

**TOWN OF KITTERY  
PLANNING BOARD MEETING**

Thursday, April 28, 2005

APPROVED  
Council Chambers

Meeting called to order at: 6:14 p.m.

Present: Ron Ledgett, Doug Muir, Chairman Russell White, Megan Kline, Scott Mangiafico, Janet Gagner, Jerry Solich

Present from the Town Council: Councilor Frank Dennett, Rich Balano, Glenn Schwaery, George Heilshorn, Ann Grinnell, Leo Guy

Also Present: Planner Jim Noel, Mark Eyerman, Earldean Wells, Town Manager Jon Carter

**1. ROLL CALL**

Roll call noted.

**2. APPROVAL OF PREVIOUS MEETING MINUTES**

Deferred to next meeting.

**3. DISCUSSION 6:15 to 8:30 p.m.**

See Action Items 4-28-05.

Break 8:30 pm - 8:44 pm

**4. PUBLIC COMMENT ON NON-AGENDA MATTERS**

Earldean Wells wants to know whether the Quarterdeck will be submitting plans.

Planner Noel says they have.

Ms. Wells has not received a copy of whatever the Briers presented last time.

Planner Noel thought it was put in her box.

Ms. Wells never got it. Kittery Commons came and made a presentation to them and they have invited them to do a site review.

Chairman White says that is OK to do.

Bob Guay, Chairman of the Kittery Community Center Building Committee, talks about the recent Council meeting. Mr. Solich rightfully said at that meeting that it should have been a joint public hearing. He is discouraged. They are trying to move ahead so that the Planning Board can eventually look at plans. He feels that this is breeding an us against them mentality and he is

trying to discourage that. Everyone in Kittery should call it their community center. Hopefully everyone will use it. He is surprised at the number of times we have allowed a project to come before us when the time is precious. He is surprised in particular re: the Meeting House Village project when it appears that it does not meet some of the ordinances. This is the last time the Board will see him until Planner Noel puts the community center project on the agenda.

**5. PUBLIC HEARING: (CONTINUATION) ATTAR ENGINEERING, INC. FOR VERNON CONTINUING CARE HOMES, INC./ MEETINGHOUSE VILLAGE. PHASE II MAJOR/CLUSTER SUBDIVISION FOR ELDERLY HOUSING. MAP 8 LOT 41. ZONED URBAN RESIDENCE.**

Chairman White introduces it.

Ken Wood from Attar Engineering in Eliot begins the presentation. With him are Paul Andrews of Meeting House Village, Bill Eaton - traffic engineer, Durward Parkinson - attorney, and Ben Waldon who did the engineering plans. He would like to bring us up to date on the modifications to the plan. He will have Mr. Eaton discuss traffic and his traffic counts. He would like the Board to discuss it and respectfully consider approving the plan. In deference to the introduction from Mr. Guay, Mr. Wood thinks that it meets the requirements, otherwise he doesn't think they would have been in front of us all this time and there would not have been prior approvals for the same applicant. The biggest modification is the reduction of 60 units over the entire plan. Although they are considering and they are looking for approval for the two, we are looking at one. Before us proposed in total would be 4 phases of 148 units. They took out the 6-plex and schoolhouse and reduced Village Manor by 52 units. They reduced parking. Phase 2, other than the reduction of some parking spaces, remains the same for our consideration and approval. He and Mr. Noel discussed this and decided to leave Phase 2 essentially the same. There is one modification to that. On our plan, although he doesn't think they need it, they have included an emergency gated access to Page St. They just recently changed this plan from that which the Board members have in front of them. Rick Rossiter wanted some land deeded to the Town for a turn around at the end of Page Street. Vernon Continuing Care Homes deeding over a small piece of property at the end of Page Street to the Town of Kittery, a hammerhead turnaround primarily for snow plow trucks. Mr. Rossiter and Mr. O'Brien support emergency access. Their requirements were that it be gravel and maintained year round. It would be similar to Shepard's Cove. It also provides secondary and emergency access to Page Street. Those are the changes. He has provided the Board with open space calculations. He would be glad to revisit those. After phase 2 was constructed, approx 92.1 percent would remain in open space and about 77 percent would be usable open space. He thinks the 70.88 percent in note 11 is conservative. He took the usable open space and divided it by total acreage of the parcel, rather than the total open space. If you want to discuss density, after phase 2, there will be 92 percent open space. The Ordinance requires 50 percent. The density in units is less than 6 units per acre. Taking out the units they have, you end up with 5.9 units per acre. There have been a number of comments from the abutters. He thinks they have provided responses to their statements. The finished floor of the first floor of one building is 15' higher than ground level, but there is a finished basement, so there are 3 feet of fill. The abutters say there are 3 vernal

pools. That is not quite true. They now say there could be 3. The point is not to argue each of their concerns. There is some truth based on fact and some concern based on emotion. He wants a chance to discuss the concerns when the Board feels the comments need to be addressed. He would be glad to answer any questions the Board may have at this time. If there are no questions, the traffic engineer, Mr. Eaton, will make his presentation. Traffic has been such a big element of this subdivision, Mr. Eaton is more qualified to answer those questions than he is. The Ordinance is not based on someone going out and counting traffic. They are supposed to calculate it with the ITE manual, which Mr. Eaton has done.

Chairman White tells him to proceed.

Bill Eaton of Brunswick, ME rises to speak. Traffic generation from something such as this will be minimal. When he initially prepared this, he focused on peak hour traffic, and said everything that is not a duplex will be considered a senior adult attached development. The duplexes he considered senior adult detached. Those units would be close to that. There is a big difference in the trip generation during peak hour. For attached, it is 1.1, but detached is 2.6. That would give him a conservative figure to work with. Since then, the development has been scaled back. Based on previous experience, he is looking at Meeting House and Village Inn as congregate care facilities, with some independent living, communal activities, etc. He is treating the 26 Village Inn units and 8 at Meeting House as congregate care. The rest are single attached units. Phase 1 and 2 will be 193 trips daily. A trip is a one-way trip. If you go to the store and return, that is 2 trips. So, there will essentially be 97 in and 96 out per day. The peak hour will be approximately 8 trips. With these numbers, he went back and calculated the A&P. Although he did not participate in it, there was also a traffic watch over the two hour period of 6:15-8:15 am, in which the person watched and saw 11 vehicles. With his estimation procedure, he arrived at 5 per hour, which is similar.

Chairman White says the Board members might have questions, so we could go to this.

Mr. Muir says that with the 193 trips per day, the applicant is apparently using the figures for congregate care facility for the bulk of the units because if the applicant used the number for attached, it is well over 200.

Eaton applied it to Meetinghouse and Village Inn only.

Mr. Muir asks how many dwelling units there will be in South Campus when phase 2 is completed.

Mr. Eaton says 68. The figure for that is 3.4 trips per day. He feels that congregate care are 30.

Mr. Muir thinks that congregate care facilities typically offer dining.

Mr. Eaton says that is not always.

Mr. Muir says that they are talking about a facility where people do not need to leave. This does not describe the applicant's development.

Mr. Eaton would like to explain.

Ms. Kline wants to know if they have cooking facilities in the units.

Mr. Eaton says they provide cooking facilities. It is typically populated by those that do not have autos and have services provided to them. They can have it linked with care, where the person could eventually go to a nursing home. The regular apartments have cars parked all over the place. You don't see that here. If there are over 200 trips per day, then you need 2 access points and the applicant has that. The issue in traffic is not daily traffic. It would be like telling Ken

Wood to design drainage based on the yearly amount. You do it based on peak flow.

Mr. Ledgett is having trouble understanding why we are going through this argument. If we look at the definitions at face value, there's a difference between the congregate care facility and the detached unit. He feels Mr. Eaton is pushing the definition as far as he can in one direction, seemingly trying to get away from 200 trips per day, and now Mr. Eaton says that the discussion is moot because the applicant is providing the second access any way. If the applicant is doing that anyway, then why are we debating the nuances of these definitions? Mr. Ledgett would vote with Mr. Muir.

Mr. Eaton prefers his interpretation. The books are there for engineers.

Mr. Ledgett and Mr. Muir are engineers.

Mr. Mangiafico agrees with Mr. Ledgett and Mr. Muir on this, but thinks it is kind of a moot point. Go with the higher amount of trip ends as findings of fact. The fact is that they have provided secondary access, unless we think that is not enough.

Chairman White says the issue is the access and that has not been before us before. Certainly, we have some members of the public who oppose the use of gated access.

Mr. Mangiafico says that if they did not have second access, he would feel more strongly about resolution of this issue. He thinks the actual number is somewhere in the middle.

Chairman White agrees this is an argument that we don't need to have.

Mr. Mangiafico thinks that we need in the findings of fact to specify what definition we are using.

Chairman White says that if there is no central dining provided in the large or small buildings, then what is the difference between them?

Mr. Muir has 2 conclusions. One is that a second entrance is needed. The second is that the numbers are higher than those that Mr. Eaton gave.

Mr. Mangiafico says we are not at the level of it being a problem with secondary access.

Chairman White would accept the plan as presented as having dealt with the trip counting issue and respectfully note that some of the Board may disagree with some of the presentation, but we don't need to worry about it at this point. It is somewhere in the range and we would say that it is at the higher end of the range. He asks about Page Street. How is it that the proposal came forward? What exists there now and what changes would occur?

Mr. Wood says most of the street for the lot frontage is on Page Street. The Town of Kittery through Mr. Rossiter wanted a hammerhead-type turnaround at the end of Page Street. He shows a diagram that illustrates it. They would give this small area to the Town of Kittery, 50'x50', and that would allow Rick to create the one leg of the turnaround on it, and then at the current existing end of Page Street, they would have a gate, and after that, they would have a 16'-wide gravel surface that would join with their paved road.

Chairman White asks if Page Street was extended.

Mr. Wood says no. The acquisition of land is to the right-hand side of it. It just creates the leg for the turnaround. It would allow him to back in toward the right, swing around, and head back.

Chairman White says it is a bit different from what we have on our maps.

Mr. Wood says the Board's shows something different than what is being presented now because they were created before they reached the agreement.

Chairman White asks what alteration to Page Street would occur.

Mr. Wood says the 50'x50' area would be the only area that would have construction. There would be construction away from the last house on the left. There would be about a 18'x40' piece of pavement that creates the turn around. He illustrates on the white board. A truck comes up, backs in, and swings out to US Route 1. They would extend this and on their property have a break away gate. That's what Mr. O'Brien would like and they have no problem doing it.

Chairman White asks if any parking or units have been reduced in phase 2.

Mr. Wood says that there is no decrease in the number of units, but the number of parking spaces have been reduced by 4.

Chairman White asks whether there has been any shift in the placement of buildings or pavement.

Mr. Wood says no.

Chairman White thinks there is one new aspect that members of the public will want to comment on. Is there any Board comment before that?

Mr. Ledgett says that there is a wetland crossing near the turnaround.

Mr. Wood shows that the turnaround is on high ground.

Mr. Solich asks about the gravel road.

Mr. Wood says that this was a filled road before and there is a culvert. One wetland is created because the culvert backs up.

Mr. Muir wants to know how much road would be built with phase 2.

Mr. Wood says it is difficult to say. They would construct a gravel road.

Chairman White says but you don't complete the loop.

Mr. Wood says yes.

Mr. Muir asks whether they will be putting gravel where they are thinking of putting a permanent road.

Mr. Wood says yes.

Chairman White asks for public comment on the new aspects of the plan. There has been extensive public comment as to the plan already presented, and only comments about new aspects are requested. With respect to anything that has been addressed before, he asks that the public keep their comments very brief.

Nicholas Pesarik of Kittery Maine, wants to state for the record that he never said there are vernal pools on the property. He said there are potential vernal pools. They are still in the process of being defined. He is wondering what effect Page Street will have on the future two phases as well as run offs and the wetlands. There is also the issue of snow storage.

Chairman White asks about the proposed future use of the road.

Pesarik thinks the proposed future expansion has a lot to do with this whole issue. As for the unit count, they say they've come down to 6, but that is still a bone of contention. That's all he has for now.

Russ Plante of 1 Lyndon Way will keep it shorter than what he was going to say. The ZBA denied the special exception at two independent hearings. There are also at least a dozen zoning elements not met. He presented that in a nine-page letter to the Planning Board. There are basically no changes. During the previous meeting, he was told that he could not address the use of Page Street. Phase 2 has remained the same. This has become four large, toxic pills rather than seven little ones. None of the criteria have been corrected. Access to Page Street should not

be allowed. He will not read his letter aloud; he trusts the Board to read it. Look at page 6, Article 12 of the Wetland Section, re: storm water management and removing topsoil. He trusts the Board will discuss the other sections he has laid out as well. He won't get into the congregate care thing. He finds it interesting that it is a retirement community. He can guarantee that as someone that could live there, he would make more than three trips per day out of there. His father lives in a congregate care facility. The buildings are not well laid out. The Comprehensive Plan suggests four buildings. It is time to discontinue deliberations on plans that have not been fixed. There are many citizens asking the Board to disapprove this phase.

Chairman White thanks him for his memo as well.

Mr. Wood says that just for the record, he was not given a copy of Mr. Plante's nine-page memo.

Chairman White asks if we have an extra copy for him.

Planner Noel says it went out in the packet, but his secretary did not put it in with the abutters' letters for Mr. Wood.

Mr. Wood has received a copy from another member of the public attending the hearing.

Mildred Hobson of Page Street asks if they own the property at the end of Page Street, what is to prevent them from opening the gate whenever they want? How will it be taxed if they own the land and there is a temporary turnaround?

Chairman White says that the tax situation will be worked out with the Town Manager. As far as a gate and its use, if it's an emergency gate, a lock box is for firemen to use only and with a break away fence, you have to drive through it. It's restricted and it would say so on the plan and that is sufficient assurance that it won't be used otherwise.

Ms. Hobson wants to know why they waited to this late date to bring this up.

Chairman White can't answer that.

Glenn Estes abuts this property. He does not envy the Board. He knows they have a lot of work to do and the Boards work together. He's ashamed to say as a taxpayer that he does not know how the boards intermingle information, but as Mr. Plant mentioned, the ZBA did deny this twice and part of it was the mishmash of information that changes like the weather in New England. He thinks that the Board should consider this to be a high trip count. He thinks they change depending on what will appease the board they are before. They had Page Street in the original plans and it has been denied several times by the ZBA, but now an official from the highway department and fire department are digging up the same grave. He does not understand. The Board has a list of discrepancies in front of it. The ZBA had a package of information that was not presented to the Planning Board. What we have has been skim coated. The Board is comprised of lay people who are trying to make sure they are following the letter of the law. If they don't present the Board with all of the information, then the decisions the Board makes are bogus. The ZBA found that what they voted on wasn't what they voted on and they changed their minds. The Board should see if it is being presented with a full factual package before it approves or disapproves this project. As far as wetlands, he does not think the DEP has looked at it to see if it is wetlands, a vernal pool, etc. He's lived in this area for many years and it looks wet to him. He thinks it should be researched. He wants to know how the boards work together and what they have to use for information.

Chairman White says that the Planning Board and ZBA would probably agree that the present way of doing this is not satisfactory, with the bouncing back and forth between two boards, when

they are not all in the same room at the same time and not getting the same packets. The Town Council will be looking to change the procedures. What is being proposed is that special exceptions will go to the Planning Board and for site review, and not to the ZBA. In terms of what the ZBA did or did not do and the basis for that, we don't second guess their process and procedure. It is not our role. There is nothing in the ordinance that says we should be doing that. Really what the ordinance contemplates is these two bodies of review and it is not clear on the order of the review. Just to make a long story short, we feel in this instance that ZBA approval will remain a condition. The resolution of the ZBA issue will be a condition. If it never gets resolved, this wouldn't get built.

Nicole Baker, 119 Rogers Road, says the biggest question that she had is with respect to Mr. Eaton's presentation. He said he deals with peak hours and not trip counts. She thinks with elderly housing, the peak hours would be earlier than what he said. Looking at people as they get older, the person she bought her house from went in there for a year and now resides in Portsmouth and he got up with the sun and went to bed with the sun. She is really concerned with a traffic count being done at that hour of the early evening when they are missing a whole day when elderly people are going out -when the sun's out rather than when it sets. She knows there was waffling on the numbers and they are leaning toward a higher count.

Chairman White asks Mr. Eaton to reexplain his traffic numbers.

Mr. Eaton says the peak hour for that development will not occur during normal peak hours, but for him, his concern is the peak hour of the adjacent roadway. Everyone there probably is out after 9 and back before 3. Since their peak is different, they probably have little impact on the peak hour that occurs on the adjacent major roadway. What he has given is when the worst case scenario will be. Making a left turn out of that roadway during peak will be nearly impossible. If you do the analysis, every car getting out during peak time will have difficulty getting out.

Ms. Baker asks if he did anything in the morning. There are a lot that go out in the morning.

Mr. Eaton says nothing was really done by him in terms of counts. He used the ITE manual to see how much traffic would be generated in the morning and the afternoon.

Chairman White clarifies that Mr. Eaton was following the ordinance, which requires the use of a manual. When you get to the upper end, actual traffic counts are required, but at this level, they are allowed to use engineering manuals of this type. They can go to the manual and pull out what is the closest. That's what everyone heard the Board discussing.

Mr. Ledgett says that there are two decisions being made here: peak traffic and its impact on the artery and the discussion about whether the applicant needs two entrances. Mr. Ledgett thinks that might be confusing a lot of people. Mr. Eaton was talking about the peak traffic count.

Mr. Eaton came up with a low enough number that he did not need to discuss two entrances in the original study.

Beverly Gregory of Kittery says that Mr. Eaton fails to realize we have two peaks in the morning and two peaks in the afternoon. The Navy Yard traffic occurs at a different time than the commuter traffic for those with 9-5 jobs. We have a very unusual schedule here. Also, Mr. Eaton considers the Village Inn a congregate care use.

Mr. Muir asks, if they don't drive cars, why do they need all the parking?

Cathy Plante of Lyndon Way says that in previous ZBA minutes, the CEO then said that Page Street was not be used for access to the property.

Scott asks if that was as a secondary access or emergency access.

Ms. Plante reads directly from the minutes. She says they discussed secondary emergency access and that Chairman Bedard said that Page Street was not to be used even before the Board saw the plans.

Ann Emerson of 67 Rogers Road says that at one of the former meetings with the Zoning Board, Mr. Wood stated that the wetland study was done by him in 1998. She would like it done by an independent person and flagged.

Mr. Wood is a certified wetland specialist in NH and flagged them. Michael Cuomo did a high intensity soil survey and that matches what he did. This is two different people doing two different studies and coming up with pretty much the same results.

Chairman White remembers that Mr. Wood's study was done before Mr. Cuomo's.

Mr. Wood says Mr. Cuomo's was probably two or three years after he did the wetlands.

Ms. Plante says the code book says to do it within two years of building.

Mr. Wood says it was done before the first phase.

Chairman White asks for anymore comments.

Mr. Estes has another comment re: traffic. This is not so much to do with weekdays as weekends, and especially in the summer. That place is busy as the devil down there in the summer. Throw in some visitors and relatives and it becomes really bad.

Chairman White says that there are two issues. Does the traffic require a secondary access or emergency access? What he understood the engineer to say is that the amount of traffic generated by this does not meet any threshold of concern or anything in our ordinance that would require us to require something of the developer. What we did need was a secondary access. There are two other hands up and then we will proceed to Board discussion.

Mr. Pesarik asks why not count in all the traffic for all phases now? In the back phases there, there are little foot bridges running around and back to some wetland issues. Yes, Mr. Wood's an expert, but things do change, especially since they completed phase 1. He thinks it should be reviewed. It's a major investment and good for all of us. The traffic thing, if they are proposing that, why not look at all of the phases? What is to keep them from pushing through all of the phases?

*Mr. Mangiafico moves to extend the meeting to 10:30 pm.*

*Mr. Ledgett seconds.*

*Mr. Muir is opposed. Ms. Kline is opposed. Chairman White on the fence. The rest are in favor and the motion carries.*

Ms. Wells asks if they received the Commission's letter.

Chairman White thinks it's in the packet.

Ms. Wells e-mailed it.

Chairman White did not print it. We need a copy to go in the record.

Mr. Mangiafico reads the letter from the Kittery Conservation Commission. They remain concerned about many of the issues they have raised and they have not been properly addressed by the developers. They want wetland crossing removed from this plan should phase 2 be granted. They are concerned it will cause future confusion and may show tacit approval of the crossing if it remains on the plan. They ask that it be removed.

Ms. Wells says it is not on the current plan presented by Mr. Wood tonight, but it is on the

master plan.

Mr. Wood says that it is part of the package, but he is happy to accommodate Ms. Wells's wish. Their original storm water plan that this Board received had a 20' road and 4' sidewalk. They have gravel instead of pavement. There are two reasons they have revised this plan. This is also in response to the second meeting with the ZBA. After the second meeting, they had discussions with members who thought that the March meeting went much better than the first meeting. The ZBA said it was too dense and needed a secondary access. The January meeting that Mrs. Gregory spoke to was when the original phase 2 was off of Page Street. The ZBA Chairman told them that he would consider a secondary access off of Page Street.

Mr. Ledgett asks the date for the soil survey and the date for the wetland marking.

Chairman White says we will proceed to Board deliberation. He does not know where to begin.

Mr. Mangiafico wants to start with the cluster residential development, article XIII, numbers 8 and 9 talk about written statements. He does not have them in front of him.

Ms. Kline says they are not presenting it like that.

Mr. Mangiafico says it has to be.

Chairman White asks if the reduction is to get out of the cluster development requirements.

Mr. Mangiafico says that because it is such a big lot, they do not go past 4 units per acre.

Ms. Kline says that for clustered residential, they cannot exceed 3.

Mr. Wood says that if we approve phase 2, then they are at 2.36 units per acre.

Mr. Mangiafico questions how they would come up with the cluster for future expansion because some of the things that they should have preserved in the beginning are not preservable anymore. Down the road, are they saying that the future expansion will come under cluster elderly?

Mr. Wood says it will come under elderly.

Mr. Mangiafico says we need to look at the preservation of natural features. When they come back, the natural features in phases one and 2 are gone.

Mr. Wood says that they are preserving ledges and wetlands.

Mr. Mangiafico says that is why he was looking for the statements. He is concerned about going from noncluster to cluster.

Mr. Ledgett has a similar concern. The way this is worded, it is something we can do and is a choice the Board gets to make.

Mr. Mangiafico says it is an issue from day one.

Mr. Ledgett thinks it is not the whole lot. He thinks you consider the zone inside each expansion. That is the density issue. Logically, the code doesn't work if you don't treat it that way because you are making commitments and you can't unfold this thing and get yourself out of it in the future.

Chairman White asks if that is an interpretation of the statute or whether there is specific wording within the statute.

Mr. Ledgett has not found specific wording as to what the land use code requires. When it comes to interpreting the code, the code gives us the authority to interpret it on page 272 at 1636070.i. We have to decide what the requirements really are here.

Mr. Mangiafico thinks we need to make that decision now as to whether cluster is allowed. He thought they were coming before us today with verbiage as to how they would do cluster for the whole thing and that they would set a section all aside and in the future we would see a second

cluster. If we don't call it cluster today, we can't do it in the future.

Chairman White says that you probably can do it, but not as well. It would do something to the ability of how much or how well the rest of the lot would be developed.

Mr. Mangiafico thinks we need to discuss and review that issue.

Chairman White says we need to decide it also. The cluster development issue has come up a couple of times periodically and came up a couple months ago when we asked for the narratives. He is not sure the applicant agreed it was a cluster.

Mr. Wood says that they provided the narratives in January 2005. Even at full build out, where 50% open space is required, the total open space is 80%, and where the usable open space is to be 30%, they provide 70%. All the wetland areas will be placed in conservation easement. Another request was the areas that would not be disturbed. The ledge outcrops are outside the limits of disturbance. They will be preserved. They did the wetlands in 1999 and the soil survey was 8/22/03. He did his field work 5/2/03. Once he gets back to his office, he can provide the exact dates for the fresh water work.

Chairman White asks what the Board wants to do with the cluster issue.

Mr. Muir thinks there is a branch here. If they want to take the entire South Campus for density purposes, then the cluster rules should apply. He is repeating what two board members have said. It seems like they should follow the cluster rules for each piece. They should declare now whether they are going to use up their reserve of area for this development or not.

Chairman White asks when we put this against the numbers in our ordinance, how do they add up?

Ms. Gagner says that in looking at the plan, it does appear that they have made a number of changes to accommodate the cluster issue. They may not be exactly what we are looking for, but they have made a lot of changes that we asked for. They preserve the knoll area that we asked them not to flatten, and address some of the wetland issues. She does not think we ever got to a specific answer on the walkways and footpaths. She thinks with other projects in the past we have worked on the front portion, knowing they would move forward. She does think we need those easements in place. We need to be able to say we followed the guidelines of cluster.

Chairman White asks if the proposal is to place those easements at this time.

Mr. Wood says the buffer areas are restricted and recorded. They have not put the wetlands into conservation easement, but they would be willing to do that. The existing paths that are shown on the plan, the ledge outcrops that will be preserved, and basically all the wooded areas will be preserved and they have no problem putting those in easements. He thinks that they are complying with the cluster requirement. If the total development meets the ordinance, then each piece meets the ordinance.

Mr. Mangiafico says that we need verbiage that says that they are going by the cluster development for the overall phase and this is what they are preserving.

Mr. Wood thinks that it was in the January 2005 submittal.

Mr. Ledgett asks what and where are they preserving. We keep dancing around the crossing of the major wetland. We're taking that off the plan, but that skirts the issue as to whether the applicant could ever do that because that crossing does not seem to meet the code requirements. The other issue is the extent of disturbance and fill within the setback and he does not think that it meets the code.

Mr. Mangiafico says that at Shepard's Cove, they pulled everything out.

Mr. Ledgett does not think that the Comprehensive Plan or the code intends for the disturbance that will happen inside the 100' setback as a result of Village Inn. He is looking at page 256-1, table 16.12 topsoil removal.

Chairman White says that we have alluded to this in other meetings. What he recalls is the question being placed, can you slide that building forward and pull some of the fill out? The answer he heard is that it was not something the applicant was eager to do.

Mr. Ledgett says that if you are going to do stuff in that area, it requires our approval and we do not have to give it, particularly if it is inconsistent with the Comprehensive Plan and code. There is room for judgment, but when you chew up more than 50% of the setback, the rubber band is stretched too far.

Mr. Wood says that they have always felt the setback was for structures, not roads. Quite a few of their projects never considered that as an undisturbed setback. He thought this was discussed and resolved 12/16/04. He reads from what Chairman White previously said in meeting minutes. It would have to be a different plan in order to preserve what is in the setback. Does the ordinance allow the applicant to do even if we do not like it. The ordinance right now seems to allow what is proposed....

Mr. Ledgett says that is not the way he reads the ordinance. He thinks that the applicant needs to get the Board's approval and the Board's judgement prevails. The issue is the disturbance. The Board will have to make its own decision. As he reads the Comprehensive Plan and the preamble to the wetland portion of the code, we are supposed to be minimizing what we do within that setback. There is a judgment that needs to be applied here.

Mr. Wood says that in some town he knows, it applies to excavating and mining.

Mr. Mangiafico says that it is approved projects.

Mr. Ledgett says the approved project is our approval of this project.

Mr. Mangiafico thinks this board has allowed some disturbance within that area.

Mr. Ledgett is not saying no disturbance, but when most of the setback is disturbed, that seems to be excessive and does not seem to meet the clear intent of this section of the code and the intent of the Comprehensive Plan. One of the things we have to do in the approval of a plan like this is conclude that this meets the ordinance and Comprehensive Plan and any other plan that applies and the code clearly invokes Comprehensive Plan requirements.

Mr. Mangiafico moves to extend to 10:45.

Mr. Ledgett asks if we will be in any different place at 10:45.

Mr. Mangiafico will move to extend until 11:00 pm.

Chairman White thinks there is another half hour to an hour of discussion on this.

Ms. Kline says and the addition of Page Street.

Mr. Muir says and the wetland crossing.

Chairman White thinks we should continue for a couple minutes.

*Mr. Mangiafico moves to extend until 10:45 pm.*

*Ms. Gagner seconds.*

*Mr. Muir is opposed. Three are in favor, but Mr. Solich's vote is contingent upon our wrapping it up. We need to memorialize where we are in the deliberations.*

Planner Noel says that with the agreement of the applicant, we could do this again 5/26.

Mr. Wood says that would be fine.

Chairman White says that we can continue with deliberations then.

Mr. Solich says there are two sticking points for the Board, and more than that for the audience: 1. The closeness of Village Inn to the wetlands. He likes that they took away 60 units, but they should have taken away those instead. 2. Too much parking.

Mr. Ledgett would second that. The nonpoint source pollution of this development is extreme.

Ms. Kline says in support of that, Pepperell Green has a DEP conservation easement that also as part of the ordinance pushes us to look toward preservation of the setback. She thinks it is with the deed information, so their part of the stream is on that. The applicant still has phase 4 marked here and they were going to have more buildings up against the existing Meeting House, so that's more impervious surface right there that caused her some heartburn. We keep flip-flopping between phase 2 and some large stuff. It looks like the applicant had their expansion line for 3 and 4 and then they have a snow storage sign and a split rail fence all heading over the property line. This indicates to her that even though they moved the parking area, they are clearing to the property line, and with the change in density, they have to give the 50' and it should be undisturbed. Also, the cluster ordinance requires us to have a contiguous flow to buffer areas.

Mr. Wood provides the dates for the soil and wetland surveys.

Mr. Ledgett says the soil survey is contemporary, but the wetland survey is from 1999 and there is very good evidence that wetlands change in that period of time, and in a much shorter time, and one of the things that drives the change is development. He thinks it may be a very smart move to resurvey that. He does not think we will ever put that argument to bed unless they survey it.

Ms. Kline can't believe she is having to make this argument, but because of the longevity of this review, things that were tagged at one point have fallen by the wayside over several years and what we are looking at is wetland setbacks and they would have to make those measurements with code enforcement anyway.

Mr. Ledgett says it would be prudent to do it now.

Ms. Kline says it is not her call. It is clear they will have to do it when they do work. She would like retention of as much of the setback as we can get. That is where the water quality comes in. No matter how much you use silt fences, the water quality is the issue here. If you've been around a pond that has had disturbance near it, the water quality is crappy for a long time after and sometimes never gets better.

Chairman White thinks there is legitimate disagreement in the Board right now. He would almost like a memo to clarify that. That's something that we can do.

Mr. Wood asks if it is fair for him to assume that the Board has to give approval for disturbance within the wetland setback and that the Board would like it minimized, but the Board is not saying there cannot be any.

Chairman White reads it that way.

Mr. Wood says that we are saying there is too much disturbance and they have to get rid of some of it.

Mr. Mangiafico says that if this is a noncluster, then we could say there would be no disturbance in the wetlands.

Chairman White agrees. We said in the beginning that we are sort of two tracking it and it has changed over time. The applicant has been responsive and made some substantial changes. Ms. Wells says the Conservation Commission brought up some concerns on the landscaping. Mr. Wood says there were some changes made. He will send a copy of the letter detailing them to Ms. Wells.

This item is concluded by Chairman White.

- Housekeeping issue: Mr. Mangiafico asks if we can put a memo together with help from Planner Noel.

Mr. Muir asks if it is to be done through e-mail.

## **6. OLD BUSINESS**

None.

## **7. PLANNER'S TIME**

Planner Noel hands out documents. He asks the Board to open to first page with highlights. This is on the Briers. The applicant would like to move the driveway south from where it is. It is currently 60' from the edge of the wetlands. They want to slide it down to 30' from the wetlands.

Mr. Ledgett asks if this is a DEP issue.

Planner Noel says this is just access to the lot.

*Mr. Mangiafico moves to extend for another 10 minutes.*

*Ms. Gagner and Mr. Ledgett second.*

*All in favor but Mr. Muir.*

Mr. Ledgett does not know how we can look at this since there are easements that have to go on this property per the DEP order.

Planner Noel does not understand the question. He shows what has been approved and where they would like to slide it.

Mr. Ledgett says that the setbacks need to be changed. If we are to do anything with this plan, we need the whole ball of wax.

Planner Noel says that is the issue - is this inconsequential, or do they need full public hearing?

Chairman White says that it is an amendment regardless. They may not need a public hearing, but there are certainly some steps to go through.

There is a discussion on what exactly the applicant intends to do, with Mr. Mangiafico, Ms. Kline, Chairman White, Planner Noel, Mr. Ledgett around the plan.

Planner Noel says that he wants to avoid the outcrop and not blast through it.

The Applicant says it makes the driveway less steep and more usable. It is still 30' from the wetlands.

The Applicant says that he is not requesting any change in the driveway easement, staying out of the 30' buffer, but he trying to avoid a 22% slope by simply changing the angle of the driveway, which changes it to 14% and allows him to site the house where he wants to. They have not brought the rough grade road into place yet. They really are just looking for a driveway easement and change. The driveway would continue to be in the utility easement. They would not go into the 30' setback.

Chairman White does not see it as a major shift.

Mr. Mangiafico says that although it is closer, the fact that they are not blasting is better.

Ms. Kline says that they could design something so that not all of the runoff goes toward the wetland. She remembers it as a bowl there anyway. They need to be realistic.

Mr. Ledgett thinks that this plan needs to be updated re: shoreland zone. Now are making changes to lots within the shoreland zone. This plan is not correct. This is the old plan.

Ms. Kline says it is a saltwater wetland.

Mr. Ledgett says the other issue is the DEP has ordered drainage easements on this property and we don't know where those are.

Chairman White says that he might be OK with the proposal because they are moving it further away from the shoreland zone.

The Applicant says the drainage easement applies only with respect to lots 1-4. Lot 1 has been recorded. 2 and 3 will be recorded shortly. They are glad to do a new delineation of the 250, but he thinks they are that moving away from it.

Chairman White says to relabel and replot the setback.

Planner Noel explains that Board would like to see the correction made as to the shoreland zone being redelineated. We have not been asked for that before.

The Applicant asks for approval subject to the delineation.

Chairman White thinks it is fine so long as it is outside of that.

Mr. Ledgett says it is still in the shoreland zone.

Chairman White tells him to re-delineate and show the new proposed location. He is not hearing what the Board would want. The public hearing would happen as soon as Planner Noel could get the applicant in.

The applicant asks whether, if it is replotted and outside of the 250, it can be approved.

Ms. Kline says it has to meet the minimum setback.

Mr. Ledgett says that within the shoreland zone, specific requirements

Chairman White asks if Planner Noel thinks the requirements are met, whether he can sign.

Consensus is yes.

## **8. ADJOURNMENT**

Meeting terminates on its own. 11:02 pm.