

## PLANNING BOARD

DATE: February 11, 2021

TIME: 6:00 P.M.

PLACE: Zoom Virtual Meeting

FOR: Regular Meeting

PRESENT: Brandee Nelson, Chair; Malcolm Fick; Jonathan Hankin; Jeremy Higa;  
Pedro Pachano

Chris Rembold, Assistant Town Manager/Director of Planning and Development

Ms. Nelson called the meeting to order at 6:00 P.M. She read the opening statement from the agenda and announced that the meeting is being recorded.

Ms. Nelson called for a roll call of those present:

Mr. Hankin, present; Mr. Pachano, present; Mr. Fick, present; Mr. Higa, present; Mr. Reed, not present; Ms. Nelson, present

### **FORM A's**

Michael Parsons from Kelly, Granger, Parsons and Associates was present with a Form A on behalf of Richard and Heather Atwood for a parcel of land located at 57 VanDeusenville Road on the west side of VanDeusenville Road. Parcel A contains 1.58 acres of land and is not to be considered a separate building lot. Mr. Parsons said the parcel is being conveyed from an abutter.

Mr. Hankin made a motion to endorse the plan, Mr. Fick seconded.

Roll call vote: Mr. Hankin, aye; Mr. Pachano, aye; Mr. Fick, aye; Mr. Higa, aye; Ms. Nelson, aye

### **MINUTES: JANUARY 28, 2021**

Mr. Hankin made a motion to approve the minutes of January 28, 2021 as amended, Mr. Fick seconded.

Roll call vote: Mr. Hankin, aye; Mr. Pachano, aye; Mr. Fick, aye; Mr. Higa, aye; Ms. Nelson, aye

### **SPECIAL PERMIT: 148 MAPLE AVENUE**

Mr. Rembold said the public hearing for the special permit for 148 Maple Avenue was continued from January 14, 2021. The applicant is requesting that the public hearing be continued to February 25, 2021.

Mr. Hankin made a motion to continue the public hearing for 148 Maple Avenue to February 25, 2021 at 6:00 P.M., Mr. Fick seconded.

Roll call vote: Mr. Hankin, aye; Mr. Pachano, aye; Mr. Fick, aye; Mr. Higa, aye; Ms. Nelson, aye

#### **SITE PLAN REVIEW: 22 ELM COURT**

Attorney Charles Ferris was present on behalf of Navaporn Zivasatianrach (Ms.Z) for a house located at 22 Elm Court. Mr. Ferris said Ms. Z purchased the three-family house in 2008 not knowing it was not a legal three-family. He said there was a permit taken out in 2005 to create a two-family house but there isn't anything to show when the house was converted into a three-family. He said Ms. Z is now trying to sell the property. It was discovered that the three-family is allowed by-right with the Site Plan Review.

Mr. Ferris said there won't be any interior or exterior changes. The intent is to make the property legal according to the zoning bylaws. He said there are some fire code issues due to the close proximity of the abutting building. He said the architect that has been retained has proposed alterations but the Building Inspector was not satisfied with the proposal. The State Building Inspector is being consulted but the zoning issue has to be resolved before the building code issue.

Mr. Ferris said the use has been existence since it was purchased in 2008. The building provides moderately priced rentals for the work force in Town. He said this is a benefit for the Town.

Ms. Nelson said the application is fairly complete. She asked if everyone is familiar with the location.

Mr. Hankin said yes.

Ms. Nelson asked if there were any questions from the Board.

Mr. Hankin said he can attest that the house is currently a three-family.

There were no questions from the Board. Mr. Fick read through the SPR. There were no issues.

Mr. Hankin made a motion to approve SPR for 22 Elm Court for a three-family dwelling, Mr. Fick seconded.

Roll call vote: Mr. Hankin, aye; Mr. Pachano, aye; Mr. Fick, aye; Mr. Higa, aye; Ms. Nelson, aye

## **SPECIAL PERMIT & SITE PLAN REVIEW: 17 MAHAIWE STREET**

Ms. Nelson recused herself from the discussion. She muted herself and turned off the video.

Mr. Fick took over as the Vice-Chair.

Mr. Hankin said he consulted the Ethics Commission as he represented the applicant four years ago when the property was purchased. He said he has no financial interest and has filed an Appearance of Conflict of Interest form with the Town Clerk.

Attorney Dennis Egan was present along with the applicant Brian Hazelton and Engineer Brent White from White Engineering.

Mr. Egan said the applications are for three special permits, one mixed use and the Water Quality Protection District, one for the ZBA for the expansion of a non-conforming pre-existing building. Additionally there is a SPR before the Planning Board.

Mr. Egan said the house had previously been used for offices. The barn on the property is circa 1920. There is also a house on the property that will be returned to a single family use to be lived in by Mr. Hazelton and his family. The property is proposed to be used as a contractor yard. The barn is to be used for business. The barn will have an area where Mr. Hazelton can meet with customers.

Mr. Egan said the Board of Health expressed concerns about dust and noise on the property. He said there will be less vehicle trips than the previous use. Mr. Hazelton has agreed to park the more intensive vehicles off site. The vehicles to be parked on the property will be a Subaru, a pick-up truck and a mini-van. Two small trailers will also be parked near the barn. He said fewer vehicles will keep the dust down and reduce the noise. Keeping the larger vehicles off site will help to maintain the residential character of the neighborhood.

Mr. Egan turned the discussion over to Mr. White.

Mr. White shared his screen to show the buildings, barn, proposed shed, residence. He said there is an existing curb cut and driveway. There is a proposed swimming pool that would reduce the gravel area of the lot by 1,000 square feet.

Mr. White presented information regarding the special permit for the Water Quality Protection District. He said the test soils are good. He said there will good recharge of water by using gutters on the barn that will drain into a collection box then clean water will be infiltrated into the ground via a combination of infiltrators and drywells.

Mr. White reviewed the site improvements. He said there is a large evergreen behind the house that was hit by lightning. The tree will be removed as will several Norway maples along the south boundary. He said eight trees will be planted along the street. Each tree will have a minimum caliper of one inch. He said the trees along the street will probably be fruit trees.

Mr. White said there will be approximately 220 cubic yards of soil removed from the site. Most of the soil to be removed will be for the pool installation and the infiltration chambers.

Mr. White said there will be two lights on the barn and the proposed shed. The light spill will go about half way across the property. He said he would answer any questions.

Mr. Fick asked if the members had any questions.

Mr. Pachano asked if the shed is proposed to be open.

Mr. White said there will be overhead doors facing Mahaiwe Street.

Mr. Pachano asked if the travel trailers are habitable.

Mr. White said the trailers are light duty like what is used to transport lawnmowers. He said bigger trailers would be stored off site.

Mr. Hankin asked if the trailers are flatbed or covered.

Mr. Hazelton said the trailers are covered. They are used to store tools needed at the job sites. One trailer is six feet by ten feet and the other is seven feet by twelve feet. Generally the trailers are on the job sites.

Mr. Hankin asked if the trailers double as offices on a job site.

Mr. Hazelton said they are pretty small. There is a coffee maker and a microwave. There are no lights in the trailers they are used to supply tools on projects.

Mr. Hankin asked if they would be parked tandem when they are on the property.

Mr. Hazelton said they will rarely be on the property but when they are they will be parked tandem in the shed as it is approximately 14 feet wide.

Mr. Pachano asked what material will be stored on site, wood and stone.

Mr. Hazelton said he does general contracting. He said he does quite a bit of masonry. He said there will be materials stored outside. He said ladders and scaffolding will be stored in the shed.

Mr. Pachano said he didn't have any other questions.

Mr. Hankin asked for clarification about the materials to be stored on site. He asked if there will be pallets of stone and raw materials.

Mr. Hazelton said he currently has some pallets with materials stored on site. He said he doesn't have long term plans to store large pallets of stone. He said he would like the property to be as much of a home as possible.

Mr. Hankin noted the previous use was offices. There was a lot of parking and traffic.

Mr. Hazelton said he can't have a shop because that would be considered light industrial. He said that is not allowed. He said he wants to be environmentally sound and respectful of the neighbors.

Mr. Hankin said the barn will have an office and storage.

Mr. Hazelton said there will be a private office on the second floor. The first floor will be used to store specialty carpentry tools that can't be stored in the shed or the trailers.

Mr. Hankin asked there will be daily deliveries from lumber yards.

Mr. Hazelton said there will be some mill work delivered. He said the deliveries will be increased but not be frequent. He said when the delivery vehicles can't get into the driveway they park in the street and we notify the police. We have done this for the last 4-5 years.

Mr. Fick said how do we make a recommendation to limit the size and number of vehicle and pallets. He wondered if diesel vehicles should be limited.

Mr. Hazelton said his pick-up truck is a diesel. He said it is a domestic vehicle so it shouldn't be considered a construction vehicle. He said none of his vehicles require a CDL to operate. He said he is happy to listen to how the Board wants to monitor the use. He said he doesn't want to disrespect the neighbors or the community. He said he has listened to the concerns. He said there haven't been any noise complaints from the neighbors behind him. He said he offered to put up a fence for the neighbors to the west but they didn't want a fence. He said he is willing to

work with the Town and the neighbors to do what needs to be done to make the contractor yard happen.

Mr. Fick said his concerns are more about the next person who buys the property and what they do with it. He said there needs to be a condition to limit heavy trucks.

Mr. Egan said we are happy to hear the conditions.

Mr. White said there is a written commitment to restrict the dump truck, excavator and skid steer. He said that has been submitted. Those vehicles will be stored off site.

Mr. Fick asked if restrictions can be based on size and tonnage. He said he didn't want a pick-up truck restricted.

Mr. Rembold said it is important to discuss. He said the Board doesn't need to narrow the list too much unless the intent is to make those recommendations to the Selectboard and the ZBA. The Board can propose specific conditions. He said there is no need to get into the small details.

Mr. Fick said he would like to recommend that the SPGA set conditions to limit the size of vehicles to be stored on site.

Mr. Higa suggested recommending to the Selectboard a condition on the use. Not for this applicant but for future owners of the property. He said it is great that the applicant is open to working with the Town and the neighbors but the concern is about future owners.

Mr. Rembold said there are 21 attendees some have their hands raised.

Mr. Fick said he would entertain questions from the audience but he had a couple more questions. He asked about the lights on the shed and in the pool.

Mr. Hazelton said he is not that far into the project. He said he is not going to try to light up the sky. He said he works with environmentally conscientious contractors. He said he expected to put a motion sensor light on the barn. He said there may be a light or two around the pool patio. He said everything in the proposal is what we want to do.

Mr. Higa asked if the SPR is for the entire site.

Mr. Rembold said yes. He said typically the special permit goes through before the Board approves the SPR.

Mr. Higa said we can make comments to the applicant.

Mr. Hankin asked if there would be a fence or landscaping for screening the headlights from the parking spaces facing the west neighbor?

Mr. Egan said the proposed shade trees will help with light pollution and headlights.

Mr. Hazelton said the neighbor has indicated that they want to see what is happening with the property. He said he doesn't want to put in a 6 foot barricade fence. He said he would add some landscaping.

Mr. Fick allowed comments from the audience.

Michael Kernan from 12 Mahaiwe Street said the owner has been operating a contractor yard in violation of the zoning code. He said the operation has been going on since 2018 the entire time he has lived in the neighborhood. He said the Building Inspector said the owner needed zoning relief. He said a Cease and Desist order was issued in 2019 but there was no enforcement. Mr. Kernan said in 2020 another Cease and Desist was issued and the owner was advised to get a special permit. There was no enforcement for the second Cease and Desist.

Mr. Kernan said now the owner is acknowledging that he has been operating an illegal contractor yard. Fines should be levied. A contractor yard is prohibited in all zones except an industrial zone and this area. He said construction vehicles have packed down the land. He said the applicant has failed to mention that right now there is a large construction vehicle parked behind the house. Mr. Kernan said the applicant has created the situation that exists.

Mr. Kernan said there is a 2 ½ ton weight limit on Mahaiwe Street. The sign is posted on the west end of the street. He said the barn has been renovated, there are new windows upstairs. The Building Inspector said the porch is 5-6 feet but it is much larger. Now there will be an additional shed that will create an impingement issue that will result in loss of real estate value for the neighbors. He asked the Board to read all of the information and reject the proposal.

Ms. Matz from 22 Mahaiwe Street said she lives across the street. She thanked Mr. Hazelton for attempting to understand our concerns. She said the neighbors next door don't want a fence. She said there has been a Cease and Desist order so there hasn't been much activity. She wondered if the neighbor would still be happy when the activity starts again. She said she has lived in the neighborhood for 30 years and for 26 years there was no building company at that location. Primarily there was office space in that building. She said some space was used for

storage. She said there has never been a problem with traffic. She said Mahaiwe Street is an unstable street that can't sustain heavy truck traffic.

Ms. Matz asked what amount of the site will be used for the contractor yard. She asked how much of the land is impermeable and will that create a problem with run off. She asked if there are problems with toxins in the building materials. She said the Board of Health cited toxins in the dust from the site.

Ms. Matz said the barn work is already done. There was new work done in the barn. She said was a huge wood burning furnace brought into the barn four years ago. She asked what toxins are coming from that furnace. She asked if the Town is aware of the work that has already been done. She suggested that the site should be looked at to see what exists.

Ms. Matz asked that the Board make their points clear. There have been times when there has been a lot of traffic and a lot of noise. This is not an industrial zone.

Mr. Matz said the house is less than 1/3 of the property and there is a huge wood furnace that pollutes the neighborhood.

Mr. Fick said this is not a public hearing but comments are welcome. He asked if there are any other comments.

Michelle Loubert from 70 Division Street said the Board has brought up good questions. She said she is disturbed when there are infractions then people get a pat on the back. She said that contractor yards were discussed on January 9, 2020. One Board member recommended that they be allowed. She said this is a quiet neighborhood. Contractor yards are not quiet or clean. She said she sympathizes with the residents and asked if this is an appropriate location to have this type of business. She asked the Board to stop ruining our neighborhoods.

Mr. Fick suggested discussing the special permit for the Selectboard for the use and the WQPD. The Board reviewed the criteria under 10.4

Mr. Hankin said the proposal is in keeping with social economic and social community needs.

Mr. Hankin said of the traffic flow that there will be fewer trip ends than generated by the previous use, but there will definitely be heavier vehicles on the road. He said he doesn't know how to weigh trip ends vs. a heavy traffic concern.



Mr. Higa said it is unclear what the traffic will look like during the house renovation vs. after the house renovation. He said maybe the applicant can make that information more clear.

Mr. Fick said he would also like to have the weight limit on the street addressed.

Mr. Hankin said there may be some issues regarding the character of the project. He said he doesn't know if the wood fire heat source is outside the barn or inside. He said the impact of this can be significant. He said this is not just a residential neighborhood but a contractor yard is a variant that will impact the neighborhood.

Mr. Higa said if there were one contractor storing material on the property it would be different. It is more detrimental because there is more than one contractor.

Mr. Higa said the Town not enforcing zoning is a separate issue. When people try to bring their property into conformance it is not a good idea to penalize them at that point. They are trying to do the right thing. He said it is up to the Selectboard to determine what conditions should be put on the permit if it is granted.

Mr. Hankin did not think there were significant changes to the natural environment.

Mr. Fick said the neighbors think there is an increase in the impervious surface but the plan shows there will be less impervious surface

Mr. White said the layout has gutters on the barn that will drain into the subsurface infiltration chambers.

Mr. White explained the drainage including the numbers for a 24 hour rain event. The drainage information is included in the application.

Mr. White said the impervious surface on the site will be improved by putting the pool in. He said a drywell could be put in the northeast corner of the barn. He said other ideas could be discussed to provide further improvements. He said the lot is flat so it is a challenge to capture and drain runoff.

Mr. Hankin asked about snow plowing and snow removal.

Mr. White said there is plenty of room for snow storage on the west side of the driveway. The snow would be removed if there is too much. He said there are 10 parking spaces but only 5 parking spaces are required.

Mr. Hazelton said the driveway appears to be gravel but it is asphalt with gravel over it from years of driving on it. He said the asphalt will be removed and a more permeable material will be put in.

Mr. Fick asked about the impact on Town Services, tax base and employment.

Mr. Hankin said he does create jobs.

Mr. Fick asked about thought for a recommendation.

Mr. Hankin suggested the introduction to the recommendation could say, based on what we have heard and the concerns of the neighbors.

Mr. Fick said we need to enumerate the storage of vehicles and how it will be limited; traffic of heavy vehicles on Mahaiwe Street; the wood burning furnace should be explored.

Mr. Higa said the Selectboard could consider any conditions that apply or won't apply going forward. He suggested that hours of operation should be discussed.

Mr. Rembold said the special permit can be conditioned on ownership and duration of use.

Mr. Higa made a recommendation to include Mr. Hankin's language that based on what was presented by the applicant and the concerns of the neighbors, to suggest that the Selectboard consider the following recommendations on the requested use of a contractor's yard at 17 Mahaiwe:

- Consider limiting on the property the storage of vehicles, the size of vehicles and the amount of materials
- Consider the amount of heavy traffic on Mahaiwe Street
- Consider the impact of the wood burning furnace in the barn on the neighborhood
- Consider making the special permit, if granted, specific to the applicant. Do not allow the special permit to be conveyed without the permission of the SPGA
- Consider not allowing expansion of the use in the future
- Consider setting hours of operation

Mr. Pachano seconded.

Roll call vote: Mr. Higa, aye; Mr. Pachano, aye; Mr. Hankin, aye; Mr. Fick, aye

Mr. Fick asked about the special permit for the WQPD.

Mr. Hankin said the issues have been addressed. He said he doesn't have any issues with what has been suggested.

Mr. Fick agreed.

Mr. Pachano said if anything the drainage is over designed.

Mr. Hankin moved to send a positive recommendation to the Selectboard on the WQPD, Mr. Pachano seconded.

Roll call vote: Mr. Higa, aye; Mr. Pachano, aye; Mr. Hankin, aye; Mr. Fick, aye

Mr. Fick asked about the ZBA special permit for the expansion of a pre-existing non-conforming building.

Mr. Higa said the special permit is for the barn not the shed

Mr. Rembold said that is correct, the shed as proposed conforms to zoning setbacks.

Mr. Pachano made a motion for a positive recommendation to the ZBA as the expansion does not add to the non-conformity, Mr. Hankin seconded.

Mr. Pachano suggested recommending that the ZBA investigate the zoning violations.

Mr. Rembold said that is not within the Board's purview. That is a separate matter.

Mr. Fick said he is not sure he would be comfortable making that recommendation.

Mr. Pachano said there are building and zoning enforcement issues in the Town. He suggested it might be put on a Selectboard agenda for the Building Inspector to have some assistance. He said without enforcement there is no law.

Mr. Higa agreed something needs to be done but he didn't think it should be part of this process. He said he didn't think it is right to penalize an applicant when they are trying to make something right.

Mr. Fick called the vote: Roll call vote: Mr. Higa, aye; Mr. Pachano, aye; Mr. Hankin, aye; Mr. Fick, aye;

Mr. Fick said that given all of the open issues we should wait until the special permit is granted before concluding the SPR.

Mr. Hankin said we should go over the issues for the applicant to be ready when they return.

Mr. Rembold asked about the lights around the pool.

Mr. Higa said light should not leave the property and it should be downward directed. He said the lighting needs to be addressed.

Mr. White said he had provided a temperature for the lights.

Mr. Fick read through SPR.

Mr. Hankin said a dumpster is not shown on the plan. We didn't discuss it. He said there needs to be screening of headlights from the parking lot.

Mr. Pachano said that if the neighbors move and new neighbors have light glaring onto the property it will be an issue. He said we need to provide some protection for future tenants.

Mr. Fick suggested this issue can be discussed at the meeting for the SPR.

Mr. Fick said the SPR issues include the traffic on the street, the location and screening of the dumpster and the pool lighting. He explained to the applicant that we go through the SPR criteria so he can understand what needs to be ready for the next discussion. He asked for consent to continue SPR to the next meeting.

Mr. Egan granted consent to continue the SPR to the next meeting on February 25, 2021.

Ms. Nelson returned to the meeting. The Board took a five minute break from 8:22 resuming at 8:27 PM.

#### **BARRINGTON BROOK SUBDIVISION:**

David Margulies, developer and Dave Ward were present via Zoom to continue discussion of the release of lots from the covenant on lots in the Barrington Brook subdivision.

Mr. Rembold said he forwarded information to the Board from Mr. Ward. The information was sent to the Board on January 9, 2021. He said the information lists the items to be completed and what the residents have agreed to. Additionally there is another letter of support from a resident

of the Cottages. The letter supports the completion of the subdivision and the release of the lots from the covenant. He said the letter states that the work in the subdivision will be completed by August 15, 2021.

Ms. Nelson said although she appreciates the e-mail sent by Mr. Ward, she thought the Board was clear at the last meeting that the information should be provided several days ahead so the Board would have time to review. She said she would be more comfortable getting quotes for the work from the contractors, not by letter from the applicant.

Mr. Rembold said the paving estimates are in writing.

Dr. Margulies said he is the developer, Mr. Ward is his consultant. He said he understands there is a history between Mr. Ward and the Board. He said he has the paving and excavating quote in hand as well as the infrastructure quote. He said he would get the information to Mr. Rembold in the morning. He said the cost to complete the work is \$101,000.

Ms. Nelson said the Board needs more than a day or two to review the information. She said the Board needs clarification of the lots to be released from the covenant and the lots that will remain in covenant. She asked that the quotes from the contractors be provided. Ms. Nelson said the applicant needs to provide the conditions of the subdivision approval that have not been met and the schedule of completion.

Dr. Margulies said it is not unreasonable to continue the discussion to the next meeting. He asked that rather than specify five lots allow any five of ten lots that can be sold.

Dr. Margulies said there are agreements with the Cottages and the Estates regarding the subdivision items that they don't need completed. He said this will be put in writing.

Dr. Margulies asked if instead of getting engineer to certify what exists we can agree that the certificates of occupancy will be held until it is certified that the as built drawings show that the project is in compliance. He said he is undertaking big risk and expense to build. He said doing an assessment in the winter could be difficult.

Dr. Margulies said the Board did ask to receive the information in advance of the meeting. He said going forward we will comply. Everything will be in writing and provided in advance.

Ms. Nelson said you are asking for an engineer's certification to be replaced with certification from a contractor.

Dr. Margulies said he has certification from contracts. He said he is asking to avoid duplicate expenses.

Ms. Nelson said if your project has any professional degree of oversight it shouldn't be a problem to get certification of the work. The work should be done according to standards as it being done.

Dr. Margulies said there are several generations of design professionals involved over the history of the project. He said we don't have linear records of what was done over the years. The design professionals would have to do a fair amount of work to determine what has been done.

Mr. Fick asked if he knows what was presented to the Planning Board over the years.

Dr. Margulies said when he assumed ownership of the three times defunct project there was no continuity. He said he had to finish Burning Tree Road. He said he made attempts to determine what had be done and what hadn't been done which resulted in some remediation.

Mr. Fick said we have a responsibility to hold the properties to make sure work is not left undone.

Dr. Margulies said he doesn't know what was built stem to stern on Burning Tree Road but he is doing archeology type work to determine as best we can what was done and what needs to be done. The work going forward is being professionally done. We intend to complete the balance of the work in a transparent way and to provide as built under professional supervision. He asked the Board to allow him to spend two million dollars and provide as built that will be real documentation.

Ms. Nelson said we are between a rock and a hard place. It is a complicated situation with a history. She asked the Board members if there were questions.

Mr. Hankin said engineering certification of what has been built is helpful but what about what hasn't been built. He said we should have certification about what has not been built according to the approved plan.

Ms. Nelson said we want to know what conditions of the definitive plan have not been met.

Dr. Margulies said he can provide information about surface features.

Ms. Nelson suggested that Dr. Margulies go through the definitive plan conditions then tell us what hasn't been done. She said she is concerned about installation of sewer and water pipes. She asked if the Town has records of those installations.

Mr. Rembold said the Water District should have information about the water mains. He said the sewer is private. The Town only has information about the connection to the Town sewer system.

Mr. Rembold said he thinks what Dr. Margulies has suggested makes sense. He said the Planning Board is trying to have a clear understanding of what has been built vs. what needs to be done. He said the impacts on the site from sewer and water drainage is important. He said it is clear that a lot of the definitive plan has not been done and that needs to be delineated. He suggested some of the information can be done prior to issuance of the certificates of occupancy but the Planning Board needs to be very detailed in developing an agreement to move forward. He said the covenant could be released for any five of the remaining ten lots if this is what the Planning Board wants but the Board has to be very specific and clear.

Mr. Hankin said he hasn't seen what is outstanding from the definitive plan. He said it makes him very nervous.

Ms. Nelson asked Dr. Margulies if he will bring the information to the next meeting.

Dr. Margulies said he will work with Mr. Rembold to find a path forward for both the residents of the project and the Town. He said in an ideal world sidewalks might be ideal but the project has buried two previous developers.

Mr. Hankin said he wants to be clear that everyone on the Board wants to see the project completed.

Dr. Margulies said he understands your responsibility. He said he would get information to the Board before the next meeting.

Mr. Pachano said we all want to understand what is left and the possible expense to the Town. He said if the lots are released the Town could possibly end up with fully developed lots with homes. Why can't we give some leeway to get the work done with some deadline down the road?

Dr. Margulies said to be clear, the buyer has the right to walk away from the house and I will have to refund the funds if no certificate of occupancy is granted. He said it is a crazy agreement but the time is now to sell the lots. The sooner this gets done the sooner I can get going.

Ms. Nelson said she wants to see the project built. She said over the history of the project the improvements have been left outstanding for too long. They might not ever get done.

Mr. Fick said he is concerned about not having a definitive list. He said SK Design provided a list previously, maybe that can be updated. He said he agrees with Mr. Pachano that relying on the certificates of occupancy to get everything done can provide leverage but what is everything that needs to be done.

Ms. Nelson asked if it is practical to approach this on a parallel path. She said we could release 2 or 3 lots but the information has to be provided.

Mr. Fick said we have to get a definitive list of work to be completed. Without a list of work, no certificate of occupancy will be granted.

Ms. Nelson said to Mr. Pachano you are proposing to get the information but accelerate the release of lots.

Mr. Pachano said to set a date in the spring when the information needs to be provided.

Ms. Nelson said we still want the information but release the lots either now or at the next meeting.

Mr. Pachano said yes. Dr. Margulies said he has 3 lots sold.

Mr. Hankin said he is uncomfortable with accelerating the release of lots. He said he would prefer to have Dr. Margulies come back to the next meeting with the information.

Ms. Nelson asked what the risk is.

Mr. Hankin said if the Town ends up with the land it probably won't be able to sell the lots. He can sell the lots only because he builds the houses. If Dr. Margulies builds the houses it raises the lever. He needs to provide the information.

Mr. Pachano asked what security does the Town have.



Mr. Rembold said the lots are held in covenant.

Mr. Pachano asked if the Planning Board or Town have control in the past.

Mr. Rembold said lots were released from the covenant as roads and bridge was built.

Mr. Hankin said it was offered to Mr. Ward to have the lots released in exchange for a performance bond. He said he is not sure if Dr. Margulies has considered that option.

Mr. Higa said he is concerned about the timing because there are three solid people ready to buy the lots. It is a unique time. He said we don't want to miss out on the opportunity to have the lots sold by dragging out the release. He said what would we do if we are left with all of the lots?

Ms. Nelson said she agreed but we didn't get the information we requested. She said she is cold on releasing the lots prior to getting the information.

Mr. Fick said we should have Dr. Margulies come back with the estimates in two weeks then we can release the lots with the certificate of occupancy restriction and go from there. He said we can look at the numbers and a list that we can give to the Building Inspector for the ultimate release of the certificates of occupancy.

Ms. Nelson said to Dr. Margulies that he needs to get the information to us so the lots can be released at the next meeting.

Stanley Brown from 2 Thrushwood Road, part of the Estates, thanked the Board for considering the matter so carefully. He said he lives in the part of the subdivision that is not finished. He said he is mostly concerned with getting the subdivision finished and finished right. He said he personally supports giving Dr. Margulies three lots as soon as possible. He said he looked at the estimate that was provided saying it seems low. He said he would like to have a closer look at it. He said the landscape plan should be looked at before the release of the last ten covenants. He said he doesn't want to delay the process but wants it worked out. He said he thinks working with Dr. Margulies will be easy.

Ms. Nelson we have requested a list of outstanding issues. She hopes the list will be comprehensive and includes addresses.

Sharon Shalow, potential new resident, said she wondered if the lot she is looking at is among the 3 lots to be released. She said she believes in this property. She said she is concerned about

the delays. She said is trying to put a voice to the lots. She said she wants to retire here. She asked the Board to formulate a process rather than put up hurdles. She said she may have to reevaluate her plan if the process doesn't move along. She said she making a plea to help move the process along.

Diana Gittleman from 3 Burning Tree Road, the Cottages, asked if the estimate for paving included the pool lot. She said she would like to know what will be paved under the estimate. She said the estimates are lower than previous estimates. She said Londonderry needs two coats the entire length.

Dr. Margulies said the estimate is less because it is more economical to do a lot of paving at one time.

Ms. Nelson said the discussion will continue at the next meeting.

#### **ZONING:**

Mr. Pachano said it would be fine to forgo the zoning discussion given the length of the meeting. He requested input from the Board members particularly how the MXHO would affect the east side of Stockbridge Road. He said he doesn't know if anyone thinks the proposal is a good idea.

Ms. Nelson said it has merit. She said she has gone through possible cases in her mind. She said she is not sure if there were buildings the size of the Holiday Inn along Stockbridge Road if that would be something we would be proud of.

Mr. Pachano said he thinks the traffic on Stockbridge Road has outgrown the area. He said the proposed zoning would create corridors along a major route and promote walkability and neighborhoods and protect the area from massive amounts of traffic going through. He said zoning can have design impacts not just land use.

Ms. Nelson said it can. She said she likes the idea of buildings creating a street buffer. She said the reality is the parking would be in the rear of the buildings. She said we need to be sensitive to the neighborhoods. She said she is still working through scenarios.

Mr. Rembold said technical assistance can be provided by BRPC for the impacts on Stockbridge Road.

Mr. Pachano said he has spoken to someone at BRPC. A small study can be done.

Ms. Nelson asked if it would be a study similar to what was done in Housatonic.

Mr. Rembold said possibly. He said he would work with Mr. Pachano to put it together if that is ok with the Board.

The Board supported Mr. Rembold's suggestion.

Mr. Fick said he has comments but there isn't time to go over at this meeting. He said he would like to seek support from BRPC.

Mr. Hankin said he has lots of edits. He asked that a Word document be sent.

Mr. Hankin said he sent out an e-mail with suggested housekeeping edits.

Ms. Nelson asked if he wanted the edit included on the warrant.

Mr. Hankin said yes. The edits are very simple.

Ms. Nelson asked if there is time to get the edits on the warrant.

Mr. Rembold said he would look into it.

Ms. Nelson said if it is doable we can include it on the next agenda.

Mr. Hankin said he also has suggested amendments to the Town Code.

Mr. Rembold said if the amendments involve other boards or committees they should be discussed with the Selectboard.

Mr. Hankin said the Conservation Commission made changes to their bylaw but everyone overlooked what was in the Town Code.

Mr. Pachano asked if the Town Code changes could go to the Selectboard through staff.

Mr. Rembold said yes it makes sense to advance to Selectboard. He said he would look at it.

Mr. Hankin said the common driveway portion limits the driveways to serve three houses. He said it reflects old zoning. He said the code reflects old zoning and it needs to be brought up to current zoning.

Mr. Rembold said it sounds like a discussion this Board should have on a future agenda.

**AFFORDABLE HOUSING:**

Mr. Hankin said there needs to be a definition of affordable housing.

Ms. Nelson said we need to be careful about putting in definitions then having to change them.

Mr. Hankin said the percentage of AMI and length of deed restrictions, if there are any, if in the definitions would be easier to amend than in all of the other sections that pertain to affordable housing.

**TOWN PLANNER'S REPORT:**

Mr. Rembold asked the Board members to hold the 5<sup>th</sup> Thursday of April for a joint meeting with the Selectboard.

Mr. Rembold said the Annual Town Meeting will be held in June. He said the citizen's petitions are still open.

Mr. Rembold said the next meeting will be busy. He said with the permission of the Chair the public hearing has been moved to March 25, 2021. He said the public hearing will include the B-3 proposed zoning and the three citizen's petitions unless we add Mr. Hankin's suggestions.

**BOARD & COMMITTEE UPDATES/ISSUES & CONCERNS:**

There was nothing from the Board.

**CITIZEN'S SPEAK TIME:**

No one spoke.

Having concluded their business, Ms. Nelson adjourned without objection at 9:41 P.M.

Respectfully submitted,

*Kimberly L. Shaw*

Kimberly L. Shaw  
Planning Board Secretary