

Master Plan, Con't. - Comprehensive Permit - Brushy Brook, Plat 32 - Lots 1 through 71, Dye Hill Road. LR 6-A Owners, LLC, applicant.

Attorney William Landry represented the applicant. Also present were Christopher Duhamel of DiPrete Engineering and the applicant, David Allen.

A court stenographer was present to record the proceedings. A copy of the transcript will be made part of this record.

Mr. DiOrio asked the Board to address their missed meetings.

Each member of the Board responded, individually, stating that they have either read the minutes, the transcripts, or viewed the video of the meetings they had missed.

Mr. Walker began: MR. CHAIRMAN, I MOVE THAT THE COMPREHENSIVE PERMIT APPLICATION OF LR 6-A, LLC BE GRANTED MASTER PLAN APPROVAL, SUBJECT TO THE FOLLOWING CONDITIONS:

- (1) THE APPROVED DENSITY WILL BE IN THE RANGE OF 93 TO 116 SINGLE FAMILY UNITS, TO BE DETERMINED BY A PROPER YIELD CALCULATION AT PRELIMINARY, PLUS A DENSITY BONUS OF 25% FOR AFFORDABLE FAMILY HOUSING TO BE AWARDED UNDER THE HOPKINTON INCLUSIONARY ZONING ORDINANCE, FOR A TOTAL OF 116 TO 145 UNITS OF SINGLE FAMILY HOUSES.
- (2) THE APPLICANT SHALL RECONFIGURE THE DEVELOPMENT UNDER OUR SUBDIVISION CLUSTER REGULATION, USING 20,000, MORE OR LESS, SQUARE FOOT LOTS, SO AS TO MAXIMIZE THE OPEN SPACE ADJACENT TO ARCADIA MANAGEMENT AREA AND SO AS TO ELIMINATE, TO THE MAXIMUM DEGREE POSSIBLE, HOUSE LOTS ABUTTING THE MANAGEMENT AREA.
- (3) IN ACCORDANCE WITH OUR CLUSTER REGULATIONS, THE APPLICANT SHALL PROVIDE PUBLIC DRINKING WATER WELLS, UNLESS PROVEN INFEASIBLE AND COMMUNAL SEPTIC WITH DE-NITRIFICATION, USING OPEN SPACE FOR WELLS AND SEPTIC IN SUCH A WAY AS TO ACHIEVE MAXIMUM FEASIBLE SEPARATION BETWEEN WELLS AND SEPTIC AND MINIMUM POTENTIAL FOR POLLUTION AND NITROGEN LOADING.
- (4) THE APPLICANT SHALL MAKE ALL OFF-SITE ROAD, BRIDGE AND CULVERT IMPROVEMENTS THAT WERE REQUIRED IN THE PREVIOUS PUD FOR THE SITE, WHICH IS PART OF THE RECORD. THESE OFF-SITE IMPROVEMENTS INCLUDE WIDENING A BRIDGE AND TWO CULVERTS ON SAW MILL ROAD TO TWENTY-TWO (22) FEET, CLEARING TWO (2) FEET ON EACH SIDE OF THE ROAD, AND CHIP SEALING SAW MILL ROAD AND DYE HILL ROAD FROM ROUTE 138 TO THE ENTRANCE OF THE RESERVE AT BRUSHY BROOK. IN ADDITION, THE APPLICANT SHALL MAKE THE IMPROVEMENTS AND PROVIDE FOR THE MONITORING RECOMMENDED IN THE RAB REVISED TRAFFIC IMPACT STUDY DATED JULY 2, 2010. FINALLY, THE APPLICANT SHALL PERFORM THE IMPROVEMENTS INDICATED IN THE PUBLIC WORKS DIRECTOR'S MEMO OF JANUARY 15, 2010, EXHIBIT 22, UNLESS THEY ARE PROVEN TO BE INFEASIBLE.
- (5) ALL EXTERIOR LIGHTING, BOTH PUBLIC AND PRIVATE, SHALL BE DARK SKY COMPLIANT, AND THERE SHALL BE PLAN NOTATIONS AND DEED RESTRICTIONS TO THAT EFFECT.
- (6) ALL LOW AND MODERATE INCOME HOUSING UNITS MUST BE INTEGRATED THROUGHOUT THE DEVELOPMENT; COMPATIBLE IN SCALE AND ARCHITECTURAL STYLE TO THE MARKET

RATE UNITS WITHIN THE PROJECT; AND, MUST BE BUILT AND OCCUPIED PRIOR TO, OR SIMULTANEOUS WITH, THE CONSTRUCTION AND OCCUPANCY OF ANY MARKET RATE UNITS.

MR. WALKER FURTHER MOVED THAT THE FOREGOING APPROVAL AND CONDITIONS ARE SUPPORTED BY THE FOLLOWING FINDINGS AND CONCLUSIONS, ALL SUPPORTED BY COMPETENT EVIDENCE IN THE RECORD BEFORE US:

SECTION II. PROCEDURAL MATTERS

A. THE STATUTE

BEFORE THE PLANNING BOARD IS A "SINGLE APPLICATION FOR A COMPREHENSIVE PERMIT," BROUGHT UNDER THE RHODE ISLAND LOW AND MODERATE INCOME HOUSING ACT, R.I.G.L. § 45-53-1 ET SEQ., WHICH WILL BE REFERRED TO AS "THE ACT".

B. PLANNING BOARD TO ACT AS LOCAL REVIEW BOARD

IN ACCORDANCE WITH PAST PRACTICE IN HOPKINTON, THE PLANNING BOARD SERVES AS THE LOCAL REVIEW BOARD UNDER THE ACT, FOR REVIEW OF COMPREHENSIVE PERMIT APPLICATIONS.

C. STAGES OF REVIEW

ON OCTOBER 20, 2010, THE BOARD COMPLETED AND CLOSED THE PUBLIC HEARING ON MASTER PLAN. THEREFORE, THE "DECISION" THAT § 4 OF THE ACT REQUIRES THE BOARD TO RENDER WITHIN 40 DAYS AFTER TERMINATION OF THE PUBLIC HEARING IS A DECISION ONLY ON THE APPLICANT'S CONCEPTUAL PLAN. FOR PURPOSES OF OUR DECISION, THEREFORE, WE ASSUME THAT THE APPLICANT'S CONCEPT, AS SUBMITTED, WOULD PROVE FEASIBLE FROM AN ENGINEERING PERSPECTIVE AND COULD RECEIVE THE NECESSARY PERMITS FROM STATE REGULATORS.

SECTION III. LEGAL STANDARDS FOR REVIEW OF COMPREHENSIVE PERMIT APPLICATIONS

THE BOARD, IN REACHING ITS DECISION ON THE APPLICANT'S MASTER PLAN SUBMISSION, MUST REVIEW THE NECESSARILY LIMITED RECORD BEFORE IT AND APPLY TO THAT RECORD THE LEGAL STANDARDS PRESCRIBED BY LAW. SOURCES OF APPLICABLE LAW ARE AS FOLLOWS:

A. THE AFFORDABLE HOUSING STATUTE

SECTION 4(A)(4)(v) OF THE ACT REQUIRES THE BOARD, IN APPROVING AN APPLICATION, TO MAKE THE FOLLOWING FINDINGS SUPPORTED BY LEGALLY COMPETENT EVIDENCE IN THE RECORD:

(1) THE PROPOSED DEVELOPMENT IS CONSISTENT WITH LOCAL NEEDS AS IDENTIFIED IN THE LOCAL COMPREHENSIVE COMMUNITY PLAN WITH PARTICULAR EMPHASIS ON THE COMMUNITY'S AFFORDABLE HOUSING PLAN AND/OR HAS SATISFACTORILY ADDRESSED THE ISSUES WHERE THERE MAY BE INCONSISTENCIES.

(2) THE PROPOSED DEVELOPMENT IS IN COMPLIANCE WITH THE STANDARDS AND PROVISIONS OF THE MUNICIPALITY'S ZONING ORDINANCE AND SUBDIVISION

REGULATIONS, AND/OR WHERE EXPRESSLY VARIED OR WAIVED LOCAL CONCERNS THAT HAVE BEEN AFFECTED BY THE RELIEF GRANTED DO NOT OUTWEIGH THE STATE AND LOCAL NEED FOR LOW AND MODERATE INCOME HOUSING.

- (3) ALL LOW AND MODERATE INCOME HOUSING UNITS PROPOSED ARE INTEGRATED THROUGHOUT THE DEVELOPMENT; ARE COMPATIBLE IN SCALE AND ARCHITECTURAL STYLE TO THE MARKET RATE UNITS WITHIN THE PROJECT; AND, WILL BE BUILT AND OCCUPIED PRIOR TO, OR SIMULTANEOUS WITH THE CONSTRUCTION AND OCCUPANCY OF ANY MARKET RATE UNITS.
- (4) THERE WILL BE NO SIGNIFICANT ENVIRONMENTAL IMPACTS FROM THE PROPOSED DEVELOPMENT AS SHOWN ON THE FINAL PLAN, WITH ALL REQUIRED CONDITIONS FOR APPROVAL.
- (5) THERE WILL BE NO SIGNIFICANT NEGATIVE IMPACTS ON THE HEALTH AND SAFETY OF CURRENT OR FUTURE RESIDENTS OF THE COMMUNITY, IN AREAS INCLUDING, BUT NOT LIMITED TO, SAFE CIRCULATION OF PEDESTRIAN AND VEHICULAR TRAFFIC, PROVISION OF EMERGENCY SERVICES, SEWERAGE DISPOSAL, AVAILABILITY OF POTABLE WATER, ADEQUATE SURFACE WATER RUN-OFF, AND THE PRESERVATION OF NATURAL, HISTORICAL OR CULTURAL FEATURES THAT CONTRIBUTE TO THE ATTRACTIVENESS OF THE COMMUNITY.
- (6) ALL PROPOSED LAND DEVELOPMENTS AND ALL SUBDIVISIONS LOTS SHALL HAVE ADEQUATE AND PERMANENT PHYSICAL ACCESS TO A PUBLIC STREET.
- (7) THE PROPOSED DEVELOPMENT WILL NOT RESULT IN THE CREATION OF INDIVIDUAL LOTS WITH ANY PHYSICAL CONSTRAINTS TO DEVELOPMENT, THAT BUILDING ON THOSE LOTS, ACCORDING TO PERTINENT REGULATIONS AND BUILDING STANDARDS, WOULD BE IMPRACTICABLE, UNLESS CREATED ONLY AS PERMANENT OPEN SPACE OR PERMANENTLY RESERVED FOR A PUBLIC PURPOSE ON THE APPROVED, RECORDED PLANS.

SECTION 4(A)(4)(VII) OF THE ACT PROVIDES THAT THE BOARD MAY DENY THE APPLICATION FOR ANY OF THE FOLLOWING REASONS, ALSO SUPPORTED BY COMPETENT EVIDENCE IN THE RECORD:

- (1) IF THE CITY OR TOWN HAS AN APPROVED AFFORDABLE HOUSING PLAN AND IS MEETING HOUSING NEEDS, AND THE PROPOSAL IS INCONSISTENT WITH THE AFFORDABLE HOUSING PLAN;
- (2) THE PROPOSAL IS NOT CONSISTENT WITH LOCAL NEEDS, INCLUDING, BUT NOT LIMITED TO, THE NEEDS IDENTIFIED IN AN APPROVED COMPREHENSIVE PLAN, AND/OR LOCAL ZONING ORDINANCES AND PROCEDURES PROMULGATED IN CONFORMANCE WITH THE COMPREHENSIVE PLAN;
- (3) THE PROPOSAL IS NOT IN CONFORMANCE WITH THE COMPREHENSIVE PLAN;
- (4) THE COMMUNITY HAS MET OR HAS PLANS TO MEET THE GOAL OF TEN PERCENT (10%) OF THE YEAR-ROUND UNITS BEING AFFORDABLE;
- (5) CONCERNS FOR THE ENVIRONMENT AND THE HEALTH AND SAFETY OF CURRENT RESIDENTS HAVE NOT BEEN ADEQUATELY ADDRESSED.

B. TOWN ZONING AND SUBDIVISION REGULATIONS

UNDER THE ACT AND THE SUBDIVISION ENABLING ACT, THE BOARD NOT ONLY CAN, BUT MUST APPLY THE REQUIREMENTS OF THE TOWN'S ZONING AND SUBDIVISION ORDINANCES AND REGULATIONS. THE ONLY CONSTRAINT IS THAT THE ACT'S PROVISION IN § 45-53-3(2) THAT OUR REGULATIONS MUST BE "CONSISTENT WITH LOCAL NEEDS," WHICH THEY ARE IF THEY ARE "REASONABLE IN VIEW OF THE STATE NEED FOR LOW AND MODERATE INCOME HOUSING," CONSIDERED WITH THE FOLLOWING NEEDS:

- (1) PROTECTION OF THE HEALTH AND SAFETY OF PROJECT OCCUPANTS AND RESIDENTS OF THE TOWN;
- (2) PROMOTION OF BETTER SITE AND BUILDING DESIGN IN RELATION TO THE SURROUNDINGS; AND
- (3) PRESERVATION OF OPEN SPACE;

AND, THE REGULATIONS ARE APPLIED AS EQUALLY AS POSSIBLE TO BOTH "AFFORDABLE" AND "MARKET RATE" HOUSING.

IN OTHER WORDS, THE ACT, ALTHOUGH IT EMPHASIZES THE NEED FOR AFFORDABLE HOUSING, RECOGNIZES THAT THERE ARE OTHER COMMUNITY NEEDS, AND THAT SOMETIMES THOSE OTHER NEEDS MAY TRUMP THE NEED FOR AFFORDABLE HOUSING. AS OUR SUPREME COURT HAS SAID, IN CONSTRUING THE ACT, "AN ORDINANCE OR REGULATION IS REASONABLE IF IT IS NOT DESIGNED OR INTENDED TO EXCLUDE LOW AND MODERATE INCOME RESIDENTS FROM THE COMMUNITY OR TO DISCOURAGE OR FRUSTRATE THE LIKELIHOOD OF SUCCESS OF A PROJECT," WHICH COMES FROM COVENTRY ZONING BOARD. OF REVIEW V. OMNI DEVELOPMENT CORPORATION, 814 A.2D 889, 899 (R.I. 2003)

SIMILARLY, IF WE WERE TO APPROVE THE APPLICATION "WITH CONDITIONS", THOSE CONDITIONS WOULD HAVE TO BE "REASONABLE," I.E., "CONSISTENT WITH LOCAL NEEDS," IF THEY WOULD RENDER THE PROJECT "INFEASIBLE," I.E., WOULD MAKE IT IMPOSSIBLE FOR THE APPLICANT TO PROCEED WITHOUT FINANCIAL LOSS. ESPECIALLY RELEVANT AT THIS EARLY, CONCEPTUAL STAGE OF REVIEW, ARE TWO OF OUR TOWN ZONING AND SUBDIVISION REGULATIONS:

FIRST, THERE IS THE ZONING DENSITY REGULATION THAT REQUIRES, IN AN RFR-80 DISTRICT, A LOT OF AT LEAST 80,000 SQ/FT FOR EACH SINGLE FAMILY UNIT.

SECOND, THERE IS THE SUBDIVISION REGULATION, ARTICLE IV. A., WHICH ESTABLISHES A PRESUMPTION IN FAVOR OF "RESIDENTIAL CLUSTER" DESIGN, OVER CONVENTIONAL SUBDIVISION, WHICH PRESCRIBES A FORMULA FOR DENSITY CALCULATION, AND WHICH REQUIRES THAT AT LEAST 30% OF A PROJECT'S LAND SUITABLE FOR DEVELOPMENT BE SET ASIDE AS OPEN SPACE.

IF THESE REGULATIONS ARE CONSISTENT WITH LOCAL NEEDS, AS DEFINED ABOVE, THEN THE BOARD CERTAINLY CAN APPLY THEM TO THIS APPLICATION, AND AT LEAST, ARGUABLY MUST DO SO.

IN ADDITION, THE TOWN HAS RECENTLY ENACTED AN INCLUSIONARY ZONING ORDINANCE WHICH EMPOWERS THE PLANNING BOARD TO GIVE ANY SUBDIVISION DEVELOPER A DENSITY

BONUS OF UP TO 20% FOR AFFORDABLE HOUSING AND ANY COMPREHENSIVE PERMIT APPLICANT, SUCH AS THE APPLICANT HERE, A DENSITY BONUS OF UP TO 25%.

SECTION IV. THE APPLICANT'S CONCEPTUAL PLAN

THE APPLICANT'S PROPOSAL CONCERNS PLAT 32, LOTS 1 THROUGH 71, TOTALING 358 ACRES, ON DYE HILL ROAD IN NORTH HOPKINTON.

THE APPLICANT'S ORIGINAL PLAN WAS, IN EFFECT, TO COMBINE THESE 71 LOTS, THEN RE-SUBDIVIDE THEM FOR CREATION OF 300 RESIDENTIAL UNITS, OF WHICH 25% WOULD BE AFFORDABLE, WITHIN THE MEANING OF THE ACT. TWO HUNDRED UNITS WOULD HAVE BEEN FREE STANDING SINGLE FAMILY THREE BEDROOM HOUSES; 100 UNITS WOULD BE MULTI-FAMILY STRUCTURES WITH TWO OR THREE BEDROOM APARTMENTS OR CONDOMINIUMS. THE APPLICANT TOOK THE POSITION THAT THESE 300 UNITS WERE NECESSARY AND THAT THE DENSITY COULD NOT BE DECREASED WITHOUT MAKING THE PROJECT INFEASIBLE, BUT OFFERED NO COMPETENT PROOF TO SUPPORT THAT POSITION.

THE APPLICANT LATER VOLUNTARILY AMENDED THE PLAN TO ELIMINATE THE MULTI-FAMILY BUILDINGS AND TO BUILD A TOTAL OF 270 SINGLE FAMILY THREE BEDROOM HOUSES, STILL WITH 25% AFFORDABLE. THE APPLICANT DID NOT EXPLAIN HOW THE PROJECT HAD BECOME FEASIBLE AT A DENSITY LOWER THAN THE 300 UNITS ORIGINALLY PROPOSED.

THE APPLICANT PROPOSES TO SITE THESE HOUSES ON LOTS OF ABOUT ONE-HALF ACRE, WITH INDIVIDUAL WELLS AND SEPTIC. ABOUT 158 ACRES WOULD BE USED FOR THE HOUSES AND ROADS, WITH ABOUT 200 ACRES, MUCH OF IT NON-BUILDABLE, WETLANDS, AND STEEP SLOPES, LEFT AS OPEN SPACE.

THE APPLICANT PROPOSES TO BUILD THE HOUSES ALONG BOTH SIDES OF A LONG LOOP ROAD, WHICH TWO EARLIER OWNERS HAD CLEARED AND ROUGHED OUT, IN FAILED VENTURES WHICH ENDED IN BANKRUPTCY, TO BUILD ABOUT 134 UNITS AND A GOLF COURSE UNDER A NOW-EXPIRED PLANNED UNIT DEVELOPMENT. THE LOOP ROAD AND HOUSES WOULD OCCUPY THE PERIMETER OF THE PARCEL, WITH THE OPEN SPACE LOCATED MOSTLY IN THE CENTER OF THE LOOP. THUS, ABOUT 75 OF THE PROPOSED HALF-ACRE HOUSE LOTS WOULD DIRECTLY ABUT THE BOUNDARY OF THE STATE'S ARCADIA MANAGEMENT AREA TO THE EAST AND NORTH.

SECTION V. THE SITE

THE SITE IS LOCATED ON DYE HILL ROAD, NEAR THE EXETER TOWN LINE, IN ONE OF HOPKINTON'S REMOTEST, MOST RURAL AREAS. IT IS ABOUT 2.5 MILES TO THE NEAREST VILLAGE, HOPE VALLEY, AND ITS COMMERCIAL AND CULTURAL SERVICES AND AMENITIES.

THE SITE IS BOUNDED ON THE EAST AND NORTH, AND PARTLY ON THE WEST, BY THE ARCADIA MANAGEMENT AREA, ONE OF THE STATE'S JEWELS OF A NATURAL AREA. THE REST OF THE SITE BORDERS MAINLY ON SMALL FARMS.

DYE HILL ROAD IS A NARROW RURAL ROAD THAT OFFERS ACCESS TO SPRING STREET, ROUTE 138, AND HOPE VALLEY, EITHER DIRECTLY OR VIA TWO OTHER NARROW RURAL ROADS, WOODY HILL ROAD AND SAW MILL ROAD.

SECTION VI. STATUS OF AFFORDABLE HOUSING IN HOPKINTON

THE TOWN HAS IN PLACE A COMPREHENSIVE PLAN WHOSE GOALS INCLUDE PRESERVATION OF THE TOWN'S GROUND AND SURFACE WATERS, PRESERVATION OF ITS NATURAL RESOURCES AND TO PROMOTION OF ITS TRADITIONAL RURAL CHARACTER. ANOTHER GOAL OF THE COMPREHENSIVE PLAN IS TO PROMOTE ORDERLY GROWTH.

THE TOWN HAS ADOPTED AN AFFORDABLE HOUSING PLAN, WHICH THE STATE APPROVED IN SEPTEMBER, 2005. THUS, THE TOWN HAS PLANS TO MEET THE ACT'S REQUIREMENT THAT 10% OF ITS HOUSING STOCK BE AFFORDABLE.

THE AFFORDABLE HOUSING PLAN INCLUDES AS ONE OF ITS GOALS INSTITUTING MANDATORY INCLUSIONARY ZONING FOR MAJOR DEVELOPMENTS THAT REQUIRES INTEGRATED AFFORDABLE HOUSING. THE PLAN ALSO SEEKS TO AVOID BARRIERS TO AFFORDABLE HOUSING, SUCH AS PROVIDING INFRASTRUCTURE TO PROJECTS LIKE SEWER AND WATER, SINCE THE TOWN LACKS PUBLIC SEWERS AND A PUBLIC WATER SUPPLY. MOREOVER, THE PLAN RECOGNIZES THAT THE SOILS IN THE TOWN, LIKE THE GLACIAL TILL SOIL INVOLVED IN THIS PROJECT, CAN BE PRECLUSIVE TO DEVELOPING AT INCREASED DENSITY. FINALLY, THE PLAN SEEKS TO ACHIEVE AFFORDABLE HOUSING WHILE PRESERVING THE TOWN'S CULTURAL AND HISTORIC FEATURES.

IN OCTOBER, 2007, HOPKINTON WAS AWARDED A CERTIFICATE FROM THE STATE OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT, IN RECOGNITION OF THE TOWN'S EFFORTS TO DEVELOP AFFORDABLE HOUSING OPPORTUNITIES.

THE TOWN HAS NOT RESTED ON ITS LAURELS.

EARLIER THIS YEAR, THE TOWN COUNCIL TOOK ANOTHER STEP TOWARD ACHIEVING OUR AFFORDABLE HOUSING PLAN, BY ENACTING AN INCLUSIONARY ZONING ORDINANCE, WHICH EMPOWERS THE PLANNING BOARD TO GRANT DENSITY BONUSES, FOR CONSTRUCTION OF AFFORDABLE HOUSING, OF UP TO 20% FOR ANY DEVELOPER, AND UP TO 25% FOR COMPREHENSIVE PERMIT DEVELOPERS, SUCH AS THIS APPLICANT.

THAT THE TOWN AND ITS PLANNING BOARD HAVE MOVED AGGRESSIVELY TO IMPLEMENT THE PLAN AND HAVE ALREADY MADE SUBSTANTIAL PROGRESS, IS SHOWN BY THE FOLLOWING:

A. STATISTICS

THE TOWN CURRENTLY HAS 219 UNITS OF AFFORDABLE HOUSING ACCORDING TO THE APRIL 19, 2010, RHODE ISLAND HOUSING CERTIFICATION, A NUMBER THAT IS 7.2% OF THE TOTAL YEAR-ROUND HOUSING UNITS IN THE TOWN. IT NEEDS ONLY 85 MORE UNITS TO MEET THE EXISTING SHORTFALL FROM THE 10% REQUIREMENT. IN OTHER WORDS, ONLY FIVE YEARS INTO ITS 20 YEAR AFFORDABLE HOUSING PLAN, HOPKINTON IS ALREADY 70% OF THE WAY TOWARDS ACHIEVING ITS AFFORDABLE HOUSING GOALS.

ANOTHER 34 UNITS HAVE BEEN RECENTLY APPROVED BY THE PLANNING BOARD AND ARE AT VARIOUS STAGES OF CONSTRUCTION. FACTORING THESE UNITS INTO THE CALCULATION WOULD PLACE THE TOWN AT 8.3% OF ITS AFFORDABLE HOUSING OR ALMOST 80% OF ITS WAY TOWARD ITS GOAL.

B. RECENTLY APPROVED AFFORDABLE HOUSING PROJECTS

- (1) CANONCHET WOODS: THE DEVELOPER OF THIS PROJECT OFFERED THE PLANNING BOARD A CHOICE BETWEEN A CONVENTIONAL, ALL MARKET RATE PROJECT, OR GRANTING A DENSITY BONUS TO OBTAIN 20 AFFORDABLE FAMILY TOWNHOUSES. THE PLANNING BOARD OPTED TO GRANT THIS SIGNIFICANT DENSITY BONUS AND APPROVED THE PROJECT IN 2007, WITH 33 MARKET RATE HOUSES AND 20 AFFORDABLE FAMILY TOWNHOUSES.

OF THE 20 AFFORDABLE FAMILY TOWNHOUSES APPROVED THREE YEARS AGO, DUE TO MARKET CONDITIONS, ONLY TWO HAVE ACTUALLY BEEN BUILT, AND THEY REMAIN UNSOLD AFTER TWO YEARS ON THE MARKET.

- (2) ROCKVILLE MILL: THE PLANNING BOARD APPROVED THIS 14 UNIT ALL AFFORDABLE PROJECT ON OCTOBER 16, OF THIS YEAR, OVER SUBSTANTIAL NEIGHBORHOOD OBJECTION, GRANTING THE DEVELOPER A SUBSTANTIAL DENSITY BONUS, AS WELL AS SIGNIFICANT DIMENSIONAL VARIANCES AND A MUNICIPAL FINANCIAL SUBSIDY, TO RENDER THE PROJECT FEASIBLE. THE DEVELOPER EXPECTS TO BEGIN CONSTRUCTION SHORTLY AND TO COMPLETE IT IN ABOUT A YEAR.

IT IS CLEAR FROM THE RECORD IN THIS CASE THAT COMPLETION OF THE REMAINING SHORTFALL IN THE TOWN'S INVENTORY OF AFFORDABLE HOUSING, ALTHOUGH IMPORTANT, IS NOT A MATTER OF SUCH GREAT URGENCY AS WOULD JUSTIFY THE PLANNING BOARD, OR ANYONE ELSE, GIVING SHORT SHRIFT TO OTHER IMPORTANT TOWN GOALS AND VALUES, INCLUDING MAINTAINING THE TOWN'S RURAL CHARACTER AND AMBIENCE AND AVOIDING UNNECESSARY ENVIRONMENTAL DEGRADATION.

THE APPLICANT HAS POINTED OUT THAT OUR BIGGEST SHORTFALL IN AFFORDABLE HOUSING INVENTORY IS IN THE CATEGORY OF FAMILY HOUSING. BUT THE SIMPLE, UNDISPUTED FACT IS THAT 20 UNITS OF SUCH FAMILY HOUSING WERE PRE-APPROVED THREE WHOLE YEARS AGO, AND AS YET ONLY TWO HAVE BEEN BUILT, AND THEY HAVE BEEN SITTING THERE, NICE UNITS, CONVENIENTLY LOCATED WITHIN A MINUTE FROM EXIT 2 AND 2 TO 3 MINUTES FROM HOPE VALLEY, UNSOLD AND VACANT FOR TWO YEARS. OBVIOUSLY, WHAT IS MORE URGENTLY NEEDED RIGHT NOW THAN STILL MORE UNITS OF AFFORDABLE FAMILY HOUSING IS BUYERS FOR THE UNITS WE ALREADY HAVE.

THE REASON FOR THIS ANOMALY IS EVIDENT TO ANYONE FAMILIAR WITH OUR LOCAL REAL ESTATE MARKET. THE AFFORDABLE HOUSING ACT, WITH ITS MANDATES FOR CONSTRUCTION OF SUBSIDIZED, DEED RESTRICTED HOUSING, WAS ENACTED AT A TIME WHEN THE REAL ESTATE BOOM HAD DRIVEN UP THE PRICE OF HOUSING TO WHERE WORKERS OF LOW AND MODERATE INCOME COULD NOT AFFORD TO BUY OR RENT HOUSING. EVER SINCE 2007, THAT BOOM MARKET HAS GONE BUST, AND PRICES OF THE EXISTING HOUSING STOCK HAVE CRASHED TO WHERE LOW AND MODERATE INCOME PEOPLE CAN FIND PERFECTLY GOOD HOUSES TO BUY AT PRICES THEY CAN AFFORD, EVEN THOUGH THOSE HOUSES ARE NOT DEEMED AFFORDABLE UNDER THE ACT DUE TO THE LACK OF SUBSIDY AND DEED RESTRICTION. INDEED, SO CALLED MARKET RATE HOUSES ARE AVAILABLE AT PRICES THAT MAKE THEM MORE ATTRACTIVE THAN SO-CALLED AFFORDABLE HOUSES, BECAUSE THEY LACK THE DEED RESTRICTIONS THAT LIMIT MARKET APPRECIATION INVESTMENT POTENTIAL.

SECTION VI. EVALUATION OF THE CONCEPTUAL PLAN

THE MOST STRIKING THING ABOUT THE APPLICANT'S CONCEPTUAL PLAN IS THAT IT WOULD ADD 270 HOUSES TO THE TOWN'S EXISTING HOUSING STOCK, AN INCREASE OF ALMOST 10%, WHICH THE APPLICANT HAS SAID IT COULD ACCOMPLISH IN AS LITTLE AS THREE YEARS. THE TOWN POPULATION WOULD PRESUMABLY INCREASE BY A LIKE AMOUNT. A GROWTH IN THE TOWN'S HOUSING STOCK OF 10% IN SUCH A SHORT PERIOD OF TIME IS NOT THE KIND OF ORDERLY GROWTH SOUGHT IN THE TOWN'S COMPREHENSIVE PLAN.

THESE HOUSES WOULD SIT ON HALF ACRE LOTS, AT THREE TIMES THE OVERALL DENSITY ALLOWED BY THE TOWN'S ZONING REGULATIONS. IN EFFECT, THE APPLICANT SEEKS PERMISSION TO TAKE A DENSE SUBURBAN NEIGHBORHOOD FROM WARWICK OR CRANSTON AND DROP IT INTO A SMALL, RURAL TOWN'S MOST RURAL AREA, WITHOUT THE PUBLIC HEALTH INFRASTRUCTURE, LIKE WATER AND SEWER, THAT SUBURBAN COMMUNITIES ENJOY, AND WITH ONLY NARROW, WINDING COUNTRY ROADS TO CARRY ITS TRAFFIC. THE PROPOSAL IS SO DENSE AS TO BE WHOLLY INCONSISTENT WITH THE RURAL CHARACTER OF THE TOWN IN GENERAL AND IS IN STARK CONTRAST TO THE SURROUNDING PRESERVED FOREST AND FARMLAND.

MOREOVER, THE APPLICANT WOULD ADD INJURY TO INSULT BY PUTTING THIS SUBURBAN NEIGHBORHOOD RIGHT ON THE BOUNDARY OF ONE OF THE STATE'S PREMIER NATURAL AREAS, WITH ALL THE ENVIRONMENTAL THREATS THAT ENTAILS.

THIS PROJECT WOULD ALSO IMPOSE A HUGE FISCAL IMPACT ON THE TOWN. FISCAL IMPACT STUDIES BY THE APPLICANT'S OWN EXPERTS, ONE BY DIPRETE ENGINEERING, TWO BY JOSEPH LOMBARDO, SAY THE PROJECT WOULD GENERATE FROM 106 TO 171 ADDITIONAL SCHOOL CHILDREN AND FISCAL DEFICITS TO THE TOWN RANGING FROM \$393,500 TO \$1,793,920 PER YEAR. MR. LOMBARDO'S SECOND STUDY, WHICH RELATES TO THE REVISED, 270 UNIT PROPOSAL, PROJECTS THE DEFICIT AT \$651,000, WHICH TRANSLATES TO AN AVERAGE \$200+ TAX INCREASE FOR ALL OF THE TOWN'S REMAINING HOUSEHOLDS.

THE PROJECT AS PROPOSED IS, IN SHORT, INCOMPATIBLE WITH THE TOWN'S RURAL CHARACTER AND REAL NEEDS AND WOULD PERMANENTLY ALTER THE TOWN FOR THE WORSE. IT IS HARDLY SURPRISING, THEREFORE, THAT WHEN WE EXAMINE THE RECORD BEFORE US, IN LIGHT OF THE SEVEN FINDINGS SECTION 4(A)(4)(V)(A)-(G) OF THE ACT REQUIRES US TO MAKE IN ORDER TO APPROVE THE PROJECT, WE FIND THAT ONLY THREE OF THE REQUIRED FINDINGS ARE ADEQUATELY SUPPORTED BY COMPETENT EVIDENCE IN THE RECORD.

FIRST, THE APPLICANT PROPOSES THAT THE AFFORDABLE HOUSING UNITS, UNDER THE REVISED PROJECT, WOULD BE INTEGRATED THROUGHOUT THE DEVELOPMENT AND COMPATIBLE, CONSISTENT IN SCALE AND ARCHITECTURE WITH THE MARKET RATE UNITS, AND WOULD BE BUILT BEFORE OR AT THE SAME TIME AS ANY MARKET RATE UNITS, AS THE ACT REQUIRES. INDEED, AS PREVIOUSLY INDICATED, THAT WOULD BE ONE OF THE CONDITIONS WE WOULD IMPOSE UPON THE PROJECT, EVEN AT THE REDUCED DENSITY.

SECOND, AS REQUIRED BY THE ACT, THE PROJECT AS A WHOLE AND ALL INDIVIDUAL LOTS WOULD HAVE ADEQUATE AND PERMANENT ACCESS TO A PUBLIC STREET, NAMELY DYE HILL ROAD, VIA STREETS TO BE BUILT WITHIN THE PROJECT TO TOWN STANDARDS.

THIRD, SO FAR AS APPEARS, NONE OF THE PROPOSED BUILDING LOTS HAVE ANY PHYSICAL CONSTRAINTS THAT WOULD MAKE IT IMPRACTICABLE TO BUILD HOUSES ON THEM ACCORDING TO PERTINENT REGULATIONS AND BUILDING CODES, ALSO REQUIRED BY THE ACT.

THOSE REQUIRED STATUTORY FINDINGS ARE SUPPORTED BY COMPETENT EVIDENCE IN THE RECORD.

ON THE OTHER HAND, THE RECORD DOES NOT PERMIT US TO MAKE THE REMAINING FOUR FINDINGS THAT ARE REQUIRED BY THE ACT FOR APPROVAL OF THE PROJECT AS PRESENTED:

- (1) THAT THE PROPOSED DEVELOPMENT IS NOT CONSISTENT WITH LOCAL NEEDS AS IDENTIFIED IN THE LOCAL COMPREHENSIVE COMMUNITY PLAN WITH PARTICULAR EMPHASIS ON THE COMMUNITY'S AFFORDABLE HOUSING PLAN.

THE PROPOSAL AT ITS SUGGESTED DENSITY FAILS IN NEARLY EVERY MANNER TO MEET THE GOALS INHERENT IN THIS TOWN'S COMPREHENSIVE PLAN. SOME OF THE MANY GOALS THIS PROJECT FAILS TO MEET INCLUDE PRESERVATION OF THE TOWN'S GROUND AND SURFACE WATERS, PRESERVATION OF ITS NATURAL RESOURCES AND PROMOTION OF ITS TRADITIONAL RURAL CHARACTER. AS GZA REPORTS AND TESTIMONY BEFORE THE BOARD ESTABLISH, THE PROJECT AT ITS PROPOSED DENSITY CANNOT RELIABLY DELIVER ENOUGH SAFE DRINKING WATER, CANNOT RELIABLY AND PROPERLY TREAT WASTE WATER AND OTHERWISE PRESENTS A SIGNIFICANT ENVIRONMENTAL RISK TO THE TOWN'S GROUNDWATER AND SURFACE WATER, MOST NOTABLY, BRUSHY BROOK. ANOTHER GOAL OF THE COMPREHENSIVE PLAN IS TO PROMOTE ORDERLY GROWTH. INCREASING THE TOWN'S HOUSING STOCK BY 10% IN A VERY SHORT PERIOD OF TIME IS NOT ORDERLY GROWTH.

AS THE RECORD BEFORE US SHOWS, THE HOPKINTON TOWN COUNCIL HAS APPROVED AN AFFORDABLE HOUSING PLAN, WHICH RECEIVED STATE APPROVAL ON SEPTEMBER 30, 2005. THAT PLAN DESIGNATES AS THE DESIRED RECEPTOR AREAS FOR AFFORDABLE HOUSING THE VILLAGES OF ASHAWAY AND HOPE VALLEY, THE TOWN'S BUSINESS AND CULTURAL CENTERS, AND THE AREAS AT EXITS 1 & 2, WHICH ARE IN CLOSE PROXIMITY TO THOSE VILLAGES.

THIS IS CONSISTENT WITH THE RHODE ISLAND FIVE YEAR STRATEGIC HOUSING PLAN: 2006 TO 2010, STATE GUIDE PLAN ELEMENT 423, WHICH RECOMMENDS THAT AFFORDABLE HOUSING BE NEAR COMMUNITY ASSETS, SUCH AS BUSINESSES, SCHOOLS, MEDICAL AND SUPPORT SERVICES, CHURCHES AND RECREATION. MOREOVER, THE STATE'S LAND USE 2025 PLAN AND FUTURE LAND USE MAP, WHICH ARE THIS STATE'S LAND USE PLAN, INCLUDES SUSTAINING THE URBAN AND RURAL DISTINCTION IN THE STATE. THESE DOCUMENTS GENERALLY DESIGNATE AREAS SUCH AS THE ONE IN QUESTION FOR LOWER INTENSITY USES SINCE THEY ARE REMOVED FROM URBAN SERVICES. THESE SAME DOCUMENTS SPECIFICALLY DESIGNATE THE LAND IN QUESTION AS CONSERVATION/LIMITED DEVELOPMENT OR RESERVE, NEITHER OF WHICH DESIGNATION IS REMOTELY CONSISTENT WITH THE PROPOSED PROJECT.

THE PROPOSED PROJECT DOES NOT EVEN PRETEND TO BE CONSISTENT WITH OUR APPROVED AFFORDABLE HOUSING PLAN, WHICH THE APPLICANT DERIDES. FAR FROM PUTTING AFFORDABLE HOUSING NEAR COMMUNITY ASSETS, THIS PROJECT WOULD LOCATE THEM IN A REMOTE AREA AS FAR FROM SUCH ASSETS AS IT IS POSSIBLE TO GET AND STILL BE WITHIN THE TOWN.

BY CONTRAST, CANONCHET WOODS, ONE OF THE TWO AFFORDABLE HOUSING PROJECTS WE HAVE MOST RECENTLY APPROVED, IS RIGHT OFF MAIN STREET, ON THE SOUTH EDGE OF HOPE VALLEY, CLOSE TO EXIT 2, AND EVEN WITHIN WALKING DISTANCE OF MEDICAL SERVICES AT WOOD RIVER HEALTH CENTER. THE OTHER, ROCKVILLE MILL, IS RIGHT OFF SPRING STREET, OUR OTHER MAIN DRAG, ON THE NORTHERN EDGE OF HOPE VALLEY.

- (2) THE PROPOSED DEVELOPMENT IS NOT IN COMPLIANCE WITH THE STANDARDS AND PROVISIONS OF THE MUNICIPALITY'S ZONING ORDINANCE AND SUBDIVISION REGULATIONS, AND WHERE IT VARIES, THE LOCAL CONCERNS THOSE VARIANCES CAUSE; OUTWEIGH THE TOWN'S NEED FOR AFFORDABLE HOUSING.

THE PROPOSED DEVELOPMENT INDISPUTABLY DOES NOT COMPLY WITH THE STANDARDS OF THE HOPKINTON ZONING ORDINANCE AND SUBDIVISION REGULATIONS. THAT IS OBVIOUS FROM THE MERE FACT THAT THE APPLICANT SEEKS MASSIVE RELIEF FROM THOSE STANDARDS AS PART OF THE REQUESTED MUNICIPAL SUBSIDY FOR THE AFFORDABLE HOUSING. THIS PROPOSAL REPRESENTS A MASSIVE DEPARTURE FROM THE TOWN'S ZONING ORDINANCES AND SUBDIVISION REGULATIONS, PARTICULARLY AS TO ITS PROPOSED DENSITY. THE EXTREME DENSITY OF THIS PROJECT IS PRIMARILY THE CAUSE OF THE LOCAL CONCERNS RAISED IN THIS DECISION, INCLUDING THE INABILITY TO DELIVER RELIABLE, ADEQUATE, AND SAFE DRINKING WATER, INABILITY TO RELIABLY AND PROPERLY TREAT WASTE WATER AND THE SIGNIFICANT ENVIRONMENTAL IMPACTS THESE ISSUES VISIT ON THE LOCAL ENVIRONMENT. THEY ARE CLEARLY THE VERY HEALTH AND SAFETY RISKS THAT THIS BOARD IS CHARGED WITH PREVENTING.

THIS APPLICANT WOULD BUILD HOUSES AT A DENSITY THREE TIMES WHAT OUR RFR-80 ZONING REGULATIONS PERMIT, AND ON LOTS ONLY A QUARTER THE SIZE THOSE REGULATIONS REQUIRE.

THE PROJECT ALSO DOES NOT MEET THE REQUIREMENTS OF OUR SUBDIVISION CLUSTER REGULATIONS, WHICH DO PERMIT DENSITY BONUSES AND REDUCED LOT SIZES, IN EXCHANGE FOR DESIGNATED OPEN SPACE. THE PERMITTED DENSITY BONUSES ARE NOT AS GREAT AS THOSE THE APPLICANT SEEKS. ALSO, UNDER THAT REGULATION, LOT SIZES AS SMALL AS THE APPLICANT PROPOSES ARE AVAILABLE ONLY WITH PUBLIC WATER AND COMMUNAL SEPTIC, WHICH THE APPLICANT DOES NOT PROPOSE AND WHICH WE WOULD REQUIRE AS A CONDITION EVEN FOR A LESS DENSE CONFIGURATION.

AGAINST THESE SIGNIFICANT LOCAL CONCERNS, THIS BOARD MUST WEIGH THE TOWN'S NEED FOR AFFORDABLE HOUSING. IN DOING SO, THIS BOARD CANNOT IGNORE THE REAL LIKELIHOOD THAT IF IT WERE TO APPROVE THIS PROPOSAL AT THE DENSITY SOUGHT, THIS BOARD WOULD BE PLACING AT RISK THE HEALTH, SAFETY AND WELFARE OF NOT ONLY THE FUTURE RESIDENTS WHO WOULD OCCUPY THE NEW DEVELOPMENT, BUT ALSO THE SURROUNDING NEIGHBORS. MOREOVER, THIS BOARD WOULD NEED TO IGNORE THE FACT THAT THIS PROPOSAL IS THE ANTITHESIS OF WHAT THE ANTICIPATED USE OF THE LAND IN QUESTION IS DESIGNATED FOR BOTH BY THIS TOWN AND THE STATE OF RHODE ISLAND, AND WILL LIKELY REPRESENT A REAL INTERFERENCE WITH THE USES ALREADY IN PLACE IN THE NEIGHBORING LANDS.

AGAINST THESE VERY REAL CONCERNS, THIS BOARD RECOGNIZES THAT WHILE THE TOWN HAS NOT REACHED ITS 10% REQUIREMENT FOR AFFORDABLE HOUSING, IT HAS COME VERY FAR IN A SHORT PERIOD OF TIME AND IS LESS THAN 2% AWAY FROM ACHIEVING ITS GOAL. THIS BOARD ALSO CANNOT TURN A BLIND EYE TO THE REALITIES OF THE REAL ESTATE MARKET, AND MORE PARTICULARLY, THAT THERE ARE AFFORDABLE HOUSING UNITS ALREADY BUILT IN THIS TOWN THAT HAVE NOT SOLD FOR A SIGNIFICANT PERIOD OF TIME AND REMAIN VACANT. IT SHOULD ALSO BE RECOGNIZED THAT AS MR. RICCI, THE SCHOOL SUPERINTENDENT, POINTS OUT IN HIS LETTER OF OCTOBER 5, 2009, ADDING 171 STUDENTS TO THE CHARIHO SCHOOL SYSTEM WILL REQUIRE EXPANDING THE SCHOOL ITSELF AS WELL AS

HIRING ADDITIONAL STAFF, ALL AT CONSIDERABLE EXPENSE TO THE TAXPAYERS OF THIS TOWN. THIS IS IN ADDITION TO THE \$651,000 EACH YEAR THE TAXPAYERS WOULD HAVE TO RAISE IN ADDITIONAL FUNDS JUST TO PAY FOR THESE NEW CHILDREN'S EDUCATION. THE REAL ECONOMIC COST TO THE TAXPAYER TO OBTAIN ADDITIONAL AFFORDABLE HOUSING IS LIKELY MORE THAN THE TAXPAYERS CAN BEAR, PARTICULARLY IN THIS TOUGH ECONOMIC TIME. IN BALANCING THE CONCERNS RAISED BY THIS PROPOSAL'S DEPARTURE FROM THE ZONING ORDINANCES AND SUBDIVISION REGULATIONS AGAINST THE TOWN'S NEED FOR AFFORDABLE HOUSING, THE SCALE TIPS DECIDEDLY AGAINST APPROVING THIS PROJECT AT THE PROPOSED DENSITY.

(4) THERE WOULD BE SIGNIFICANT NEGATIVE ENVIRONMENTAL IMPACTS FROM THE PROPOSED DEVELOPMENT.

AS NOTED ABOVE, THE PROJECT AS PRESENTED WOULD SITE ABOUT 75 HALF ACRE HOUSE LOTS RIGHT ON THE BOUNDARY OF THE ARCADIA MANAGEMENT AREA. AS OUR CONSERVATION COMMISSION CHAIRMAN, HARVEY BUFORD, AND DEM'S CATHERINE SPARKS HAVE NOTED, THIS WOULD INEVITABLY LEAD TO INVASION OF THE MANAGEMENT AREA BY THE MANY CATS AND DOGS THAT WOULD COME ESPECIALLY FROM THESE ABUTTING HOUSES, BUT ALSO FROM MANY OTHERS IN THE PROJECT. THIS WOULD CERTAINLY POSE A SERIOUS DANGER TO BIRDS AND SMALL MAMMALS AND EVEN TO LARGER MAMMALS, SUCH AS DEER.

ANOTHER SERIOUS THREAT WOULD COME FROM INVASION OF THE MANAGEMENT AREA BY CHILDREN, OR EVEN ADULTS, ON DIRT BIKES AND ATVs, RESULTING IN SERIOUS ENVIRONMENTAL DAMAGE. GIVEN THE REMOTENESS OF THE AREA, IT WOULD BE VIRTUALLY IMPOSSIBLE TO POLICE THIS PROBLEM ADEQUATELY, GIVEN THE LIMITED RESOURCES AVAILABLE TO THE TOWN AND THE STATE.

THE APPLICANT DOES NOT DISPUTE THAT THIS ENVIRONMENTAL DAMAGE WOULD OCCUR, BUT JUST DISMISSES IT; IN EFFECT SAYING THAT AFFORDABLE HOUSING WOULD BE WORTH IT. WE DISAGREE.

ANOTHER NEGATIVE ENVIRONMENTAL IMPACT THAT WOULD INEVITABLY FLOW FROM THIS PROJECT, AS PRESENTED, WOULD BE THE LOSS OF HUNTING GROUNDS IN THE MANAGEMENT AREA. AS BUFORD AND SPARKS POINT OUT, STATE LAW PROHIBITS FIREARM HUNTING WITHIN 500 FEET, AND BOW HUNTING WITHIN 200 FEET, OF A DWELLING. BUFORD CALCULATES, QUITE CONSERVATIVELY, THAT THE DWELLINGS THE APPLICANT WOULD PUT ON THE BOUNDARY OF THE MANAGEMENT AREA WOULD CAUSE THE LOSS OF MORE THAN 50 ACRES OF PRIME HUNTING GROUNDS. AGAIN, THE APPLICANT DOES NOT DISPUTE THIS IMPACT, BUT JUST CONTEMPTUOUSLY DISMISSES IT AS REPRESENTING A MISGUIDED SENSE OF PRIORITIES, AN ATTITUDE THAT ONLY UNDERSCORES HOW INCOMPATIBLE WITH A RURAL COMMUNITY THIS BASICALLY URBAN PROJECT WOULD BE.

ANOTHER CONCERN, AS DETAILED IN THE GZA REPORTS AND TESTIMONY, IS THE POTENTIAL NITROGEN LOADING LEVEL THE PROJECT, WITH THE DENSITY AND LAYOUT PROPOSED, COULD PRESENT, WITH RESULTING POLLUTION OF DRINKING WATER AND DEGRADATION OF WATER QUALITY IN BRUSHY BROOK AND OTHER WETLANDS, BOTH ON SITE AND DOWNSTREAM. THE APPLICANT DISPUTES THIS AND ARGUES THAT THE GZA CONCERNS ARE BASED ON A "WORST CASE SCENARIO" THAT MAKES USE OF UNREALISTICALLY HIGH ASSUMPTIONS ABOUT SUCH THINGS AS THE NUMBER OF PEOPLE WHO WOULD ACTUALLY OCCUPY THE HOUSES IN THE PROJECT. THE APPLICANT ALSO TAKES ISSUE WITH THE ASSUMPTIONS THAT GZA USED IN PERFORMING MANY OF ITS CALCULATIONS. HOWEVER, LORRAINE JOUBERT, OF THE

UNIVERSITY OF RHODE ISLAND, SUPPORTS THE METHODOLOGY GZA USED IN CALCULATING NITROGEN LOADING AND MASS BALANCE. SHE ALSO ECHOED MANY OF GZA CONCERNS IN HER AUGUST 15, 2010 EMAIL TO THE PLANNER. WHILE IT MAY BE THAT THE HARMS GZA AND JOUBERT WARN AGAINST, ARE LESS LIKELY TO OCCUR THAN ARE THE VIRTUALLY CERTAIN NEGATIVE IMPACTS DISCUSSED ABOVE, THEY ARE NEVERTHELESS WITHIN THE REALM OF FORESEEABILITY, AND SO CANNOT BE DISMISSED OUT OF HAND.

FOR US TO ACCEPT THE ENVIRONMENTAL HARMS THIS PROJECT AS PROPOSED WOULD ENTAIL, AS WELL AS OTHER HARMS THAT ARE LESS LIKELY, BUT STILL FORESEEABLE, JUST BECAUSE THE TOWN WOULD THEREBY GAIN AFFORDABLE HOUSING, WOULD BE IRRESPONSIBLE.

THAT IS ESPECIALLY SO, WHEN SIMPLY BY REDUCING THE PROJECT DENSITY TO A REASONABLE LEVEL, AND BY RECONFIGURING IT TO PROVIDE A SUBSTANTIAL BUFFER FOR THE MANAGEMENT AREA, WE CAN SUBSTANTIALLY MITIGATE OR EVEN ELIMINATE THESE ENVIRONMENTAL IMPACTS, WHILE STILL MAKING A SIGNIFICANT STEP TOWARD MEETING OUR AFFORDABLE HOUSING GOALS.

(5) THERE WOULD BE SIGNIFICANT NEGATIVE IMPACTS ON THE HEALTH AND SAFETY OF CURRENT OR FUTURE RESIDENTS OF THE COMMUNITY, IN AREAS INCLUDING, BUT NOT LIMITED TO, SAFE CIRCULATION OF PEDESTRIAN AND VEHICULAR TRAFFIC, PROVISION OF EMERGENCY SERVICES, SEWERAGE DISPOSAL, AND AVAILABILITY OF POTABLE WATER.

THE PROJECT AS PROPOSED WOULD PRESENT AN UNACCEPTABLE RISK OF CASCADING PROBLEMS WITH POTABLE WATER AND SEWAGE DISPOSAL THAT COULD CAUSE SERIOUS HARM TO PROJECT RESIDENTS AND THE TOWN.

THE APPLICANT PROPOSES TO PUT INDIVIDUAL WELLS AND SEPTIC ON HALF ACRE LOTS THAT WOULD TYPICALLY BE ABOUT 100 FEET WIDE AND 225 FEET DEEP. IN THE FACE OF REGULATIONS THAT REQUIRE A MINIMUM SEPARATION OF 100 FEET BETWEEN WELL AND SEPTIC. AND THIS SEPARATION REQUIREMENT APPLIES NOT ONLY TO INDIVIDUAL LOTS, BUT AS BETWEEN NEIGHBORING LOTS, ALSO. THESE SAME REGS REQUIRE WELLS TO HAVE A MINIMUM 50 FOOT SETBACK FROM THE PAVED STREETS. WITH LOTS AS SMALL AS THOSE PROPOSED, THERE IS VERY LITTLE ROOM FOR ERROR OR CORRECTION, SHOULD PROBLEMS WITH WELLS OCCUR.

IT IS NOT ENOUGH TO SAY THAT EACH LOT WILL NEED DEM APPROVAL FOR ITS WELL AND SEPTIC, AS INDEED THEY WOULD. JUST BECAUSE A LOT MEETS THE STANDARD FOR WELL AND SEPTIC LICENSES IS NO ASSURANCE AT ALL THAT WELLS THAT MEET PRODUCTIVITY REQUIREMENTS WHEN INITIALLY TESTED WILL CONTINUE TO DO SO AS NEIGHBORING PROPERTIES ARE OCCUPIED DURING THE PROJECT BUILD-OUT. THE APPLICANT'S OWN EXPERT, MR. DALEY, CANDIDLY ACKNOWLEDGED THAT NOT EVERY HOMEOWNER'S WELL WOULD BE EQUALLY PRODUCTIVE AND THAT SOME MIGHT GET ALL THE WATER THEY COULD POSSIBLY WANT.

IF A HOMEOWNER RUNS INTO WELL PROBLEMS, ESPECIALLY AFTER NEIGHBORING LOTS ARE BUILT AND OCCUPIED, ON LOTS THIS SMALL, WHAT ASSURANCE IS THERE THAT THERE WILL BE ANOTHER PLACE TO DRILL THAT WILL MEET SEPARATION REQUIREMENTS FROM ALL THE NEARBY SEPTIC FIELDS AND FROM THE STREET AND BE PRODUCTIVE OF ENOUGH WATER?

THESE THREE BEDROOM HOUSES ARE CLEARLY AIMED AT THE LOW END OF THE HOUSING MARKET, WITH LIKELY BUYERS WHO'S FAMILY BUDGETS WOULD NOT EASILY ACCOMMODATE

THE FINANCIAL DRAIN A PROBLEM WELL COULD CAUSE. SUCH PROBLEMS WOULD MOST LIKELY ARISE AFTER THE DEVELOPER IS LONG GONE, LEAVING THE HAPLESS HOMEOWNER HOLDING THE BAG AND THE TOWN, WITH AT THE VERY LEAST, A SERIOUS POLITICAL PROBLEM ON ITS HANDS.

ALSO, AS NOTED ABOVE, GZA HAS NOTED THAT THE CURRENT CONFIGURATION POSES A SIGNIFICANT THREAT OF DRINKING WATER DEGRADATION BY NITROGEN LOADING FLOWING FROM THE OWNER'S OWN SEPTIC OR THOSE UPGRADE. THE APPLICANT, OF COURSE, DISMISSES THIS CONCERN AS OVERBLOWN AND BASED ON UNREALISTICALLY HIGH ASSUMPTIONS ABOUT OCCUPANCY, AND SO FORTH. WHILE THE APPLICANT'S EXPERTS OFFERED COMPETING TESTIMONY, WE CANNOT IGNORE THAT MS. JOUBERT SUPPORTED GZA'S METHODOLOGY. WE ALSO CANNOT LIGHTLY DISMISS GZA'S CONCERNS, ESPECIALLY IN LIGHT OF OUR MANY OTHER CONCERNS, ALL OF WHICH CAN BE MITIGATED BY REDUCING THE DENSITY AND CHANGING THE CONFIGURATION OF THE PROJECT.

WE CANNOT AFFORD TO IGNORE OUR OWN TOWN HISTORY, WHICH INCLUDES THE FAILED HOPE VALLEY EXPERIMENT OF DEVELOPING ON 20,000 SQUARE FOOT LOTS. DUE TO THE LACK OF INFRASTRUCTURE IN HOPE VALLEY, WELLS WERE POLLUTED AND SEPTIC SYSTEMS FAILED, WHICH NECESSITATED BRINGING THE PUBLIC WATER LINE IN FROM RICHMOND. ALSO, THE TOWN HAD TO UP-ZONE R-1 LOTS WHICH WERE FORMERLY 20,000 SQUARE FOOT MINIMUM TO THE NOW 60,000 SQUARE FOOT SIZE. THIS SUGGESTS THAT WE MUST BE CAUTIOUSLY SKEPTICAL OF THE APPLICANT'S PROPOSAL TO BUILD A DENSE DEVELOPMENT ON HALF ACRE LOTS, WITHOUT PUBLIC INFRASTRUCTURE. WHY REPEAT A FAILED EXPERIMENT?

EVEN THE TRAFFIC IMPACT ANALYSIS PRESENTED BY THE APPLICANT'S EXPERT, RAB PROFESSIONAL ENGINEERS, THOUGHT CONCLUDED THAT THE PROJECT WOULD HAVE MINIMAL IMPACT ON OVERALL TRAFFIC ON DYE HILL ROAD, SAW MILL ROAD, AND SPRING STREET, NEVERTHELESS RECOMMENDED SEVERAL OFF-SITE IMPROVEMENTS. THESE INCLUDED WIDENING THE TWO NARROWED SECTIONS OF SAW MILL ROAD BY REPLACING THE STREAM CROSSINGS; WIDENING THE VARYING ROADWAY SECTIONS OF DYE HILL ROAD AND SAW MILL ROAD TO MINIMUM PAVEMENT WIDTH OF 22 FEET. REPAIR OF SUBSTANTIALLY DETERIORATED PAVEMENT CONDITIONS ALONG SECTIONS OF DYE HILL ROAD IN THE IMMEDIATE SITE VICINITY BETWEEN SAW MILL ROAD AND WOODY HILL ROAD TO INSURE SAFE AND COMFORTABLE RIDING CONDITIONS ARE PROVIDED TO THE SUBDIVISION; AND THAT DYE HILL AND SAW MILL ROADS BE REVIEWED FOR SIGNING AND STRIPING WITH THE TOWN TO INSTALL PROPER WARNING SIGNS AND PAVEMENT MARKINGS TO ENHANCE SAFETY OF MOTORIST TRAVELLING ALONG THE RURAL RESIDENTIAL ROADWAYS. WE AGREE THAT THESE MINIMAL IMPROVEMENTS ARE NEEDED, AS ARE STILL OTHERS.

THE PRIOR PUD, WHICH IS PART OF THE RECORD, REQUIRED CERTAIN OFF SITE ROAD IMPROVEMENTS, BASED ON THE TRAFFIC THAT WOULD BE GENERATED BY A PROJECT WHOSE DENSITY IS LOWER THAN THE APPLICANT PROPOSES, THOUGH CONSISTENT WITH THE DENSITY THAT WE HAVE APPROVED ABOVE.

IN ADDITION, OUR PUBLIC WORKS DIRECTOR, MR. REESE, IN HIS REPORT NOTES SOME ADDITIONAL REPAIRS THAT WOULD NEED TO BE MADE, IN LIGHT OF ROAD DETERIORATION THAT HAS OCCURRED SINCE THE PUD WAS APPROVED YEARS AGO. THESE ADDITIONAL REPAIRS SHOULD ALSO BE MADE, AS A CONDITION FOR APPROVAL OF THIS PROJECT, TO ASSURE REASONABLE LEVELS OF TRAFFIC SAFETY.

THE RECORD BEFORE US, WHICH FAILS TO SUPPORT SEVERAL FINDINGS REQUIRED FOR US TO APPROVE THE PROJECT DOES SUPPORT SEVERAL OF THE STATUTORY GROUNDS FOR DENYING THE APPLICATION:

- (1) THE PROPOSAL IS INCONSISTENT WITH THE TOWN'S STATE APPROVED AFFORDABLE HOUSING PLAN:

AS NOTED IN DETAIL ABOVE, THE TOWN NOT ONLY HAS AN APPROVED AFFORDABLE HOUSING PLAN IN PLACE, BUT HAS AGGRESSIVELY PURSUED THAT PLAN AND ACHIEVED SUBSTANTIAL AND AWARD WINNING SUCCESS AND PROGRESS. THUS, THE TOWN IS MEETING ITS LOCAL HOUSING NEEDS. THE APPLICANT'S PROPOSAL IS INCONSISTENT WITH THE TOWN'S APPROVED AFFORDABLE HOUSING PLAN, FOR THE REASONS SET FORTH IN DETAIL ABOVE, WHICH WOULD JUSTIFY AN OUTRIGHT DENIAL OF MASTER PLAN APPROVAL.

- (2) THE PROPOSAL IS NOT CONSISTENT WITH LOCAL NEEDS, INCLUDING ZONING ORDINANCES THAT CONFORM TO THE TOWN'S COMPREHENSIVE PLAN:

AS STATED IN DETAIL ABOVE, INDISPUTABLY THE PROPOSAL DOES NOT CONFORM TO THE TOWN'S ZONING AND SUBDIVISION REGULATIONS. MOREOVER, IN LIGHT OF THE TOWN'S APPROVED AFFORDABLE HOUSING PLAN AND ITS AWARD WINNING PROGRESS TOWARD MEETING THE GOALS OF THAT PLAN, DEMONSTRATED WILLINGNESS TO GRANT REASONABLE RELIEF FROM REGULATIONS TO ACHIEVE AFFORDABLE HOUSING GOALS, AND THE LACK OF ANY HISTORY OF UNREASONABLE APPLICATION OF REGULATIONS TO AFFORDABLE HOUSING PROJECTS, THOSE REGULATION ARE CONSISTENT WITH OUR LOCAL NEEDS.

- (3) THE PROPOSAL IS NOT IN CONFORMANCE WITH THE TOWN'S COMPREHENSIVE PLAN FOR THE REASONS ALREADY SET FORTH IN DETAIL.

- (4) THE TOWN HAS PLANS TO MEET ITS GOAL OF 10% AFFORDABLE HOUSING AND IS AGGRESSIVELY PURSUING THAT PLAN AS AGAIN NOTED IN DETAIL ABOVE.

- (5) THE PROJECT DOES NOT ADEQUATELY ADDRESS CONCERNS FOR THE ENVIRONMENT AND FOR THE HEALTH AND SAFETY OF RESIDENTS, ALSO AS NOTED IN DETAIL ABOVE.

FOR ALL THE FOREGOING REASONS, THE BOARD WOULD BE MORE THAN JUSTIFIED IN DENYING THIS APPLICATION OUTRIGHT. NEVERTHELESS, THE BOARD RECOGNIZES THAT, LIKE ANY PROPERTY OWNER, THIS APPLICANT DOES HAVE A RIGHT TO DEVELOP ITS PROPERTY IN A MANNER CONSISTENT WITH OUR LAWS AND REGULATIONS.

MOREOVER, IT HAS BEEN OUR CONSISTENT POLICY TO PURSUE OUR AFFORDABLE HOUSING PLAN DILIGENTLY AND TO WORK WITH DEVELOPERS TO GET SENSIBLE ADDITIONS TO OUR STOCK OF AFFORDABLE HOUSING IN WAYS THAT RESPECT THE RURAL CHARACTER AND TRADITIONS OF THE TOWN AND THAT PROTECT THE TOWN FROM UNNECESSARY ENVIRONMENTAL HARM AND OUR CITIZENS FROM NEEDLESS THREATS TO THEIR HEALTH AND SAFETY.

IN KEEPING WITH THAT POLICY, INSTEAD OF DENYING THE APPLICATION, WE GRANT IT WITH THE LIMITATIONS AND CONDITIONS SET FORTH EARLIER IN THIS MOTION.

MR. ESCHER SECONDED THE MOTION.

Ms. Douthitt asked the motion could include a Homeowners' Association for maintenance of private roads within the project, as this project would already put stress on the Town's existing roads.

Mr. DiOrio said that is something that could be entertained if a subsequent design comes before the Board.

Mr. Lamphere said it is a comprehensive permit. If the Board was so inclined to approve a development of this size, perhaps the Board could mandate private roads.

Mr. DiOrio said that is something that could be considered if it comes before us again.

MESSRS. ESCHER, DIORIO, WALKER AND MS. DOUTHITT APPROVE. MR. COX DOES NOT APPROVE.

MOTION PASSES.