

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

6 **March 6, 2013**
7 **7:00 P.M.**

8 **Hopkinton Town Hall**
9 **One Town House Road, Hopkinton, Rhode Island 02833**

10 **CALL TO ORDER**

12 The March 6, 2013 meeting of the Hopkinton Planning Board was called to order at 7:02 P.M. by
13 Acting Chairman Howard Walker.

14 **MEMBERS PRESENT**

16 Howard Walker, Hazel Douthitt, Joseph Escher, Donald Simmons and Carolyn J. Doyle
17 were present. Alfred DiOrio was absent.

18 Also present were: James Lamphere, Town Planner; Scott Levesque, Town Solicitor; Barbara
20 Capalbo, Council Liaison; Brad Ward, Building and Zoning Official; and, Harvey Buford,
21 Conservation Commission.

22 **APPROVAL OF MINUTES**

24 MS. DOYLE MOVED TO ACCEPT THE MINUTES OF THE FEBRUARY 6, 2013 MEETING AS CIRCULATED.
25 MS. DOUTHITT SECONDED THE MOTION.

26 MESSRS. WALKER, ESCHER AND SIMMONS, AND MS. DOYLE AND DOUTHITT APPROVE.
27 MOTION CARRIES.

28 **AMENDMENT TO APPROVED SITE PLAN - ROCKVILLE MILL - PLAT 30, LOT 43,**
30 **CANONCHET ROAD. ROCKVILLE MILL, LLC, APPLICANT.**

32 Mauricio Barreto, architect for the project, said the issue in question was the lighting for
33 the parking lot and the site. The Board approved the project based on the drawings that
34 were presented at the time, indicating a certain amount of light fixtures and the
35 manufacturer for the fixtures. The project is publically funded; the contractor has the
36 right to present different manufacturers so long as the item complies with the
37 requirements of the design. The fixtures selected by the contractor met the requirements
38 of the design and the project. The Town Planner did not think he could approve them
39 given that the Board had approved a plan that had the specific manufacturer for the
40 light fixtures. The contractor went to purchase the fixtures that were specified originally
41 and found them to be substantially more expensive than what was in the budget. They
42 asked the contractor to eliminate the bollards. The tall fixtures were installed and
43 comply with the requirements of Dark Sky and the requirements of the building code.
44 They are asking the Board to allow them to get the Certificate of Occupancy by
45 approving the plan without the bollards.

46 Mr. Walker said in reviewing the file, these bollards were more than just decorative;
47 there is a safety element. They were designed to light the sidewalk from the parking lot
48 into the building after dark.

2 Mr. Barreto said he believes so. The requirement of the code is to have enough light to
provide safety for people exiting the building. The design meets that requirement. He
4 does not think that the site, at this point, represents any kind of dangerous situation or
condition. The building inspector told them he wanted to confirm that the light levels
6 were sufficient as per the building code. They did a review of that last week and found
that the conditions meet the intent of the building code.

8 Mr. Simmons asked if he had the results of that test.

10 Mr. Barreto said this just happened on Friday. The drawings that were submitted for
12 the building permit do have a photometric plan.

14 Mr. Simmons said that photometric plan included the light from the bollards.

16 Mr. Barreto said yes it did. The bollards are shown in blue and the other lights are
shown in orange. The position of exits is where our lighting meets the requirements.

18 Andrew Ellis, the project architect, supervised the construction of the building. The
20 bollards shown on the photometric drawing were in addition to and beyond what is
required in the building code. Perhaps Mr. Ward could testify that the light levels meet
22 the intent of the building code.

24 Mr. Ward said the light levels within the building code are very minimal; they are only
at the exit doors themselves. He could not definitively state if there is a code violation
26 here. However, he felt there was a discrepancy walking across the parking lot when you
got to the sidewalk; your eyes could not adjust to see if there were any hazardous
28 conditions or debris. He would agree the lighting as done meets the minimum
requirements of the building code. However, there are dark spots that could be
30 addressed with these bollards that are beyond the extent of the building code and he
cannot and will not mandate them. The Board, because the bollards are on the site plan,
32 may have that option. He is not partial one way or the other. They certainly do meet
the minimum requirements of the building code with the lighting that they have now.

34 Mr. Simmons said the regulations for safe egress is a half foot candle. The drawing with
36 the bollards just about made half a foot candle on some of the sidewalks. He just came
from a tour of the facility, with the lights on, and can say that they may not need all of
38 these bollards but would highly recommend that they at least do a bollard in the front,
near the handicap ramp, where marked in orange. The RLM's outside the door do a
40 very good job and do light most of the sidewalk. There are some dark spots in there,
that he can guarantee, you are not getting half a foot candle. The minimum
42 requirements, outside the doors for safe egress from any public space, is supposed to
have half a foot candle maintained. That is IDS recommendation and accepted practice.
44 These plans were drawn up with the bollards and that is what we approved.

46 Mr. Levesque said it is the Board's right to enforce the terms and conditions of your
approval in any particular project, including this one. What you are faced with tonight
48 is whether or not they are asking you for a minor change or a major change, as set forth
in the pack of materials. If this is a minor change you can proceed with allowing them

2 to do it. The question is, do you still think the bollards that were required with the
4 original approval are necessary? If that is the case, then there is nothing more for you to
do other than to require them to do it, otherwise, you are to determine if what they are
asking for is a major change or a minor change and that will dictate where you go.

6
8 Mr. Simmons said he does not think we are unreasonable, and in the same response, he
does not think we would need to enforce all the bollards, but he would certainly like to
see the bollards in the locations Mr. Lamphere has indicated on the plan.

10 Ms. Douthitt added, just for safety sake.

12 Mr. Simmons added, for redundancy purposes. If your RLM above the front door goes
14 out, now you have nothing. If the bollards are there, you have a chance of actually
seeing the sidewalk and getting in the building.

16 Mr. Ward said additional lighting has been put in the courtyard since he was out there
18 and that two bollards in the courtyard could be eliminated. If one of the lights did go
out, there would be sufficient lighting.

20 Ms. Douthitt asked Mr. Ward to show which two bollards.

22 Mr. Ward said when he was out there, the light was out and the area was totally dark,
24 and has to agree, a little redundancy would be advantageous for the safety of the
occupants.

26 Mr. Gordon said when a bulb goes out, we replace it. Should we have a redundancy for
28 the redundancies so when the bulb goes out we fix the bulb?

30 Ms. Douthitt said it is fine if you replace the bulb, but if there is no light there, that is
something entirely different.

32 Mr. Gordon asked, you are saying you want the bollards to be there like back up
34 lighting in effect?

36 Mr. Simmons said at least you would have something rather than nothing.

38 Mr. Escher said even minimums are not what they have in some places.

40 Mr. Simmons said he can guarantee in this spot here you are not meeting the half foot
42 candles, and knows for a fact, in the front that they are not meeting it. That is wrong
because that is where your handicap ramp enters the sidewalk. He would like to see
44 three bollards added: one in front; one next to the portico on the side of the building;
and, one on the end, before the stairs that go down to the courtyard.

46 Mr. Gordon asked, so you're saying there are three you identified.

48 Mr. Simmons identified the bollard locations on the plan.

2 Mr. Lamphere said there is one on each side of the door. There are a total of 12 bollards
4 on the plan. As the result of a conversation he had in his office with the building official,
they looked at it with an open mind to consider what lights could be omitted. They
6 indicated on the plan: the three that are in the playground area; the two on each side of
the post office door should remain; and, the seven others could probably be removed
along with the two orange ones in the courtyard, leaving you with five.

8
Mr. Ward said he would defer to Mr. Simmons who recommended three.

10
Ms. Capalbo said we are adding low to moderate income families with small children
12 and disabled people who need a lot more light than other people, especially with
wheelchairs, canes or crutches. Probably the ADA would require more light for a
14 disabled person than the amount of light for a normal person. She wants to see her
citizens taken care of. All levels of ADA need to be addressed. She feels there should be
16 more than three bollards which give nice light at your feet and you don't see glare when
you are walking.

18
Mr. Barreto said the ADA state coordinator has seen and approved the drawings. In his
20 experience he has not seen any ADA regulations dealing with light levels. The concern
is not unreasonable. They have complied with all the requirements of the law. Yes, you
22 can imagine or believe there are conditions where you feel uneasy about the amount of
light that there is.

24
Mr. Walker asked the solicitor, on this kind of issue, what would distinguish a major
26 from a minor change.

28 Mr. Levesque said on page 3 of the memo, in the middle of the page you will see what
the differences will be that would make this a major.

30
Mr. Walker said that as far as this lighting issue is concerned, this would not create
32 additional lots or dwellings units; would not violate the provision of the Zoning
Ordinance; and, would not have any significant negative affect on abutting property,
34 unless someone thinks otherwise. So presumably, this particular change would be
deemed minor. He asked if there would be any dissent in that viewpoint. Since it
36 would be a minor change, the Planning Board could approve it or reject it without
public hearing.

38
Mr. Levesque agreed.

40
Mr. Simmons said in his opinion, the three bollards must be installed and indicated
42 them on the plan as Board's Exhibit 1.

44 Mr. Walker added, the Planner can then properly supervise and sign off.

46 Mr. Gordon said one of the reasons they are here on this subject is that they need the CO
as soon as possible for the flow of the financing, to pay the contractor and others that are
48 owed money. If they do not have the CO by a certain deadline they could jeopardize
that money coming in from the lender and the tax credit investor. If you have a

2 requirement that we have three bollards, but we need the CO, and you are going to
4 make sure that we install the bollards, then there is a timing issue. He suggested the
Board let them leave in escrow, the money it would take to do this, so they can get the
CO.

6

Mr. Ward said he has done this before and held the check in his office. If the check gets
8 close to stale dating, it has to be either cashed or replaced with a new one. He does not
mind holding on to it if there are no provisions in the finance department to allow the
10 project to go forward, as long as there is certification from a professional on cost, and as
long as this Board feels comfortable with his office holding on to the check.

12

Mr. Levesque said he would not be comfortable with the check. He would like a little
14 more security on the Town's behalf. If we are going to accept funds they ought to be
deposited somewhere. As to where it goes in the Town's coffers, he would suggest
16 assistance from finance. He feels fairly comfortable that we have the expertise on our
Board to figure out the cost of the lighting. However, he is not sure we are going to be
18 able to figure out the fencing issue and the playground issue this evening. He
understands the time concerns. It is his opinion that the Board ought to be prudent and
20 do things carefully so that if that is an option that is elected, we have adequate funds
sitting somewhere to get these things done, if and when necessary.

22

Mr. Walker asked Mr. Gordon what exactly is their timing issue; how much time do they
24 have to work with to secure their funding, and how much time does the Board have to
work with to get this right?

26

Domenic Mazza, the construction contractor, said he could get the bollards in at a
28 minimum of six to eight weeks. The lighting package is made in Mexico.

30 Mr. Walker said, I think you are missing the point. How much time do you have to
secure your financing and consequently, how much time do we have to get this right?

32

Mr. Gordon said they need to deliver the CO by the end of March. They could qualify
34 the cost of the three bollards. Mr. Marchant may have the ability to hold the money in
the CDBG consortium.

36

Mr. Marchant said he does not have a place to hold it.

38

Mr. Walker said he would rather have it held some place in Town Hall.

40

Mr. Gordon said they could use a more readily available manufacturer that would
42 comply with the standards.

44 Mr. Simmons said there are always alternates. You need your CO by the end of the
month. We are not going to meet again by the end of the month. How do we OK that
46 fixture?

48 Mr. Ellis said it could be pending submittal of documentation of this fixture and if you
so agree that it meets the specifications, or the Planner agrees, then that is fine. If we do

2 not and we have to install the original fixture, you will hold the money until that has
4 been done. Once you have the money, we have the time to review the fixture and for
your decision.

6 Mr. Simmons said he is willing to review their specification sheets if they are emailed to
Mr. Lamphere who can send it off to him and Ms. Capalbo as well.

8
10 Ms. Capalbo said they should be able to get an alternate specification sheet in less than a
week. There are certainly fixtures that cost less that their lighting designer should be
able to give them.

12
14 Mr. Ellis said they could easily do that through the contractor which was the issue in the
first place. They were being held to the manufacturer that was listed and they were
being denied the ability to price it alternately.

16
18 Mr. Walker suggested \$2500 for three lamps that they have to put in as per drawing.

20
22 Mr. Simmons agreed.

24 Mr. Escher said if you are at \$800 apiece, without labor it would be \$2400. He does not
think that number will cover it.

26 Mr. Walker suggested \$3000 and Mr. Gordon agreed.

28
30 Mr. Gordon said when they got their approval from the Town, one of the stipulations
was that they had to put in a five foot, vinyl, black fence, between their property line
and their neighbor, Christopher Tanguay. They had an executed agreement as a
condition by the Board. The State Historic Preservation Commission requested that they
use a wrought iron style fence that was more historic in look and nature, to fit the
historic nature of the building.

32
34 Mr. Walker asked if it was a State request or demand.

36
38 Mr. Ellis said it was a strong request. To meet the tax credit standards, they would be
more inclined to approve a fence of a more compliable material.

40
42 Mr. Gordon said they set up a site visit, had a mock-up of the fence, and met with Mr.
Tanguay. Mr. Gordon was not there. They had an agreement with Mr. Tanguay on a
black, five foot, vinyl fence, and they were proposing a different one. Mr. Tanguay
okayed the alternative fence and they went ahead and installed this alternative fence
with his approval. It cost more money than the other fence but they had to comply with
historic. A few months ago, it seemed that Mr. Tanguay was not happy with the fence
and wanted a second fence behind the fence that was put in to create more security.
They spent their budget on the wrought iron fence and cannot undo what they paid for
and installed. They feel they worked with him to get approval and they installed the
fence with a cost difference of \$3500 more. What they did not do at the time was get
something in writing. That is why they got these affidavits that he believes the Board
received. They did talk with Rhode Island Housing and have here tonight a

2 representative from Rhode Island Housing who was at this meeting where they got
approval to use the alternative fence. The contractor and the architect were also there.
4 They took signing this affidavit very seriously and consulted with their lawyers. They
did that in lieu of the fact that at the time, they did not get something in writing that
6 they could document to the Board. They cannot undo the fence they installed and they
do not have any money to put in a new fence or a second fence behind the first fence.
8 They are asking that the Board to consider the fence that they did install as a minor
amendment to the approved plan.

10 Mr. Lamphere went to the site and compared the completed project to the conditions
12 that were laid out by the Planning Board. One condition was to adhere to the agreement
signed by Mr. Tanguay and the developer. In his opinion, Mr. Lamphere did not see
14 that the fence complied with what was written in the agreement, which is what he
reported to the Board. He went out there to see that the lighting was installed according
16 to conditions, and believes that conditions attached to any project by the Planning Board
are important because they are singled out and accentuated that this is exactly what you
18 want.

20 Mr. Gordon said they would have never changed the fence if they did not feel like they
had permission. You are right; we know what was approved and are very aware of the
22 signed agreement that we have.

24 Mr. Ellis said the fence that is installed functions and serves the same purpose, whether
it is a vinyl fence or a metal fence, the purpose of creating a barrier. The intent of having
26 a fence there, achieves the same purpose, the demarcating barrier between one property
and the other. It is a question of material.

28 Mr. Walker asked, in their judgment, the purpose of this fence was to mark the property
30 line?

32 Mr. Ellis responded no; to provide a barrier to prevent people on one side of the
property from trespassing on to the other side. He believes that the installed fence
34 serves that purpose as would the vinyl fence. They both form a physical barrier that
someone would have to climb over in order to access the next piece of property.

36 Mr. Escher asked what was the height of the original vinyl fence?
38

Mr. Ellis said, as specified, five feet.
40

Mr. Escher asked the height of the wrought iron fence.
42

Mr. Ellis said they measured it and found it is 56 inches, 4 inches shorter than the fence
44 that was specified.

Mr. Escher said besides people going across the property line, does it have any function
46 for privacy?
48

2 Mr. Ellis said no. The vinyl fence is an open chain link fence; you can see through it.
4 The other has open metal pickets; you can see through that. There is a steep slope
directly behind the fence. You're looking through the fence into a slope, so in his
opinion, it would have no visual difference.

6
Mr. Walker said the fence you keep referring to as vinyl.

8
Mr. Ellis said it is a vinyl coated metal chain link fence.

10
Mr. Walker said so the metal is coated. It's not one of these with the slats?

12
Mr. Ellis said no. It is an open chain link fence, but instead of being plain galvanized
14 aluminum, you have a rubbery coating. It's been hot dipped in a coating for weathering
purposes.

16
Mr. Lamphere said that as part of his review of this inspection, he looked at the
18 agreement and thought there would be due diligence to contact the signatory of this
agreement to see if was implemented according to what was agreed to. When he called
20 Mr. Tanguay, he expressed the fact that he was not satisfied with the fence. That is why
Mr. Lamphere brought this issue to the Planning Board. He would rather have this
22 discussion now than write something to the building official saying ok, the site plan has
been complied with, and then have this issue brought to the Board after the fact that
24 they get a CO. He feels he is better protecting the Town by having that discussion right
now. He would rather have seen any change that was agreed to in writing as an
26 amendment to that agreement. That would have been clearer than having affidavits
from somebody saying he said this and she said that. That's the agreement that was laid
28 out, right there, signed. When he contacted one of the parties, and one of the parties
tells him no, the agreement has not been kept, it is his duty to bring that to the Board
30 and have the Board decide what to do.

32 Mr. Walker responded, no question. He suspects that the applicant is quite aware a
written agreement to this change would have been very much in the applicant's interest
34 to make it obtainable.

36 Mr. Gordon said they agree. They wish they got it at the time. You think of an affidavit
as a legal document. We are still where we are now. They are not going to disagree.
38 They would have preferred they did that, but at that moment they were relaxed and
things seemed to be going well. Their guard was down and they did not follow up with
40 something in writing.

42 Mr. Tanguay said July 19 was the first time he met Mr. Mazza, the contractor. He had
not seen Ms. Blais since the meetings before the approval. The day of this meeting at the
44 mill, the fence was already installed. That he agreed to a change in the fence before the
installation it is a blatant lie. They would have had a letter signed if he was absolutely
46 agreeing to a change in the fence before installation. The meeting was about setting up
the tree cutting on the property line with a tree service. The septic system was already
48 installed, the fence was already installed, and the trees were cut. He is the next door
neighbor that came to an agreement, has a contract he signed and still agrees to the

2 terms in the contract which was part of the original approval; a five foot chain link fence
4 was approved. The fence that was installed is flimsy, it was damaged before they
6 started occupying the building, and it continues to get damaged. The gate was off its
8 hinges from the Sandy storm. He saw the postmaster back into it and it never had a
10 latch or lock until February 4 when Mr. Lamphere went there to inspect the project.
12 That day they spoke about the issues which had also taken place in a phone call in
14 August. Mr. Tanguay has a text message from Ms. Blais from August 9, so he has had
16 this issue for seven months. He wrote to her and printed it out from his phone so he
18 would have documentation regarding their needing to meet soon. He read, "I was
20 looking over the contract dated July 26, 2010. Certain aspects of this project were been
22 done out of sequence; the septic system and the fence on my property line. The tree
24 cutting should have come first. Now many marked trees cannot be accessed from the
26 mill side because they could not get the bucket truck in because the septic system is
28 already put in." A third of the trees were not cut and Mr. Tanguay said he let that go.
30 Now they have to lower every piece of tree on a pulley system to not disturb the fence.
32 They have a truck, a fence, and a hill with trees. He continues reading, "the fence
34 should not have been changed without his consent. We agreed on a five foot black chain
36 link, not a four foot hollow steel fence. This issue needs to be addressed. Issues like
38 these arise because of poor communication. I just wanted to give you a heads up on
40 what we were discussing." This is from August 9, shortly after the meeting. He has
42 correspondences back and forth to his phone through to January where she stopped
44 responding to his requests. He said he tried to compromise with them. He met with
46 Ms. Blais and Mr. Mazza on August 18 to talk about changing the fence to the proper
48 one. Ms. Blais said under no circumstances were they going to change that fence and he
felt pressured. The purpose of this fence from the beginning of this project proposal was
for his security from trespassing. He has a pool and old barn in the field. They can still
access that field; there is a whole section without fencing. This four foot steel fence isn't
going to keep anybody out. They came to an agreement, that is what he wants and he
has not changed his mind> Mr. Tanguay said they changed their mind without his
approval and all he wants is what they agreed to, signed off on, and the Board
approved. Mr. Tanguay addressed Mr. Walker saying, "You asked me at that last
meeting before the approval, do you agree to the terms on this contract, and I said yes."

34 Mr. Walker asked what is the purpose of this fence.

36 Mr. Tanguay said the purpose of the fence was to keep children and teenagers off his
38 property and getting hurt. He had to put a five foot fence around his pool and he
40 wanted that on his property line as assurance people cannot walk into his field or his
back yard. This fence does not serve it.

42 Mr. Simmons asked Mr. Tanguay how does he address the three affidavits that say he
actually agreed to a mock-up of the fence.

44 Mr. Tanguay said he has not seen the affidavits.

46 Mr. Ellis said, while Mr. Tanguay is reviewing those documents, he would like to
48 address the meeting that took place on July 19. There are a few other points they would
differ on. He said the fence was constructed. I agree that a six to eight foot section of

2 fence was constructed on that day for him to look at. The rest of the fence was on other
4 areas of the property. The fence on the northern side had already been constructed.
6 That was not on his property line, so yes, that part of the fence was complete. The part
8 on Mr. Tanguay's property line was approximately a six to eight foot section constructed
10 on that day. Mr. Tanguay referred to the fence as being hollow metal. The pickets are
solid steel bar stock. The rails and posts, are solid steel sectional members, not tubular
aluminum. The building inspector also examined the fence with regard to the amount
of force required on the fence per code. He believes he found it could resist 200 pounds
per square foot.

12 Mr. Ward said that was on the other side. It was irrelevant on this side.

14 Mr. Ellis said the same fence has the same construction.

16 Mr. Simmons asked, the fence on the river side was fully erected and you had six to
18 eight feet on Mr. Tanguay's line, and then invited him?

20 Mr. Ellis said, yes and Mr. Patino from Rhode Island Housing was there, Mr. Mazza and
22 himself were there. It was adjacent to his stairs that they had the section of fence
erected. They looked at the fence and asked his opinion of it, and to the best of his
24 recollection his words were, "this is better than what I was expecting. This is a much
nicer product than what I thought I was going to get."

26 Mr. Levesque asked other than the fence being four inches shorter and a different
material, what else is different?

28 Mr. Ellis said in his opinion, nothing. It functions in the same capacity.

30 Mr. Simmons asked if the three people that signed the affidavits are in the room tonight.

32 Mr. Ellis said they are all in the room.

34 Ricardo Patino, Rhode Island Housing, said he remembers having a discussion with Mr.
36 Tanguay regarding the gate and what kind of lock will they use. They cut more trees
38 than they were supposed to cut which he disagreed with because Rhode Island Housing
does not cut trees on somebody else's property. The intention is to build affordable
40 housing. They cannot keep spending more money on these properties. Rhode Island
Housing's resources are limited as well as the federal government's resources for us to
42 keep spending more money on this project. This mill was abandoned for many years.
Anyone can drive by there today and can be very proud of the job we did there, and the
44 federal government did what is required to have everybody happy. We agree Mr.
Tanguay was there. He agreed and unfortunately he changed his mind. He does agree
46 with Bill Gordon and the Board, that unfortunately, that day we did not provide a piece
of paper. We were told we were doing a gentlemen agreement, the same thing they did
48 on this day when they agreed to cut more trees. Our Rhode Island Housing position is
that we did more than we were supposed to do on this project.

2 Mr. Tanguay said he did not agree to the fence and there are still a third of the trees on
4 the property line, marked trees with orange paint, that need to be removed. They could
not access the trees because the septic system is in the way. He does not see how that
equates to cutting more trees for him than were agreed upon?

6
Mr. Ellis said the agreement says trees shall be cut at ten feet and twenty feet.

8
Mr. Tanguay agreed and said then we agreed to take them down to the base.

10
Mr. Ellis said they cut trees to the front with the concession they would not have any
12 trees cut here on the back of the property; that he would prefer to have these cut all the
way down to the ground. They planted additional arborvitae on his land.

14
Mr. Tanguay questioned, was there an original number anyway?

16
Mr. Ellis said Mr. Patino can attest to that because he objected to their installing
18 additional plantings beyond what he deemed was appropriate. Again, for the federal
government to be spending money on someone else's property is very unorthodox.

20
Mr. Walker said the issue is the fence. As far as he knows, no one has complained to us
22 about the trees being cut or not being cut, so the issue is the fence. He asked Mr.
Tanguay, if the existing fence were ripped out and replaced by the fence that was agreed
24 to in the written agreement, how would Mr. Tanguay's life be improved if that were to
happen?

26
Mr. Tanguay said he would feel more secure. The fence does not do what a chain link
28 does. You can back into a chain link with your car; it will stretch or come back. This
fence breaks. The solid spokes are bent, there are missing ones, and it was like that
30 before people started moving in. It would improve his sense of well-being if they had
the fence that he agreed to.

32
Mr. Walker asked, you would be more secure against what?

34
Mr. Tanguay said trespassing, liability. The same things he explained in the original
36 meetings in 2010. He is the only person directly affected by this property. The applicant
needed five variances to do this project. He understands their money goes toward
38 building housing, but they needed a lot of approvals to do it on that site and it is
basically in his back yard where his pool is. The building is 25 feet from his property
40 line. He wants to feel secure. They have not had a full summer there yet and a lot of
people hang out there in the parking lot, smoking, drinking. It is loud and it disturbs
42 him. He wants to feel safe. He wants to feel that if he goes out for the day or the
weekend, someone is not going to jump over this four foot fence. He agreed to a specific
44 fence and that is not what was put in. He tried to compromise with Ms. Blais and Mr.
Mazza in August and said, let's say we don't take this out and put in a chain link like we
46 are supposed to. Let's say we do a livestock fence on the whole property line; five foot,
wood posts, the roll out wire. It's not expensive, but do the whole property line. You
48 won't even see it. You'll still get to see this historical fence and he will feel secure. As it
stands, people can walk right into his yard. This fence is decorative only. They have

2 been trying to make him appreciate it for its aesthetics, not its purpose. He did try to
compromise with Ms. Blais for the rest of the summer and into the winter. He has a text
4 message from Ms. Blais that says Mr. Mazza has an estimate of \$10,000 for the livestock
fence.

6
Mr. Ellis said on the site plan we are referencing, the fence on the approved plan ends
8 short of the corner of the property. They never intended to do any fencing at this last
portion of the property that Mr. Tanguay is now mentioning. Even if a different fence
10 was installed, it would have ended at the point shown on the plan. What is shown on
the plan as the length, that length of fence has been installed, just of a different material.

12
Mr. Walker said there is no question that the fence that is in there is not the one that is in
14 the agreement. That is indisputable. It is also pretty clearly the case that either the
existing fence or the one that you agreed to, does stop short of running along the full
16 length of the property. Even if the fence were installed exactly as agreed to, someone
who is intent on trespassing on your property could very easily do so. The fence is a
18 reminder of the boundary line that should not be crossed. Neither fence will do much
more than serve as a reminder.

20
Mr. Tanguay said he agrees, but also thinks you cannot go through a chain link because
22 of the small spaces. This fence has larger spaces and with a missing spoke, it is even
larger. A small child can go through the existing fence with a missing spoke. There is
24 no security with this fence and it is broken already.

26 Mr. Simmons said this is what makes him torn because we have three people that signed
a legal document.

28
Mr. Tanguay responded, they can sign anything. What makes it true? They work
30 together; they are completely biased.

32 Mr. Gordon said they work together but they are separate. Ricardo works for Rhode
Island Housing, a state finance agency. He would not sign an affidavit to agree to this
34 because we asked him to.

36 Mr. Tanguay said that without a signature, it is here say.

38 Mr. Gordon said they took the affidavits very seriously and Mr. Patino, Mr. Mazza and
their architect would not have lied and does not think these professionals would put
40 their licenses on the line and lie over a fence.

42 Mr. Tanguay said what he wants today is what he wanted two and a half years ago.

44 Ms. Capalbo said Rhode Island Housing chose to do Rockville Mill and they chose to
make it a historic property. She is not surprised that the historic lady did not like chain
46 link because she would want it to be an iron fence, especially for the historic tax credit.
She suggested, as an alternative, is to put a six foot, inexpensive, stockade fence behind
48 the existing fence and split the cost or whatever you arrange. But the fence will stay.

2 Mr. Tanguay said the stockade will not give privacy as it is at the bottom of the hill and
4 will be an eyesore. The livestock fence behind what is there is wire. You wouldn't see it
and it wouldn't detract from what is there.

6 Mr. Simmons said anything you put down there is not going to help the privacy issue.
The bank and the evergreens are the greatest ally.

8

10 Mr. Tanguay said the evergreens are for the privacy and seven years ago he planted the
top of the hill with arborvitae. They will grow and fill in in quicker with the trees being
cut.

12

14 Mr. Simmons said whatever they do for a fence on their property will not help the
privacy issue.

16 Mr. Tanguay said the fence on the bottom was for security.

18 Mr. Walker said there was no question that there was a signed and written agreement
20 specifying the fence. He does not think Historic Preservation would be the least
surprised to hear about the demands that they were making on the contract. He believes
22 everyone is presenting this as they see it and presenting it honestly. His approach
would be, there are two people in a very difficult situation and somebody will be hurt
24 either financially or their feelings. He said the question to him is, what is the fairest way
for everybody to resolve this? We could tell the contractor that a deal is a deal, tear that
26 fence out and put in the one that Mr. Tanguay agreed to. This is going to be very costly
to somebody who is a well-intentioned person and asked Mr. Tanguay what benefit
28 would he gain if the Board ordered that? The fence that is in there now, is at least as
attractive aesthetically, if not more so, than the fence that you agreed to. He does not see
30 how Mr. Tanguay would be more secure against trespassing if you got the fence you
agreed to versus the one you have now. You might get a marginal improvement in
32 security against small children wandering on the property although he finds it difficult
to envision that being a real problem because immediately behind this fence is a very
steep and very tall embankment. Neither fence will protect against somebody hopping
34 the fence, so he does not see how his security situation is any different regardless of
what the fence is. He would like to solve this matter so it is reasonably fair and protects
36 the interest of everybody rather than sticking to some agreement when he doesn't see
where the real benefit is, even to Mr. Tanguay, when doing so is the satisfaction of
38 making somebody adhere to the strict terms of the agreement.

40 Mr. Simmons said he was in complete agreement.

42 Ms. Douthitt said she doesn't think the fence will be there long enough and he'll be left
44 with the arborvitae for privacy or security. Because it was changed, she doesn't think it
is going to matter one way or the other because in a few years it is going to be knocked
down. The only thing they have in writing is what they agreed to.

46

48 Mr. Walker said the existing fence is very close to the cars next to the post office. It
blends right into the embankment and cars can't see it. Cars have obviously backed into

2 it. A chain link would be moderately more durable in terms of surviving cars backing
4 into it, but is not sure either one is going to last very long.

6 Ms. Doyle said she has been involved in other projects and knows the issues with
8 historic fences versus chain link, and in every case she has seen the wrought iron go in
10 instead of the chain link for historic purposes.

12 Ms. Douthitt said that is what they have in writing and that is what they are supposed to
14 hold to.

16 Mr. Escher said and then there is nothing in writing after that to change it. You guys do
18 paperwork constantly.

20 Mr. Levesque said he would like to hear from the applicant why they can't do the
22 livestock fence.

24 Mr. Gordon said they have already spent \$8500 on the fence that they do have in. They
26 don't have any money to do the \$9000 fence that is being suggested. The project is over.
28 They can absorb the bollards. Money is set aside for the playground. They do not have
30 \$9000 to put a fence behind the fence that they put in.

32 Mr. Levesque told Mr. Gordon that they saved money with the change in the lighting
34 plan that we discussed this evening.

36 Mr. Gordon said they did not save because the Dark Sky lighting that they put in ended
38 up costing them the full amount they had in the entire lighting budget. That was one of
40 the reasons why they had not done the twelve bollards.

42 Ms. Douthitt asked, this historical fence cost more than the chain link?

44 Mr. Gordon said yes, \$3500 more. They had to use the contingency for it. They do not
46 have the money to do a whole second fence.

48 Mr. Tanguay said then he is sacrificed because they overpaid for something he didn't
want. He attended every meeting for this project, took a lot of time to look up zoning
laws and DEM regulations, and come up with a solid case every time he spoke to get his
point across, because he is affected by this, all these residents living on a river bank in
his back yard. He just wanted a good fence and that is what he is still asking for. He did
not make them put that fence in and pay that much more money. He had no say in that.
If they had come to him sooner and done it properly, the hillside would have been cut
first, before the septic went in, before any fence went in.

44 Mr. Simmons said he agrees with Mr. Walker that making them rip out the fence, or
46 putting in a new fence behind it, is not going to serve any practical purpose. He fully
48 understands the contract but he cannot disregard the three affidavits who say Mr.
Tanguay witnessed the mock-up and agreed to the change.

2 Mr. Levesque said the Board has to weigh the evidence as they see fit. It is not intended
4 to put Mr. Tanguay in a situation where he feels like he is being held in irons, and vice
4 versa. You are weighing evidence in order to come to a conclusion.

6 Mr. Tanguay said he would think something with his signature would weigh a lot more
8 than without his signature.

8 Mr. Simmons said he fully agrees with that and he fully agrees that when these changes
10 were taking place with the lighting, maybe we should have been approached. We ran
10 out of lighting, how do you feel about a replacement fixture? Or, the State of Rhode
12 Island just told us we need to have a wrought iron fence. That time has passed. This is
12 what we have to work with. He does not think it is going to serve any purpose to rip
14 that fence out and put a new one in. Maybe a new one behind it.

16 Mr. Walker asked about the playground.

18 Mr. Gordon said the playground was ordered today and will be arriving in two weeks
20 and be installed.

20 Mr. Levesque said so then it is not an issue tonight and you are not asking for any
22 changes for it.

24 Mr. Gordon said they want the CO, and if they need to, they could add that to the
26 escrow and be able to get the CO in a couple of days. If they document that it has
26 already been paid for and will be installed, they would like it to not stop them from
28 getting the CO. It is a non-issue as long as they can get the CO. If it needs to be installed
28 and they don't want to wait the few weeks, then there is a way we can get around that.

30 Ms. Douthitt asked if they have a receipt.

32 Mr. Gordon said we can get you a copy of that. The company they purchased the
34 playground from does the installation.

34 Mr. Lamphere asked if it will look like on the plan?

36 Mr. Ellis said yes. The only alteration is the climbing structure is actually an arm that
38 extends off of the slide. The bracket in between is rated as a chin up bar so they four
40 activities they can play with.

40 Mr. Mazza said the chin up thing is not going to be part of it.

42 Mr. Lamphere asked about the two benches.

44 Mr. Mazza said no.

46 Mr. Ellis said they could relocate the existing granite slab benches from the front of the
48 building to the playground. The benches were never in the package of equipment from
48 the play manufacturer.

2 Ms. Doyle asked if the benches he talks about moving were required on the plan.

4 Mr. Ellis said the benches in the front were not shown on the plan.

6 Mr. Mazza said he doesn't think they have room. They stuff they are putting in there fits with safe circles, according to the manufacturer.

8

10 Mr. Lamphere said the benches serve a purpose; a parent or guardian can watch the children while they are playing. So you are telling me there is nowhere out there that you can put a bench so that somebody can sit?

12

14 Mr. Mazza said maybe once the playground equipment is installed. The playground guide made the best use, with Mr. Ellis, of the space that fits.

16 Mr. Lamphere said then what they are saying is that what the architect drew on paper can't be built out in the field because it doesn't fit.

18

Mr. Mazza said that wouldn't be the first time that happens.

20

22 Mr. Ellis said maybe they could revisit the benches once the play equipment is installed and take measurements. If they don't interfere with the protection area for the safety of the children, perhaps we could look at locating the benches along the driveway if there is sufficient clearance for the fire trucks.

24

26 Mr. Escher asked if the two benches that are on the plan are in the budget.

28 Mr. Mazza said those two were probably the two benches that went to the front.

30 Mr. Gordon asked if we can have this be a minor modification, not having benches. We need to now wait and see operationally how it works.

32

34 Mr. Ellis said only the play installer is certified to know what the distances are and has to make the determination as to what is safe and what is not.

36 Ms. Capalbo said she remembers all of the conversations of this mill and does remember being particular. When you have low to moderate income housing you have children and the playground is very important portion of it, which seems to now be under the carpet. She is concerned that by the end of March they are not going to have equipment, it is not going to be installed, and it is going to be the wrong size. You need benches for parents to sit. She is sure the granite benches are beautiful in front of the mill because they would go with the mill, but the granite is particularly dangerous for children to hit their head in the playground where they are throwing themselves around. She does not think they thought about this very thoroughly. She knows they need their CO but this is late to come up with these problems and not have them solved. She finds it a constant, continuous issue.

46

48 Mr. Ward would not recommend moving the granite slabs for benches for the playground. He agrees with Ms. Capalbo that it is just going to create more of a hazard.

2 Mr. Ward said he senses that the Board will approve the fence that is up there and he
doesn't think that it is unreasonable to...

4

Mr. Walker said he would not take that for granted, at least just yet.

6

Mr. Ward said he understands. He does not think it is unreasonable to say that two
8 exterior benches with backs to sit are desired.

10 Mr. Ellis said they can make every effort to accommodate some sort of fixed seating,
pending installation of the playground. Maybe not a bench; maybe a small circular
12 sitting structure or something. They could make every effort to accommodate some
seating capacity safely in the playground.

14

Ms. Douthitt said, even if they have to bring their own chairs, there should be some
16 space for supervision of children within the playground area.

18 Mr. Gordon said you don't think we care about the people. They devote their entire
careers to doing affordable housing and their families, so it's a good point. You are
20 right. There needs to be an ability to circulate and be there, but we should wait until the
playground equipment is up before we place seating. Let's see how it operates or works
22 to make sure whatever they do is safe.

24 Ms. Douthitt said it should have been there in the beginning when you have housing for
families.

26

Mr. Gordon asked what do you mean the playground should have been there in the
28 beginning?

30 Ms. Douthitt said when you first brought us this project, there wasn't any indication of
any room for children in the beginning. It's been an issue; where are the kids going to
32 play besides the road out front?

34 Mr. Gordon said the playground was in the plan from the beginning.

36 Voices from Board and audience said no.

38 Mr. Escher said we stipulated that.

40 Mr. Ellis said we had a grassy play area and you requested play equipment which they
added to the plan which was approved. But there was a grassy area; they put in
42 equipment at the Board's request.

44 Mr. Lamphere said a letter from Andrew Ellis, the architect, dated July 18, 2012, states as
a condition of issuing a temporary CO on this project last summer, once again they were
46 under a time constraint that they needed to get their financing in order, the play area
equipment will be installed by September 17, 2012. It is now March, 2013.

48

2 Mr. Ellis said those were the dates given to him by Mr. Mazza at that time when he
believed he could have the equipment installed. In the paragraph before that, Mr. Ellis
4 said if that was not done, the course of action that he has as the architect, is to withhold
payment from Mr. Mazza for those items, which is what they have done. They have not
6 paid him for those items since he didn't keep those dates.

8 Mr. Lamphere said whether or not you paid the contractor is your business. Our
business is to see that the approved plan by this Board is instrument in the field. That's
10 it. Is it built or is it not built? Right now it is not.

12 Mr. Walker asked how much is this playground equipment.

14 Mr. Ellis responded, \$7500.

16 Mr. Levesque asked why the temporary CO doesn't allow them to get the funding they
need by the end of the month?

18 Mr. Gordon said because the folks who are providing the mortgage and the tax credit
20 equity, their condition is they have to have the final CO with no conditions. Until then,
the temporary CO is a temporary CO

22 Mr. Levesque asked there is no question you need it in order to get a certain funding. Is
24 that what you are telling me?

26 Mr. Gordon said yes.

28 Mr. Levesque asked if there is an option of the agreement, or anywhere else, for an
extension.

30 Mr. Gordon said no. There are significant funds at stake to help pay for these things.

32 Mr. Levesque asked what happens if you don't get the CO at the end of this month.

34 Mr. Gordon said it jeopardizes getting a chunk of the financing.

36 Mr. Levesque asked if the money goes away.

38 Mr. Gordon said it is kept by them.

40 Mr. Levesque asked, what do you mean, who's keeping the money that you don't get?

42 Mr. Gordon said Bonneville Mortgage, which is the company that the USDA got the
44 loan for affordable housing, will actually keep it. It is money that comes from them to
us, as a reserve that is held. If they don't meet the benchmark by these deadlines, then
46 they don't release that money. It is their money but they keep it.

48 Mr. Levesque said while there may not have been a provision for an extension, have you
asked for one?

2 Mr. Gordon said he has not asked for one.

4 Mr. Levesque asked, is that something you could do?

6 Mr. Gordon said he can. He does not think he can but he will ask. He thinks they've
said you can't extend it. You have to get things in to us by x and y date. They don't
8 want to necessarily keep it but they want them to make their deadlines.

10 Mr. Walker said we have some issues that we have to address. Getting back to the issue
of the fence, he does not detect our usual consensus quite forming here, so maybe the
12 easiest way to deal with the fence is by way of a motion. If somebody would present a
motion either to hold the applicant to the terms of the written agreement with Mr.
14 Tanguay, or a motion from somebody else to relent and accept the fence that has been
installed as a minor amendment to the approved plan, and if we can get a second, we
16 can have a discussion and vote. It will either carry or go down to defeat. Then
somebody, if it carries, fine. If it is defeated, then somebody else can make a motion for
18 the opposite. So, let's see if we can get a majority in favor of one position or the other.
That being said, unless counsel has any other idea of how to dispose of this...

20

Mr. Levesque said that's the process.

22

Mr. Walker said the Chair would be happy to entertain a motion by somebody to do
24 something regarding the fence.

26 MR. ESCHER MOVED TO HOLD THE APPLICANT TO THE ORIGINAL AGREEMENT.

MS. DOUTHITT SECONDED THE MOTION.

28 MR. ESCHER AND MS. DOYLE AND DOUTHITT APPROVE THE MOTION.

MESSRS. SIMMONS AND WALKER ARE AGAINST THE MOTION.

30 MOTION CARRIES.

32 Mr. Walker asked, are there any questions about the bench?

34 Ms. Douthitt said until they have the equipment, it is going to be hard to know because
of the size of the land area, whether they can even put a bench in there. We don't know
36 what the equipment is going to look like and how it's going to fit into that tiny little
piece of land.

38

Mr. Levesque said he is not sure the Board has an appropriate application before them to
40 question any kind of a change from what is proposed on the plan, as it refers to the
playground, since they have from the applicant, a representation that it will be installed
42 in two weeks and the benches will be addressed in some form. It seems there is nothing
to tangibly address on the playground issue at this point.

44

Mr. Walker said except presumably for the question of an escrow for installation of the
46 equipment pending so they can get their final occupancy certificate.

48 Mr. Levesque said, so cost of benches and playground installed with the appropriate
fixtures.

- 2 Mr. Walker said they said the cost of the equipment is \$7500.
- 4 Ms. Douthitt said they said they already paid it because it is on its way.
- 6 Ms. Doyle added, plus the install.
- 8 Mr. Escher said so it's the benches, and he would assume some paperwork from them, showing what they paid for the installation and playground equipment.
- 10 Mr. Walker asked, how much of an escrow would be reasonable, do you think, on that
- 12 issue.
- 14 Mr. Escher said, a couple of benches, \$500.
- 16 Mr. Walker asked, that would be on top of the \$3000 for the lighting.
- 18 Mr. Escher said the \$3000 for the lights is separate.
- 20 Mr. Walker said then that would be \$3500 in escrow.
- 22 Mr. Escher added, and proof of the payment for installation and purchase of the
- 24 playground equipment.
- 26 Mr. Walker said he thinks you have identified something we can put into the record affecting the bollards we would require to be installed.
- 28 Mr. Simmons corrected, the locations. We were still going to get alternates of the
- 30 fixtures for Mr. Lamphere.
- 32 Mr. Lamphere said when they give him alternate fixtures, he would prefer to give them to Mr. Simmons and let him make the decision as to whether they are adequate
- 34 substitutes or not. If Mr. Simmons approves them, let the Board give him the authority to do that, and if they meet his muster, that would be fine with Mr. Lamphere.
- 36 Ms. Douthitt said that sounds good as he is a reliable expert.
- 38 Mr. Walker said he agrees with that and the Board's consensus. We need an appropriate
- 40 motion from somebody to approve the installation of three bollards in the locations that have been shown and designated on the plans by Mr. Simmons as the Board's lighting
- 42 expert, as being an acceptable minor deviation from the approved final plan, and that the final Certificate of Occupancy can be issued to the applicant subject to an escrow in
- 44 cash or other current funds being deposited with the Town by the applicant in the amount of \$3500 to secure the procurement and installation of those bollards and of a
- 46 couple of benches, to be determined at a later date after the installation of the playground equipment, presumably to be approved administratively by the Planner. Would anybody be inclined to make such a motion?
- 48

2 Mr. Levesque said with one addition, perhaps, Mr. Chairman. The issue is that the
4 fence, as constituted, is not appropriate at this point given the Board's vote which would
mean the actual fence would need to be installed in order for a CO. He would suggest
that some discussion be had on that issue.

6
8 Mr. Walker said, if there is not going to be the issuing of a CO with the existing fence
still in there, there's going to have to be a substantial escrow to cover the cost of
removing and reinstalling the fence. We have some numbers that have been tossed
10 around. He can't think it would cost a great deal of money to remove the existing fence.
There might be some salvage value left in it. The cost of the original fence, the applicant
12 has said would be somewhere like \$8500, would that have been the original installation
cost?

14
16 Ms. Doyle said the letter here said it would be \$5000 for the chain link; it was \$8500 for
the metal.

18 Ms. Douthitt said Mr. Tanguay said he'd be happy with a ranch style fence instead of
the chain link; he'd settle for a cheaper type.

20
22 Board: A livestock fence.

24 Mr. Escher said that would be in addition to the other one; not in lieu of it.

26 Mr. Walker said that would involve leaving the existing fence in place and installing it in
addition to it.

28 Mr. Escher said, but we voted to hold them to the original agreement, so we have to go
one way or the other, unless you're willing to change or amend the motion.

30
32 Mr. Lamphere asked does adhering to the agreement that was signed necessitate
removing the fence that's there or would it be just merely adding another fence to satisfy
that?

34
36 Ms. Doyle said do we care if that other fence is removed?

38 Mr. Lamphere said that's up to the Board. That's what he is asking.

40 Ms. Doyle said it wouldn't matter to her.

42 Mr. Lamphere asked, does that have to be removed or could the appropriate, whatever
type of fence that Mr. Tanguay would agree to, was added on Mr. Tanguay's side of the
fence, would that be...

44
46 Mr. Walker said the agreement says fencing: a five foot black vinyl fence has been
agreed upon in the plan dated June 17, as a four foot vinyl fence specified, has been
revised to a five foot fence. It doesn't say anything about removing a decorative
48 wrought iron fence. If this fence were installed it would fulfill the terms of the contract
and certainly Mr. Tanguay is willing to accept something less than the chain link fence

2 and accept a livestock fence or whatever that is, presumably that would be doable. We
could amend the motion to allow that as a suitable alternate.

4 Mr. Lamphere said he thinks the fence that's there now is on the property line.

6 Mr. Escher asked, now where do you locate the next one.

8 Mr. Lamphere said do you want this new fence to be on the property line or would Mr.
10 Tanguay accept it to be on his property?

12 Mr. Tanguay said it would be hard to say because the markers are gone.

14 Ms. Douthitt asked, on the inside or the outside?

16 Mr. Escher asked Mr. Tanguay, if we gave you a preference, what would you say?

18 Mr. Tanguay said this is a tough one because he really wanted the chain link.

20 Mr. Escher said you were willing to compromise earlier. I'm asking if you changed that
or not?

22 Mr. Tanguay said he would be willing to change it and add the livestock fence if it is of
24 good quality and runs the whole property line.

26 Mr. Patino said they are in violation of the laws of the State of Rhode Island. Rhode
Island Housing is not allowed to install any fence on somebody else's property. We
28 have a historic society here. They have to spend the federal money in the way that the
federal government tells them to do it. We totally reject this offer.

30 Mr. Gordon said the Board is putting them in an impossible position. The State Historic
32 Commission didn't let us use that fence. People are already talking about how vehicles
are bumping up against the existing fence. They can't move more into their property
34 line and they are theoretically not allowed to spend any money as Mr. Patino said, on
fencing and other work on other people's property. They are not allowed to do it, but
36 they fudged it a bit by moving some of the plantings on the other property. To respond
to Mr. Tanguay's needs, the Board is putting them in a very precarious, untenable
38 position and is stumped on how they are going to solve what your vote is.

40 Mr. Patino said they cannot spend \$3000 for a fence for affordable housing. That is the
bottom line. This town has to comply with affordable housing. They did their part; they
42 did it in good faith. They are here trying to help this community to comply with the
State regulations. Their agency cannot stretch anymore. No one in this room wants to
44 be on the *Providence Journal* front page tomorrow, that we spent \$3000 for a fence for
public housing. They are producing affordable housing. This is not a high end
46 community.

48 Mr. Mazza said he went to install the lock. When he went give the keys to Mr. Tanguay,
Mr. Tanguay said he does not like the fence. He wants the livestock fence he is talking is

2 about, to go past the septic tank, take a left and go into the woods, but that wasn't their
4 deal. He told Mr. Tanguay he is owed a lot of money on the project, that's why the
6 playground is at the end. He is out of money. He had to install 30,000 gallon plexitanks
8 for fire protection. Mr. Tanguay liked the fence at that meeting. He said Mr. Tanguay
10 told him, you know I did like the fence, but I changed my mind. I don't like it any more.
12 Mr. Mazza continued. He has been working for Rhode Island Housing for over twenty
14 years. He built buildings for Rhode Island Housing on a gentleman's agreement. He
16 does not go back on his word. He said he would see Mr. Tanguay come and get his
18 mail everyday. That fence was going up for months because it all had to be individually
20 welded and put up in sections. It wasn't a one day deal. Now, at the last minute, is not
22 the time to disagree on a fence. You ended up with a beautiful building, it serves its
24 purpose, it's probably one of the safest buildings in the Town. These little sticking
26 points that hold up a Certificate of Occupancy, do not make the building unsafe. There
28 was a lot of stuff that maybe they did that changed in the plans. Brad would come in.
Ray Bader came to the job every day. When Ray Bader wanted something moved, we
moved it. Was it a change in the plan? It was a change in the life safety plan, but it was
something that Ray Bader wanted, so we did it. We didn't make Ray Bader sign a letter
every time he wanted to move something or a light fixture. If Brad said so, we did it.
Everything isn't always written down on these big jobs. In this case, maybe they should
have written something down. Mr. Tanguay was there at that meeting. Everybody saw
the fence. The whole thing was about the color, the fence, the spacing, the two hundred
pound test. We got a fence there that serves the same purpose as the original fence. If
somebody wants to get into Mr. Tanguay's yard, all they have to do is walk out the post
office door and go straight up. There's nothing stopping anybody from going straight
up on in his yard. We're talking about a huge project that was done. They preserved
the character of the building, made a nice place for people to live, but for a fence we're
going to hold up a Certificate of Occupancy.

30 Mr. Walker asked, where do you want to go from here?

32 Mr. Escher said we made a motion and it already passed.

34 Mr. Gordon asked, can you amend a motion? It id the motion up against other rules and
laws and regulations that they can't necessarily beat. The motion has them stuck.

36 Ms. Capalbo commented, you said the fence was a strong suggestion, or was it not to do
38 it? Usually historic says you're going to do this. If you are going to get historic tax
credits that are federal, you may not be able to bypass historic anyway.

40 Mr. Gordon said he is not sure they can. Then they would have their fence with this
42 other fence behind it and they don't have the money. They have already paid for their
fence.

44 Mr. Walker the motion has been made, seconded, voted and carried so the matter of the
46 fence seems ready to be disposed of for tonight. Is it not or is there some way that we
48 could proceed if somebody wanted to proceed?

2 Mr. Ellis asked that however you proceed with the fence, that the Board clarify exactly
4 what steps need to be taken, whether you want the existing fence removed, what type of
6 fence you want installed in place of it, and where is it to be designated. As for the plans,
in the same location of the drawn fence? We just need you to state exactly what the
Board wants them to do to be in compliance.

8 Mr. Gordon said they have a problem with whatever the Board says, they can't
necessarily do. They have no money.

10

Mr. Ellis said yes, but we need to know what they are asking us for because they haven't
said take out the fence.

12

14 Mr. Escher said the motion was to put the fence in as per the original plan and the
agreement. I believe that's what it was, so there's your answer.

16

Mr. Ellis said so removing the current fence?

18

Mr. Escher said if it means you have to put it on that property line, whatever has to
happen. He does not know how much more specific you need to be.

20

22 Mr. Ellis said they were entertaining Mr. Tanguay's suggestion of the livestock fence.

24 Mr. Walker said the answer to that is that the motion has been made and has carried.
The motion is that the fence would be installed as per the original agreement with Mr.
26 Tanguay, the one that he signed. If Mr. Ellis wants to propose to Mr. Tanguay privately
some alternative that he finds acceptable, they we'll be happy to entertain and address it
28 again. But for now, that issue has been resolved, perhaps not in a way that satisfactory
to the applicant, but it has been resolved and now it is time to move on to the
30 questionable lighting and the benches. Let's return to that and get something
established on that so we can move on and get some other business done.

32

MR. SIMMONS MOVES TO ACCEPT AS A MINOR CHANGE, THE REDUCTION OF BOLLARDS ON
34 THE WALKWAY FROM TWELVE TO THREE, TO BE INSTALLED IN THE POSITION SHOWN ON THE
MOCKED-UP PLAN WHICH HAS BEEN IDENTIFIED AS BOARD'S EXHIBIT 1, WITH THE FINAL
36 BOLLARD FIXTURE SPECIFICATIONS TO BE APPROVED BY MR. SIMMONS, SIGNED OFF ON AND
GIVEN TO MR. LAMPHERE, WITH THE SUM OF \$3000 TO BE PLACED IN ESCROW FOR THE
38 PURCHASE AND INSTALLATION OF THE BOLLARDS.

MR. ESCHER SECONDS THE MOTION.

40 MESSRS. SIMMONS, ESCHER AND WALKER, AND MSES. DOYLE AND DOUTHITT APPROVE.
MOTION CARRIES.

42

Mr. Lamphere suggests the Board entertain a motion to amend the motion that was
44 made for the fence, to provide for the instance in which the applicant and Mr. Tanguay
can come up with an alternate situation which would effectively amend their agreement
46 and have the parties sign it as an amendment. In other words, if they can agree to an
amendment to that, outside of this body, presented to the Planner, can we let that go?

48

MR. ESCHER SO MOVES.

2 MS. DOUTHITT SECONDS THE MOTION.
MESSRS. SIMMONS, ESCHER AND WALKER, AND MSES. DOYLE AND DOUTHITT APPROVE.
4 MOTION CARRIES.

6 Mr. Walker asked if we have anything on the benches for the playground?

8 MS. DOYLE MOVES TO PUT INTO ESCROW \$500 TO COVER A SEAT OR SEATS IN THE
PLAYGROUND AREA TO PURCHASE AND INSTALL.

10 MR. SIMMONS SECONDS THE MOTION.
MESSRS. SIMMONS, ESCHER AND WALKER, AND MSES. DOYLE AND DOUTHITT APPROVE.
12 MOTION CARRIES.

14 Mr. Walker said now we have to do the CO.

16 Mr. Levesque asked what in particular where you thinking you need to address? The
only thing remaining is whether or not you are going to require the escrow of funds for
18 the fence because that presumably won't be done before the end of the month and they
are going to want their CO. Presumably they're going to try to put it in, so that's the
20 case.

22 Mr. Escher said the worst case is they don't get an agreement with Mr. Tanguay and
they're back to their original price on the original fence as far as an escrow amount.

24 Mr. Walker said which seemed to be in the neighborhood of \$5000, probably \$6000 if
26 you include the price of removal of the other one. So we have \$6000 for the fence; \$3000
for the lighting; \$500 for the benches. That's \$9500 and subject to counsels suggestion
28 that we need a motion to allow the Town to issue a final Certificate of Occupancy subject
to the posting of a cash or other current funds escrow amount of \$9500 to be used as
30 security for completion of the fence, playground benches and the lighting.

32 MR. SIMMONS SO MOVES.
MR. ESCHER SECONDS THE MOTION.
34 MESSRS. SIMMONS, ESCHER AND WALKER, AND MSES. DOYLE AND DOUTHITT APPROVE.
MOTION CARRIES.

36 Mr. Walker asked if there is anything left open on the matter of Rockville Mill? We have
38 disposed of all issues that were properly before us. That being the case, onward and
upward.

40 **PRE-APPLICATION - MAJOR LAND DEVELOPMENT - CARRIAGE BARN MINI STORAGE -**
42 **PLAT 28, LOT 136, MAIN STREET. SASSY PROPERTIES UNLIMITED, LLC, APPLICANT.**
Attorney Vincent Naccarato represented the applicant.

44 Mr. Naccarato said this is an application for a special use permit for a Major Land
46 Development. The proposal is to expand the current mini storage facility to land that
belongs to the applicant located directly east of the existing mini storage site. This land
48 was formerly the site of the town and state garage. In 1998 the property obtained a
Special Use Permit to allow the mini storage facility to be built. At one time the property

2 was solely owned by one individual. The property was split conveying a portion for
mini storage. There was a swap of land done by administrative subdivision in 2003.
4 The applicant wants to utilize the property acquired from the administrative subdivision
and add 20,000 square feet of mini storage on the property acquired.

6
Nathan Lauder, Licensed Land Surveyor and Survey Manager for Cherenzia and
8 Associates, said he was initially involved with the project in 2002-03 for the previous
owner assisting with the swap. They did not do the final; that was done by
10 comprehensive permit. The portion of land that was merged into the existing storage
units is currently undeveloped. The layout shown is conceptual. The new buildings
12 will be for the same type of use.

14 Mr. Simmons asked why are they looking to eliminate the restrictions?

16 Ed Faubert of Sassy Properties said they want to expand so they can entertain customers
with climate control storage.

18
Mr. Simmons said the other two are outdoor storage, temperature control and overnight
20 storage of business equipment and machinery.

22 Mr. Faubert said the business machinery is his plow trucks.

24 Mr. Simmons said that was the one that worried him. Do you envision renting this out
to construction companies, landscapers?

26
Mr. Faubert said he has his landscaping equipment there and the plow trucks.

28
Mr. Simmons said so then it is your personal equipment you want to store there.

30
Mr. Faubert said he would like to accommodate customers in the winder time who have
32 registered boats and registered trailers to be able to provide outdoor storage, in a
confined area.

34
Mr. Simmons asked if there was to be an area set aside for the boats.

36
Mr. Faubert said in between the buildings, along the fence line. He would like to see
38 maybe a dozen boats, cars or trailers.

40 Ms. Douthitt asked if there will be a hard top or asphalt cover.

42 Mr. Faubert said the land would not be paved. It is all stone. When it was built they
didn't allow them to pave it because runoff wouldn't be handled by road frontage.

44
Mr. Naccarato asked the uses of the existing buildings.

46
Mr. Faubert said the first building is leased to a consignment shop; the building in the
48 middle is used as their office; the other building is a residential home that was used at
one point for a live-in manager on site. It is rented to a family.

2

Mr. Naccarato asked if he has any plans for those buildings.

4

Mr. Faubert said they will remain as is.

6

Mr. Levesque asked what are the neighboring uses.

8

10 Mr. Faubert said the church and the adjacent property that was a woodshop. The only other neighbor they have is where the church property comes out in the back. There are three houses between his house and the vegetable stand.

12

Mr. Levesque commented that this is a split zone lot, R-1 and RFR-80.

14

Mr. Naccarato said R-1 is to the west and R-80 is to the east.

16

18 Mr. Levesque asked why it wouldn't be the more prudent to ask for a zone change to commercial, which would be consistent with the use they are asking for, rather than go through this process? He's not sure you get there from here.

20

22 Mr. Naccarato said rezoning is an option. When this special use was obtained in 1998, there was nonconformity for the entire property. They believe the nonconformity still exists.

24

26 Mr. Levesque said he does not see how they got a special use permit, but is not trying to judge that.

28

Mr. Naccarato said it is a zoning issue and rather than convince the Zoning Board that there is a nonconformity there, they are asking to replace one nonconforming with another.

30

32 Mr. Walker asked, are you trying to replace one with another or are you trying to expand an existing nonconforming use?

34

36 Mr. Naccarato said it is their position that the land was still nonconforming when acquired by the previous owner, ARA Development. There was still the intention to use this property in some type of business storage fashion. A history of the property was submitted to the Zoning Board. Nothing has really changed. Years have gone by without any activity on that particular property, so it is still, in their minds, nonconforming. It is part of the storage facility. They are just expanding into it. A rezoning opens the property up to other uses, other than what are nonconforming.

42

44 Mr. Walker said he recalls there is a prohibition against expanding an existing nonconforming use. Is this an example of that?

46 Mr. Naccarato said this is not an expansion of a nonconforming use. This is the replacement of one nonconforming use with another. The conditions are still the same as were obtained in 1998.

48

Mr. Walker said what is the nonconforming use that you are changing?

2

Mr. Naccarato said it was the state garage storage facility.

4

Mr. Faubert said they got the special use permit when they built it when the property was leased to the State as a storage facility for their equipment, inside a building and outside.

8

10 Mr. Levesque said the concern is that this Board will have to make a determination on the fact that ultimately the Zoning Board will deal with in order to make a recommendation for you to get the special use permit. He is bringing it up to the
12 forefront now because he is uncertain how you will get there. It sounds like you're convinced you're going to get there.

14

16 Mr. Naccarato said he is not convinced. He thinks this is their best argument because this property has never been used for anything but.

18 Mr. Walker said this property is used as a temporary storage facility, with three buildings used for that storage, and you want to put up three more.

20

Mr. Faubert added, that are climate controlled.

22

24 Mr. Walker said whether they are climate controlled or not has nothing to do with the definition of the use, and you are telling me the existing use here of temporary storage facility, is nonconforming use. Now you are trying to expand this nonconforming use by roughly doubling the amount of the temporary storage facility.

26

28 Mr. Naccarato said they would be adding three buildings.

30 Mr. Walker said with the same use as the existing buildings. Isn't that an expansion of an existing nonconforming use and is that even permissible?

32

34 Mr. Levesque said that is exactly what he is having a hard time getting his mind around. It sounds like he is convinced he can teach me why it is not an expansion of a nonconforming use.

36

38 Mr. Naccarato said his position right now on this particular property is that they could start storing vehicles and whatever the history is here. However the property has been used in the past, they could use. This property, the entire parcel, was always used for
40 some type of business storage. They could, right now, without any permits, start some type of storage; it may not be mini storage. They are applying now to the Zoning Board
42 to replace that nonconforming with the existing nonconforming directly to the west. It is not an expansion because they can use this property for other than mini storage, for
44 storage there was there before. The history they submitted in 1998, is still the same.

44

46 Mr. Ward said in the Zoning Ordinance there is a use alteration and that is what he has amended his zoning application for, to alter the use from a previous gravel bank operation and storage to put in a mini storage. He is altering the use. It is in our Zoning
48 Ordinance. In the state regulations, it is an option, a mechanism that he is using through zoning to go forward. He has discussed this with Mr. Romano and they have also

2 discussed the zone change aspects. There is a provision for use alteration and it is not
the alteration of the building as he found out from the State.

4 Mr. Naccarato, now that being said, pre-apps are for discussion. They are not adverse to
6 getting a zone change. Probably, in the long run, it would benefit them with a more
marketable piece of property with different uses that could be utilized. He is very
8 reluctant to get into the rezone process without some backing.

10 Mr. Walker said if the Planning Board recommends and the Zoning Board approves
what you want to do here, this will approximately double the assessed valuation of this
12 property and the tax revenue to the Town that is derived from it. If whatever we do or
whatever arrangement, whether it's by rezoning, special use permit, or whatever, you're
14 able to put three more storage buildings on there, roughly doubling the existing storage
space, presumably that is going to roughly double the amount of revenue derived from
16 the property which is going to roughly double the value and the amount of taxes the
Town will get.

18 Mr. Naccarato said that's very optimistic. He does not think it will be double but
20 certainly the property would be more valuable. You can take either path. Is a rezone
more palatable to everybody than a special use permit?

22 Mr. Walker said his viewpoint, from just his familiarity with the area and the property
24 in question, is that he thinks this is a splendid use for this property and does not
particularly care how you go about getting it done and getting the additional tax
26 revenue into the Town. Whether by rezoning or special use permit is up to the
applicant.

28 Mr. Naccarato agrees it is an excellent use for the area, it is non-offensive and doesn't
30 generate a lot of traffic.

32 Ms. Douthitt said it doesn't look like it will do any pollution to the groundwater.

34 Mr. Naccarato said there is no septic being added, no need to upgrade the sanitary
facilities, serviced by municipal water supply. It is a very benign use for the area.

36 Mr. Lamphere said if they were to choose the rezoning route, he is pretty sure they
38 would have to make a comprehensive plan to change it and that would complicate it
even more.

40 Mr. Buford asked, the whole property down to the stream, what do you want? Do you
42 own everything to down there?

44 Mr. Naccarato said no, he just owns what is shown on the site plan.

46 Mr. Buford asked, that piece that you are talking about working on now shifted back
and forth in ownership?

48

2 Mr. Faubert said no. At one point all the property was owned by one person and then it
was split.

4 Mr. Buford said so that was part and parcel to Women’s Development’s plans.

6 Mr. Faubert responded yes.

8 Mr. Buford asked, for the adjacent property, what is it’s status? Would it be open for
10 development like this as well? He is trying to understand what might happen in that
area. Was it part of the state garage storage?

12 Mr. Naccarato said yes it was.

14 Mr. Buford asked, what was the year that second piece was acquired?

16 Mr. Naccarato said he thinks 2003. 1998 was the special use permit for the first section
18 and then the administrative subdivision.

20 Mr. Buford asked, if they hadn’t been merged you would say that property was still
22 available for this same kind of use because it had the same storage as your original
parcel?

24 Mr. Naccarato corrected the date. The administrative subdivision was 2007.

26 Ms. Capalbo said the Carriage Barn has been a really good owner. The property has
28 been well managed. She thinks it is an asset to Hope Valley. She is not against
expanding their use. She doesn’t know how the zoning works. She does think they
30 have to be careful about outdoor storage and consider oil and gas leaking on the surface.
She does not believe changing the zone to commercial will be accepted. If anything, that
section would be neighborhood business and residential.

32 Mr. Ward said they would have to get a text change in addition to a rezone.

34 Mr. Walker asked if they have any sense of how the abutters are going to react to this?

36 Mr. Naccarato said they do know that this property that is adjacent, the woodworker, he
38 was vehemently opposed to the initial special use permit and a lot of exceptions that are
contained in the special use permit were imposed for him. He has since passed away
40 and feels the current property owner is not adverse to what they are trying to do. The
others, they don’t know. They do know that Mr. MacDonald has no problem.

42 Mr. Walker asked if they specifically notified the abutters.

44 Mr. Naccarato said there was no notice given. The way the regulations are with a
46 special use permit, they have to get the Planning Board’s approval at the first approval
stage in order to go back to the Zoning Board for the hearing on the special use permit.

48 They will have to come back to the Planning Board with Master plan and get conditional
approval at Master plan in order to go for a special use permit.

2 Mr. Lamphere asked, you're resting your case on basically replacing an existing
4 nonconforming use with another nonconforming use?

4 Mr. Naccarato said that's the plan; less offensive.

6 Mr. Lamphere asked if that is allowed.

8 Mr. Ward said it has a use authorization.

10 Mr. Buford has one suggestion from the Conservation Commission. The broad
12 description of what might be parked on there was narrowed down to make it sound
14 acceptable. You might want to think about just what you would have on there in
16 writing; a definition that is clearer for that purpose. Think of what works. Write some
simple rules so it is clear to us that you are not to let something happen on the property.

18 Mr. Faubert said they already have that in place with the contracts.

20 Mr. Simmons said to refine it.

22 Mr. Naccarato asked to combine master and preliminary for the next session.

24 Mr. Levesque said they need conditional before they come back for preliminary.

SUBDIVISION REGULATIONS REVIEW - ARTICLE XVI

26 Review of the Subdivision Regulations will be continued to the April 3 meeting.

28 **PLANNER'S REPORT:** None

CORRESPONDENCE AND UPDATES:

30 Mr. Lamphere said the Board received some correspondence from Charlestown which is
32 a resolution that they passed on Affordable Housing.

34 **PUBLIC COMMENT:** None

36 **DATE OF NEXT REGULAR MEETING:** April 3, 2013

ADJOURNMENT

MR. SIMMONS MOVED TO ADJOURN. ALL APPROVE.

40 The meeting was adjourned at 10:04 P.M.

42
44 Attest: _____
Lynda St. Amour, Planning Board Clerk

46 Approved: April 3, 2013

48