. Chairman Best noted that is a different process. Stanley Bonislowski wanted to make the owners aware of the no salt, no phosphorous, and no fertilizer restrictions. Chairman Best explained that is why there will be signs on site. Attorney Leonard said there is no question people will see them. Chairman Best noted that MCC recommended Green SnoPro certification.

Attorney Leonard stated that the applicant agrees to all staff conditions. Chairman Best gave Bernard Plante a copy of the MCC e-mail, since he did not get their comments in writing. Attorney Leonard did see and agree to it. It is incorporated into the staff comments.

Tom Koenig asked about testing in the turf and water quality management plan, which Attorney Leonard did not know. It is the same program that was used in a project in Amherst. The wording can be eliminated because phosphates will not be used after the lawn is established. Chairman Best suggested that the conditions adopted be as restrictive as possible. Michael Redding said that the wetland scientist has good credentials. The program makes sense and meets Planning Board needs. He suggested using compost barriers to prevent phosphate runoff, to which Attorney Leonard agreed.

Attorney Leonard said Note 17 on the plan concerning winter road maintenance states there will be no salt or sand and identifies two deicers. There will be minimal use of deicers. Chairman Best said calcium acetate could be used but not sodium chloride. The Board cannot limit its use beyond the porous asphalt. Attorney Leonard will change Note 17. Tim Thompson explained that putting sand on porous asphalt would obviate its effectiveness.

Chairman Best listed additional conditions: a winter maintenance plan, by-laws to state no use of phosphorous, installation of a compost berm, use of only calcium chloride deicers, no salt signs on the road, and Green SnoPro or functional equivalent certification. Attorney Leonard agreed to implement a compost berm, incorporate staff conditions into condominium and other documents and work on sign wording with staff.

2. Traffic. Attorney Leonard confirmed that traffic has been reduced in the area and that the previous traffic study remains valid.

3. Porous pavement drainage program. Attorney Leonard said that porous pavement has been refined since 2007. Stantec reviewed the plan and addressed Board concerns and confirms that there is no issue. A porous pavement plan will be submitted.

Attorney Leonard stated that there is no reason to install sidewalks. There are none in the area. The applicant would either give a \$50,000 payment in lieu of building sidewalks or ask for a waiver of the sidewalk requirement. Lynn Christensen stated that one purpose of elderly housing is for residents to walk rather than drive. Sidewalks are a critical part of this development. That is why more intense development was allowed. Chairman Best agreed, saying that the intent of the Master Plan is to have sidewalks along D.W. Highway from Nashua to Bedford, even if it is done piecemeal. \$50,000 is an acceptable option because it allows the town to choose the best place for a sidewalk. There is no reason for a waiver. Stanley Bonislowski said D.W. Highway is important.

It is long and there will be a lot of activity in the next few years that sidewalks can connect. PWD is not installing sidewalks. They must start somewhere. Tom Koenig said that PWD's position is not necessarily that of Town Council. Attorney Leonard said that slopes are a difficulty. Tim Thompson said a sidewalk would be in the town's right-of-way. Angelo Drive would be included as well as the frontage on D.W. Highway. Bernard Plante noted three culverts on the property, which was subdivided in 2006. Tim Thompson said that, after six years, the \$50,000 payment plus interest must be returned to the applicant if it is unused. Lynn Christensen wanted either that it be used or a sidewalk be installed but not to grant a waiver. Chairman Best said that how to spend the \$50,000 is beyond the Board's purview. Tim Thompson noted that the Capital Improvement Plan (CIP) does not include construction of sidewalks anywhere in town during the next six years. Stanley Bonislawski preferred keeping the money to build sidewalks on D.W. Highway, but Chairman Best explained that the site must be at a nexus for this project. Alastair Millns preferred building a sidewalk now rather than waiting six years. Attorney Leonard noted that the amount was based on the cost of a sidewalk that was originally planned to go to Shaw's, which has relocated. The applicant is willing to install a sidewalk along D.W. Highway now. Lynn Christensen said a sidewalk on the site would not be advantageous in 10 years. She prefers keeping the payment until future development is determined. The YMCA can always be asked to install a sidewalk along D.W. Highway later. Because the cost may increase over time, either the payment should increase or the sidewalk should be installed now for \$50,000. Chairman Best disagreed about keeping the payment in the hope that the town will use it within the six-year time limit. A sidewalk along D.W. Highway will be part of the plan no matter what, so it should be done now. Stanley Bonislawski noted that PWD says that they are not in the sidewalk business. The town would have to hire a contractor to build a sidewalk if a payment were held until a later date. It is best to do it now. Chairman Best said the Planning Board is the strongest advocate of sidewalks in Merrimack. Because it is difficult to change the minds of other town entities, the sidewalk should be installed now.

Staff recommends that the Board vote either to rescind the vote made at their July 9, 2013, meeting to accept a payment in lieu of sidewalk construction or require that the applicant construct a sidewalk per the requirements of the Regulations.

The Board voted 7-0-0 to rescind the July 9, 2013, vote to accept a payment in lieu of sidewalk construction and to require installing a sidewalk along the frontage immediately, in accordance with the regulations, on a motion made by Alastair Millns and seconded by Michael Redding.

Attorney Leonard requested fulfilling conditions 10 and 11 (easements, declarations and legal documents) after plan signing and before the first building permit. They refer to the condominium documents and homeowners association, which will be done later. Tim Thompson agreed to place the declarations section of Condition 10 and Condition 11 as general and subsequent conditions prior to issuance of the first building permit. He explained Technical Comment 9 (remove a closet in the den/study). A closet means a room can be used as a bedroom, whereas only two bedrooms are allowed in elderly housing units. Attorney Leonard said the applicant would satisfy the five sections of Condition 5: There will be no change in the speed limit; There is a Headwall detail on page D-4; The pipe and Headwalls 1 and 2 will be improved; There will be additional treatment after the outlet at Headwall 3; Existing drainage was improved; There will be an easement rather than an access road; The system leading to Headwall 3 will be completely private. The applicant agrees to all conditions.

The NH Department of Environmental Services wrote stating that all necessary permits have been granted and the Court said the plan meets requirements of the Court Order.

Public comment

John McDonald, 19 Pondview Drive, an abutter who opposes the project, made a power point presentation. In storms Horseshoe Pond rises to within 3' of Pondview Drive. Although the rise has been minimal since the floods of 2005 and 2006, it will hopefully return to normal with the building of the Lowell Dam. The pond reference line is over to the property. John McDonald summarized the history of the various plans before the Planning Board since 2004. The opposition are not obstructionists. The delay was due to the applicant's withdrawals and delays. It has been five years since the Court decision. This is a new project before a new Board.

The previous Board made an error when it gave 100% credit for porous asphalt in the Shoreland Protection District (SPD). Nothing works 100% of the time. It would be a major precedent/impact for development elsewhere. Why is there a discrepancy between the impervious surface that is currently projected at 18% of the project, whereas it was previously 20%? Does it include roof overhangs?

The traffic study is flawed because it measured the effect of the estimated 200 trips daily on traffic on D.W. Highway rather than how it would affect those trying to enter D.W. Highway from either D.W. Drive or Angelo Drive. This project will add 60% more housing.

All the water on the property ends up inside a galvanized metal drainage pipe that is 40 years old and coming apart. It is no longer a single intact system. Catch Basin 3 has a pipe with a kink in it and is being replaced. The pipe is not on the plan or storm water drawings as an existing condition. It is designed for 12 acres, but more are affected. Runoff comes from Hoyt Street, which has no catch basins, across D.W. Highway and onto the YMCA property. The reinforced concrete pipe (RCP) is incorrect on the PWD plan. There is runoff to the Pond. Potential storm water will go through two headwalls and eventually to the wetlands. Why not connect the pipe to the closed storm water retention system the applicant designed? The metal pipe will be replaced by a plastic pipe and will be relocated 80' closer to Horseshoe Pond. Can the catch basin handle that? Overflow from the storm water retention system would go into the new pipe. If there is an overflow, phosphates would be caught in the system and get onto the YMCA property. The design criteria underestimate the amount of overflow in a 25-year storm event.

The shape and dimensions of the property are irregular. The development will be stuck into every nook and cranny allowed. The property will be overdeveloped and will make more problems for Horseshoe Pond. Does the buffer leave the required amount in an unaltered state? Covering 40% of the SPD with asphalt, roofs and various curbs and manholes creates a lot of buildup in that area. The development is not in the best interests of the town and will be a death knell for Horseshoe Pond.

Lynn Christensen asked why the traffic study was wrong. John McDonald repeated that it should have measured the impact of the development on abutter traffic.

Alastair Millns noted that the Court decision and local ordinances and regulations do not allow paving to the river. Rain can get under rooflines. Some of John McDonald's conclusions are not true.

John McDonald said he read from the DES criteria on how to measure impervious surface in the SPD. He questions whether the applicant did that when he arrived at the 18% impervious surface figure. Alastair Millns noted that the town dropped to the State's standard of 30%. John McDonald asked what happened to the 2006 figure. Chairman Best stated that this is a new application that should be judged on its merits. The 2006 percentage should be ignored. There is no obligation to reconcile a six-year old number. John McDonald asked how the figure could be different.

Lynn Christensen asked if there is a drainage issue in the Hoyt Street area. Tim Thompson referred her to PWD.

To John McDonald's objection that emergency vehicles narrow roads when piling plowed snow, Stanley Bonislowski said the town allows 22'-wide rather than 24'-wide roads. He will be looking to see how driveways and cars fit and whether the buildings are squeezed in. There is no narrowing problem on the 22'-wide road in his development. John McDonald reiterated that this project is overdeveloped. Rather than scale back, the developer asks for a narrower road. In John McDonald's area, the road narrows when plowed because the residents do not want to tear up the grass. Chairman Best said the Planning Board decided on a waiver to allow a 22'-wide roadway based on the Fire Department's recommendation. They look at safety and state that 22' works for their trucks. Chairman Best agrees that there is a lot of development on the site. He agreed with Stanley Bonislowski that John McDonald made an articulate and excellent presentation.

Margaret O'Neill, 60 Island Drive, said that Horseshoe Pond is fragile. Residents lost three weeks of use this summer because of algae blooms. She is concerned that the development will impact the Pond more and that residents will lose total use of the Pond. The traffic on D.W. Highway is horrible, especially where it narrows. People will not respect the rules as traffic increases. The traffic is extensive now. In her opinion, traffic has increased on D.W. Highway since 2005. Water does come south off Hoyt Drive, making her car feel like it is hydroplaning.

Bob Shagoury, 71 Island Drive, said the bridge was raised 10' and water rose 10' over that. He asked what the penalty would be if Melton does not live up to the conditions of approval. The traffic study should have been taken from 4:00-6:00 p.m., when traffic is heaviest. What if properties are devalued because of the Pond? How can an emergency vehicle turn on a 22'-wide road where it crosses the dirt road? What will become of the asphalt in front of KinderCare? What will be the amount of porous pavement? Bob Shagoury wanted to protect wildlife.

Chairman Best said he would not sign the site plan if conditions were not met. The town has enforcement mechanisms. The Planning Board has no control over KinderCare's site. Sidewalks can take various forms (e.g., curbing, green space, paved pedestrian path way) and must be acceptable. The Board cannot determine how to integrate it with the neighbors' sidewalk. The Board held a site walk where the Fire Department determined the configuration is acceptable. The Board has no authority to limit the applicant about the neighbors' ability to view wildlife. Stanley Bonislowski said he would be sure the developer does not make many promises and then walk away. Tim Thompson explained that, according to the State statutes, if the conditions were violated, there would be a \$275 a day fine plus a \$550 a day fine for subsequent offenses or the approval could be revoked. Chairman Best said the applicant would want to be able to state that he followed the plan to the letter if something were to happen to Horseshoe Pond later. Lynn Christensen said many Pond issues are due to prior development over which the Planning Board has no control. It can mitigate future development. It is an old pond no matter what the Board does. Hopefully the aging can be mitigated. Alastair Millns added that the Lowell Dam might flush it better. The state of the Pond is not Bernard Plante's fault nor is it under Board control. It can only say that the applicant cannot make the Pond worse. Chairman Best said the YMCA project consists of 8+ acres in a watershed of over 1,000 acres. It is not the straw that broke the camel's back. Melton is not responsible for upland and catch basin issues.

Attorney Leonard said the traffic and drainage studies were extensively reviewed by all appropriate parties who determined that they are accurate and that they work. The applicant stands by his correct information.

Tom Koenig noted that, at certain times, the intersections leaving Angelo and D.W. Drives are difficult. Attorney Leonard reiterated that a complete traffic study was done and reviewed and

modifications were made. Bernard Plante stated that in a 55+ project, many people would be older and will not work full time or be in traffic at peak times. The typical age is the late 60s and early 70s. Tom Koenig noted school bus stops at age-restricted developments. Stanley Bonislowski said one has to live with the traffic, which is a problem whether or not there is a development. He agreed that older people would not drive during rush hour. It can work out.

Attorney Leonard said the drainage was improved, but everything else is the same. The Court and the Zoning Board of Adjustment (ZBA) reviewed these arguments extensively and found that all studies are sufficient. Traffic is a concern, but is it not a real issue and it is being addressed in a legitimate and appropriate way.

Chairman Best's concern is the impact on Horseshoe Pond. He was persuaded at this meeting by the letter from the wetland scientist and Michael Redding's support for him. There is a lot of credible science. 60-70 homes will not add that much traffic. There will be a 20 car per hour increase at peak hours. The 18.8% impervious surface does not change the calculation and it is under the 20% limit. The Ordinance no longer exists. NHDES has approved required permits. Signs about fertilizer and salt restrictions are important. He supports approval.

Desirea Falt said traffic might be bad, but a traffic light is not the solution. Chairman Best opined that a traffic light would make matters worse. Lynn Christensen said traffic is an issue now, but the development will not aggravate it significantly. Alastair Millns agreed. Traffic is better than it was five years ago. The development will not make it worse. The real problem is cars getting off Exit 11 going to Baboosic Lake Road. Exits 10 and 11 are too close together. This development is not the problem. It would be better if some traffic lights were removed.

Michael Redding said that the wetland scientist's letter and the fertilizer restriction won him over. Any development would increase the amount of phosphorous. The applicant did a fairly good job trying to mitigate the impacts. He supports approval.

Desirea Falt asked if there would be any benefit to reducing the number of units. Chairman Best stated that there would be more area for water to infiltrate and more grass would be fertilized. Michael Redding said that any reduction would increase the amount of phosphorous. He agreed with Chairman Best that removing units would make a very small change/improvement. Tim Thompson said a reduction must be justified in the Ordinance. The developer is proposing less than the Ordinance allows.

The planning staff recommends that the Board grant conditional final approval to the application with the following precedent conditions to be fulfilled within six months and prior to plan signing, unless otherwise specified.

The Board voted 6-1-0 to grant final approval, with the following conditions, on a motion made by Alastair Millns and seconded by Lynn Christensen. Tom Koenig voted in the negative.

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. Satisfactory resolution of the remaining comments in the Stantec review letter dated 9/9/13;
4. Building elevations for the 16-unit building (Sheets 23 & 24 of 29) to include materials, colors, and dimensions (including building height to soffit and to peak of roof);

5. Satisfactorily address the following comments from Town Engineer/Deputy Director of Public Works Kyle Fox in an e-mail dated August 30, 2013 as follows:
 - a. *Note 19 indicates the posted speed of Angelo Drive shall be 25 mph - being a public way, that would have to be enacted into the Town Code, requiring a public hearing(s).*
 - b. *At the end of HW2 the note indicates Gabion Stilling Basin - See Detail Sheet.....detail does not appear to be included.*
 - c. *Given the nutrient concerns (phosphorous) in Horseshoe Pond, treatment swales or another treatment method should be provided at the end of HW 1, 2, 3 (particularly 2 and 3 as 2 is being moved closer to the pond and includes overflow site stormwater, and 3 which is a new outfall only 100' from the pond).*
 - d. *Will an access road be provided to allow access to HW1 and HW2?*
 - e. *Is the system that leads to HW3 completely private?*
6. Satisfactorily address the following comments from Ron Miner, Superintendent, Merrimack Village District, in an e-mail dated August 26, 2013 as follows:
 - a. *Buildings A&B each show one tap to the buildings. Is this a fire or domestic service and what size? As per the MVD By-Laws, the fire and domestic lines need to be separate.*
 - b. *No water services are depicted for the smaller cluster units (1-4), (5-7), etc. Will they require fire and domestic lines and will they be separately metered?*
7. A wastewater permit application must be filled out and returned to Roger Descoteaux (Industrial Pretreatment Manager) at the wastewater treatment plant to determine flow allocation needed and assess the proper connection fees to be charged. Flow requests will also be subject to review by the NH Department of Environmental Services (NHDES) and there is a \$1000.00 fee payable to the NHDES for said review;
8. The applicant shall satisfactorily address any forthcoming comments received from LMRLAC;
9. Dedication of a permanent easement for the long-term operation and maintenance of the proposed sewer line be reviewed and approved by the Director of Public Works and the Board's Legal Counsel, at the applicant's expense;
10. Review and approval of all easements, covenants, and other required legal documents by the Board's Legal Counsel (legal review shall be performed at the applicant's expense);
11. The applicant shall incorporate the Turf and Water Quality Management Recommendations prepared by Robert Prokop (in his August 5, 2013 letter) into the appropriate notes on the plans (and into the declarations and by-laws as required by General & Subsequent Condition #1) amended by modifying recommendation #1 with language prohibiting the use of fertilizer containing phosphorous after 1 month, removal of the words "Unless tested" from recommendation #3 and adding a requirement for the use of compost berms. Additionally, the applicant shall add appropriate signage to the plan set (supplementing the "no-cut" signs) indicating turf/landscape management notice (in a form acceptable to the Community Development Department);
12. Approval by the Merrimack Fire Marshal of any proposed street naming and/or unit addressing scheme. Additionally, written confirmation from the Fire Department to be submitted to the Community Development Department that prior review comments have been addressed to their satisfaction;
13. Town Council to approve proposed release of Existing Sewer Easement (if a recorded sewer easement exists);

14. Satisfactory review and approval by the Planning Board of the concurrently submitted site plan proposing the construction of recreational fields on other land of the YMCA on Wright Avenue;
15. Address the Planning Staff Technical Comments (see below).

Planning Staff Technical Comments

1. Revise all references to the 25 ft. wetland setback to read 25 ft. no-disturb wetland buffer;
2. All references to a “proposed property line” to be removed as the subdivision was previously approved and is recorded as HCRD Plan #34863 (see Sheets G-1, U-2, L-1, and L-2);
3. Cover Sheet – Amend Note 17 to state that the alternative de-icing compounds specified shall be kept to a minimum and be applied by a Green SnoPro trained and certified (UNH program) individual (or functional equivalent program/certification). Additionally, the applicant shall add “No Salt Route” signs to both ends of the proposed private roadway;
4. Sheet 3 of 29, Proposed Easements Plan – Note Book/Page number of all existing easements (if recorded);
5. Applicant’s Landscape Architect to work with staff to ensure that Landscape Plan does not pose any conflicts with proposed pole lights, utilities and snow storage areas. Landscape Plan to be amended as appropriate and re-submitted to staff for review;
6. Note 9, Sheet D-8 (Sheet 21 of 30) to be amended to include “and disturbed areas” after the words “All seeded” and incorporate the minimum 8% organic content into the soil note as required by Section 10.01 (1)(f) of the Subdivision/Site Plan Regulations;
7. Sheet I-1, Impervious Exhibit – Applicant to work with Staff to decide how best to address certification notes for the former impervious area requirements of Section 2.02.12.J.5 of the Zoning Ordinance;
8. Sheet D-2 – Add details for the proposed 6 ft. high stockade fence and the split 3-rail fence as shown on Sheet L-1, Landscaping Plan;
9. The floor plans for the second floor units to be modified to remove the closet in the den/study.

The following general and subsequent conditions are also placed on the approval:

1. Review and approval of the project’s condominium declarations, and by-laws by the Board’s Legal Counsel (legal review shall be performed at the applicant’s expense) shall be completed prior to the issuance of the first building permit for the project. The Board requires the inclusion of language in the Condominium and by-laws documents detailing the proper treatment and maintenance regimen(s) for the porous pavement system and requiring annual inspection and reporting to the Town of the condition and performance of the porous pavement system and the storm water management system(s) (per a prior recommendation of the Conservation Commission (8/22/06) and Stantec (9/5/06 and 11/29/06)). Additionally, the Condominium documents and by-laws are to address fertilizer use (in accordance with the management plan established by Robert Prokop on August 5, 2013 with the addition of compost berms), pesticide application, no-cut and no-disturbance buffers (including appropriate signage), landscaping, de-icing compounds, etc. as described throughout the plan set and expressed by the MCC at their September 16, 2013 meeting. Condominium documents and by-laws to also specify that the alternative de-icing compounds specified in Note 17 on the Cover Sheet be kept to a minimum and be applied by a Green SnoPro trained and certified (UNH program) individual (or functional equivalent program/certification);

2. Limits of tree clearing and area of disturbance to be staked in the field by the Licensed Land Surveyor prior to the start of any clearing of the site. Inspection to be conducted by the Community Development Department;
3. Qualified geotechnical engineering personnel, with experience in porous pavement construction, to be on-site to oversee and inspect the construction of the porous pavement system and, upon completion, to certify compliance with the approved design and specifications (per prior recommendation of Stantec);
4. The Developer to place sufficient funds in escrow, prior to the start of construction, to cover construction inspection of any public improvements by the Town's third-party inspector (As applicable, per former Director of Public Works Ed Chase's Memo of 12/4/06);
5. Pursuant to review comments from Kyle Fox, Deputy Director/Town Engineer, Public Works Department, the porous asphalt pavement maintenance plan and stormwater maintenance plan should be incorporated into a post construction SWMP document with annual reports of activity delivered to the town;
6. Pursuant to a recommendation by the Town's legal counsel in a July 11, 2013 letter addressed to Planning Board Chairman Robert Best, approval is "...conditioned upon compliance with the April 20, 2004 Court Order and upon approval of the Attorney General's Office Bureau of Charitable Trusts as to the appropriate allocation of the proceeds from the sale of the property."

6. YMCA/Melton Associates – Consideration of Final Approval of a site plan application proposing the development of athletic fields, bathrooms & maintenance structure, related parking & appurtenant improvements in the R (Residential) District, located off Wright Avenue at 381 D.W. Highway. Parcel is located within the Aquifer Conservation District, the Flood Hazard Conservation District, and the Shoreland Protection District. Tax Map Parcel 4D- 3/092. This agenda item is continued from the September 10, 2013 meeting.

Tim Thompson said that, since the July 9, 2013 meeting, the plans were revised to address Planning Board comments. The size of one field was changed and moved 100' farther away from the Pond. There are still some issues (e.g., field maintenance, public access) to be resolved between Merrimack and the Manchester YMCA as mandated by the Court before Condition 4, written approval of the NH Department of Justice, Charitable Trust Division, can be fulfilled. He recommends that the same fertilizer program as in the elderly housing project be a condition of approval. Chairman Best said there might be access for the town if the YMCA helps to maintain the fields, but it is not germane to Planning Board review. He, too, wanted to include fertilizer restrictions in the agreement. Salt is not an issue because there would be no winter use. Tim Thompson agreed. There will be no snow plowing in winter. Alastair Millns noted that no one from the YMCA was in attendance and that Bernard Plante is not responsible for maintenance. Chairman Best said the same conditions and enforcement could be required as for the elderly housing.

Attorney Leonard said the Planning Board issue on July 9, 2013, was moving one field 100' farther away from the Pond. That is the only change.

Attorney Leonard agreed to Michael Redding's suggestion to add the same conditions about fertilizer use, compost berms and signage as for the elderly housing project. He added that the MCC approved.

Alastair Millns suggested a condition that the YMCA also sign, but Tim Thompson stated that the owner always does.

Chairman Best said in July that the baseball field was too big, so it was subsequently reduced. Bernard Plante said it was reduced to the size of a softball field and the buffer was increased by 50'. There is now a 100' buffer from the reference line to the backstop. The drainage system traps most runoff in retention basins before discharging into Horseshoe Pond.

Tom Koenig said the soccer field is closer to the Pond. Tim Thompson said they are multi-purpose fields. Chairman Best said the project would be built in phases.

Michael Redding explained how the storage swale would protect the Pond from fields 2 and 3 and how the grass could be managed without fertilizer. There would always be some phosphorous because of the open space and the high grass field. Tom Koenig said it is a tradeoff whether to plant fescue, which is better in drought conditions, or Kentucky blue grass, which is tougher but needs more water.

Tim Thompson referred to Condition 7b, which ensures that the town has access to the property to deal with the phosphorous issues.

There was no public comment.

Staff recommends that the Board vote to grant conditional final approval to the application, with the following precedent 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 the following conditions, on a motion made by Alastair Millns and seconded by Lynn Christensen:

1. Final plans and mylars to provide all professional endorsements and be signed by all property owners;
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. Final review and approval of all easements, covenants, declarations, and other required legal documents (including those related to signage & Turf and Water Quality Management as required in precedent condition #5, maintenance responsibility for the fields, usage restrictions, and public access as applicable, see also precedent condition #4), by the Town's legal Counsel at the expense of the applicant;
4. Plans are not to be signed by the Planning Board (and thus any and all proposed improvements shall not be permitted to commence) until the express written approval of the New Hampshire Department of Justice, Charitable Trust Division is received by the Town of Merrimack, in accordance with all applicable deed restrictions and court rulings;
5. The applicant shall incorporate the Turf and Water Quality Management Recommendations prepared by Robert Prokop (in his August 5, 2013 letter) into the appropriate notes on the plans amended by modifying recommendation #1 with language prohibiting the use of fertilizer containing phosphorous after 1 month, removal of the words "Unless tested" from recommendation #3 and adding a requirement for the use of compost berms. Additionally, the applicant shall add appropriate signage to the plan set indicating turf/landscape management notice (in a form acceptable to the Community Development Department);
6. Address the following comments from the Public Works Department:

- a. Add a note regarding the Stormwater Regulations. The SWMP should include post construction plans for use of fertilizers, including reporting to the Town when treatments are applied;
 - a. DMH 1 and the associated pipe reduce the distance of overland flow runoff has prior to the pond. Proper treatment swales should be added to the outfall of the pipe;
 - b. The sidewalk should have a note indicating that all organics must be removed prior to placing crushed gravel base.
7. The applicant shall address the comments received from LMRLAC and the Conservation Commission;
8. Address the following planning staff technical comments:

Planning Staff Technical Comments

- a. The applicant shall identify the recordable sheet of the site plan (assumed to be sheet 3) and ensure it meets the requirements of the Hillsborough County Registry of Deeds;
- b. The applicant shall verify the Public Works Department is satisfied with Note #16 on sheets 2 & 3 (addressing phosphorous mitigation issues related to Horseshoe Pond);
- c. The applicant shall provide all appropriate details for the proposed pavilions, storage building, landscaping, all proposed informational signage, pavement (driveway/accessible parking pavement structural section), and gravel parking in the plan set (as applicable) to ensure proper construction.

The following general and subsequent conditions are also placed on the approval:

1. Limits of tree clearing and area of disturbance to be clearly marked in the field prior to the start of any clearing of the site; and inspection, by the Town's inspector at the applicant's expense, of the "flagging" and site clearing and field construction activities to insure compliance with the Town's Shoreland Protection ordinance and other ordinances and regulations of the Town;
2. The Applicant to place sufficient funds in escrow, prior to the start of construction, to cover construction inspection of any public improvements, by the Town's third party inspector (as applicable).

7. Discussion/possible action regarding other items of concern

Chairman Best proposed a future discussion of using the money from payments in lieu of sidewalk construction and encouraging sidewalks. He noted that Money Magazine rated Merrimack #23 as the best community in which to live in the US and best in NH.

Lynn Christensen, who sits on the State Commission for Housing Regulation and Policy, which discusses affordable housing, asked residents who have related concerns to bring them to her attention.

8. Approval of Minutes – September 10, 2013

Postponed to October 15, 2013.

9. Adjourn

The meeting adjourned at 10:40 p.m., by a vote of 7-0-0, on a motion made by Alastair Millns and seconded by Lynn Christensen.