

2 **TOWN OF HOPKINTON**
4 **SPECIAL PLANNING BOARD MEETING**

6 **December 14, 2009**
7 **7:00 P.M.**

8 **Hope Valley Elementary School**
9 **15 Thelma Drive**
10 **Hope Valley, Rhode Island 02832**

12 **CALL TO ORDER**

13 The December 14, 2009 special meeting of the Hopkinton Planning Board was called to order at
14 7:07 P.M. by Chairman Alfred DiOrio.

16 **MEMBERS PRESENT**

17 Howard Walker, Joseph Escher, Hazel Douthitt, Alfred DiOrio and Donald Simmons were
18 present. Ray Cox was absent.

20 Also present were: James Lamphere, Town Planner; Scott Levesque, Town Solicitor; and,
21 Harvey Buford; Conservation Commission.

22 **Master Plan Public Informational Meeting, con't. – Comprehensive Permit – Brushy**
24 **Brook, Plat 32 – Lots 1 through 71, Dye Hill Road. LR 6-A Owner, LLC, applicant.**
25 Attorney William Landry represented the applicant.

26 *A court stenographer was present to record the proceedings. A copy of the transcript is*
28 *attached and made part of this record.*

30 **Edward Pimentel**, Planning Consultant, was sworn in and described the procedure for
31 developing his report. Mr. Pimentel said local need is for the elderly, special needs and family
32 and within those groups there are people at different income levels. Hopkinton is doing well and
33 is at 7.7% of reaching the 10% goal with the majority for seniors and the greatest need for family
34 affordable. He determined that if a conventional development, one hundred fifty-seven (157)
35 acres would be deemed unsuitable for development. He did a density analysis for a conventional
36 development, without a right of way, allowing for about one hundred (100) units. The yield they
37 are proposing is a two hundred percent (200%) increase over what is allowed by conventional
38 development. A conventional development would allow one hundred units with none affordable.
39 Of the 300 units they are proposing, 75 will be affordable.

40 **Mr. Landry** asked how the density bonus compares to other Comprehensive Permits?

42 **Mr. Pimentel** said they have asked for density bonuses of up to six hundred percent (600%) on
43 lots much smaller in size, adding that a lot of communities don't have the land resources that
44 Hopkinton has. He has determined it will provide the vast majority of family ownership
45 affordability and does not think there will be any impact; this property is clearly suitable for
46 development.

48 **Mr. Landry** said their experts have returned to answer questions: Mr. Duhamel, Mr. Daley, Mr.
50 Bannon and Mr. Lombardo.

2 **Mr. Lamphere** presented his memo of November, 25, 2009 as Planning Board Exhibit 1 and
4 reviewed the memo's contents. He presented his memo of December 14, 2009 as Planning Board
Exhibit 2 and reviewed the contents of the memo.

6 **Mr. Lamphere** said balance captures the essence of planning. An example would be a balance
8 of affordable housing and protecting groundwater resources. He asked the Board to see the
challenges of having two to three times the density allowed under zoning codes to maintaining a
10 balanced, sustainable community. He said the State Legislature has mandated that ten percent
(10%) of our year-round housing be low or moderate income housing. This is housing that must
12 have either Federal, State, or Municipal subsidies attached to it and assures affordable for at least
thirty (30) years. The applicant has submitted a plan for a Major Land Development project in
14 the form of a Comprehensive Permit of which twenty-five percent (25%) of the proposed housing
must be low or moderate income. In a Comprehensive Permit the applicant may request waivers
16 from any aspect local zoning, including density requirements.

18 **Mr. Lamphere** made the following comments on prior testimony:

20 *1. Mr. Landry stated that local zoning is insufficient for getting the town to the 10% low or
moderate requirement.*

22 The Town of Hopkinton is now at 6.97% of counted low to moderate income housing. The Town
received an award in October 2007, in recognition of the Town's success in developing
24 affordable housing. Local zoning is not solely for attaining the ten percent (10%) low or
moderate income housing requirement. The comprehensive permit, with its built in zoning
26 waiver provisions, was designed to facilitate the attainment of that goal. Local zoning has broad
based legitimacy. He has attached Addendum A to his memo, listing all the purposes zoning is
28 intended to further. It does provide for the establishment of low or moderate housing and equally
serves to provide for the protection of our water resources. When is it appropriate to depart from
30 the strictures of zoning? How far can you depart from zoning without creating unacceptable
adverse impacts? Is the present case an example of smart growth? A certain amount of zoning
32 relief, where appropriate, may be necessary in order to meet local affordable housing
requirements. Projects on the scale of Brushy Brook are not necessary to get there. It has been
34 overly mentioned that the ten percent is the only need we should be fixated on. You should not
address all the need, or even half the need, in a project like this, that could create more problems
than we started out to fix.

36 *2. Mr. Landry suggested that this project would get the town to the 10% threshold without any
38 other projects.*

40 The Town of Hopkinton official count stands at two hundred twelve (212) out of three thousand
forty (3040) year round housing units for the 6.97%. With the twenty (20) affordable units at
42 Canonchet Woods, we are at 7.5% affordable. Brushy Brook, as proposed, would increase the
affordable housing count to three hundred seven (307) out of 3393, bringing us up to nine percent
(9%), still leaving the town open to additional comprehensive permits.

44 *3. Mr. Landry said the applicant has submitted information that exceeds requirements at Master
46 Plan level. Later Mr. Duhamel said the Master Plan is conceptual in nature with detailed
engineering done at the Preliminary stage.*

48 The Master Plan stage is the most important stage of the process. Approval of a Master Plan says
the Planning Board agrees with the parameters and the overall layout of the project, giving the
50 applicant the approval to go forth and expend the funds that are necessary for engineering. If
applicants prematurely go forth and do work required at later stages in the review process, prior
52 to getting Master Plan approval, they do so at their own risk. Review of the Master Plan gives the

2 Planning Board the opportunity to compare the proposal to existing regulations and to shape it in
4 a way that reflects good planning practices. Comments from state agencies are also important at
6 this stage, particularly from the RIDEM. The density of this project is approximately three times
8 that allowed under existing zoning. Before any Master Plan is approved, there should be
10 substantial testimony on record relative to the likely environmental impact of a project of this
size. To date the applicant has not given any comments on the project from DEM. They have
only submitted a permit to alter freshwater wetlands dated September 2000, that was issued for a
much less dense, one hundred thirty-four (134) unit project. The Master Plan approval is
extremely significant and should not be taken lightly by the Board.

12 *4. Mr. Duhamel attempted to liken this project to Conservation Development.*

12 Mr. Duhamel mentioned that the proposed lot sizes and setbacks are similar to those in
14 Conservation Development. He failed to point out, that for the most part, Conservation Design is
16 density neutral and preserves open space. Density bonuses may be given but would generally not
be remotely close to the magnitude being sought here. Mr. Lamphere read an excerpt from the
North Kingstown Conservation Design Ordinance.

18

20 *5. Mr. Duhamel compared this project to Canonchet Woods, a comprehensive permit that his
firm engineered and was approved by the Planning Board, stating that Canonchet Woods was a
huge success from a design standpoint.*

22 In terms of density, it is not appropriate to compare the present Brushy Brook project with the
24 Canonchet Woods project which was proposed for an eighty-six (86) acre site. The applicant
prepared an alternate conventional subdivision plan yielding thirty-six (36) lots and a cluster
26 subdivision plan yielding thirty (30) lots. Ultimately, thirty-three (33) lots were approved for
market-rate single family homes along with one additional lot, transferred to Women's
28 Development Corporation, for ten (10) duplexes, a total of twenty (20) units. Based on the thirty-
six (36) lot conventional plan, by-right option, the total approved density bonus amounts to forty-
seven percent (47%), no way comparable to the 200% density bonus requested for Brushy Brook.

30

32 *6. Mr. Duhamel stated that Hopkinton's fees seem higher than those in other towns.*

32 Mr. Duhamel mentioned that the Master Plan in Charlestown is \$250. What he failed to mention
34 is that Charlestown, and many other towns, have project review fees where consultants are called
in, review the project as submitted, and give the town an appraisal of it. Hopkinton's fees are
based on the size of the project, the larger the project, the higher the fees.

36

38 *7. Mr. Daley from LFR analyzed and assessed the Brushy Brook project in terms of the
availability or potential yields of the groundwater underlying the site as well as the potential
impact of the use of private wells on site would have on the underlying aquifer.*

40 In the hydrologic report analysis performed by LFR, May 2009, Mr. Daley concluded that the
42 project would not significantly impact the availability or potential yield of groundwater
underlying the site. However, he goes on to state that approximately eighty-five percent (85%) of
water withdrawn by the wells will be reintroduced to the aquifer through the septic systems. A
44 letter from Paul Aldinger & Associates, included in Exhibit 1, April 2001, which related to the
Reserve at Brushy Brook PUD, stated that the required yield of a public water supply for all of
46 the residences would greatly exceed that which could be supplied by either the glacial till or the
bedrock.

48

50 *8. The Traffic Impact Study*

50 The traffic impact study prepared by RAB Professional Engineers, May 2009, calls for minimal
mitigation measures to accommodate this development, mainly signage on the narrow sections of
52 Saw Mill Road, at the stream crossing, to control traffic in an one way manner, and to have Dye

2 Hill Road and Saw Mill Road reviewed for signage to enhance safety. It does not seem
reasonable to expect these measures to be adequate. All of the town roads that will service this
4 subdivision will need a tremendous amount of work. The Reserve at Brushy Brook PUD
approval, made part of the record in the applicant’s binder, called for a number of conditions,
6 including off-site road improvements, that provided for widening the bridge on Saw Mill Road.

8 **Mr. Lamphere** continued. Addendum B of the Rhode Island Low and Moderate Income
Housing Act lists five reasons for denial of a proposal, one being consistency with the
10 Comprehensive Plan. Mr. Pimentel mentioned needs, as if the getting to the 10% is the only need
the town has. The Comprehensive Plan has a whole host of needs that also have to be met. He
12 would suggest to the Board when looking at the evidence, if you feel this project is contrary to
meeting those needs, you have a basis of denial. He has also provided Addendum C lists the
14 seven positive findings of fact that the Board has to make that are necessary for approval.

16 **Mr. Lamphere** said the land is currently zoned RFR-80 calling for a lot size of 80,000 square
feet per dwelling unit. Mr. Pimentel’s report states there are 184.3 acres suitable for
18 development. A cluster design in accord with the Zoning Ordinance and Land Development
Regulations, would yield approximately one hundred (100) units; three times the number allowed
20 under zoning. Mr. Lamphere requested the applicant provide a conventional subdivision yield
plan that suggests one hundred twelve (112) lots could be created by right, assuming that several
22 wetland crossings would be approved by DEM. This density proposed, is similar to what one
would find in an urban/suburban area. Urban/suburban development demands urban/suburban
24 infrastructure to support that level of development as well as places of employment, shopping and
public transportation. Groundwater quality in sections of Cranston, Warwick and Providence is
26 classified as GB, not fit for drinking without treatment. He asked if that is the direction we want
to drive the town in? He suggested further examination of this project should start with the
28 maximum number of units that could be created under existing zoning, by right, then with a
reasonable, scientific-based determination made as to what amount over and above that would be
30 unacceptable.

32 **Mr. Lamphere** said that on the Comprehensive Plan Future Land Use Map, the entire parcel is
classified as open space and conservation land. Included among such areas are lands that are
34 important for open space, passive and active recreation activities, properties that are adjacent to
large dedicated open spaces, such as Arcadia, and lands for the preservation of natural and
36 cultural resources. He would not suggest this land is not appropriate for residential development,
however, to develop this property in a way that is three times more dense than presently allowed
38 under zoning, is clearly inconsistent with the Town of Hopkinton Comprehensive Plan. The
applicant has made considerable reference to the Reserve at Brushy Brook PUD, consisting of
40 sixty-six (66) single family homes, sixty-eight (68) residential condominiums and a golf course,
for a total of one hundred thirty-four (134) residential units. While this development was
42 approved by the town, Mr. Lamphere said our PUD ordinance states that “the total density and
building bulk of any proposed PUD may not be increased to exceed the density and building
44 requirements for the underlying zoning district.” He said the PUD may have exceeded the
density of the underlying zone, but does not see how this could be used as justification for any
46 minimum number of units on this property.

48 **Mr. Lamphere** said the fiscal analysis presented in the DiPrete Engineering narrative, projected
a total of one hundred seventy-one (171) students generated, versus Mr. Lombardo’s study, which
50 Mr. Lamphere still has not received, that projects one hundred eleven (111) students. In this case,
the applicant has presented two widely divergent reports with DiPrete projecting a 1.8 million
52 dollar annual deficit for the town and Mr. Lombardo projecting a \$400,000 deficit. The Reserve

2 at Brushy Brook PUD, approved March 1997, projected one hundred fifty (150) students
4 generated, using a multiplier of point five (.5).

6 **Mr. Lamphere** said his recommendation to the Planning Board would be to turn the plans and
8 records over to an independent consultant. He feels that is the only way to gauge the ultimate
10 carrying capacity of that land. He would recommend Jacobs, Edwards and Kelcey, one of the
12 town's approved engineer consultants, to examine this entire proposal in detail. At this point, the
14 Planning Board has only heard testimony from the applicant's representatives. Site specific
conditions should be examined to determine the likely long-term carrying capacity of this parcel.
Some effluent analysis based on the cumulative impact would be appropriate. Review calls for
multidisciplinary expertise and time that is beyond the present staffing capacity of the Planning
Department. The filing fees and/or project review fees, normally associated with a project of this
magnitude, could be appropriately be used to hire a consultant.

16 **Mr. Lamphere** also suggested the Board require the applicant to provide initial comments on this
18 particular proposal from Federal and State agencies, particularly DEM. A RIDEM letter dated
20 October 16, 1996 commented on the one hundred thirty-four (134) units in the PUD, preferring a
22 reduced density and also suggested that the Town of Hopkinton embark on an Environmental
Impact Statement to assess all the potential impacts associated with that development proposal,
including impacts watershed-wide outside the boundaries of this project. His recommendation is
to find a density that makes sense for that parcel.

24 **Mr. Levesque** said there has been a request that the fees be waived but has not heard from the
26 applicant whether or not the applicant is claiming that without the waiver, the project will be
28 infeasible. He asked if there been an analysis done as to the percentage of density that is
necessary to keep the project feasible, minimum density, and is that number different than the
number that has been brought forward?

30 **Mr. Landry** said they are not taking the position that payment of the filing fee would make the
32 project infeasible. The filing fee is up to \$36,000, excessive in terms of normal filing fees for
34 projects of this nature. They are aware that in other projects this Board has required applicants to
pay outside consulting review fees, in addition to the filing fees, using the Clarks Falls Road
project as an example. They submitted a project pro forma showing the rate of return was
significantly less than ten percent (10%). There is no bank involved for financing.

36 **David Allen**, General Partner of Realty Financial Partners of Wellesley, Massachusetts, is sworn
38 in. His firm was a lender to Brushy Brook and purchased the property at foreclosure in the fall of
40 2009. The rate of return in the pro forma, for most conventional projects they would be an
underwriter for, would have a 30% to 40% gross margin. This project, because of market
conditions, is at 10% with 300 units. This project could not be financed with fewer units.

42 **Mr. Buford** said the Conservation Commission wrote two letters to the Planning Board dated
44 October 28, 2009 and December 9, 2009 which he read for the record. He would like to request
46 an environmental impact statement comparing standard development density with what is being
proposed. The 2006 plan did not have any houses within one half mile of Arcadia. The current
project will have the most extreme impact on the Arcadia Management Area.

48 **Mr. DiOrio** opens questions from the public, deferring questions from the Planning Board.

50 **Andrea Gardiner**, Arcadia Road said the number of school-age children is underestimated and
52 that this project will not address affordable housing while protecting the integrity of Hopkinton

2 and its rural character. She said wildlife will be displaced and that there are existing streams
4 flowing through the majority of the housing lots. Fragmenting the wildlife will bring animals in
6 the yards. There are deep forest birds who will not adapt to living on the edge of a subdivision,
8 stating that as the habitat goes, so go the animals. Species there include the Pileated Woodpecker
10 and the Black Throated Green Warbler. Plant life will be gone that provides food and shade,
12 protects wildlife, prevents erosion, filters out water and air, and helps to prevent floods. Forests
are essential for the conservation of the water supply, absorbs carbon dioxide, and puts out
oxygen. There will be artificial light where, when excessive, will block out the stars. The Town
of Hopkinton approved a two million dollar bond to acquire and protect open space. People that
come in from out of town to make money, leave us, and ruin what we have.

12 **John Orlandi**, 122 Dye Hill Road, said his property is bordered on three sides by this property.
14 He thanked the applicant for not putting the [fire]access road in and for moving the property line
16 for building back. His well is a 28 foot deep driven point. He asked what 300 wells and septic
18 systems will do to his well. He said the roads are narrow, just east of the site curved, and have
20 single lane bridges on Dye Hill Road and Saw Mill Road that can not handle the amount of
22 traffic. The applicant said the project will generate two hundred (200) cars, but believes that
24 number is low. He talked with the Rhode Island Department of Transportation who also thought
26 200 cars is a very low number and said that single lane bridges are not a good idea to hold this
amount of additional traffic. The previous traffic report from when this was Fogarty's property,
had half the number of houses and twice the number of cars. The bridge on Dye Hill Road cost
\$90,000 to fix; there are five bridges in the area. Whispering Pines Campground has more than
two hundred forty (240) sites which is full on holidays and more than half on regular days, adding
to the traffic and walkers in the area. He spoke with Barry Ricci, Superintendent of Schools, who
said he has no empty classrooms. Mr. Ricci said that with 171 students, they would need a new
elementary school and an addition to the middle school, with the high school being okay. They
will need teachers and school busses. He also said none of the three towns would vote for
building a new school in Hope Valley. Students would have to be bussed to Hope Valley and
possibly out of the area. The proposed impact will raise the taxes \$1.60 per thousand. He
recommends that the Planning Board not waive the fees and get an independent study.

32 **Alexander Poules**, Woody Hill Road, asked what noise is acceptable with splitters and crushers?
34 They have silence now. He asked how long will the crushing go on? What is acceptable?

36 **Mr. Duhamel** said the construction site is monitored. There is a noise ordinance in several towns
38 that allow 55 to 60 decibels, at the property line, within business hours, under temporary
40 conditions. They will work with the Building Official to determine acceptable time. They can
42 take the rocks and boulders and move them to the center of the site for the crushing operation.
44 They will move rocks from the surface with twenty yard trucks, that don't go off road, stay on the
site, move the rocks to the center of the site and crush them to create building material.
Mechanical splitters will be within the immediate area. They will be in compliance with noise
density. The site was redesigned so that construction activity would be moved away from the
residences on Dye Hill Road. The majority of the project is surrounded by Arcadia Management
open space.

46 **Mr. Poules** said to be in a city with all this noise at 70 decibels, where there is already noise at 30
48 decibels, is only going up 40 decibels. To go from 0 to 70 decibels is extreme. No traffic study
50 was done on Woody Hill Road; 165 is a main highway. He asked, don't you think people are
going to use another artery?

2 **Mr. Bannon** said they looked at all area roadways, the point of development and access to major
routes.

4 **Mr. Poules** said, so you're saying there would be no increase in traffic when people come off
6 165?

8 **Mr. Bannon** said there will be some traffic, yes.

10 **Mr. Poules** said when he drives in to Wyoming, certain times during the day you are going to
circumnavigate and take the back roads, so being an expert you would cover the back roads, too.

12 **Mr. Bannon** said because 85 to 90% of the traffic would be using the route he described,
14 resulting in five or ten cars that may go up Woody Hill that has no impact.

16 **Mr. Poules** asked and you still think narrow roads are safer than with wider roads because people
have a tendency to drive slower on them?

18 **Mr. Bannon** said absolutely. If the road was 30 feet wide, they would be going 50. They are
20 trying to maintain the character of the road and widening is not done in a rural situation.

22 **Mr. Poules** said and you don't put a project like this in a rural situation.

24 **James LaPlume**, Woody Hill Road, regarding the crusher to be used on site, asked if this is a ten
year project.

26 **Mr. Duhamel** said the project would be completed in two to three years.

28 **Mr. LaPlume** said he does not always work nine to five and some days has to sleep during the
30 daytime. He hesitates to use the word mining, but if they are going to be in there with the crusher
to reuse the minerals that are on site, he is under the assumption that the present terrain, where
32 you start striping from one area to fill another, will end up with property that looks like Stilson
Road. In the past twenty to twenty-five years there has been a lot of development on Escoheag
34 Road. Prior to the development there would be three cars on Woody Hill Road. Now there is a
parade of cars in the morning with the same parade going through in the afternoon. He doesn't
36 think they have done an impact of the traffic on Woody Hill Road.

38 **Mr. Duhamel** said the development is to reduce the impact and disturbance to the community in
the area. They are preserving 200 acres of open space without any disturbance. The previous
40 application for a golf course would have completely stripped the land. The remaining clearing is
for the roadway which is essentially cleared on the site today.

42 **Anthony Capo**, 213 Skunk Hill Road, said he lives between this property and Arcadia, with a
44 path between the two. He spends 250 hours a year on that property, exercising, training his dogs,
picking berries, looking for wildlife. He knows the land. He sees on the map that it doesn't show
46 two bodies of water coming down the center. He asked the percentage of impervious coverage.

48 **Mr. Duhamel** said impervious cover is in the 6 to 8% range including the 24 foot right of way,
driveways and houses. All impervious surfaces have to be analyzed for the amount of runoff
50 generated.

2 **Mr. Copa** said to round him up and call it 10% because he hasn't calculated roads, parking areas,
4 cul de sacs, which would bring it over 10%. The EPA says a property is substantially impacted if
6 over 10% of its area is impervious. The cap up there is not your traditional cap; there is a
8 geological moment up there. There are geological caps up there that are impervious that shed
10 water and exponential rain. No one has ever dug a hole up there, but he has. You can not put
foundations up there. The US Bureau of Mines says that a pneumatic rock crusher and rock
driller, operating at 10 meters or thirty feet, is 130 decibels. He said 190 decibels will ruin your
hearing; at 90 decibels, your hearing becomes impacted. He asked if there is a noise ordinance in
town.

12 **Mr. DiOrio** said the Board does not know the answer.

14 **Mr. Copa** reads from the Newburyport, Massachusetts noise ordinance and says they also have
16 an odor ordinance. He said a 66 million dollar project has 16 divisions. Division 0 is working
18 conditions; hours of work are specified in their contract. Division 2 is the site work. There will
20 be enormous trailers chugging up and down the roads for vendors. Check the school bus
22 schedule and see what happens at 7 and 3:30. There will be tree cutters, pneumatic rock guys, the
24 rock haulers, are all going to be lining up. When they start hitting their air brakes on Skunk Hill,
26 Dye Hill and when they are coming up the hill, chucking diesel into his house, and he has to shut
the windows in July, he is not going to be happy. They pay taxes not to live like that. He asked if
the town has guards in place for excess profiteering. He offers zero to these guys. If they want to
come back, they buy Chariho Little League Field, do all the infrastructure, fix it up and sell it to
Chariho Little League for one dollar. The 36,000 dollars you said no to is now 72,000 dollars.
Every bedroom they put up, tax it. He said he reserves the right to make this as uneconomical
and as infeasible as possible.

28 **Matt LaPlume**, 204 Woody Hill Road, wants to know how 300 housing units will share 200
30 cars. In the past couple of years he has seen developments coming in with traffic from Saw Mill
32 and Dye Hill making a substantial difference to where he lives on Woody Hill Road and believes
34 that should be checked. There will be more than 500 cars going down Woody Hill Road. They
say they have taken a good look at all the impact the development is going to make. He would
tell them to make sure they covered all bases, make assumptions, and strongly suggests they go
back to where they came from, reassess what is really important, and come back when they are
ready.

36
38 **Ms. Gardiner** said the narrative report says taxpayers would be responsible for the roads and the
parking lots because they are public. She asked why would parking lots for private homes be the
responsibility of taxpayers who do not live there?

40
42 **Mr. Duhamel** said the design is public roads; there are no public parking areas.

44 **Ms. Gardiner** said it was in the Master Plan Narrative and talked about the parking lot being lit
46 for security reasons. It is under road maintenance and says the proposed roadways and parking
areas in the development will be public and are proposed to be maintained by the town. This will
include the maintenance of all drainage.

48 **Mr. Duhamel** said Public Works typically maintains drainage retention basins. There are no
parking areas. Parking is allowed on the street.

50
52 **Ms. Gardiner** said the report should be corrected because it is here in black and white.

2 **Mr. Copa** asked, in the drawing , does this road, as shown here, lie as currently constructed.

4 **Mr. Duhamel** said very much.

6 **Mr. Copa** said if you walk the property you will find the actual is different than that shown on
the plan for drainage; it is clearly different. This is the crown piece in here. These are the
8 outlying areas that are below the high ground gradient. The water is passing through these
properties in reality, down into the lower end of the rivers.

10

Mr. Duhamel said the analysis of the drainage impact on the site, wetlands and abutting
12 properties is very specific and controlled by DEM. DEM spends months looking at calculations
done by engineers who spent months developing them. They walk the site and determine that
14 there is no increase in rate or volume of runoff. In each area of discharge there are least two
checkings of watersheds on the site. Each watershed area has to meet the high criteria. There is a
16 lot of engineering work that has to occur in order for a shovel to be put into the ground. This road
network has already been engineered and designed by another firm and approved by the town and
18 DEM. They are starting from scratch and are living by the new, more stringent DEM regulations.

20 **Mr. Copa** said this just does not show the two main bodies of water; the valley is not shown.

22 **Mr. Duhamel** said they are shown on the plan as wetlands. The Planner has a 40 scale plan that
shows this in detail.

24

Mr. DiOrio would like to discuss an independent review. He believes the next step is to collect
26 the documentation and send it off to the consultants. The Board indicates they agree.

28 **Mr. Lamphere** said the town has two qualified engineering firms approved by the Town
Council: Joseph Frisella or Jacob, Edwards and Kelcey. Upon a motion from the Planning
30 Board, he will turn over official copies to them and ask for their independent analysis of the
project.

32

Mr. DiOrio asked if the Planning Board has latitude on selecting the firm.

34

Mr. Lamphere responded yes.

36

Mr. DiOrio asked if payment for those services is out of the application fees or are they in
38 addition the application fees.

40 **Mr. Lamphere** said he will review the Subdivision Regulations.

42 **Mr. DiOrio** asked if it is equitable to say payment can be worked out between the town and the
applicant? The town is not paying the bill. It must come from either applicant's fees or
44 supplemental funds.

46 **Mr. Lamphere** said he is not sure that could be worked out. He does not believe the applicant
has agreed to pay the application fees. If the applicant pays the fees, regardless of how our
48 Subdivision Regulations read at the present time, that application money could legitimately be
used to compensate the consultant.

50

2 **Mr. Walker** said it is not a matter of agreeing to pay fees. The applicant can request a waiver as
4 a subsidy and the Board has discretion to deny. He suggests the request for a waiver of fees
should be denied for the time being.

6 **Mr. Lamphere** said he is in complete agreement. The Pre-application and Master Plan fees have
not been paid. We need at least partial payment to go forward and hire a consultant.

8 **Mr. Walker** asked what effect does non-payment of the fee have on the timing and the deadline?

10 **Mr. Lamphere** said we have a March 6 deadline to make a decision on this application. The
12 thirty day period from the time of the Pre-application meeting was ended. He has not submitted a
Letter of Completeness, but believes the deadline has passed.

14 **Mr. DiOrio** said the time expired so the application is complete?

16 **Mr. Levesque** suggested a motion on the request for a waiver and then a motion on the
18 consultant and whether the applicant will consent to pay for the expense.

20 **MR. WALKER MOVED TO DENY THE APPLICANT'S REQUEST TO WAIVER FEES.**
MS. DOUTHITT SECONDED THE MOTION.

22 Messrs. Walker, DiOrio, Cox, Simmons, Escher and Ms. Douthitt approve.

24 *Motion passes.*

26 **Mr. Levesque** suggested discussion with the applicant regarding independent review at the
applicant's expense.

28 **Mr. Landry** said there is limited value of outside consultants at Master Plan stage as opposed to
30 the Preliminary stage. The site has not been engineered. The Rhode Island DEM and possibly
the Rhode Island Department of Health may need to get involved in groundwater and certainly RI
32 DEM on wetland issues and septic system approval. If those approvals are not decided at state
level, they will make it back here for Preliminary and the project does not go forward. There are
34 self-policing issues that are dealt with by the permitting structure and they would not agree to pay
for outside reviews at Master Plan stage on those types of issues as they will be decided by DEM,
36 and they usually only raise a bunch of questions at Master Plan level. When towns bring in
outside consultants on septic system issues, the consultants tend to agree that the soils are good,
water tables are good and you can design a septic system to work in those soils, and they end up
38 agreeing that if RI DEM approves it, it is going to be good. They have presented testimony that
the soils are conducive for the septic systems, the design of the project is within the parameters
40 normally approved by DEM. They would not agree to finance another set of opinions on things
that are resolved. They can not agree to any outside consultants without scope of work, a
42 proposal for a set fee for the consultants, and the questions that are going to be resolved through
the state approval process of this project. There would have to be multiple consultants from
44 which they would make the decision as to who does the work.

46 **Mr. Levesque** said the Board should discuss what experts and for what reasons.

48 **Mr. Walker** said the issue before us to consider this project's impact on the town because the
Planning Department is not set up to review this project on its own.

50 **Mr. Lamphere** said we don't have the resources to do this work in house. He believes the
52 application is incomplete. LFR did not address water issues. There is a problem with density.

2 We need someone to look at that parcel and determine the carrying capacity of the parcel and our
4 checklist requires the applicant to provide written comments from DEM.

6 **Mr. Landry** said DEM does not have a process to check proposals. There is a sequence that
8 won't give approval on Master Plan. This project is already planned, developed and designed
10 beyond the Master Plan level. The Public Informational Hearing comes after the state round.

12 **Mr. Lamphere** said the State of Rhode Island passed Land Development and Subdivision
14 Regulations in 1991 saying review can be at Master Plan stage. DiPrete came up with DEM
16 comments at the Master Plan stage. A Master Plan approval says a major part is done.

18 **Mr. Landry** added, and approved by state agencies.

20 **Mr. Lamphere** said this is a comprehensive permit with three times the normal number of units.
22 We do not want to create an environmental nightmare and that is why we should bring in an
24 independent consultant at this time, to review what they have done and to look at things that they
26 have not done to date. There are major issues that have to be looked at. Mr. Lamphere said
28 payment of fee is a checklist requirement and will give us enough money for review.

30 **Mr. Landry** said the checklist has a section for initial written comments from other agencies
32 provided by the Administrative Officer.

34 **Mr. DiOrio** said we can set a continuation date when the fee is paid.

36 **Mr. Landry** said there could quite possible be an appeal.

38 **Mr. DiOrio** said in light of that, it might not be appropriate to set a date. When this issue is
40 resolved we will know whether an independent consultant is hired or not.

42 **Mr. Lamphere** said there is the March 6 deadline. He asked if the applicant does not intend to
44 fund an individual review?

46 **Mr. DiOrio** said there has been no funding at this level.

48 **Mr. Lamphere** said this project is not consistent with the Comprehensive Plan, not just the
50 housing element, but in total, of which there are a number of needs that have to be addressed. If
52 in an effort to get to the 10%, throw everything else out the window, we are in trouble.

54 **Mr. Walker** said we can continue to the regular January meeting for a determination of the
56 applicant's position. If the fee is not paid or when the applicant will pay, it will then be put on in
58 late January or February for a discussion of the application.

60 **Mr. Levesque** said that sounds logical to him and asked the applicant whether experts will be
62 brought to the next meeting.

64 **Mr. Walker** said that if there is no independent review, we will need to schedule another meeting
66 with the experts.

68 **Mr. Landry** said that makes sense. He did not expect the Board to move on the waiver issue
70 tonight. He has an obligation to discuss the ruling with his client. To be put on the January
72 agenda for the applicant's input is reasonable.

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2 **Mr. Walker** said we should know what the situation will be by the January meeting and how we
4 will have to proceed with scheduling and administrative purposes. We could have a special
session if experts are needed.

6 **MR. WALKER MOVED TO CONTINUE THE PUBLIC INFORMATIONAL MEETING TO THE**
8 **NEXT REGULARLY SCHEDULED MEETING, JANUARY 6, 2010 AT THE TOWN HALL, 7:00**
P.M.

SECONDED BY MR. SIMMONS.

10 Messrs. Walker, DiOrio, Simmons, Escher and Ms. Douthitt approve.
Motion passes.

12

ADJOURNMENT

14 **MR. DIORIO MOVED TO ADJOURN THE MEETING.**

MR. ESCHER SECONDED THE MOTION.

16 All approve.

18 The meeting adjourned at 10:04 P.M.

20

22 Attest: _____
Lynda St. Amour, Planning Board Clerk

24

26 Approved: January 6, 2010