



TOWN OF NORTHBOROUGH PLANNING BOARD

Town Hall Offices • 63 Main Street • Northborough, MA 01532 • 508-393-5019 • 508-393-6996 Fax

Approved 03.16.2021

**Planning Board
Zoom Meeting Minutes
January 19, 2021**

Members (Remotely): Kerri Martinek, Chair; Amy Poretsky, Vice Chair; Anthony Ziton; Mille Milton; Michelle Gillespie

Members Absent: None

Others (Remotely): Kathy Joubert (Town Planner); Robert Frederico (Building Inspector); Fred Litchfield (Town Engineer)

ZBA Attendees: Fran Bakstran, Paul Tagliaferri, Dick Rand, Mark Rutan, Brad Blanchette

Chair Martinek called the Zoom meeting to order at 6:00 p.m. and made the announcement that pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 20A, §18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, that the meeting of the Northborough Planning Board is being conducted via remote participation to the greatest extent possible. Public comment will not be taken. The process was explained.

Member and Staff roll call was taken: Anthony Ziton, Mille Milton, Amy Poretsky, Michelle Gillespie, Kerri Martinek, Kathy Joubert (Town Planner); Robert Frederico (Building Inspector); Fred Litchfield (Town Engineer).

Joint Discussion with Zoning Board of Appeals (RE: Proposed Zoning Proposals for 2021 Annual Town Meeting):

Accessory Dwelling Units – The proposed change is for Residential A&B (RA & RB) to be by right as opposed to by Special Permit.

Groundwater Special Permit – There are two perceived paths within the bylaws; there should only be one way for the process to avoid confusion. Ms. Bakstran asked the steps Ms. Martinek was trying to remove and/or consolidate. The part of “making the determination” is already in the bylaw under (b) in the current section. It’s in an area on how to file with the Town Clerk. Ms. Martinek thought it did not make sense because it was more about criteria and moved the language into the special permit criteria section. Another version was for more language criteria for a special permit in general to weigh the adverse effects vs. the beneficial impacts to the towns as it relates to all of the special permits. She said the Groundwater district is the only overlay district that does not specifically reference the special permit criteria, which is why she felt the need to mention special permit criteria. She said the other overlay districts have the tie-back. She wanted to eliminate any confusion and make it clear.

Mr. Litchfield said it has been his understanding that the groundwater overlay district has been mainly for the use for the determination by the Groundwater Committee to see what safeguards

are necessary for that particular project in the groundwater overlay district. The whole point for the groundwater bylaw was to apply some extra standards pertaining only to how the site is used within the groundwater area to protect the groundwater supply and not so much the other special permit criteria. That's for the determination of the special permit granting authority. He has been doing it for a while and believes they have been doing it the same way and he got his direction as to how those groundwater meetings have been run in the past from the previous town engineer who was here when the bylaw was adopted in 1986. It has been consistently looking only at the use of the property and how best to protect the groundwater supply in the worst case scenario. If chemicals are stored within the building, we need to know what they are, how they are stored, what happens if there is a spill, and is there proper containment; not so much the other criteria you have for the special permit itself.

Ms. Martinek said the problem is that when you apply for a special permit with site plan approval; you need to have the special permit follow the same path. You can't have one way to do it for groundwater and another way to do it with a general special permit criteria. If the additional criteria is something groundwater looks at, that remains the same. It clears up the fact that you need to make sure your special permits tie into their core criteria which is also related to procedures, the public hearing, plans, regulations, etc.

Ms. Joubert said the criteria in the bylaw says what the Groundwater Advisory Committee looks at when they review a special permit in a groundwater area. Ms. Martinek is not proposing that that be changed. Ms. Joubert thought it went back to the fundamental question that she heard from town counsel is that the way the site plan bylaw is written is when an applicant is applying for a special permit, they also have to go to site plan approval, but that site plan approval does not become a special permit. Otherwise, that would affect uses that are allowed by right now end up becoming a use that needs a special permit. That's not how the bylaw is set up. Ms. Martinek said the Groundwater Committee has no authority to be a special permit granting authority, so you do need a special permit that has the fundamental criteria and provisions of a special permit. You can't make the groundwater committee a mini-special permit granting authority in the bylaws. Ms. Joubert says it very specifically says what the criteria that the Groundwater Advisory Committee and then the special permit granting authority consider. The three criteria have been in there since 1986. Ms. Martinek says they have to figure out a way that they are not two different paths to the same special permit. Because if it comes for a special permit with site plan approval, you get kicked back to the provisions of Section 7-03-040. How do we reconcile that?

Ms. Bakstran asked Ms. Martinek if she was looking to somehow tie in the recommendation of the Groundwater Advisory Committee into the special permit process because she said the Committee is only advisory. Ms. Martinek said she just wants to make the path the same. Ms. Joubert stated the groundwater bylaw specifically says that the special permit granting authority must make three findings; it is very specific what the special permit granting authority must do. Ms. Poretsky said she is on the Groundwater Committee and didn't know if anyone on the Groundwater Committee has a copy of the bylaws because she has brought up things and people didn't know what she was talking about. When making recommendations they never go back to the book and go down those criteria and vote. She doesn't even think anyone on the committee knows what those three say. She thinks they take Mr. Litchfield's letter and go through the different calculations and sometimes the applicant hasn't even met the calculations and its forwarded to the SPGA saying Mr. Litchfield will get the numbers before it goes in front of the ZBA or Planning Board. And even during our meetings a couple of members have said we are not a voting committee, we're just advisory. She doesn't think they look at the bylaws. They don't

make a decision on the zoning part of it. Ms. Bakstran asked if anyone on the ZBA had an opinion on whether or not adding the full spectrum of special permit criteria to any special permit that is related to the Groundwater Overlay District in addition to the criteria already in the Groundwater Overlay District special permit; do we want to add additional steps or requirements to a special permit when the only issue is Groundwater. Ms. Joubert said you have to look at what those criteria are, and they don't work for the Groundwater Bylaw which is why there is specific criteria. Ms. Martinek said you can't have two ways to get a special permit; it's confusing. The PB will have to figure out the language to get where they want to get. Mr. Frederico commented that Ms. Martinek said it is a confusing process and asked if she could cite any examples because he has been doing it for 3+ years in town and has not had one person tell him that they were confused by the process. He also asked if there were any specific cases because he is trying to understand what she is trying to fix. If there are any, what would the outcome be if what she wants to do was approved. Lastly, if she wants to rewrite the zoning, one of the mechanics is about how this is going to operate in terms of who goes where and how because himself, Ms. Joubert and Mr. Litchfield are the gatekeepers about how to direct people and what they need and from what board. Ms. Martinek said they just went through this exact thing with 0 Bartlett Street and there was a lot of wasted time that nobody should have had to spend. Mr. Frederico said they negated virtually every expert in the area on each point of question the PB asked. She said there was a lot of back and forth and a memo from another attorney said the position on it was nonsensical, and our town counsel said, the special permit process should be the same whether it's an individual permit or whether it is a site plan with special permit review; you can't have two different ways to do it. Mr. Frederico asked what is he supposed to do when someone comes up; it is just the same as if it were any other special permit; there is no additional work. It is just cleaning up the language so they don't have to look at two different paths. Mr. Frederico said there are two different paths because are you are trying to achieve two different goals; one is for the protection of the water supply, the other is general issues pertaining to special permits; they are completely different. Ms. Bakstran said the PB has time to work on that one. There are open ended questions that the ZBA cannot provide the board with answers.

Duplex Special Permit – Currently when it has a Groundwater Special Permit it has to go to two separate boards. The PB is proposing that it have both of those pieces heard by one board, and since it is a residential it makes sense for it to be the Planning Board that takes both of those pieces, not the ZBA. ZBA members had no issues.

Craft Breweries – Ms. Bakstran was not sure if they were talking about destination type brew pubs and/or beer production. Ms. Poretsky was trying to figure out how to use open warehouses or places in the industrial district. Ms. Bakstran said a lot of the craft breweries are reusing space in industrial parks. The proposal includes a special permit in the Business West, East, Downtown Business and Downtown Neighborhood. Ms. Joubert said in order to write the bylaw, they need to know what it is they are writing the bylaw for. When she talked to the ABCC (who issues the license), there are two different avenues. One is a manufacturing license (and they highly recommend that you don't limit it to just breweries), that you include malt beverages, wineries and distilleries (all three). It needs to be determined is it the manufacturing they are after, i.e., no restaurant associated with it, you couldn't go in for tastings or have a beer or wine; it is strictly manufacturing, they can have a store, but there is no consumption on site; it would be for off premise consumption. The other avenue which is a different process when you want to have consumption on site (pouring on premise) and then the restaurant. The decision has to be made. Is it just manufacturing or the combination of manufacturing and also being able to consume on site, and then what zones to allow it in needs to be determined. Ms. Joubert said in order to

allow both, they would be completely different zoning districts. Some members agreed with the Brewery, Distillery or Winery with Tasting Room. They will allow the consumption on site and also want to allow manufacturing. The PB originally proposed that a Brewery, Distillery or Winery with Tasting Room would be allowed by right in industrial and special permit elsewhere. Mark Rutan saw it as two different operations; one is the production of an alcoholic beverage which would be permitted and licensed as an industrial process and the other, the operation, he would separately permit to pour. He pointed out that producing alcohol is not going to involve a lot of traffic or parking, and hopefully not a lot of police presence. Ms. Bakstran asked how they felt about the definition “a business located in a building where the primary use is for the production and distribution of malt, spirituous or vinous beverages.” She asked for a consensus of the board that it is something they would want to look at for a possible use in our industrial area; the answer was yes. Ms. Bakstran liked the idea of special permit because it is new and we can always loosen the restrictions if it works out well; a good starting point.

Prohibited Uses – Ms. Poretsky stated the uses the board knows they don’t want in town should be prohibited. Ms. Bakstran asked if a prohibited use is on the list, does that mean that they cannot apply for a variance? She said the whole idea of a variance is to get permission for something that would not otherwise be allowed. She said the PB was asking at their last meeting and not sure if they had an answer whether if it is not on the list, does silence mean it is ok or not ok. What does something that is not on the list mean. Ms. Poretsky said in the bylaws now, silence would mean not allowed because if it is not permitted it is prohibited. She said adding a no use variance shall be granted would save time and money for the applicant, time on the boards, time and money for the neighborhoods. She said without a list it could fall into some categories. Ms. Bakstran said they would have to be very careful that they will not make something a non-conforming use by now making it a prohibited use; are there consequences making something prohibited that is currently allowed. Ms. Joubert asked is the list the way the PB wants to go because she had brought up at other meetings that we used to have this in the Zoning Bylaw and removed it because it is an antiquated way of writing a Zoning Bylaw and went to the Use Table. She said the board could go with the Medway list, or amend the Use Table and put them in as prohibited uses. Ms. Poretsky thought the list is quicker and easier than changing the Use Table. Ms. Martinek thought where they struggle a lot of times is that most towns are getting rid of use variances and having a use variance is an antiquated bylaw. She had commented that if we are getting rid of use variances we would need more lead time to talk it through more and get feedback from the ZBA. Is there a secondary tool we could use in the meantime to make sure we are not allowing things that none of us want in town? Mr. Rand said a lot of the things we do not permit now; some of the things exist in town without permits for those specific items, what do we do, throw them out? Ms. Poretsky said they were going to review up to “n” on the provided example list. Ms. Bakstran said “p” incorporates everything on the entire list so why do you need the list. Ms. Poretsky thinks there are different opinions on what is allowed and how uses are interpreted. Ms. Bakstran asked members of the ZBA their thoughts on a list or is just updating the Use Table a more fluid path; members were split. Ms. Bakstran does not know how you would address the question if someone comes up with something that is not on the list; we would still have to go through the process no matter if there is a Use Table or a list. It will have to be looked at on an individual basis.

Commercial Storage Facilities – No opposition to updating the Use Table to prohibit it in Business West.

Contractor's Yard – Ms. Bakstran said changing/updating the definition is not going to impact the concerns that were raised specifically by 50 Southwest Cutoff or 329 West Main Street because they are pre-existing non-conforming uses. She asked for confirmation that the intent of these changes is to somehow prevent anything like a contractor's yard ever being able to be in the Business West (which you can't do because it already exists) and is only allowed by right now in industrial. Do we need to change the definition of something that is no longer allowed anywhere but industrial? She was not sure the PB could accomplish what they are looking to do. Ms. Poretsky said she was trying to take the sales part out. Ms. Bakstran asked her what is the opposition to allowing contractor's yards, by our definition, to sell their products. What do we gain by not allowing them to do that? Ms. Poretsky said they can still sell their service; contractors are service people. They are not a store where they are selling products. Ms. Bakstran said our current definition allows for the sale of wholesale and retail of the materials of the contractor. She was asking if contractor's yards are only allowed by right in industrial, what is the downside of allowing them to sell their products under the definition of contractor's yard. Why do they have to be redefined into something else? In her opinion, Ms. Poretsky said Delgreco's was not a contractor's yard. Ms. Bakstran said that would be addressing a non-conforming pre-existing use. Ms. Poretsky said it was retail sales. She was trying to get it more black and white what a contractor is. Ms. Bakstran does not know what the PB is trying to accomplish with the change in definition for a contractor's yard that is only allowed by right in industrial area that someone may or may not want to sell wholesale or retail materials along with storing their equipment and their supplies. What are we trying to fix; it is not the non-conforming uses in the Business West District. Ms. Gillespie said we want to make sure that this does not have unintended consequences and to make sure contractors such as electricians and plumbers have a place where they can go to in town as well as landscapers. Is this going to work and are there unintended consequences to other businesses we want to keep in town. Ms. Martinek said there is some fine tuning agreed upon but not sure if the particular piece covers it. Ms. Bakstran asked for ZBA input; there was none

Non-Conforming – Ms. Poretsky would like to add a purpose and intent to the section. She was unsure why 50 Southwest Cutoff didn't trigger the need for non-conforming to non-conforming special permit. She wanted to ask Town Counsel why it didn't and make sure the Zoning Bylaw does trigger it. Ms. Bakstran asked Ms. Joubert if they should be discussing it specifically since they have not yet finished the appeal period for that Decision. Ms. Joubert has said before that if they are going to talk about a specific project, the applicant should be present. Ms. Bakstran said the hearing has been closed and doesn't want any influence over the appeal process by discussing it. Ms. Martinek said the goal is to clean up Business West. She said we keep getting the chances but not triggering the Special Permit process where they would like to see it go to the ZBA first. Is there something in our bylaws that needs to change so we do have that opportunity at the ZBA level. Ms. Bakstran said in that way if something is a pre-existing non-conforming use (for example a gas station) and they decide now they want a used car lot. That is a different non-conforming use and therefore would trigger review by the ZBA to determine whether the new non-conforming use less detrimental than the previous non-conforming use; that is how the process works. In certain circumstances, if it is the same pre-existing non-conforming use and just changing ownership, and/or some other component of it, that doesn't trigger anything because it is not meant to. It is a pre-existing non-conforming use that is not changing; it is just either just refreshing, changing owner, etc., and she doesn't know whether we are allowed as a town to say if it is a pre-existing non-conforming use that changes ownership triggers something but if it is the same definition, the same use, it doesn't trigger anything because it is same pre-existing non-conforming use. Ms. Poretsky asked during class and it is not

the definition of the use that makes it a grandfathered use, it has to be the underlying use and gave an example. Ms. Poretsky stated that you don't just grandfather a warehouse to a warehouse, it's the actual use taking place in the warehouse that is grandfathered. Ms. Bakstran what she was trying to do is a very specific change. She asked what is it about our bylaws that does not direct that process. More examples and discussions continued. Mr. Rutan said his understanding of how it works right now is that the Zoning Enforcement Officer makes a decision as to whether the non-conforming use is greater or not and people can appeal his decision to the ZBA, which in the end drives it to the ZBA. He sees the mechanism working, other than if we are finding the whole idea of appealing the enforcement officer's decision is laborious; then we will have to change something. Ms. Poretsky said in the CPTC non-conforming bylaw class she went to they said if there is a change "in a structure" there could be something in the wording that the bylaw wording that the zoning enforcement officer can make that decision, but when it's a "use", it has to go to the ZBA. Ms. Bakstran said it goes back to the initial interpretation of the zoning enforcement officer and if at that level it doesn't rise to the level that this is a pre-existing non-conforming use change, it is not going to go to the zoning board, she does not know how you would write a bylaw to change the interpretation responsibility of the zoning enforcement officer which is what his job is. She cautioned people that if they have any additional feedback for the PB they would have to do it at the public hearing or at town meeting. Ms. Joubert will ask Town Counsel to word it. She said there were changes on this section a few years ago and we're changing what was voted on two years ago. What she was gathering from tonight is that what people are looking for (or the majority of people are looking for) to somehow add language into the non-conforming section regarding the use, how to direct the process to the ZBA when a use is either expanded or it changes, even if the use is within the same definition in the Use Table. Ms. Poretsky said that was accurate but also has questions she wanted to discuss. She also said that you can update the bylaw that doesn't allow changes or expansions. It's within the right of the town freeze the use in place so it doesn't expand and change and wanted talk about it. She asked did we ever have a non-conforming use expand or change where everyone though it was for the best' Mr. Bakstran said the gas station. There was no opposition from that gas station changing from a gas station to a gas station/convenience store. Mr. Rutan made a motion to close the ZBA meeting; Mr. Rand seconded; roll call vote: Tagliaferri-aye; Rand-aye; Rutan-aye; Blanchette-aye; Bakstran-aye; motion approved.

Public Hearing Special Permit Common Driveway Application for 85 and 95 West Street, Map 57 Parcels 34 and 35, to construct a common driveway serving five lots:

Applicant: Brant Viner and Margaret Harling
Engineer: WDA Design Group
Date Filed: December 23, 2020
Decision Due: 90 days from close of hearing

Ms. Gillespie recused herself from the public hearing. Brian Waterman (WDA), Attorney Mark Kablack participated. The board received the Town Engineer's comments today. Ms. Martinek asked Mr. Waterman what information is missing from the application that the PB needs. Mr. Waterman said he hasn't had time to respond to Mr. Litchfield's comments and doesn't believe he received all the comments yet. He has a continued hearing with the Conservation Commission in February. They have been working with Mr. Litchfield and Ms. McDonald on the drainage system questions. They had their soil evaluator and Yankee Engineering testing last week; he did not have the results yet. The total property is 17.3 acres; approximately 630-feet of frontage along West Street. There is an existing home at 85 West Street; 95 West Street was listed as undeveloped property. Approximately 80% of the frontage has a wetland resource area along it. A portion of the 100-year flood zone comes onto the property; it is contained in

the pond and the wetland to the west. The wetlands and resource areas have been confirmed with the Conservation Commission. There is an approximate 80-foot elevation change across the entire acreage. An ANR plan was approved November 18, 2020 which created Lots 1A & 1B; 1A has been sold. There is an existing driveway that runs along the wetland edge; a new driveway is proposed. Lot 1B is not part of the common drives. The common drive would serve five lots: 3, 4, 5, 6 and the house at 85 West Street. This design requires no wetland alterations. They meet the setback for the site distance requirements. There is a water line in West Street which is approximately 1,500-feet to the northeast of the proposed drive; they propose to extend the 8" water line up to the common drive. There is a hydrant at the end of the turnaround. The Fire Chief requested an additional hydrant at the intersection of the common drive with West Street. They will also be contacting the DPW about doing booster pumps for the system. Road length is approximately 949-feet; the longest drive off it is approximately 450-feet. He explained the drainage design. He did receive Mr. Litchfield's comments today and will review them. An abutter did request Thompson-Liston do a review (primarily for the drainage design). They will respond when they receive the soil data. There has been discussion on an agreement with owners and future owners for maintenance of the common drive as well as the stormwater management system. The attorney has submitted a draft to Ms. Joubert and Mr. Litchfield.

Ms. Martinek asked the board for comments/feedback. Ms. Milton asked about the elevation; Mr. Waterman explained it. She asked if the common drive would be maintained privately; he said yes. Mr. Ziton asked for comment on the driveway for Lot 1B. He thought it looked like it went onto the abutting property. Mr. Waterman said the driveway is about 4-feet off the property line at the closet point. There is no setback for driveways. Ms. Poretsky asked what is the length from West Street to the circle and was told approximately 850-feet. She said there is something in the bylaw that if it goes over 500-feet there may be additional safety measures. That is being worked on with the booster/hydrant. The Fire Chief will provide a letter based on the additional information. He was fine with the turnaround and the width of the pavement (22-feet). Comments will be coming from the Police Chief as well. She thought the end of the driveway is in the 25 no-disturb and 35 no-build. Mr. Waterman said they are maintaining 35.5-feet from the wetland boundary to the southwest. They are within 25-feet of the wetland to the north. The existing driveway there now is within 4-feet of the wetland. Because they will be removing and restoring the area, it will now be 15-20-feet away.

Ms. Martinek asked for public comment. Mitchell Cook (67 Cherry Street) had a concern about the water runoff, elevations and erosion. He was curious why it was not looked at as a subdivision; there will be more traffic and he's concerned about allowing more common driveways. Mr. Litchfield said as to the choice of whether it is a subdivision or a common driveway is the applicant's prerogative provided they have adequate frontage and area to create the lots on existing public ways, which is the case here. Had the driveway been an actual subdivision roadway, it would be much larger than the 22-feet. The right-of-way for a subdivision road would be 40- or 50-feet depending on the boards wishes at the time. The pavement width would be 26-feet. The drainage would be similar but more involved. The roadway in a subdivision generates frontage; more lots could be proposed. The owner of the property worked with their engineer and had several options that we reviewed over the last several months; this one balanced the need for environmental protection around the wetlands and the applicant's desire to maximize the value of the property. It is within the applicant's right to propose it as a common driveway. It does allow the town to have less responsibility because it will be maintained by the future homeowners as part of the declaration that will be reviewed at a later date.

Dan Derby (35 West Street) asked why the applicant needed a special permit. He said because the town only allows 3 houses off a common driveway. Ms. Joubert said by the common driveway regulations, a

special permit is required from the PB and can have a maximum of 5 house lots off of the common driveway; they all have to have frontage off an existing road.

Joseph McFee (39 West Street) was concerned that the runoff will be increased. He said it is a 6 house subdivision and asked if an impact report was requested or submitted. Ms. Martinek said it was part of the criteria for a common driveway. Ms. Joubert explained that when lots have frontage on an existing road, they are not subdivision lots and don't follow the subdivision criteria with a new road.

Peter Tonelli (47 West Street) said his property is situated above all the properties and the hill is saturated; water control is a big issue. His concern is that he has a right-of-way next to where the common driveway will be. He owns 50 acres behind it as well that has access from Auger Ave. and what impact would it have if he were to build a subdivision. Mr. Litchfield said the rules are the same for the common driveway as a subdivision would be in that a proposed subdivision cannot send any more water on a neighboring property than was going there before their design. That is why this application has a number of underground infiltration areas as well as underground detention before the water ultimately gets to the culverts that go under West Street. Some of the abutters have talked about West Street and the drainage. One of the comments in the letter the DPW and he talked and those culverts need to be evaluated and replaced. Mr. Tonelli talked the elevation on Lot 4 and water would be running onto his property. Mr. Waterman addressed the water runoff from Lot 4. There is already a natural runoff existing on the slope, but they did a modified plan with an interceptor swale at the bottom of the proposed grading to take water away from the slope and down towards the swales, water quality swales are adjacent to the common drive; it was submitted to Attorney Gould weeks ago. Additional drainage measures have been added to address those concerns.

Mr. Litchfield did receive a letter from James Tetreault (Thompson-Liston) on behalf of Mr. Cook and Attorney Gould. His job is to make comments and review the plans for the Planning Board. He did read and review the letter and did incorporate some questions in his letter; which is why some additional testing has been done on the site. Until we receive that information, those answers cannot fully be elaborated on.

Because more information is still needed, Ms. Poretsky made a motion to continue the Public Hearing Special Permit Common Driveway Application for 85 and 95 West Street to February 16, 2021 at 7:00 p.m.; Mr. Ziton seconded; roll call vote: Milton-aye; Poretsky-aye; Ziton-aye; Martinek-aye; motion approved.

Public Hearing Definitive Subdivision Application for 0 Bartlett Street, Map 51 Parcel 3 and Map 66 Parcel 16, to construct a four-lot subdivision:

Applicant: The Gutierrez Company
Engineer: Allen & Major Associates, Inc.
Date Filed: December 17, 2020
Decision Due: March 16, 2021

Michelle Gillespie returned to the public hearing. David Robinson (Allen & Major), Robert Nagi (VHB), Israel Lopez (Gutierrez Company), Attorney Donahue (Fletcher Tilton) participated. The hearing notice was read into record. Attorney Donahue said they were there in the late summer/early fall with a preliminary plan of subdivision as required by MA law for a subdivision that resulted in the board's denial at the October 6, 2020 meeting. The plan before the board tonight incorporates a number of comments received from both staff and PB members to that process. Because subdivisions are a little different and because their frequency of being before boards has dropped over the years, he started to describe what a subdivision process is. Ms.

Martinek asked if he could get to the presentation; he did not need to go through the process of the subdivision right now; the board was tight for time and wanted to make sure he had enough time to present. She said the board would probably not be making decisions tonight due to missing material so if he wanted to present some material that would be a good use of time. Attorney Donahue summarized the difference between the other matters the board deals with on a regular basis. A subdivision is that it is governed by a different statute and that statute sets a different standard for the board's review. What that statute says in MGL Chapter 41 Section 81A is that a subdivision plan is entitled to approval. After ignoring repeated requests to please use the time appropriately by making the presentation, rather than advising the board on what constitutes a subdivision, Ms. Martinek muted Attorney Donahue and asked if someone wanted to give the presentation as she requested. Mr. Lopez was not sure why Attorney Donahue was cut off. Ms. Martinek said because she requested several times for somebody to present the plan and we have very limited time. Mr. Lopez said they are going to present the plan and thinks out of courtesy we should at least let Attorney Donahue not be on mute. Ms. Martinek again said she asked several times for someone to make the presentation.

Mr. Robinson, Project Manager (Allen & Major Associates) shared the submitted Plans for a Non-Residential Definitive Subdivision of Land, Parcel H Way, 0 Bartlett Street, Map 51 Lot 3 & Map 66 Lot 16. Before submitting the plan they met with Kathy Joubert and Fred Litchfield and reviewed each sheet and got their feedback and input and updated the plans as appropriate. The final plans are the ones submitted to the town which are being shared tonight. He said the plans have been prepared in strict accordance with the subdivision rules and regulations of the Town of Northborough.

They propose to subdivide the existing property at Map 51 Lot 3 and Map 66 Lot 16 collectively known as 0 Bartlett Street into four distinct parcels as well as a subdivision road. Parcel H1 19.9 acres; Parcel H2 38.78 acres; Parcel B1 1.04 acres; and Parcel B2 5.88 acres. They have per the Town of Northborough subdivision rules and regulations provided a signature title block, it is signed and stamped by a professional registered engineer in the Commonwealth of Massachusetts, and provided a list of drawings, a locus map, and the owner, applicant, site engineer and land surveyor for the project. They have the standard abbreviations, notes, grading and drainage notes, utilities notes with aforementioned title block for signature and stamped and signed by a professional registered engineer. It is followed by more notes on sheet C002. Moving on to the Existing Conditions Plan, it is a topographic existing conditions plan of the site prepared by a professional registered engineer in the Commonwealth of MA conforming to the rules and regulations put forth by the Town of Northborough's subdivision rules and regulations. It is the eastern portion of the site showing the Conservation restrictions on the site. He showed the required index and zoning summary plan Sheet C003, showing an overall view of the parcel subdivided into four distinct parcels with a subdivision roadway of 0.59 acres. They have also included the required zoning summary of minimum zoning requirements. Moving on to the plans, it shows every single existing and proposed lot line for the parcel. It also names the parcel. It is important to note that Parcel H Way is a private parcel, it will not be maintained by the town. The plan shows the required monumentation at the subdivision roadway and show every single existing and proposed lot line which is able to be reproduced on the ground in accordance with the rules and regulations. Moving on to the second sheet, it is largely just existing lot lines. These would be recorded with the Registry should they be approved. Moving along he showed the erosion control plan. It shows typical erosion controls for a project of this size and scope including, but not limited to, silt fencing and hay bales, stockpile areas, saw cut at Bartlett Street. The important thing to note here is that they do encroach slightly on the 100-foot state

jurisdictional buffer, although they do not encroach on the 25-foot local no-disturb buffer. They are proposing a stormwater basin (a surface basin) which would overflow to the wetland area flag A144 which was previously requested by the Conservation Commission that they provide stormwater overflow to that area to keep it as a wetland in future conditions. Additionally, the infiltration provided by the stormwater basin will feed the groundwater and supply water to the wetlands. It is important to note there is no direct disturbance to the wetlands that had been flagged and walked and approved on site. Additionally the 25-foot local no-disturb buffer and the 35-foot local no structure buffers have been respected with this definitive subdivision submission. Moving on they have the materials and layout plan. It shows the paved Parcel H Way which has been engineered and designed to meet the requirements of subdivision rules and regulations of the Town of Northborough. It shows a paved 26-foot wide subdivision road located within a 50-foot wide right-of-way with sidewalks on either side and a landscaped area in between. They have the required lighting, hydrants, and the bulb dimensions all provided on the layout plan. They have also carried forward the 6-foot wide painted crosswalk striping per the Town of Northborough Trails Committee request. In accordance with the rules and regulations they are proposing a drainage easement on 0.51 acres to accommodate the proposed stormwater basin. It should be noted that the site lighting is exactly the same as what was installed and approved by the Planning Board at the Hayes G site at 150 Hayes Memorial Drive in Northborough and Marlborough MA. Moving on to the drainage and grades plan, it is a very simple grading and drainage design. It is a simple slope from the high point at Bartlett Street down about 1% which is in accordance with the rules and regulations of the Town of Northborough subdivision regulations. Catch basins are located mid-point down the driveway and low point in the cul-de-sac. They will be conveyed by a properly sized reinforced concrete pipe to a sediment basin which will treat TSS and water quality. It will overflow to a detention basin which has been designed to accommodate the 100-year storm for the proposed subdivision impervious roadway and will overflow to flag A144 as requested by the Conservation Commission. There is also a 10-foot level maintenance path as requested by engineering at our previous meeting prior to the submission of these plans. Moving on to the utilities plan they have a very similar utility scheme to what was proposed in the site plan application for the Parcel H project. It is separate fire and domestic water lines, it is electric telephone and cable to the site to provide electricity for the proposed lighting and it is a sewer force main which will connect to the municipal sewer system. He showed the required plan and profile of the drainage system as required by the subdivision rules and regulations. They show the existing right line grade, the existing center line grade of the proposed subdivision road, and the existing left side line grade of the proposed subdivision road in exact accordance with the rules and regulations of the subdivision regulations. It is a standard roadway design. He showed the required fully engineered plan and profile of the utilities including the sewer force main as well as the roadway profile. They also put together a fully engineered plan and profile for not only the roadway but also the utilities in the road, and coordinated them to avoid any conflict with the proposed drainage on site. They have standard erosion control details including the construction entrance, sediment fencing, proposed stockpile areas, trenching for utilities, signs, hydrants, bends for water lines; they are also proposing a sloped granite curbing at the site per the request of the engineering department. He did say in addition to these fully engineered plans for a Non-Residential Definitive Subdivision of Land known as Parcel H Way, they also submitted a signed Form C Definitive Subdivision application, the appropriate filings fee, certified abutters list, list of waivers (there are none), memo from the MA Historical Commission, subsurface soil investigation, geotechnical report, traffic memorandum, and a very lengthy Phase I environmental assessment prepared by a licensed site professional, Sanborn Head). He believes all the required materials have been submitted.

Mr. Lopez said he received a comment letter from the Town Engineer earlier today and thought it would be helpful if they could walk through a couple of the questions he had so they could get clarification on some of the comments made in the review letter and have an opportunity to respond to some of the questions.

He said with respect to the requirement of the Conservation Commission and requiring approval, they understood that. The Conservation Agent did attend the preliminary meeting they had with the Town Engineer. Given the significantly less disturbance that the proposed subdivision roadway would be presenting, the Agent was comfortable with the subdivision plan as proposed and didn't raise any objections or concerns. They look to file an NOI prior to breaking ground. Similarly with the Earthwork Board, they understood they would need an Earthworks Permit. With respect to the stop sign, there is a stop sign indicated on the plan. He was not sure if there is a different stop sign the Town Engineer is requesting or at a different location. They can add a "no right turn for trucks" sign as well. Mr. Litchfield apologized; he missed the stop sign on the plan. Traffic will be discussed later. With respect to the minimal horizontal separation between sewer and water being 10-feet, he believes it was specified at 10-feet. Mr. Robinson said it is exactly an offset of 10-feet for the fire line, and greater than 10-feet for the domestic water line. Mr. Robinson will add a dimensional to the plan showing it. Mr. Litchfield said he believes the DPW's comments he incorporated in that section of the letter were all based on things he wanted to see on the plans. There have been some issues with contractors building things that were not clarified on the plan properly. Even though they are scaled, contractors seem to miss that part of it. With respect to the sewer inspection port and air relief manhole, Mr. Lopez said they had received prior letter from the DPW which had requested that that inspection port and relief manhole be located right at the lot line, so that is where it was placed. They were trying to be consistent with the prior letter they received from the DPW. They are happy to shift it to be within the property line or on the lot line. He will need clarification as to where it should be. Again, Mr. Litchfield apologized and will clarify and verify with the DPW Director and give him direction for the appropriate location. It is something they want to make sure is clarified on the plans. Mr. Lopez thought the blank flange wye fell into that category as well. It was their understanding that the wye was not to be installed, as it would be undesirable, there would be a potential clog point if there were no user from the Lyman Street side of the road; he asked for clarification on how to address that. Mr. Lopez thought they had included all the required sewer and water details on the plans. If there is more, he is requesting what they are. Mr. Litchfield will clarify it with the DPW Director. Mr. Robinson said they did add a note to the plans that everything should be tested per the Town of Northborough standards which they believe is an umbrella term that would cover the proper inspections and testing. It is not something they have done previously for Hayes G project; it was not an issue.

Rob Nagi (VHB) said their role in the subdivision plan was to look at the safety of the driveway and make sure it was designed to the appropriate standards. In the introduction to their memo included in the design package, it notes that the subdivision itself is not going to be generating any traffic; it is the development that goes on the subdivided parcels that would. It is not being proposed here; it would be a separate site plan submission. They looked at the driveway to make sure it met safety standards. The driveway meets AASHTO standards for driveway sight lines (well over 600-feet in both directions) to see any oncoming vehicles. They also wanted to make sure that pedestrian accommodations around the subdivision roadway met typical design standards (they do). The sidewalk meets out to Bartlett Street and goes completely around the entire subdivision roadway. The traffic study submitted formed the basis of the opinion that the driveway would be able to serve the subdivision itself. They used the prior development as a

potential development that could go onto this site given the existing zoning; 151,000 square foot warehouse type facility. They wanted to make sure the amount of traffic generated would be suitable at the driveway entrance onto Bartlett Street. In the traffic study you ultimately come to the traffic analysis table which indicates that the intersection would operate well, Level Service C or D, for traffic entering onto Bartlett Street with little delay in getting out onto Bartlett Street considering all the other development going on out there. They updated the background traffic developments that were happening out there to the current development program that is happening around this facility as of December 15th. It included the updated information about the Amazon facility, which they did confirm with the Development Program Manager what the facility was being designed for and what it was going to be generating for traffic; it is consistent with what is in the traffic memo. They also wanted to make sure from an operations perspective there (Mr. Litchfield's comment #6), it needs to be updated to include current volumes, the current information that is contained in the study is based on traffic data collected in October 2019, which was pre-COVID, and would be more reflective of what is out there. If they gathered additional traffic data today, they would discover that there is less traffic now. He said again, the subdivision itself is not going to generate traffic. It is more getting to the basis of will the driveway itself be able to handle the appropriate levels of traffic that will be coming and going from it. The conclusion is yes, the current layout would be able to serve the amount of traffic that would come and go from that facility. Attorney Donahue pointed out to the board that beyond the subdivision which is before the board this evening, any developments on the lots created by the subdivision will by definition require one or more approvals from the town in which issues surrounding traffic generated by that actual use would be appropriate. As Mr. Nagi pointed out, the subdivision itself does not generate traffic in some fashion and the statute talks more about the analysis being the adequacy of the way as it intersects with the existing public way and its adequacy for access to the lot within the subdivision. Mr. Nagi also wanted to point out that actual alignment of the subdivision road onto Bartlett Street has been shifted slightly to remove it from the water protection area. Attorney Donahue pointed out because it was mentioned during the preliminary plan process that they would not anticipate and would be amenable to a condition of approval that this roadway not be moved for acceptance of a town way, they expect it to be maintained by the lot owners as a private way; the burden of maintenance will not fall on the town.

Ms. Milton said the road has a right-of-way section and asked if it would be a private road over that section and was told yes. She said it looks like there will be a crosswalk, will it be on the right-of-way section as well and was told yes. Mr. Ziton said we did this before, looking at the subdivision, we talked about some of the areas that were developable and which were not. He asked which parcels are viable for development. He also wanted to clarification about the parcel on the north side. Mr. Robinson said the parcel was subdivided with an ANR as part of the Hayes G project. The parcel has been sold to a different entity. Mr. Lopez said with respect to the subdivision of land, they are proposing four lots. The developable land area within each of the lots is shown on the drawings. Parcel H2 and B1 do not have a lot of developable area. H1 and B2 do. At this time they do not know what future development plans can be done on those lots. There any number of different uses that would be allowed within zoning. They would have to supply a site plan approval to do anything on those lots but they could support either a building development program on the lots or provide excess parking or provide stormwater or nothing at all. It's hard to say what the development program will be in light of the fact that the prior site plan approval was not approved. Mr. Ziton asked if the subdivision right-of-way only indicated the road coming in from Bartlett Street. Mr. Robinson explained that the right-of-way is the property line where the edge of the property line for the roadway meets the edge of the property that is going to be developed. He said most roads have a 50-foot right-of-way but the road may

only be 25-feet; it just always has to fit in the right-of-way. The right-of-way is the legal area defined by property lines that the road must fit within with the sidewalks and landscaping, etc. In this case, the Town of Northborough requires a 50-foot wide right-of-way and you need to fit the sidewalks, 4-foot landscape area, and 26-foot wide paved roadway with curbing within that 50-foot right-of-way. Mr. Litchfield commented that the right-of-way is typically the portion that the town would accept as public. That would define the limits of the right-of-way if the street were to become a public way. Ms. Poretsky said the drawings showed the drains and basins and asked if the basins were just for this driveway or also include future development. Mr. Robinson said it only includes treating the proposed impervious site improvements for the roadway and the sidewalk for this particular development. She asked if it had to go before the Groundwater Committee. Mr. Litchfield did not believe it did. She thought a road that was considered an industrial property is considered industrial and thought it would have to. Mr. Litchfield said a roadway is not necessarily an industrial use, it is just a roadway. Site plans would come before the Planning Board and the Groundwater Committee once the lots are planned to be developed, those would be required to, but not just the roadway. Ms. Martinek said if it is just a roadway, the roadway still requires a special permit. Mr. Litchfield said it does not require a special permit. The roadway is being developed under the Subdivision Control Law. Attorney Donahue said the confusion is the term “use” as that is used in the zoning bylaw where the use is controlled by a table of uses. The ability in a different statutory forum of a landowner to submit his land and divide it which is the Subdivision Control Law. Where they come together can be difficult, particularly for smaller subdivision roads, but essentially what the courts have ruled is that a road is not a use in and of itself. For example there is no use in your Table of Uses for a road. Every use off of the road triggers some requirement for review under zoning for that particular use. Ms. Poretsky said the way she is looking at this is they have a parcel H and a parcel B and subdividing parcel H and subdividing parcel B; it seems like two subdivisions. She was not sure how those could connect to the four-lot subdivision. In her opinion, parcel B should not be subdivided because they are creating a non-conforming lot. B1 only has 45,000 square feet. Per our zoning, you need 60,000 square feet to have a lot in the industrial zone. Her concern is subdividing a lot and creating a non-conforming lot. She would like to ask Town Counsel. Ms. Joubert said any time someone does an ANR or subdivision, they can create a lot that would be labeled in the future as not to be considered a buildable lot. Ms. Poretsky said in the past they were told they could create a lot if it met the frontage and square footage; this does not. When she read the subdivision bylaw criteria, 10-12-050, it says there has to be compliance with zoning for all buildings, structures and lots. Ms. Joubert said that’s to get a buildable lot. You can put a lot on a plan whether it’s an ANR plan or subdivision plan and it is usually labeled “not to be considered a building lot” or “non-buildable lot”; it is perfectly legal. An ANR doesn’t have to conform to zoning; it only has to meet a minimum of frontage and square footage in accordance with the state statute. There are many lots in town considered non-buildable or not to be considered a building lot. Ms. Poretsky said she talked the assessors about a lot on West Main Street being built on that was considered a non-buildable lot. The assessors said that can go back and forth at any time. Attorney Donahue thought some of the confusion might be in trying to, once again, determine why the notation is shown. Why there might be a notation on one or more of these lots that is not a buildable lot is to make sure that someone does not get confused that by thinking it is simply on a plan that it has been endorsed by the board’s endorsement of the plan as a buildable lot. It doesn’t mean that you can’t take that lot and apply it under applicable zoning or whatever relief might be available under zoning, make it capable of being a lot which a building can exist. Ms. Poretsky wants to ask Town Counsel can a lot not be subdivided if you are creating a non-conforming lot. Why can’t parcel B stay as one lot? Attorney Donahue said the B section can’t stay as one lot and have a road through it. By definition it is now created as two

lots, one on each side of the roadway. They can't subsume the road as a subdivision because then it is not a subdivision road anymore. It's either the contradiction or the inconsistency between the two statutory frameworks. She asked about the waivers. With the preliminary subdivision they were asking for waivers for drainage structures, basin and drainage piping, fire hydrant, cul-de-sac bulb. She asked Mr. Litchfield and the applicant if they are now meeting all the subdivision roadway requirements (the ones they asked for with the preliminary plan). Attorney Donahue said the message they took from the denial or the discussion leading to the denial is that this board is not amenable to waiving subdivision rules and regulations for the subdivision; the instructions given to the design engineer were to meet those requirements; they believe they have. Mr. Robinson agreed.

Ms. Martinek asked Mr. Litchfield if the applicant complied with Chapter 10-36 Design Standards and was told yes. They did not ask for any waivers, they included everything required per the subdivision rules and regulations that are required to build a roadway. Ms. Poretsky asked if they were going to use the roadway for all four lots or just for the two at the top. Mr. Lopez said the roadway right now is designed and is intended to be used as shown on the plan. She went back to the definitive plan criteria and it says where utilities cross they need an easement of 20-feet. Isn't there a 20-foot easement where the utilities are going across or it looks like it's going underneath the road. Mr. Robinson said they are located in the 50-foot right-of-way. Mr. Litchfield said that section refers to an easement going across property that is not part of the right-of-way. It does not apply to utilities within the roadway that is proposed as part of the subdivision. She asked about the Geotechnical report. It talks about stormwater management proposed to the northwest and east of the proposed building. She said it sounds like that was from the old plan when they were doing parcel H and asked Mr. Litchfield if it was referring to the original basin behind the building that was removed. He deferred the question to Mr. Robinson. There is only one basin shown on the subdivision plan so there is only one basin being reviewed as part of the subdivision roadway. Mr. Lopez said it referred to the basin that was part of the parcel H building design, not the basin that was included in the subdivision roadway design. Mr. Lopez said any changes to the building that was proposed under the parcel H development scheme would have to go back to them for review. It is not applicable to the stormwater basin that is designed as part of subdivision roadway. It is not relevant to this stormwater basin. She asked did the MWRA get a copy of the Geotechnical report. Mr. Lopez said they did get a report. The information that was in this larger Geotechnical report that was relevant to the aqueduct crossing was excerpted from this report and provided in a more condensed report to the MWRA. The MWRA was not reviewing profiles of roadways and cross sections of building slabs for the buildings per se because it is not their purview, it is not their land. The portions of the geotechnical analysis that dealt with the roadway design over the aqueduct, the ground penetrating radar analysis that was done to locate the depth of the aqueduct as your cross over it, all that information was given to the MWRA. They did a site visit and along with numerous phone calls led to the issuance of the 8M permit. She asked if they saw the new subdivision roadway design. Mr. Lopez they have not. If and when the roadway is built, they would revise the drawings, submit them and get a modification of the permit as needed to construct the building. It is a right-of-way they have with the MWRA and would get it at the appropriate time. It doesn't make sense to go back to them now to revise the 8M permit without constructing the roadway. Attorney Donahue said they would be amenable to a condition of approval that requires before the start of construction of the roadway, they provide to the board evidence of the MWRA sign-off on the construction detail that are in the approved subdivision plan. Ms. Martinek asked if they had a permit for this plan to cross that area. Attorney Donahue said they have a permit to cross the aqueduct. They have not contacted the MWRA with the specific design until they find

out if it is acceptable to the town under its subdivision rules and regulations. She said their plan currently includes building on land that they don't even have a permit to use right now. Mr. Lopez said they have the absolute right to cross the aqueduct. Whether or not they have a permit in hand today, unless someone on the planning board can direct him otherwise, does not think there is any requirement that they have to have a permit in hand with another private party, essentially an easement, to cross the aqueduct in order to obtain site plan subdivision approval. Ms. Martinek asked if they had easement rights recorded at the registry. Mr. Lopez said they have a deeded right to cross the aqueduct. She would want to see that because ownership of land is required. Mr. Lopez said they already provided that. It was provided in the original, there is a deed reference, it is recorded but they can provide it again. She wanted to clarify if they owned the piece of land. Mr. Lopez said they do not own the aqueduct land. Attorney Donahue will send the easement rights to the board. The property of Gutierrez has a legal easement right, which is different than ownership, but it is the ownership of the right to cross instead of own the fee.

Ms. Milton was curious what the thinking was behind how the lot lines were drawn for the two larger parcels H1 and H2. They were designed to meet the minimum buildable requirements per the zoning bylaws for an industrial parcel of land. She talked about non-buildable being able to change if you submitted a different plan. Does non-buildable mean you can't put structures on it, but could put a different type of constructive element on it? Attorney Donahue said the notation "not a buildable lot" is to make it clear that it currently does not comport to the dimensional requirements of the Town of Northborough. She thought that most of the abutting properties are owned by Gutierrez. Mr. Lopez said they no longer own any of the abutting land.

The Board of Health has not provided feedback at this time; Ms. Joubert said they are dealing the COVID-19 every day and she will follow up with the Health Agent. Mr. Litchfield commented they may have thought no letter was necessary because the project is proposing to tie into town water and sewer. Regarding Conservation review, they have received an Order of Conditions. Attorney Donahue said they are not planning as a condition of this board's approval to obtain a new Order of Conditions limited to the proposed subdivision plan. Ms. Martinek said the subdivider, which relates to a subdivision plan, shall provide documentation prior to PB approval; she is expecting it as part of their application. Ms. Martinek said there is some outdated documents that no longer reference the plan, i.e., the Mass Historical Commission as well as the 8M permit references the old plan; she would look to see if a new permit was issued for the correct plan. She will want to see the easement right recorded with the registry of deeds for the area owned by the MWRA. Attorney Donahue said they will call out and send to the board under separate correspondence for the board's records, the easement. They are not planning to obtain during this public hearing process a new 8M permit that refers to the subdivision plan. To the practical reason that until the plan is approved, they don't know if it's the final plan. What they indicated is that it would be a reasonable condition of approval that they get a modified or amended plan prior to constructing the subdivision. At that time they can submit to the MWRA the approved subdivision plan and there will be no question about it as to what they are approving. Ms. Martinek said before granting approval they would like to know that they have permission to cross that land, and right now they don't have the permit. Attorney Donahue said there is no harm, because if they don't get approval after the board approves the plan, they can't build the roadway. The question is not approval of the plan, it is construction of the roadway. She wants to know if the MWRA approves a subdivision road which is very different from them crossing with an access driveway. Mr. Lopez said it is not that different from their standpoint. What they are concerned about, given that they have the legal right to cross over the aqueduct, is the integrity of the tunnel that is buried 15-feet below the surface. What they have done through extensive analysis

is to demonstrate the worst case scenario of loading on top of the access drive, would there be any damage or degradation to the structure beneath it. Their engineers looked at the analysis and agreed they were comfortable with the construction proposed for that roadway. Whether they add sidewalks on either side of the roadway cross section which are only as deep as the curbing, and in any event outside the tunnel, from their standpoint it doesn't change their analysis. They are comfortable they can submit a modified roadway design that they would approve, and happy with a condition that they would obtain the modified permit. Her understanding was that they knew with the preliminary that they had to update the 8M permit and now it seems you don't want to. Mr. Lopez did not agree with that statement. They never agreed that they would update the 8M permit for the purpose of the subdivision roadway. She said it was something they acknowledged that it would need to be updated. Attorney Donahue said they acknowledged that the board said it but they never acknowledged that they would do it. Ms. Martinek would like to see at least as a starting point, if they have the easement rights recorded with the registry of deeds. Mr. Robinson said on the existing conditions survey plan, they reference for that easement Plan Book 934 Plan 38. Attorney Donahue will submit a letter to the board appending the recorded document within a week.

Ms. Martinek said there was a lot of information that kept referring to the warehouse, but we were really trying to find out the impact of the road. She would like it zeroed down to the road itself, what is the impact of the road. Attorney Donahue asked in what fashion. She said where it is applicable or makes sense. It seems like there everything was relevant to the warehouse which is obviously not a part of this. Mr. Lopez said they did provide that information in the impact statement. There are a number of places that quantify the impervious area created by just the roadway as being .48 acres of land. Where is it applicable throughout the impact statement they did note the impacts of just the roadway. The Mass Historical letter is out date. Mr. Lopez said with respect to that letter, they have also reviewed the prior subdivision roadway and, just to clarify, their review is of the subsurface aqueduct so the aqueduct, again, is below the surface in this location and their review indicated that the proposed crossing of the roadway would have no adverse effects. It relates to the subsurface aqueduct, not the subdivision roadway itself. Whether it is 50 feet wide or 40 feet wide, it is not relevant to Mass Historical's analysis; they don't need an updated letter for the purpose of the subdivision roadway. Ms. Martinek said it is part of the criteria and impact statement and wants to know they are looking at the right plans. It says if the project plans change in the future, then the current project information should be submitted. Mr. Robinson said the roadway crossing over the aqueduct are substantially similar between the two. They are mostly concerned about the vertical clearance above the roadway. They took the exact same utility corridor and placed it over the exact same crossing; there is no significant difference between the two. Ms. Poretsky wants to ask Town Counsel on the non-conforming lot; subdividing lot B makes it a non-conforming lot. Ms. Joubert clarified that the she, along with other board members have signed many ANRs that have lots that are labeled not to be considered a buildable lot. Ms. Martinek wants to verify that the road does not need a special permit. Ms. Poretsky said parcel B and parcel H are both being divided which sounds like two different subdivisions. Can you take two parcels that you own, subdivide each of them and include it in one big subdivision? She would think the subdivision of four lots would have to be one lot that you are subdividing into four different parcels. This really isn't one lot. Attorney Donahue said he understood the difficulty given the location of the aqueduct, but essentially the division of land constitutes a subdivision. How the applicant designs that subdivision and land that he either owns or controls in some fashion can be done in any number of ways. Ms. Poretsky would also like to ask Town Counsel if two pieces of property can be combined into a subdivision with the aqueduct in the middle. Ms. Joubert said they are not subdivisions, they are parcels of

land. It doesn't matter whether you have one parcel or seven parcels that someone owns; it doesn't even have to be the same owner. If all of the parcels are put together and none of them have adequate frontage on town road, you can create a subdivision. Ms. Poretsky wants Town Counsel to look at the plan page C102 of the subdivision plan and look at parcel H and parcel B. Mr. Robinson said the applicant owns all of the land, it is their legal right to subdivide in accordance with the Town's subdivision rules and regulations.. If he does not subdivide the parcels into buildable areas, meeting minimum lot area and frontage, then the sacrifice is that he cannot construct a building on said lot. If you can show all the parcels on a plan or a series of plans, it shouldn't matter whether they are contiguous or not. Attorney Donahue stated the road is all part of one subdivision, they just happen to own land on both sides and have been given the right to cross it. Mr. Litchfield said we can ask Town Counsel but it is the same issue that came up in the site plan with the access over the access easement over the aqueduct. The two parcels are connected by that right to pass over the aqueduct making it virtually one parcel although narrowed down at the point of access across the aqueduct; it is perfectly appropriate.

Questions for Town Counsel: does the road need a special permit per the groundwater bylaw; can a non-buildable lot be shown on a subdivision plan; and can the subdivision be created even though the MWRA aqueduct separates the two parcels.

Ms. Martinek asked for public comment. Michael Bernzweig, 4 Jenkins Drive, said he would be abutting H1, it is the same project and still has all the same issues: environmental pollution, noise, and safety issues. Safety is a major concern since recently a tractor trailer jackknifed onto the Wixted's property.

Janeen Callaghan, Stirrup Brook Lane, had the same concerns she had previously. It will add more traffic issues in the area; more noise, safety, and groundwater issues. She commented that the traffic study was done prior to the Amazon facility.

John Wixted, Stirrup Brook Lane pointed out the subdivision rules to the board and said they are quite clear. Traffic will increase, not lessen on the adjacent public ways. He said for the board to read the Phase 1 Environmental Study. The board should insist on having a Phase 2 Environmental Study prior to any subdivision of the lot to ensure the safety of the public drinking water supply; make sure the VOC levels are appropriate for this development. He also commented on the lighting plan and said they are not being followed.

Ms. Martinek asked who is reviewing the geotechnical letter and Phase 1 Environmental Assessment. Ms. Joubert said the geotechnical report is done with Engineering and the DPW. The Phase 1 Environmental Assessment is reviewed in-house; the BOH is also included. Ms. Martinek said she doesn't have any information on any of those reports and asked for the recommendations from whoever reviewed it. She said the board is on a 90-day timeline starting from the date of filing. Mr. Lopez said they ready to come back at the next available hearing date. She asked if they would have something from Conservation by then. Mr. Lopez said if not, they will inform the board. Any other questions they will be able to answered and clarify at the next available hearing. Ms. Poretsky made a motion to continue the Public Hearing Definitive Subdivision Application for 0 Bartlett Street to February 16, 2021 at 7:30 p.m.; Mr. Ziton seconded; roll call vote: Milton-aye; Poretsky-aye; Ziton-aye; Martinek-aye; motion approved.

Bylaws – Four were agreed upon earlier tonight: Accessory Units, Special Permit for Duplex, Commercial Storage Facility (prohibiting it in Business West), Craft Breweries (move forward with manufacturing and pouring as a special permit in the industrial zone).

Still outstanding is Contractor’s Yard, Non-Conforming (Ms. Joubert will talk to Town Counsel about adding language or changing our language so it is directing the process to the ZBA for the use, when the use is expanded, or when the use changes, even if it is in the same definition in the use table), Prohibited Uses, and Groundwater Special Permit criteria.

Ms. Poretsky thought the prohibited uses bylaw should be written and all they have to do is go down the list and agree/disagree. Ms. Gillespie commented that three members from the ZBA thought listing it separately made it more clear/concise, while some said it could be part of the use table. She was not opposed putting it into the Use Table with the letter “n”.

Ms. Poretsky said she can write the contractor’s yard as well. Ms. Joubert commented it is not a problem to write it, but said if you are doing a change to the non-conforming, she thinks changing the contractor’s yard definition goes away.

There was brief discussion on the timeliness of receiving and requesting information from applicants and staff. Ms. Martinek said they can discuss what the process is and what works best for everyone at another time.

Ms. Gillespie made a motion to adjourn; Mr. Zitton seconded; roll call vote: Zitton-aye; Milton-aye; Poretsky-aye; Gillespie-aye; Martinek-aye; motion approved.

The meeting was adjourned at 10:42 p.m.

Respectfully submitted,

Melanie Rich
Board Secretary