

In The Matter Of:

Brookline Zoning Board of Appeals Hearing

HEARING
February 4, 2015

MERRILL CORPORATION

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Brookline Zoning Board of Appeals Hearing

Case Number 20130094

40B Application by Chestnut Hill Realty

The Residences of South Brookline

February 4, 2015 at 7:00 p.m.

Office of Town Counsel

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Appearances

Board Members:

Jesse Geller, Chairman

Jonathan Book

Chris Hussey

Allison Steinfeld, Planning Director

Maria Morelli, Planning Consultant, Planning Department

Kathryn Cochran Murphy, Esquire, Krokidas & Bluestein

Edith M. Netter, Esquire,

Edith M. Netter & Associates, P.C.

Dan Bennett, Building Commissioner

Peter Ditto, Director of Engineering and Transportation

Joseph Geller, Stantec Consulting

Marc Levin, Chestnut Hill Realty

Steven Schwartz, Esquire, Goulston & Storrs

1 PROCEEDINGS

2 7:16 p.m.

3 MR. JESSE GELLER: Good evening, everyone.

4 For the record, my name is Jesse Geller. To my left is

5 Chris Hussey, and to my far left is Jonathan Book.

6 We're continuing the meeting with the Residences of

7 Chestnut Hill.

8 We have a few administrative notes. I would

9 remind everyone that apparently the deadline for the

10 decision is February 23rd, but due to schedules, really

11 the deadline for signing of the decision is Friday,

12 February 13th. For those of you who have

13 triskaidekaphobia, it's perfect.

14 My understanding is, in the case -- and I just

15 want to make this clarification for the board --

16 whereas in 40A hearings, typically the chairman is the

17 only party that signs the decision, in this case, we

18 would ask that all members voting in favor of the

19 decision sign the decision. That is, all members in

20 the majority.

21 A note about tonight's proceedings: If the

22 board does grant a permit tonight subject to the

23 conditions, the planning department will incorporate

24 our comments from this evening into a draft for

1 circulation. So I just want noted that comments from
2 this evening are important, as you will see. The idea
3 is that we will proceed through the cleaned-up
4 document, which incorporated in revisions from the
5 prior meetings, and hopefully get to the end of it.

6 I know that there are a number of changes to
7 the findings. I'd just assume not go through all of
8 the findings. If the board feels compelled, it can
9 certainly touch on -- I think there are two or three
10 that have some changes. We can deal with those.
11 Again, I'd just assume not go through all of the
12 findings again.

13 MR. BOOK: Mr. Chairman, can we -- I
14 appreciate not going through them, but there are some,
15 you know, minor -- even in the findings, just some
16 minor -- you know, some may be typos, some may be -- I
17 was wondering, if it doesn't take too long, maybe at
18 the end after we get through the conditions, maybe we
19 can just tick though them one by one.

20 MR. JESSE GELLER: Yeah. I think that's fine.
21 The idea here, again, is that we will work through this
22 with the goal that we will have finished reviewing the
23 document, providing our final comments, and be in a
24 position and actually vote on this matter by the end of

1 the evening.

2 Obviously, if we get bogged down with comments
3 and the time slips away, we may have to discuss one
4 additional date, but I'm told by the weather forecaster
5 that there is potential for a snowstorm next Monday,
6 which would be the most obvious date. So sorry to add
7 pressure to tonight, but I think we'll try and push
8 through as much as we can and try to get to a vote.

9 MR. BOOK: Okay.

10 MR. JESSE GELLER: I'd like to call on Maria
11 Morelli who was asked to compile a summary of comments
12 from testimony that we received; that is comments
13 suggesting conditions or changes to conditions. I
14 don't think it's necessary for Maria to simply read out
15 what she's already provided to us, but I think it would
16 be appropriate for her to give us just an overview
17 summary. And then if board members have specific
18 questions on what she's provided, they certainly can
19 ask.

20 Maria.

21 MS. MORELLI: As you'll recall, on January 5th
22 the planning department compiled, for the board, all of
23 the comments the public submitted in response to the
24 December 15th draft decision. And to assist you, as

1 you noted, we have categorized common comments by
2 topic.

3 I just want to say that town staff,
4 consultants, and special counsel did make every effort
5 to ensure that those comments were addressed during our
6 review of the plans and the drafting of the decision,
7 and we looked at three areas to ensure that those
8 comments were adequately addressed.

9 We looked at the site and architectural plans
10 to see if they need to be updated or if they present
11 conditions that address the conditions that were
12 mentioned.

13 We drafted conditions and sharpened language.
14 In short, that if specific conditions were there, to
15 address those issues.

16 And we also looked at town and zoning bylaws
17 to see if there were regulations that would address
18 those concerns.

19 So we're just raising -- we're just compiling
20 the issues for you just to assist you should you want
21 to revisit any particular issue or condition.

22 MR. JESSE GELLER: Thank you. Hang on.

23 Questions?

24 MR. HUSSEY: Yes. I have one question, and

1 that has to do with the chart that you emailed out
2 today. And on the third page I noted that you
3 addressed the \$28,000 amount to be paid to the town in
4 an escrow account for inspection services. And you
5 introduced the word "consultant" into the description,
6 which did not occur in the original. So that amount
7 would not go to pay for the normal staff reviews, but
8 it's to be paid to consultants that are brought in to
9 review the documents?

10 MS. MORELLI: The building commissioner and
11 the director of transportation and engineering can
12 explain. There might be occasions, because this is a
13 very complex case, where a consultant might need to be
14 hired to perform the inspections, and that's why there
15 would be money put into an escrow account to pay for
16 those services. That's the intention of the condition.

17 MR. HUSSEY: Right. I understand that. I
18 think it makes sense. I just wanted to clarify that
19 that's what it was for.

20 MS. MORELLI: That's the intention, yes.

21 MR. JESSE GELLER: Any other questions on the
22 list that's been provided?

23 MR. BOOK: Maria, was there -- I mean, I've
24 read through the list as well as all of the comments

1 from the boards, commissions, and the neighbors. Was
2 there anything in here that was specifically not --
3 just not addressed at all that comes to mind?

4 MS. MORELLI: There were certain issues that
5 were raised that would better be addressed by special
6 counsel, and I believe that those particular issues
7 were addressed during the course of deliberations by
8 special counsel. I just have not pulled those aside.
9 But if you were to look at the January 5th compilation
10 that I prepared, you would see in the third column --
11 or on that page -- that there will be issues that are
12 better addressed by legal counsel. So if you wanted to
13 consult that draft, you would have that checklist.

14 MR. JESSE GELLER: Mr. Book, when you say "not
15 addressed," I assume, just by way of example, items
16 like suggested conditions such as a precondition to
17 issuance of the permit that the applicant obtain the
18 curb cut, that's clearly not in here. That's something
19 that we've talked about. So items like that I think
20 would not be in here in that context.

21 MR. BOOK: Correct. And, I mean, there are
22 others that were -- some of them were duplicative and
23 some of them were -- there were some comments that
24 just -- for lack of a better phrase, they just weren't

1 really addressable. They were kind of amorphous in
2 nature and it probably would have been impossible to
3 draft a condition to.

4 MR. JESSE GELLER: Right. So this does not
5 cover those kinds of issues.

6 MR. BOOK: Are you saying that, or are you
7 asking that?

8 MR. JESSE GELLER: Telling you that. At least
9 based on my look at it. Okay?

10 MR. BOOK: Yes.

11 MR. JESSE GELLER: Now, the categories that
12 Ms. Morelli is raising are legal issues. Those are
13 items that were requested that touch on specific issues
14 on which we, at one time or another, have asked the
15 advice of legal counsel.

16 The example that I would give would be --
17 we've heard, a number of times, testimony about impacts
18 on the school system, and we've turned to legal
19 counsel. And legal counsel has very clearly said
20 that's one of those things that you cannot consider as
21 part of the 40B process, so clearly you will not see
22 that here.

23 So it seems to me, if you have specific
24 questions related to conditions that bear a

1 relationship or that you have legal questions about
2 conditions, it would be appropriate to ask those of
3 Kathy.

4 MR. BOOK: Understood.

5 MR. JESSE GELLER: Okay. Anything?
6 Mr. Hussey?

7 MR. HUSSEY: No.

8 MR. JESSE GELLER: Nothing at this time?

9 MR. BOOK: No.

10 MR. JESSE GELLER: Okay.

11 Okay. So thank you, Maria.

12 MS. MORELLI: You're welcome.

13 MR. JESSE GELLER: So, again, what I would
14 suggest is that we start with the conditions, similar
15 fashion to what we were doing before.

16 Mr. Hussey, I see that you have this out. Do
17 you want to touch on this and deal with it
18 preliminarily, or do you want to put it to the back
19 end?

20 MR. HUSSEY: No. I think I'd start this now.
21 This is the memorandum we just received now that are
22 changes to the front end of the decision -- procedural
23 history and findings and summary conditions.

24 MR. JESSE GELLER: Yes. You've got a mix

1 here. What I would suggest is that if you want to look
2 at this right now, what we do is we touch on the
3 item -- the changes that you see under findings and
4 then we take the conditions in the order in which they
5 come in the revised decision. And it will necessitate
6 that we sort of look at two documents as we go through
7 the conditions.

8 MR. BOOK: Who's the drafter of this?

9 MS. MURPHY: It was a joint effort. So Sam
10 and I and Edie and others went through the draft that
11 we got yesterday and had comments. And we also had
12 some comments from members of the board and we have
13 incorporated those comments -- actually, Maria did the
14 work, but we've incorporated those comments in this
15 addendum, if you will, and they'll show up in red. So
16 these are changes since yesterday's draft -- or
17 Monday's draft.

18 MR. BOOK: Okay. And, Mr. Chairman, you'd
19 rather take this out of order rather than just --

20 MR. JESSE GELLER: No. What I'm saying is --
21 I know Mr. Hussey is anxious to speak to the changes
22 within the findings section. So what I'm suggesting
23 is, because I don't want to go through the entire
24 findings section, that we will take the limited number

1 of changes to the findings section that we see here,
2 the three of them, and then we will go to the
3 conditions and take them in the order in which they
4 appear. And as an updated change appears on this
5 latest sheet, we'll simply look at it in context.

6 Okay?

7 MR. BOOK: Okay.

8 MR. JESSE GELLER: Okay, Mr. Hussey. So I'm
9 looking at this latest sheet. I'm looking under the --
10 unless anybody has a comment on procedural history, I'm
11 just skipping to findings.

12 MR. BOOK: Procedural history on this?

13 MR. JESSE GELLER: Correct.

14 MR. BOOK: Okay.

15 MR. HUSSEY: No. I'm pleased with the changes
16 to the procedural history that are indicated in this
17 amended that we just saw today.

18 I only had one other question on procedural
19 history, and that had to do with the acreage on item
20 number 3. They stated that the original application
21 dealt with approximately 9.32 acres located in Hancock
22 Village. Did you have a chance to check that?

23 MS. MURPHY: Yeah. I think Maria has looked
24 at the issue of acreage.

1 MS. MORELLI: Right. So we had questioned --
2 we had asked the applicant the difference between the
3 8.6 and the 8.72, and they certified the 8.72. They're
4 obviously looking at the CAD drawings. And we're using
5 the word approximately just to cover that base.

6 MR. HUSSEY: Okay, fine.

7 MR. JESSE GELLER: Mr. Hussey, under findings,
8 take a look at paragraph number 3.

9 Mr. Book, obviously I'm not excluding you.

10 MR. HUSSEY: I'm pleased to see this. I had a
11 question relative to open space when it was used by the
12 neighbors, and they addressed that here and I think in
13 the condition as well, which is good.

14 MR. JESSE GELLER: Mr. Book, do you have a
15 question about that change?

16 MR. BOOK: I'm fine with the change in
17 number 3.

18 MR. JESSE GELLER: Paragraph 10?

19 MR. HUSSEY: I'm pleased to see that in here
20 as well. That's fine.

21 MR. JESSE GELLER: Paragraph 11, which is, I
22 thought, actually, at our last meeting where you were
23 going.

24 MR. HUSSEY: I know. I think that's fine. 11

1 is fine.

2 And then the last thing, the item to be
3 inserted between 11 and 12, the statement as to what
4 the original Hancock Village was intended as, is fine
5 as well.

6 MR. JESSE GELLER: Mr. Book?

7 MR. BOOK: So you're reading faster than I am,
8 so just give me a moment to catch up.

9 I'm fine with all of those changes.

10 MR. JESSE GELLER: Okay. Excellent. Thank
11 you.

12 Let's move to conditions. And as we did last
13 week, what I will do -- did we meet last week? Two
14 weeks? Whenever we didn't have a snowstorm. What I
15 will do is I'll refer to the paragraph. If you have
16 something to say, let me know your comment. Otherwise
17 say fine as we work through them.

18 Paragraph 1, I have no comment.

19 MR. BOOK: And we're incorporating these --

20 MS. NETTER: -- changes, yes.

21 MR. JESSE GELLER: Yes. It assumes -- unless
22 you make a comment, it assumes incorporation -- unless
23 anyone makes a comment, it assumes incorporation of the
24 red-line changes.

1 Mr. Hussey?

2 MR. HUSSEY: I'm fine on 1.

3 MR. JESSE GELLER: Okay. Number 2?

4 MR. BOOK: No comments.

5 MR. HUSSEY: No comments.

6 MR. JESSE GELLER: Paragraph 3?

7 MR. BOOK: No.

8 MR. HUSSEY: No comments.

9 MR. JESSE GELLER: Paragraph 4?

10 MR. HUSSEY: Should we bring up other things
11 between 29 and 38 in the conditions? Questions, if we
12 have questions?

13 MR. JESSE GELLER: We're just taking
14 them chronologically.

15 MR. HUSSEY: Okay. The conditions, they may
16 as well be discussed in --

17 MR. JESSE GELLER: Yeah.

18 MR. HUSSEY: I just had a question on
19 Condition 21.

20 MR. JESSE GELLER: Wait. Then I misunderstood
21 you. What I want to do is I just want to take the
22 conditions in the order in which they appear. If you
23 have a comment --

24 MR. HUSSEY: Okay.

1 MR. BOOK: So I can say -- I don't know if it
2 helps -- my first comment is on Condition 20, so up
3 through 19 I don't have any comments.

4 MR. JESSE GELLER: Okay. I had a question on
5 paragraph 11. Paragraph 11 of the conditions, "When
6 the town regulatory agreement takes effect ... the
7 affordability requirements, the latter which are set
8 forth ... "

9 MS. NETTER: Take out "the latter."

10 MR. JESSE GELLER: And the second one is:
11 You're referring to conditions about affordability, but
12 I don't think paragraph 9 is about affordability.

13 MS. NETTER: That's correct.

14 MR. JESSE GELLER: Okay. 11(a), you're
15 referring to "subsidy period" but it's undefined.
16 "Subsidy" we've defined through the --

17 MS. NETTER: Yes. I think we put a change --
18 if you look -- I'm not sure -- if you look at 11(a) and
19 you count up -- on page 9 you count up, and it should
20 have been 7 lines, "As defined in Exhibit 2, terms to
21 be included in replacement," and it should have been
22 moved up earlier.

23 Let me just see if Ms. Morelli caught that.

24 MS. MORELLI: Yes, I understood. Yes,

1 exactly.

2 MR. JESSE GELLER: Okay. Just to confirm --
3 and I apologize for not remembering -- there are no
4 mechanicals on any other buildings other than the
5 midrise, correct, on the roof?

6 MS. MORELLI: On the roof. Not in the infill.
7 There could be condensers that would be placed --

8 MR. JESSE GELLER: I understand that, but
9 those are on the ground.

10 MS. MORELLI: That's right. Nothing on the
11 roof.

12 MR. JESSE GELLER: Okay. And in paragraph 15,
13 page 10, second full sentence, "The restriction shall
14 run by its term in perpetuity and shall prohibit" --

15 MS. NETTER: Yes.

16 MR. JESSE GELLER: And then if you continue on
17 that line, right, okay, "prohibit additional structures
18 or buildings or paved surfaces on the site," but --

19 MS. MURPHY: Period, we're putting a period.

20 MR. HUSSEY: And then dropping, "and may allow
21 passive recreation"?

22 MS. NETTER: Yes.

23 MR. JESSE GELLER: Okay. And then just a
24 question on 16. The quoted word "thrive," I assume

1 that's straight out of --

2 MS. MURPHY: Nothing. We don't need to put
3 that.

4 MR. JESSE GELLER: I have no idea what that
5 means.

6 MS. NETTER: Flourish, don't die.

7 MR. JESSE GELLER: Don't die. I know what
8 that is.

9 MR. BOOK: Yeah. But it's more than don't
10 die.

11 MR. JESSE GELLER: Thrive gives you sort of
12 this --

13 MS. MURPHY: Abundance.

14 MS. STEINFELD: It doesn't warrant quotes.

15 MS. MORELLI: Could I just ask you to
16 clarify? Are you changing "thrive" to "flourish"?

17 MS. NETTER: No. Just take out the quotes.

18 MR. JESSE GELLER: I don't know what any of
19 those mean, but the quotes should certainly come out if
20 they're not attributed to someone we're relying on.

21 Okay. In paragraph 19, sub C, no bold on the
22 C.

23 MS. MURPHY: Yeah. We caught that.

24 MR. JESSE GELLER: And I think in the last

1 line, connecting to Independence Drive in each instance
2 not less than 23 feet, if they suddenly have an
3 epiphany and decide to do 50-foot driveways, I'm sure
4 the fire chief would be thrilled.

5 MS. MORELLI: I just want to clarify that the
6 first -- it's just a minimum width of the portion.

7 MR. JESSE GELLER: Okay. Thank you.

8 We're up to 20? Okay. Go ahead. I didn't
9 have anything on 20.

10 MR. BOOK: Just a question in terms of how the
11 town does it. Do they actually set up a,
12 quote/unquote, escrow account or does the town -- so
13 the town takes money and -- I'm looking at you, but it
14 really is a question for somebody from the town.

15 When the town takes money in from a developer,
16 what do they do with it? Is it just a segregated
17 account at a bank? Is it truly an escrow account with
18 conditions for drawing? So I'm questioning whether or
19 not the word "escrow" is really accurate and if it
20 should just be a separate account.

21 Here comes Mr. Ditto.

22 MR. DITTO: My experience in the past is when
23 a developer is required to give money to the town,
24 first of all, the selectmen must accept it. After they

1 accept it, it goes into a special account which has its
2 own identification number and then we draw down from
3 that account as we spend the money.

4 MS. NETTER: Would you like "separate"
5 better?

6 MR. BOOK: I think I would like "segregated."

7 And then I think at the end there should be a
8 sentence to the effect that after completion of
9 construction, any balance shall be returned to the
10 applicant. I think you had language like that in some
11 of the other accounts that were being set up, so --

12 MS. NETTER: Uh-uh. We took it all out.

13 MR. BOOK: You took it out?

14 MS. NETTER: Yeah. You can't keep the money
15 if you're not using it. But no, I don't think I have
16 that.

17 MR. BOOK: If you look at the end of paragraph
18 24, "all or part of such funds to be returned ... "

19 MS. NETTER: I'm wrong again. This is not a
20 good night for me.

21 MR. BOOK: That's all right. So just some
22 consistency.

23 MS. NETTER: That's absolutely true. You're
24 absolutely correct and that should be -- yeah. The

1 same language should be in there. Yeah, exact same
2 wording so that we don't ...

3 MR. BOOK: So that's all I have on 20.

4 MR. JESSE GELLER: 21?

5 MR. HUSSEY: 21. I was going to ask -- down
6 in the number of bicycles to be provided, Building 12,
7 I believe, accommodates at least 50 bicycles. Where
8 did that 50 come from?

9 MS. MORELLI: It came from Mr. Michaud who was
10 the consultant that the applicant hired from MDM
11 Transportation. That's what they proposed.

12 MR. HUSSEY: Okay. So at least those, so
13 there's some -- if it turns out there aren't anywhere
14 near that number, that can be reduced?

15 MS. MORELLI: No. At least 50 bicycles.

16 MR. HUSSEY: Oh, I'm sorry. Can't be less
17 than. We may come to that in the future. Okay, thank
18 you.

19 MS. NETTER: They can always -- I mean, for
20 things like this -- I mean, first of all, the applicant
21 has made representations that are incorporated into
22 this decision, but certainly it's a very simple process
23 if they need to make some changes and they're minor.
24 Just they come to you. If you say it's a minor change,

1 they're done.

2 MR. HUSSEY: Right. Okay.

3 MR. BOOK: I have a question on 21. So five
4 lines down, we're still on the first sentence, "The
5 transportation access plan shall be subject to the
6 review by the director of transportation and
7 engineering." I wonder if this is one of the
8 instances -- since this has yet to be provided -- that
9 there should be an approval. It's more than review.

10 MS. NETTER: We talked that through quite a
11 bit. Was it a scope issue or -- we can check the regs
12 too.

13 MS. MORELLI: This is part of 5.09.

14 MS. NETTER: Yeah.

15 Do you want to move forward while --

16 MR. JESSE GELLER: I had a question in this
17 paragraph as well.

18 MS. NETTER: Okay.

19 Dan, this is one you know by heart. Do you
20 have any comments? Mr. Bennett, I meant.

21 MR. BENNETT: As to whether it should be
22 review and approval?

23 MS. NETTER: No. If it were to be approval,
24 what does that mean?

1 MR. BENNETT: He would review it for
2 consistency. The consultant would be Peter, but he
3 would consult with his staff, possibly the
4 transportation board. We're on Condition 21; correct?

5 MS. NETTER: Yeah, 3C. I mean, if it's just
6 for compliance with this regulation, then that's pretty
7 easy.

8 MR. BENNETT: Correct, yeah.

9 MS. NETTER: But let me just see. Just say,
10 "to determine compliance with the section."

11 MS. MORELLI: I think Mr. Bennett is going to
12 check something with Mr. Ditto. We do have language in
13 this condition that says, "in accordance with the TAP
14 guidelines of the town." It quotes a specific portion
15 of that zoning bylaw which shall be subject to review.
16 I think the whole point is compliance with that
17 particular bylaw.

18 MS. NETTER: With this section of the bylaw?

19 MR. BENNETT: Well, in accordance with the
20 transportation access plan. So they're going to submit
21 a transportation access plan.

22 MS. NETTER: But it's subject to review?

23 MR. BENNETT: Correct.

24 MS. NETTER: Review to determine what?

1 MR. BENNETT: That it's consistent with the
2 transportation access plan.

3 MR. BOOK: With the guidelines.

4 MS. NETTER: Oh, it's here already. Sorry.
5 It's here.

6 MR. BOOK: So the review is for consistency
7 with the guidelines and --

8 MS. NETTER: Yeah. Shall be prepared in
9 accordance with --

10 MR. BOOK: All right. Understood.

11 MR. BENNETT: So "review" is fine. "Approval"
12 is not necessary.

13 MR. BOOK: Okay, thank you.

14 MS. NETTER: It could be more artfully
15 worded.

16 MR. BOOK: Now that I'm reading it --

17 MS. NETTER: Yeah.

18 MR. JESSE GELLER: Okay. I'm sorry,
19 Mr. Book. Are you done?

20 MR. BOOK: I'm done with 21.

21 MR. JESSE GELLER: Okay. 21, sub 4,
22 "Including car-sharing spaces among the 292 parking
23 spaces the board has approved as part of the project."
24 The comment I have is, I think the intent is that they

1 are intended as an increase of the number of
2 car-sharing spaces currently available at Hancock
3 Village. In other words, they can't take existing CSO
4 spaces in Hancock Village, reduce them, and simply move
5 them over to this project.

6 MS. NETTER: No. But it says here, "including
7 car-sharing spaces among the 292 parking spaces that
8 the board has approved." Unless I'm missing
9 something --

10 MR. JESSE GELLER: You're missing the ability
11 of the applicant to simply eliminate the CSO --

12 (Inaudible. Clarification requested by
13 the court reporter.)

14 MR. JESSE GELLER: -- the parking spaces in
15 the balance of Hancock Village and push them all onto
16 this project. I don't know why they'd do it, but these
17 are intended to be in addition.

18 MS. NETTER: So we can say that. So it shall
19 be in addition to it.

20 MR. JESSE GELLER: Okay. 22.

21 MR. BOOK: I didn't have anything.

22 MR. HUSSEY: No, nothing.

23 MR. JESSE GELLER: Okay. I had a couple. In
24 terms of the access and egress to -- this is the third

1 line -- access and egress to and from VFW Parkway to
2 Lot E3.

3 MS. MORELLI: That's more specific.

4 MS. NETTER: You prefer that? Okay.

5 MR. JESSE GELLER: And I think -- frankly, I
6 don't care what -- I think the notion here is that the
7 town has the right to participate in the process.
8 That's really what this language is about.

9 MS. NETTER: Is the language acceptable, or do
10 you want to see it --

11 MR. JESSE GELLER: It's clear that that --

12 MS. NETTER: I think the applicant wants the
13 town --

14 MR. JESSE GELLER: Oh, I know the applicant
15 wants the town's participation, but I think the notion
16 is that the town is not a silent attendee. They
17 actually want the ability to participate to the extent
18 that they get involved and they see that their
19 participation is appropriate.

20 MR. HUSSEY: I think it says that. It's
21 covered.

22 MR. BOOK: I'm sorry. E3 is the midrise lot?

23 MR. JESSE GELLER: No. E3 is the one next to
24 VFW Parkway.

1 MR. HUSSEY: It's the last buffer zone.

2 MR. JESSE GELLER: I think that's what's
3 meant. I don't think they could have a connection to
4 E2 or E1.

5 MR. BOOK: Right. I guess I'm just wondering
6 the need for the change, because really all we're
7 interested in is making sure the availability of VFW
8 access is really for the benefit of E2.

9 MR. JESSE GELLER: I want to take traffic off
10 of Asheville Road.

11 MR. BOOK: Correct.

12 MS. NETTER: Why don't we leave it as to the
13 site, because it's shown on the site plans.

14 MR. BOOK: I'm trying to understand what the
15 point of changing "site" to -- to limiting it --

16 MR. JESSE GELLER: Because that's what we're
17 talking about.

18 MR. HUSSEY: But there's no other site that's
19 part of this project that --

20 MR. JESSE GELLER: Right. So why bother
21 saying "site"? Why not just refer to it as what it
22 is?

23 MS. NETTER: Why don't we go, "the site (Lot
24 E3)." Does that work?

1 MR. JESSE GELLER: Yes. Okay. 24?

2 Mr. Book, you'll have the same comment --

3 MR. BOOK: Right. So the last sentence,
4 "Prior to the issuance of a building permit, the
5 applicant shall deliver to the town \$64,000, adjusted
6 for inflation, to be placed in a segregated" --

7 MS. NETTER: Segregated, yes.

8 MR. JESSE GELLER: And also, is the reference
9 to COs final COs?

10 MS. NETTER: Where are you?

11 MR. JESSE GELLER: The second line.

12 MS. MORELLI: My understanding is that is
13 final, but if Mr. Bennett disagrees, he can correct me.

14 MS. NETTER: No. It's for all buildings.

15 MS. MORELLI: Yes. That's what it says, for
16 all buildings.

17 MR. JESSE GELLER: Is that final CO?

18 MS. NETTER: Yes. But I don't want to put
19 "final" in here, because then it's going to sound
20 like -- let's leave it as is.

21 MR. JESSE GELLER: Well, no. They issue
22 temporary COs.

23 MS. NETTER: Right. But usually you call them
24 a temporary CO.

1 MR. JESSE GELLER: Okay. As long as we're all
2 talking the same language.

3 Okay. 25?

4 MR. HUSSEY: No questions.

5 MR. JESSE GELLER: Let's also keep in mind
6 that we should be looking at --

7 MR. HUSSEY: Yeah.

8 MS. NETTER: So the only change to 24 was the
9 word "put" became "deposit."

10 MR. HUSSEY: And also you're changing "escrow"
11 to "segregate."

12 MS. NETTER: Yes.

13 MR. BOOK: Correct. What are you looking at?

14 MS. NETTER: I was only looking at the other
15 page to make sure we recognize that.

16 MR. JESSE GELLER: Okay?

17 MR. BOOK: Yes. Segregated.

18 MR. JESSE GELLER: Okay. 27?

19 MR. BOOK: So I'm looking at the revised
20 language. I guess maybe we're getting too involved,
21 but this is going on in perpetuity and maybe we've
22 called out a particular manufacturer and maybe we
23 should say "replacement." If we're talking about
24 replacing it as necessary, it might be some other kind

1 of a gate that the director of transportation and
2 engineering or the fire department -- fire chief might
3 approve.

4 MS. NETTER: I don't know if this is a
5 particular gate that everybody has agreed on, in which
6 case -- if that's the case -- I'm just throwing this
7 out for your consideration -- perhaps if this is
8 something everybody's agreed to, if they want to make a
9 change, maybe they should come back?

10 MR. BOOK: Oh, good Lord, no. I mean, we're
11 talking about the manufacturer of a particular piece of
12 equipment. I would defer --

13 MS. NETTER: Everybody is sitting there --
14 even though they're not commenting, they're all saying
15 yes.

16 MR. BOOK: Yes, they would come back to the --

17 MS. NETTER: No. Yes, Opticon gate is the
18 gate everybody has agreed upon.

19 MR. JESSE GELLER: Well, the issue is, what if
20 the technology changes and you're in your hover
21 crafts?

22 MR. BOOK: I mean, they're talking about -- at
23 the Garden they're not going to be using Zamboni
24 machines anymore. Who would have thunk?

1 MS. NETTER: Okay.

2 MR. JESSE GELLER: Are you serious?

3 MR. BOOK: Yeah. They're swapping them out.

4 MS. MURPHY: So Mr. Zamboni is no more?

5 MR. BOOK: Well, yes, as a company, but the
6 Garden isn't going to use them.

7 I know we're getting off topic, but this is a
8 long-term proposition, this project, and the fact is we
9 called out a particular manufacturer of a gate and --

10 MR. JESSE GELLER: So do you want to refer to,
11 "or alternative optical emergency" --

12 MS. MORELLI: Can I just say that this
13 particular gate functions so that the driver of the
14 emergency vehicle can open the gate without going out
15 of the vehicle to unlock it. So "replace as necessary"
16 -- should Opticon go out of business, there would be
17 something -- maybe "replace in kind." But it's the
18 objective that we don't want the firefighter to leave
19 the vehicle.

20 MR. BOOK: Which is why I was really deferring
21 to the fire chief in terms of an alternative -- if it's
22 being replaced with something else, I would think that
23 the fire chief is in the best position to approve an
24 alternative gate.

1 MS. MURPHY: So can we say, "comparable gate
2 acceptable to the fire chief"?

3 MR. BOOK: Sounds good to me.

4 MR. JESSE GELLER: Okay. Thank you.

5 28?

6 MR. BOOK: I have a very important comment.
7 The last line before the clauses after "fire lane,"
8 close parentheses.

9 MS. NETTER: Where are you?

10 MR. HUSSEY: 28.

11 MR. BOOK: 28, top of the page.

12 MR. JESSE GELLER: Good catch.

13 MS. MORELLI: There's also an extra "the."

14 MR. JESSE GELLER: Anything else?

15 MR. HUSSEY: No.

16 MR. JESSE GELLER: Okay. 29?

17 MS. NETTER: And that also has a change in the
18 subsequent documents.

19 MR. BOOK: I have no comment.

20 MR. JESSE GELLER: Okay. I don't.

21 Mr. Hussey?

22 MR. HUSSEY: No.

23 MR. JESSE GELLER: Okay. Stormwater, 30.

24 MR. BOOK: I don't have anything.

1 MR. JESSE GELLER: Okay. 31?

2 MR. HUSSEY: No.

3 MR. BOOK: No.

4 MR. JESSE GELLER: Okay. 32?

5 MR. HUSSEY: No.

6 MR. BOOK: No.

7 MR. JESSE GELLER: 33?

8 MR. BOOK: No.

9 MR. HUSSEY: No.

10 MR. JESSE GELLER: 34?

11 MR. HUSSEY: No.

12 MR. BOOK: No.

13 MR. JESSE GELLER: 35?

14 MR. HUSSEY: No.

15 MR. BOOK: Do you think it's clear -- so if we
16 say, "prior to the issuance of a certificate of
17 occupancy," is it implicit that we're talking about the
18 first certificate of occupancy for any building -- any
19 portion of the project?

20 MS. NETTER: A.

21 MR. BOOK: That was my only -- there are going
22 to be lots of COs, and we're talking about before the
23 first one is issued this will happen.

24 MS. NETTER: A.

1 MR. BOOK: Then I have no comments.

2 MR. JESSE GELLER: Okay. 36?

3 MR. BOOK: No.

4 MR. HUSSEY: No.

5 MR. JESSE GELLER: 37?

6 MR. HUSSEY: No

7 MR. JESSE GELLER: Okay. 38, there is an
8 addition.

9 MR. HUSSEY: Fine.

10 MR. JESSE GELLER: Yeah, okay.

11 MR. BOOK: I have no issue with that.

12 MR. JESSE GELLER: 39?

13 MR. BOOK: So I have a question. In 39, with
14 respect to stormwater, is that duplicative of
15 Condition 30? I mean, I realize we haven't touched on
16 water and sewage facility designs, but ...

17 MS. MORELLI: Mr. Book, they are distinct
18 according to Mr. Ditto.

19 MR. BOOK: They're distinct?

20 MS. MORELLI: Yeah.

21 MS. NETTER: We had talked about this, Maria
22 and Mr. Ditto.

23 MR. BOOK: Okay. All right, then I have no
24 comment.

1 MR. JESSE GELLER: Mr. Hussey?

2 MR. HUSSEY: No, nothing.

3 MR. JESSE GELLER: Okay. 40?

4 MR. BOOK: No.

5 MR. HUSSEY: No.

6 MR. JESSE GELLER: Okay. 41?

7 MR. HUSSEY: Nothing.

8 MR. BOOK: There is a change --

9 MR. JESSE GELLER: Right. In (i).

10 MR. BOOK: -- in (i).

11 MR. JESSE GELLER: Okay. 42?

12 MR. HUSSEY: Nothing.

13 MR. BOOK: No.

14 MR. JESSE GELLER: 43?

15 MR. HUSSEY: The third and fourth line from
16 the bottom, "rodent control plan," seems to me one of
17 the neighbors was requesting an insect control plan
18 during construction as well. I didn't see that
19 mentioned in your --

20 MS. MORELLI: I think I understood that as
21 rodent control. There was a concern about vermin and
22 rodents.

23 MR. HUSSEY: Well, they specifically talked
24 about carpenter ants and termites. They're not

1 rodents. That's insect control.

2 MS. MORELLI: I honestly don't recall that.

3 Forgive me.

4 MR. HUSSEY: That's okay. There's a lot of
5 stuff. But that was my recollection. Does anybody
6 else recollect that?

7 MS. STEINFELD: The question is: How do you
8 control insects?

9 MR. HUSSEY: I haven't the vaguest idea.

10 MS. STEINFELD: I mean, there are ways to
11 control rodents, but I honestly don't know about
12 insects.

13 MR. HUSSEY: Well, there are ways to control
14 insects as well as carpenter ants. You can check for
15 them, and then if there's a colony in a dead, wet piece
16 of wood, then you can zap it. I would put it in.

17 MS. NETTER: So it should say, "rodent and
18 insect control plan"?

19 MR. HUSSEY: Yes.

20 MR. JESSE GELLER: Okay. 44?

21 MR. HUSSEY: No.

22 MR. BOOK: No.

23 MR. JESSE GELLER: 45?

24 MR. HUSSEY: No.

1 MR. BOOK: No.

2 MR. JESSE GELLER: 46?

3 MR. HUSSEY: I have a question on 46(e). What
4 is "stabilized construction entrance." I couldn't find
5 that.

6 MS. MORELLI: Just to give you some
7 background, that particular condition did come from the
8 peer reviewer. It was a recommend condition from the
9 peer reviewer. It's also something that Peter Ditto
10 wants to keep in these conditions. I'd have to have --
11 Mr. Ditto would have to address what that means if
12 you're looking for a definition.

13 MR. HUSSEY: I think it's not defined anyplace
14 in the documents.

15 MS. NETTER: But if everybody knows what it
16 is -- Mr. Ditto -- may I ask him to tell you what it
17 is?

18 MR. HUSSEY: I didn't know what it was.

19 MS. NETTER: We didn't either, but Mr. Ditto
20 did.

21 MR. DITTO: I think if you're familiar with
22 any language in the construction industry, this would
23 be second nature to you. Basically, what it is is a
24 way to control the vehicles tracking mud off the site.

1 And it involves, typically, constructing a
2 crushed-stone base, if you will, that's maybe 20 feet
3 wide and 30, 40 feet long. And before the trucks exit
4 the site, they drive over this stone platform, if you
5 will, when they exit the site. And the larger stones
6 are probably 3 to 4 inches in the greatest length, and
7 that's enough to knock off the mud before it leaves the
8 site. It's standard procedure in the construction
9 industry.

10 MR. HUSSEY: Good. I'll accept Peter's ...

11 MR. JESSE GELLER: Anything else on that?

12 MR. HUSSEY: No.

13 MR. JESSE GELLER: 47?

14 MR. BOOK: No.

15 MR. JESSE GELLER: 48?

16 MR. BOOK: No.

17 MR. HUSSEY: No.

18 MR. JESSE GELLER: 49?

19 MR. BOOK: Yes. After the words "during
20 construction," comma. Other than that, I'm fine.

21 MR. JESSE GELLER: 50?

22 MR. HUSSEY: No.

23 MR. JESSE GELLER: 51?

24 MR. BOOK: Is it -- I'm asking this as a

1 question. Is it clear -- when you talk about in the --
2 that the blasting/drilling plan -- that includes
3 methods to protect buildings, residents, pedestrians,
4 vehicles and utilities. Is it clear that the
5 buildings, residents, pedestrians, vehicles, and
6 utilities are both on and off site? I mean, that
7 includes the neighborhood and not just -- maybe it's
8 clear, but I want to make sure.

9 MS. NETTER: We can skip over to the blasting
10 plan and see if it's in there.

11 MR. JESSE GELLER: Exhibit 4.

12 MS. MORELLI: In the blasting provisions,
13 there is an area where there would be preblast surveys
14 done, and that -- I believe if you look at page 23,
15 Roman numeral I, sub C, that speaks to those preblast
16 survey areas, 300 feet of anticipated blasting area and
17 500 feet within Building 12.

18 MR. JESSE GELLER: Is there a reason not to
19 add the language Mr. Book is proposing?

20 MS. MURPHY: Not that I know of. What's -- on
21 and off site?

22 MR. JESSE GELLER: Buildings, residents,
23 pedestrians, vehicles, on and off.

24 MS. NETTER: Do you want to say, "on and off

1 site as provided in Exhibit," blah, blah, blah?

2 MR. BOOK: I'm fine with that.

3 MR. JESSE GELLER: Anything else on 51?

4 MR. HUSSEY: No.

5 MR. BOOK: No.

6 MR. JESSE GELLER: Okay. What about
7 Exhibit 4? Kathy, do you have something?

8 MS. MURPHY: I wondered if you wanted to
9 discuss insurance and bonds. Some of the abutters have
10 queried whether the \$5 million carried by the
11 contractor is sufficient given the nature of this
12 project.

13 And the other is, they've asked for either the
14 developer or the contractor to post bond during the
15 blasting, and that has not yet been addressed in the
16 conditions.

17 And the question to you all is whether you
18 think \$5 million is sufficient in liability insurance
19 and whether or not you think there's a reason to
20 require the contractor to post bond -- a bond.

21 MR. HUSSEY: What does the bond do, actually,
22 in this case? I mean, they have bonds for compliance.

23 MS. MURPHY: It would serve a similar purpose,
24 if not the same purpose, as insurance. It would

1 provide a fund in case there was damage -- security for
2 performance.

3 MR. JESSE GELLER: The bonding was raised
4 by ...

5 MS. MURPHY: I can't tell you which abutter,
6 but it was raised by an abutter.

7 MR. JESSE GELLER: It was raised by an abutter
8 independent of insurance?

9 MS. MURPHY: Yes.

10 MR. BOOK: And an abutter questioned the
11 \$5 million?

12 MR. JESSE GELLER: That, I remember. And the
13 \$5 million comes from where?

14 MS. MURPHY: The consultant's report.

15 MR. JESSE GELLER: The blasting consultant's
16 report.

17 MS. NETTER: Which -- let me double check, but
18 I believe has been reviewed by the chief extensively
19 and on multiple occasions.

20 MS. MORELLI: Yes.

21 MR. JESSE GELLER: And the suggestion about
22 independent bonding, was that commented on by the
23 consultant?

24 MS. MURPHY: Not that I'm aware of, but I

1 don't know for sure.

2 MS. MORELLI: I think that we had given these
3 comments to the fire chief. We have given those
4 comments to the fire department, and we didn't get a
5 response back, necessarily, that they wanted a change.

6 MR. JESSE GELLER: And within the Town of
7 Brookline -- I'm not referring to 40B projects. I'm
8 speaking globally -- what about experience in terms
9 of -- and I hesitate to use the phrase -- comparative
10 quantities and parameters of blasting? Do we have a
11 sense of what we've done?

12 MS. MORELLI: I can't speak to that on behalf
13 of the fire department.

14 MR. JESSE GELLER: Does the building
15 department know the answer?

16 MR. BENNETT: I don't have any specifics, but
17 all blasting falls under the fire department and the
18 NFPA. They do -- they issue permits, you know,
19 regularly for trenches and foundations and that type of
20 project. This one, obviously, is a little bit larger
21 than they're used to, but I think having the consultant
22 on board to assist will -- should help the fire
23 department with any issues or concerns they have. But
24 they do follow state regulations.

1 And in addition, Brookline has its own
2 regulations that they impose. One of which is that I
3 think a permit is good for 30 days. They make the
4 permit expire every 30 days so the person has to come
5 back and get a new permit instead of just --

6 MR. JESSE GELLER: Have you seen any project
7 involving blasting to the degree that this project
8 requires?

9 MR. BENNETT: No.

10 MR. JESSE GELLER: Thoughts?

11 MR. HUSSEY: Well, I don't know much about
12 insurance, but I've seen a number of certificates of
13 insurance and the instruction and they -- as do other
14 forms -- they have certain amounts for each incident
15 and then have an aggregate total, if that helps
16 anybody.

17 MR. JESSE GELLER: Well, the question is
18 whether -- forgetting how they derived to that maximum
19 amount -- but is \$5 million an appropriate amount? And
20 then the question is: Should there be independent
21 security, or should the various methodologies of
22 security -- these are -- frankly, these are questions
23 that we would typically look to people with expertise
24 to provide us with some guidance on. I have no idea

1 whether \$5 million is adequate.

2 MS. MURPHY: Can we somehow draft this so that
3 we require the fire chief to look into that?

4 MS. STEINFELD: To impose customary or normal
5 circumstances.

6 MS. NETTER: I think the consultant has
7 drafted this in accordance with the local and the state
8 laws. And in certain instances, he specified in public
9 hearings that he required more stringent items. And
10 additionally, the chief subsequently reviewed this and
11 he required additional items.

12 So if you want some general catch-all, that's
13 up to you, but I have to say that the public was very
14 articulate about this issue and very concerned. And
15 the town -- as you know as well as I -- hired a
16 consultant to just review all of this. So query
17 whether you want to do, you know, another level of
18 review.

19 MS. MORELLI: Can I also mention that the
20 language says, "shall carry a minimum of \$5 million."
21 That certainly isn't a cap.

22 MS. NETTER: Right. But they won't chose more
23 than that unless somebody -- let me just see. I think
24 there's a -- what?

1 MR. HUSSEY: A bare minimum of \$5 million in
2 comprehensive liability insurance for damage to
3 structures. So this does not cover -- I gather he's
4 saying does not cover personal injury. Is that right?

5 MS. MURPHY: Doesn't say that.

6 MR. HUSSEY: This is strictly damage to
7 structures.

8 MR. BOOK: Yeah. But I think the -- I'm going
9 to venture to guess -- whenever I see liability
10 provisions --

11 MR. JESSE GELLER: Comprehensive liability
12 coverage --

13 MR. BOOK: -- is physical injury as well as
14 damage to property.

15 MR. HUSSEY: Okay.

16 MR. JESSE GELLER: The only part -- to me
17 there are -- I hear what you're saying. To me there
18 are two things to focus on here. One is the amount.
19 And secondly, the question of whether the addition of a
20 bonding retirement has any merit.

21 MR. HUSSEY: I'd like to speak to the bonding
22 issue. I mean, normally in construction there's
23 insurance for damages and what have you. The bonding
24 has to do -- in construction, for instance, all town or

1 state projects have a performance and labor bond. What
2 that does is protect the client from -- if the
3 contractor goes out of business during the course of
4 construction, the bonding company comes in and finishes
5 the project.

6 MR. JESSE GELLER: Did you say all public
7 construction, or did you say all construction?

8 MR. HUSSEY: No. All public construction.
9 Private construction institutions can have bonds or
10 not. But that's the extent of the bonding issue as far
11 as I --

12 MS. MURPHY: Well, frequently in subdivision
13 cases -- we probably don't see them all the often in
14 Brookline, but if you're doing a major subdivision, a
15 developer or contractor will post a bond as security to
16 the town for performing all of the infrastructure --

17 MR. JESSE GELLER: Yeah. That's unique,
18 because under the subdivision control law, it provides
19 for three possibilities of security.

20 MS. MURPHY: Right. But it's different than
21 the payment kind of bonds.

22 MR. HUSSEY: It sounds like it's the same,
23 actually. It's a bond to make sure that the utilities
24 get installed.

1 MS. MURPHY: Right. But it's in favor of the
2 town.

3 MR. HUSSEY: Right. It's similar. It's
4 limited to that. It's not for damages. It's strictly
5 for performance of the construction --

6 MS. MURPHY: Of the contract.

7 MS. NETTER: And this was discussed, and the
8 board rejected performance guarantees for the project.

9 MR. JESSE GELLER: Right. This isn't about
10 performance. This is about damage and the adequacy of
11 insurance and, if you think it's worthy, bonding --
12 security for blasting.

13 MR. HUSSEY: Okay. So you're still
14 considering bonding?

15 MR. JESSE GELLER: No. I'm trying to answer
16 the question that's been asked.

17 MR. HUSSEY: I think it has to do,
18 essentially, with the limited liability, the
19 \$5 million. I think that's an insurance question. I
20 don't think that's a bonding issue. I'm not an expert
21 on this, but --

22 MR. JESSE GELLER: On a limitation of
23 liability. It's what they're putting up to cover.

24 MR. HUSSEY: Cover what?

1 MR. JESSE GELLER: Liability.

2 MR. BOOK: Can we take the bonding discussion
3 off the table? It's not warranted. So why don't we
4 confine this discussion to the issue of whether or not
5 the minimum insurance -- liability insurance is
6 adequate or not.

7 MR. JESSE GELLER: I don't have an answer.

8 MR. BOOK: I don't either. And so I think
9 that we have heard testimony from our independent
10 consultants. The fire chief has had an opportunity to
11 offer thoughts on that, a higher number if he thought
12 that that was insufficient. People in a better
13 position, more informed than we are on this matter,
14 have deemed, through either statement or lack of
15 comments, that \$5 million is sufficient, and so I see
16 no reason that we should question it.

17 MR. JESSE GELLER: Let me just ask one
18 question about the bond. Is there any advantage to the
19 bond versus insurance?

20 MS. MURPHY: No, I don't think so. I think
21 insurance is usually better.

22 MR. JESSE GELLER: Okay. So your comment is
23 fair, then.

24 MR. BOOK: I like to be fair.

1 MR. JESSE GELLER: Okay. I happen to agree
2 with Mr. Book.

3 MR. HUSSEY: So do I.

4 MR. JESSE GELLER: You know, people had the
5 opportunity to tell us -- the blasting consultant and
6 the fire chief, they had the opportunity to say, we
7 think that coverage should be X, with X being a number
8 in excess of \$5 million. They have not done so, so --
9 in fact, the blasting consultant said \$5 million, so it
10 seems to me they would not.

11 Okay. Anything else on Exhibit 4?

12 MR. HUSSEY: No.

13 MR. JESSE GELLER: Let me raise, again, this
14 question that was raised about times of blasting. And
15 one neighbor offered testimony that the times of
16 blasting should be outside the hours of school, Baker
17 School. Anybody have a thought on that?

18 MR. HUSSEY: That would be both going to
19 school and when school lets out, or during?

20 MR. JESSE GELLER: Right. Frankly, I think it
21 makes it --

22 MR. HUSSEY: Yeah.

23 MR. BOOK: Well, we're cutting out 8:00 to
24 2:30, so it really doesn't leave -- it basically means

1 they can blast from 2:30 to 4:00.

2 MR. JESSE GELLER: Right. And if you look at
3 the term we've given for completion of the project, now
4 30 months, it makes it rather difficult. I think it's
5 a standard that we haven't required otherwise.

6 MR. BOOK: No. I see no reason to change the
7 hours of blasting.

8 MR. JESSE GELLER: Okay. Anything else on
9 Exhibit 4?

10 MR. HUSSEY: No.

11 MR. JESSE GELLER: Okay. 52?

12 MR. BOOK: I have a question which may or may
13 not end up in a change.

14 The applicant is going to pay fees charged by
15 the town's consultant. Will they know -- we say here
16 that it's to be paid prior to commencement of
17 construction. And the question is: Are we going to
18 know what that's going to cost, or is the consultant
19 billing on an hourly basis, in which case the applicant
20 should pay the fees, you know, within some -- you know,
21 some number of days of demand or being submitted an
22 invoice?

23 MS. STEINFELD: In all likelihood, the town
24 will hire the consultant. We're not entering into a

1 contract unless we have the money.

2 MR. BOOK: Okay. So it's a -- it would be
3 a -- some sort of a -- either an hourly with a
4 maximum -- there would be a number --

5 MS. STEINFELD: There would be a contract, and
6 hopefully we wouldn't exceed that contract. If
7 necessary, and as we've done in the past peer review,
8 we would -- if the consultant anticipated exceeding the
9 amount of the contract, we would request additional
10 funds from the applicant, which we've done consistently
11 throughout this process with peer review.

12 MR. BOOK: Okay. So maybe what we should do
13 in 52 is similar to what we've done with the other --
14 some of the other provisions dealing with the applicant
15 when they're paying fees, that the town -- that they'll
16 deposit --

17 MR. HUSSEY: Do you think that comes under
18 65? Because we're setting up \$28,000 for additional
19 review and --

20 MR. BOOK: I think that was something else
21 that they were --

22 MR. HUSSEY: I know it was, but I'm wondering
23 if this shouldn't be in the same --

24 MS. NETTER: You may want it in both places,

1 or some general catch-all language. They're separate
2 and distinct issues.

3 MR. HUSSEY: Right. But 52 is open-ended
4 whereas 65 has a specific amount. Although if that
5 runs out, then they ask for more, right, under 65 as
6 well?

7 MS. MORELLI: I think 65 has a max cap.

8 MS. STEINFELD: Yes.

9 MS. NETTER: It does. It's \$28,000, adjusted
10 for inflation.

11 MS. MURPHY: So we just draft it so that the
12 funds are deposited in segregated accounts. We can do
13 that.

14 MR. BOOK: That works. Thank you.

15 MR. JESSE GELLER: 53?

16 MR. BOOK: I have no comments.

17 MR. HUSSEY: No comment.

18 MR. JESSE GELLER: 54?

19 MR. HUSSEY: No.

20 MR. BOOK: No.

21 MR. JESSE GELLER: 56?

22 MR. BOOK: No.

23 MR. HUSSEY: No.

24 MR. JESSE GELLER: 57?

1 MR. BOOK: No.

2 MR. HUSSEY: No.

3 MR. JESSE GELLER: 58?

4 MR. HUSSEY: No.

5 MR. JESSE GELLER: 59?

6 MR. HUSSEY: No.

7 MR. BOOK: No.

8 MR. JESSE GELLER: 60?

9 MR. HUSSEY: No.

10 MR. JESSE GELLER: 61?

11 MR. HUSSEY: No.

12 MR. BOOK: No. Except shouldn't -- I don't
13 know. Just for consistency -- shouldn't "commencement
14 of construction" in line 2 be capitalized?

15 MS. MURPHY: Yes. It will be. We haven't --

16 MS. NETTER: No, no. They're two different
17 definitions here.

18 MR. JESSE GELLER: Oh, you're right.

19 MS. NETTER: Absolutely not. Okay? That's
20 deliberately lowercase.

21 MR. BOOK: That's deliberately --

22 MS. NETTER: Yes. Because there's a specific
23 definition for this section.

24 MR. JESSE GELLER: The commencement date of

1 construction.

2 MS. MURPHY: No. Not 62. 61.

3 MS. NETTER: Oh.

4 MR. BOOK: Yeah. No. I know that 62 is a
5 different one.

6 MS. NETTER: Yeah. Absolutely correct.

7 MS. MURPHY: We haven't identified every
8 single comma and capital letter that we've caught.

9 MR. BOOK: I understand.

10 MR. JESSE GELLER: So 62 is where you've got
11 different, distinct --

12 MS. MURPHY: Yes. And we need to italicize
13 "construction" there.

14 MR. JESSE GELLER: 63?

15 MR. BOOK: No.

16 MR. HUSSEY: No.

17 MR. JESSE GELLER: 64?

18 MR. HUSSEY: No.

19 MS. NETTER: You want a segregated account?

20 MR. BOOK: You're way ahead of us. Yes.

21 MS. NETTER: Oh, I'm sorry.

22 MR. BOOK: Not way ahead of us. You're one
23 ahead of us.

24 MR. JESSE GELLER: 65?

1 MR. BOOK: Yeah. Same comment that I've made,
2 and then some language at the end that following
3 issuance of final CO, that any balance shall be
4 refunded.

5 MR. HUSSEY: And also that there be some
6 wording that --

7 MR. BOOK: Oh, for the consultants.

8 MR. HUSSEY: Right, the consultants. That
9 mirrors what Maria's memorandum said.

10 MS. NETTER: I'm not sure what you're saying,
11 but maybe you're about to say it.

12 MS. MURPHY: This doesn't say "consultant."

13 MR. HUSSEY: For consultant, inspector fees --

14 MS. NETTER: That's another section. Oh, here
15 is it.

16 MR. BOOK: These are third-party costs that
17 the town is going to incur in hiring consultants.

18 MS. NETTER: Oh, you want to make sure it
19 says, "to cover the cost of outside consultants"?

20 MR. HUSSEY: Yes, consultants', inspectors'
21 fees is what Maria says.

22 MS. STEINFELD: Maria is checking with the
23 building inspector right now to confirm that.

24 MS. MORELLI: I've been corrected.

1 "Consultant" was not intended.

2 MS. NETTER: Okay.

3 MR. HUSSEY: So that's not to be corrected.
4 It is for fees. It is to cover fees for the cost of
5 plumbing, gas, and electrical inspection, and
6 engineering fees for plan review and inspection -- as
7 it reads.

8 MR. BOOK: So I guess I'm not -- I don't
9 understand how that works. These are town employees.
10 How are you -- putting in a segregated account, how are
11 you going to drawn down on it? Does the town have a
12 schedule of hourly rates for its employees? Maybe I
13 misunderstood what this account was for.

14 MR. BENNETT: A majority of this fund is
15 plumbing, gas, electrical inspectors. So I have four
16 building inspectors, the chief inspector, then myself,
17 so we handle all the building inspectors.

18 On the plumbing, gas, and electrical side, I
19 have one full-time guy on each side. This type of
20 project would overwork that one individual, so we have
21 deputies for plumbing and gas and deputies for
22 electrical, and that's budgeted at a fixed amount to
23 cover when they're out. This additional cost is there
24 to cover them going and doing this project at a

1 specific time.

2 So I would write a memorandum to the
3 treasurer's office to have them set up separate
4 accounts, and there's a legal process for that. I
5 believe it goes in an interest-bearing account. The
6 money gets deposited in there, and as we use it, we do
7 draw off that account. And typically, if there is
8 excess at the end of the project, the money is then
9 given back to the applicant. So this should cover the
10 expenses of the building department on these additional
11 inspectors that would be called out specifically to
12 this project.

13 MR. BOOK: So these inspectors, you have
14 people who are already on the town's payroll as
15 employees?

16 MR. BENNETT: They're part-time employees
17 currently within the building department.

18 MR. BOOK: So for them to, for example, come
19 in and work on this project, you would be paying them
20 above and beyond what they -- they're paid on some sort
21 of an hourly basis?

22 MR. BENNETT: Correct.

23 MR. BOOK: Okay.

24 MR. BENNETT: Right now they're scheduled

1 about -- they come in once a week and they assist the
2 full-time inspectors on either paperwork or
3 inspections. It gives some relief to that one
4 full-time individual to do some other things that one
5 time a week. Or if they're on vacation or if they're
6 sick, they would cover in this specified time as well.

7 MR. BOOK: Okay. So this isn't -- this,
8 actually, isn't all that -- maybe all that different
9 than a consultant. They're part-time. They're people
10 who are -- I mean, it's an additional cost to the
11 town. I think that's what I'm ...

12 MR. HUSSEY: Dan, you've got one more
13 question.

14 MR. BENNETT: It isn't budgeted. This size
15 project wouldn't be budgeted. It would be over -- it
16 would over use the inspectors. And that's why it's
17 specifically the plumbing, electrical, and gas. It
18 didn't include building, because we have sufficient
19 manpower to cover that.

20 MR. HUSSEY: How about the engineering fees?
21 Is that going to Peter Ditto's department?

22 MR. BENNETT: That would be Peter, yeah. And
23 those, I think -- Peter can correct me if I'm wrong,
24 but he has inspectors that will go out and do certain

1 inspections as well.

2 MR. HUSSEY: So we should maybe qualify that
3 to be engineering fees at the DPW? I'd like to tie
4 this to Peters's department, if we could.

5 MS. STEINFELD: What number condition?

6 MR. HUSSEY: We're still on 65. Dan has
7 clarified that some of these fees are going to
8 plumbing, gas, and electrical inspections. The
9 engineering fees are going to a different department,
10 and so I'd like to have that department somehow
11 defined.

12 MS. MORELLI: Then you want the building
13 department specified as well?

14 MR. HUSSEY: No, no. Because, see, plumbing,
15 gas, and electrical, that's a specific staff and that's
16 in the building department. That's very clear. But
17 the engineering fees, that's not as clear.

18 MS. MORELLI: Well, there's a transportation
19 and engineering -- the director of transportation and
20 engineering, there is that division, so --

21 MR. HUSSEY: Yeah. Well, I think if that is
22 stated here, then that covers it.

23 MS. MORELLI: I think the question is: Are
24 you talking about that there should be --

1 MR. HUSSEY: Just the engineering portion of
2 the fees. That's all I'm suggesting.

3 MS. MORELLI: You want two separate accounts?

4 MR. HUSSEY: No, no. I don't care how --

5 MS. STEINFELD: Well, it will be in two
6 separates accounts.

7 MS. NETTER: Why don't we just say, "shall
8 deposit \$28,000, adjusted for inflation, in a
9 segregated account, the funds to be used by the
10 building and/or" --

11 MR. BOOK: Public works?

12 MR. HUSSEY: The department of transportation
13 and engineering.

14 Is that all right with you, Mr. Bennett and
15 Mr. Ditto?

16 MR. BENNETT: I have no problem with that.

17 MR. DITTO: What's the final wording on that?

18 MR. HUSSEY: That the applicant shall pay --
19 applicant shall deposit \$28,000 in a segregated
20 account, adjusted for inflation, and the funds to be
21 used by the town to cover the cost of --

22 MS. NETTER: Funds to be used by the building
23 department and the department of transportation --

24 MS. STEINFELD: And/or.

1 MS. NETTER: And/or -- to cover blah, blah,
2 blah. Good?

3 MR. DITTO: It should be Division of
4 Engineering and Transportation.

5 MS. NETTER: Okay.

6 MR. JESSE GELLER: Okay. 66?

7 MR. BOOK: No.

8 MR. HUSSEY: No.

9 MR. JESSE GELLER: 67?

10 MR. HUSSEY: No.

11 MR. JESSE GELLER: 68?

12 MR. BOOK: Are there some words missing? So
13 68 reads, "All conditions in this decision are to the
14 extent permitted by the act in the regulations."

15 MS. NETTER: No. I think -- this is Sam's
16 language. It's basically -- and actually, I don't
17 even -- the conditions are limited. Yeah, they're
18 words of limitation. It's not clear?

19 MR. BOOK: Enforceable?

20 MR. JESSE GELLER: Well, didn't you just say
21 that?

22 MS. NETTER: I don't think it's necessary,
23 given how -- you know, but it's kind of a general
24 catch-all in case something went beyond Amesbury or

1 beyond some of the other --

2 MR. JESSE GELLER: But that would nullify the
3 entire --

4 MS. NETTER: No. It would limit it, if there
5 was a difference of interpretation.

6 I don't care about taking it out. What about
7 you?

8 MS. MURPHY: I don't care either.

9 MS. NETTER: This is Mr. Nagler.

10 MR. JESSE GELLER: 69?

11 MR. HUSSEY: No questions for me.

12 MR. BOOK: No.

13 MR. JESSE GELLER: 70?

14 MR. BOOK: Nothing.

15 MR. JESSE GELLER: Does there need to be --
16 jumping back to 69 -- does there need to be a provision
17 for pest remediation to the extent needed? I think
18 that was a big issue.

19 MS. MORELLI: Well, I think the idea here is
20 that the applicant needs to comply with town bylaws
21 concerning trash. So if the applicant deals with
22 trash, then -- are you talking about something in
23 addition --

24 MS. NETTER: Do the town bylaws deal with pest

1 remediation?

2 MR. JESSE GELLER: Specific to trash --
3 storage, animal.

4 MS. NETTER: Well, it doesn't hurt to add some
5 language in there.

6 MR. JESSE GELLER: It was a particular focus
7 of a number --

8 MS. MORELLI: Well, if they do, I mean, this
9 would be a catch-all rather than repeat the contents of
10 the applicable regs.

11 MR. JESSE GELLER: Right.

12 MS. MORELLI: We're just talking about
13 compliance with the town bylaws.

14 MR. JESSE GELLER: Right. I'm not suggesting
15 we add them as words of limitation. I'm suggesting we
16 add them simply as a notation of what is included
17 without limitation.

18 MS. NETTER: So it would be in (f). Something
19 to the effect -- a plan for -- whether it's managing or
20 mediating, eliminating, whatever it is -- a rodent
21 protection plan in the context of trash. Something
22 like that.

23 MR. JESSE GELLER: Pest remediation.

24 MS. MORELLI: I can't speak for public health

1 on that. I'm sorry.

2 MS. STEINFELD: Although public health did
3 approve this condition.

4 MR. JESSE GELLER: Anybody have a thought?

5 MR. HUSSEY: Why don't we include it? I don't
6 see any harm.

7 MR. JESSE GELLER: Mr. Book?

8 MR. BOOK: I have no objection in including
9 it.

10 MR. JESSE GELLER: I don't think it takes
11 anything away.

12 MS. MORELLI: Add it. Okay.

13 MR. JESSE GELLER: 70. The only part of 70,
14 frankly, that I care about is restoration of the site.

15 MR. HUSSEY: Are you going to put all the rock
16 back?

17 MS. NETTER: Yeah. Actually, the first --

18 MR. HUSSEY: Well, I'd leave it the way it
19 is. Clearly, that's not going to happen.

20 MR. JESSE GELLER: Well, that's their
21 problem. Right?

22 Okay. Let's just quickly -- before we go to
23 the beginning under findings, let's just run through
24 our attachments.

1 So Exhibit 1, waivers, nobody had comments
2 last time. Anybody have any?

3 MR. BOOK: No.

4 MR. JESSE GELLER: Okay. Exhibit 2, the
5 bullet points for the --

6 MS. NETTER: -- terms to be included.

7 MR. JESSE GELLER: Right.

8 No? Okay.

9 Exhibit 3, which is the site light-mounting
10 height plan? No?

11 MR. BOOK: No.

12 MR. JESSE GELLER: We talked about Exhibit 4.
13 Okay. Procedural history. Okay. 1? 2? 3?

14 MR. BOOK: So on 3 I want to offer a
15 comment -- which is then going to come up again as we
16 get into -- later on in the procedural history,
17 additional paragraphs, and then the findings -- which
18 is -- I wanted to -- we spent an awful lot of time in
19 the public hearings, among other things, talking about
20 parking. And so I think we should call out the number
21 of parking spaces the original project started with and
22 what we ended up with.

23 So in number 3, after we mention 192 units of
24 rental housing, maybe we should add in the 384 parking

1 spaces. And then as we go on later on, there are other
2 places where that would be relevant.

3 MS. STEINFELD: We'll confirm the number of
4 parking spaces in the original application because, if
5 you recall, there were some inconsistencies in the
6 original application.

7 MR. BOOK: Okay. I'm sorry. I mean, I could
8 be wrong. That was the number I --

9 MS. STEINFELD: You have a better memory than
10 I.

11 MR. BOOK: No. It was in notes from over a
12 year ago, but it could be wrong.

13 MS. STEINFELD: Well, there were
14 inconsistencies with the application itself, so ...

15 MR. BOOK: Okay. So whatever the number
16 was --

17 MS. STEINFELD: Right.

18 MR. JESSE GELLER: Okay. Good suggestion.
19 5, there is one change that's been suggested.

20 MS. NETTER: We also have, at the end -- oh,
21 because you went beyond the 30 days. At the end of the
22 paragraph, you've also got the 180 days, so it just
23 makes it parallel.

24 MR. JESSE GELLER: Okay. Anything?

1 MR. BOOK: No.

2 MR. JESSE GELLER: Okay. 6?

3 MR. BOOK: No.

4 MR. JESSE GELLER: 7?

5 MR. BOOK: No.

6 MR. JESSE GELLER: 8?

7 MR. BOOK: No.

8 MR. JESSE GELLER: 9?

9 MR. BOOK: With the change, no.

10 MR. JESSE GELLER: Well, subject to the
11 outcome.

12 MR. BOOK: I know that I wasn't here on
13 February 2nd.

14 MS. MURPHY: We're deleting that.

15 MR. JESSE GELLER: 10?

16 MR. BOOK: Fine.

17 MR. JESSE GELLER: 11?

18 MR. BOOK: I have no comment.

19 MR. HUSSEY: No comment.

20 MR. JESSE GELLER: 12?

21 MR. HUSSEY: There were changes there.

22 MR. JESSE GELLER: There were changes. I
23 don't have an issue.

24 MR. BOOK: That's fine.

1 MR. JESSE GELLER: 13?

2 MR. BOOK: So in 13, that's where after the --
3 where we say in the third line, "reduce the number of
4 units to 161 and the parking spaces to 292."

5 MR. JESSE GELLER: Right.

6 Okay. Findings, paragraph 1.

7 MR. BOOK: No comment.

8 MR. JESSE GELLER: 2?

9 MR. BOOK: No comment.

10 MR. JESSE GELLER: Mr. Hussey, do I take your
11 silence as no comment?

12 MR. HUSSEY: No comment.

13 MR. JESSE GELLER: Paragraph 3?

14 MS. MURPHY: We already talked about that.

15 MR. JESSE GELLER: Okay. Mr. Book, you have
16 no issue with that?

17 MR. BOOK: No.

18 MR. JESSE GELLER: Paragraph 4?

19 MR. BOOK: No comment.

20 So it's here, between maybe 4 and 5, I would
21 add in a statement to the effect that, as proposed in
22 the original project, the -- too many parking spaces
23 were proposed, or something to that effect. I don't
24 know if those are the most artful of words.

1 MS. NETTER: You want to say something to the
2 effect that the board listened to the comments, thought
3 a lot about the parking issues or --

4 MR. BOOK: Yeah. I mean, you know, we found
5 that, you know, the roof line -- in the earlier one,
6 the roof line was monolithic and massing was -- the
7 building was too much for the midrise. We found that
8 there was too much parking.

9 MR. JESSE GELLER: Okay. Is that it on 5?

10 MR. BOOK: No comment.

11 MR. HUSSEY: No comment.

12 MR. JESSE GELLER: 6?

13 MR. HUSSEY: No comment.

14 MR. JESSE GELLER: 7?

15 MR. HUSSEY: No.

16 MR. BOOK: No.

17 MR. JESSE GELLER: 8?

18 MR. BOOK: No.

19 MR. HUSSEY: No.

20 MR. JESSE GELLER: 9?

21 MR. BOOK: No.

22 MR. JESSE GELLER: 10?

23 MR. BOOK: I'm fine with that addition.

24 MR. JESSE GELLER: 11? That was amended.

1 MR. BOOK: Should "project" in the second line
2 be capital P?

3 MS. NETTER: Which -- that's important.
4 Which --

5 MR. BOOK: In paragraph 11, second line.

6 MS. MURPHY: Yes. We caught that.

7 MS. NETTER: And also catch -- instead of
8 "drainage," can we say "stormwater runoff" to be
9 consistent, before iii.

10 MR. JESSE GELLER: Yeah.

11 MR. BOOK: I think that's good. It's accurate
12 and it explains our thinking, so I like that.

13 MR. HUSSEY: Which one are we at? I'm sorry.

14 MR. JESSE GELLER: 11. The added language to
15 11.

16 MR. HUSSEY: Okay. So between 11 and 12
17 there's to be included another finding.

18 MR. JESSE GELLER: Right.

19 MR. HUSSEY: So 12 becomes 13?

20 MR. JESSE GELLER: This would all be
21 renumbered.

22 Okay. Decisions.

23 MS. MURPHY: I heard from Sam.

24 MR. JESSE GELLER: Yeah?

1 MS. MURPHY: Condition 68, the missing words,
2 "to be interpreted and enforced."

3 MS. NETTER: "To be interpreted and enforced
4 to the extent" --

5 MS. MURPHY: -- "to the extent permitted by
6 the act and the regulations."

7 In condition 68, which currently says, "All
8 conditions in this decision are to the extent permitted
9 by the act and the regulations," the missing language
10 is "to be interpreted and enforced."

11 MS. STEINFELD: So do you want to reinsert 68
12 with those changes?

13 MR. JESSE GELLER: Do you have any thoughts
14 about that?

15 MR. BOOK: I think it's fine reinserting it.
16 I think it's -- it would be the case whether we said it
17 or not.

18 MR. JESSE GELLER: Exactly.

19 MR. BOOK: So I -- but I think there are a
20 number of things in here that we say would be the case,
21 so I'm fine putting it in back in.

22 MR. JESSE GELLER: Okay. Do we have anything
23 else important to do tonight?

24 MS. MURPHY: You have to vote.

1 MR. JESSE GELLER: Okay. Just in terms of --
2 just jumping back to mechanics, so we've made a
3 number -- we have a number of comments that remain.
4 Next steps would be that the board will vote on this
5 proposed application subject to the conditions that we
6 have now discussed, but also subject to those
7 additional changes which, should we approve this
8 application, would then be wordsmithed, would be
9 finished, it would go to legal counsel for one final
10 review --

11 MS. MURPHY: And planning department.

12 MR. JESSE GELLER: -- and planning department,
13 and would be submitted for signature by the full
14 board. Does everybody understand? Did I miss
15 something?

16 MS. MURPHY: No. I mean, the plan is that
17 this will be revised per tonight, we'll proof it and
18 try to catch all those commas and capitals and
19 parentheses and so on, do a final legal review, a final
20 planning review. We would give you a black line just
21 so you can see that we've done everything that you've
22 asked to be done, and then it would be submitted to you
23 all for signature.

24 MR. JESSE GELLER: Before the 13th?

1 MS. MURPHY: Before the 13th.

2 MR. JESSE GELLER: Okay.

3 MR. BOOK: So are we -- do we meet again, or
4 do we sign this independent -- do we need to come in
5 together again --

6 MR. JESSE GELLER: There's a mechanics
7 question about signing.

8 MS. STEINFELD: Presumably, just as the Board
9 of Selectmen does, you could vote to approve subject to
10 conditions, you'll make the changes, get you the
11 final -- review it internally and get you the final
12 decision, and we'll provide it to you, and you can sign
13 it independently of each other.

14 MS. NETTER: I don't know how difficult it is
15 schedulewise, but given we've got a blizzard that may
16 be coming up and all of that in a short time frame, is
17 it very difficult to see if everybody will convene and
18 save you something, a little bit more effort?

19 MR. JESSE GELLER: Mr. Book, are you
20 advocating getting together, or are advocating not
21 wanting to see us anymore?

22 MR. BOOK: Well, I've enjoyed seeing all of
23 you.

24 MR. JESSE GELLER: Over the last 13 months?

1 MR. BOOK: Yes. I think, really, where I was
2 heading with this in terms of understanding the
3 procedure -- are we taking a vote this evening, or do
4 we take a vote once we have a final decision before us
5 that we're about ready to sign?

6 MR. JESSE GELLER: The proposal is that we
7 would take a vote this evening and the revised and
8 final version would then be circulated for the final
9 review to verify it meets with what your comments were,
10 and then the clean version would be circulated. I
11 assume that's what --

12 MR. BOOK: Okay.

13 MS. STEINFELD: That's actually not what the
14 planning department was initially proposing. We were
15 proposing to incorporate all your changes, make the
16 editorials, address typos, forward it to special
17 counsel for a final review and their changes, creating
18 a clean copy, and distributing it to you for your
19 signature.

20 MR. JESSE GELLER: Just a clean copy for
21 signature?

22 MS. STEINFELD: Right.

23 MR. JESSE GELLER: Does the board want to see
24 one more red-lined version?

1 MR. BOOK: I would like to see a red-lined
2 version, yes.

3 MS. STEINFELD: Well, then I would propose
4 that we do, in fact, meet next week so that we can
5 finalize everything because we need your signatures by
6 a week from Friday.

7 MR. BOOK: No. I understand. I think what I
8 was thinking is when you send a -- send it --
9 distribute it to us by email, you could include a red
10 line and a clean copy.

11 MS. STEINFELD: But the problem is, what if we
12 get different comments from you? We could conceivably
13 get three sets of different comments.

14 MR. BOOK: You could, but you would get
15 that -- wouldn't you get that irrespective of what you
16 circulate to us?

17 MS. NETTER: The call is yours. And you don't
18 have to do what's typical, but I am going to tell you
19 that at this stage in the process I would be highly
20 surprised if your changes were not incorporated at
21 99.9 percent. I mean, maybe there's a comma missing --
22 and I'm not be facetious here -- and you're concerned
23 about that, but everybody has been taking notes and the
24 comments right now are far less extensive than they

1 have in the past.

2 MR. BOOK: Yeah. I'm not advocating that we
3 all get together. I just want to -- all I'm saying is
4 me personally --

5 MS. MURPHY: You want a red line.

6 MR. BOOK: I'd like to see a red line. That's
7 all.

8 MS. MORELLI: And that's a red line of just
9 the changes that you made tonight?

10 MR. BOOK: Yes.

11 MS. STEINFELD: Because, by the same token,
12 once you vote, there can be no substantive changes
13 anyway.

14 MR. BOOK: Correct. So it's really a matter
15 of confirming that the changes --

16 MS. MURPHY: -- that they voted on have been
17 made.

18 MS. STEINFELD: But, in fairness, the planning
19 department would like to impose a deadline on you so
20 that we can meet our deadline and get it signed by you
21 on the 13th.

22 MR. BOOK: Okay.

23 MS. NETTER: So you have to tell them what day
24 you get it, then.

1 MS. STEINFELD: We're just concerned, also,
2 about the snowstorm.

3 MR. BOOK: Who's on next Thursday night? Do
4 we know?

5 MS. MORELLI: I think we can get you what you
6 need by the 11th, and that gives you an extra day.

7 MR. BOOK: Okay. I'm just thinking, some of
8 us are here a week from Thursday for our regular
9 zoning.

10 MS. STEINFELD: Just one of you? Or no, more
11 than one of you.

12 MR. BOOK: No. Three of us. It's just
13 whether or not --

14 MR. JESSE GELLER: I don't know.

15 MR. HUSSEY: I don't think I'm sitting, but I
16 can come in.

17 MS. STEINFELD: Well, if you want to come in
18 on Thursday night and we'll get you some copies, that
19 would be great.

20 MR. JESSE GELLER: Worst case scenario, we'll
21 circulate this by courier. It can't be this hard to
22 get the decision signed.

23 MS. MURPHY: No. We can handle this.
24 Allison, not to worry.

1 MS. NETTER: You're dealing with a planning
2 staff -- I think you know this -- that has been all
3 out -- I'm exaggerating if I say 24/7, but not by much.

4 MS. STEINFELD: And, quite honestly, I'd like
5 to take this opportunity to commend Maria for an
6 extraordinary job.

7 MR. BOOK: Yes, absolutely.

8 MR. HUSSEY: Yes.

9 MR. JESSE GELLER: Very much so.

10 MS. STEINFELD: Because, quite honestly, she's
11 the one that's been doing all the work.

12 MR. JESSE GELLER: I'd like to commend the
13 entire planning department.

14 MS. MORELLI: Can I clarify one thing, that
15 when you send your comments, that you're sending the
16 comments to the planning department and not to one
17 another. I just want to make it very clear that you're
18 not deliberating amongst yourselves by email.

19 MR. JESSE GELLER: Right.

20 MS. NETTER: And I'm going to say the
21 obvious. My guess is you're not going to get any
22 comments, because I think you're going to catch
23 everything.

24 But, really, only if there's something major

1 that they missed.

2 MR. JESSE GELLER: I'm willing, also, to
3 suggest that, you know, if you -- I don't want to push
4 you for a deadline, but if you don't hear from someone
5 by -- I don't know -- turn around -- are you going to
6 give us --

7 MS. MORELLI: I'd like to give you 24 hours.
8 We hope to get you something the morning of
9 February 11th, and then if you could --

10 MR. JESSE GELLER: If you don't have comments
11 by the 12th by 10:00 a.m., you can assume it's
12 satisfactory. Is that fair?

13 MS. STEINFELD: I would like to raise the
14 issue, though -- you said that "if there's something
15 major." Well, if there's something major, we cannot
16 make the change because you've already voted; correct?

17 MS. MURPHY: No. If we miss something --

18 MS. STEINFELD: Oh, miss something that's
19 already been decided?

20 MS. MURPHY: Right. We can fix it.

21 MR. BOOK: We're not going to change our
22 minds.

23 MR. JESSE GELLER: Okay. So is everyone
24 prepared?

1 MR. HUSSEY: I'll second the motion by
2 Mr. Book.

3 MR. JESSE GELLER: What motion did he make?

4 MR. BOOK: You're doing it backwards. I make
5 a motion. I vote in favor of the comprehensive permit
6 subject to the conditions.

7 MR. HUSSEY: I second the motion and vote --

8 MS. NETTER: Subject to the staff --

9 MR. BOOK: Subject to this decision as
10 modified with our -- the comments that we offered this
11 evening.

12 MS. NETTER: And any clerical --

13 MR. BOOK: And any clerical modifications,
14 yes.

15 MS. NETTER: Deemed necessary by staff or
16 special counsel.

17 MR. BOOK: Yes.

18 MR. JESSE GELLER: I actually was behind --
19 this is not going to be long. I was actually behind
20 the addition, within the findings, of that language
21 basically trying to highlight what I thought were the
22 essentials, particularly from my thinking.

23 And my thinking was that there really were,
24 you know, a handful of what I viewed as critical issues

1 that were raised in testimony offered by town boards
2 and departments, by peer review, by the neighborhood.
3 And the issues, to my mind, really revolved around
4 the -- you're going to correct me. You can kick me
5 now -- drainage. It's not drainage. I know -- fire
6 and safety, transportation and traffic, construction
7 management and blasting. So there really were a
8 handful of issues.

9 It also seemed to me -- sort of paying tribute
10 in sort of a back-handed way to Mr. Zuroff and I think,
11 in a degree, to Mr. Hussey who also was sensitive to
12 this issue -- was this notion about density and mass
13 and struggling with trying to address that issue.

14 But for me, that issue really comes down to
15 how it filters back into -- in adverse ways. It's not
16 simply about density in and of itself. It's does it
17 create unacceptable or adverse levels of traffic?
18 Right? Does it create a fire and safety risk?

19 And I think at the end -- and it's cutting to
20 the chase -- based upon the peer review that we
21 received, which I have no basis upon which -- I have no
22 compelling reason to say was inaccurate, it seemed to
23 me, and it seems to me, that traffic, as we've
24 addressed it in the conditions, fire and safety,

1 construction and blasting, not drainage --

2 MR. BOOK: Stormwater runoff.

3 MR. JESSE GELLER: -- stormwater runoff --

4 MS. NETTER: The rate of --

5 MR. JESSE GELLER: -- the rate of stormwater
6 runoff, have all and can all be addressed by way of
7 conditions.

8 Or to say it another way, none of them are --
9 none of them create such an adverse impact -- again,
10 based on the testimony that we've received from peer
11 review -- none of them have such an impact as, in my
12 mind, to disqualify this project under the
13 guidelines -- as we've been read riot by legal
14 counsel -- of 40B.

15 The things, frankly, where I think there is
16 potential for adverse impacts are things we can't
17 consider: schools.

18 So that's a long way of basically agreeing
19 with your conclusion, which is based on peer review and
20 the testimony. I think that this is an application
21 which warrants approval subject to the conditions,
22 subject to the further changes, and the additional
23 verbiage that Mr. Book cited.

24 So it is a unanimous vote approving the

1 project as such. I want to thank everybody.

2 MS. NETTER: So you will be signing, and then
3 the decision will be filed in the Office of the Town
4 Clerk, and you will also send a --

5 MR. JESSE GELLER: Maria, do you have --

6 MS. MORELLI: I'm not clear if you voted.

7 MS. NETTER: Okay. All in favor ...

8 MR. JESSE GELLER: All in favor of granting
9 the permit subject to all of the conditions and other
10 language that we've referenced, say aye.

11 MR. HUSSEY: Aye.

12 MR. BOOK: Aye.

13 MR. JESSE GELLER: It's unanimous. Is that
14 clear?

15 MS. MORELLI: Yes. Thank you.

16 MS. NETTER: So you'll approve the decision,
17 it will be filed with the Office of the Town Clerk, and
18 then it will be sent by certified mail to the
19 applicant.

20 MS. STEINFELD: And we'll also post it.

21 MR. JESSE GELLER: It will be posted online,
22 right. Okay.

23 No other questions just in terms of process,
24 of what's going to happen now?

1 You have blank stares. No?

2 MR. HUSSEY: Should we set a date for another
3 meeting in case it's necessary to sign the document?

4 MR. JESSE GELLER: No.

5 MR. HUSSEY: Okay.

6 MR. JESSE GELLER: Okay. So there being
7 nothing else, I am closing this public meeting. Thank
8 you.

9 (Proceedings concluded at 9:12 p.m.)

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1 I, Kristen C. Krakofsky, Court Reporter and
2 Notary Public in and for the Commonwealth of
3 Massachusetts, certify:

4 That the foregoing proceedings were taken
5 before me at the time and place therein set forth and
6 that the foregoing is a true and correct transcript of
7 my shorthand notes so taken.

8 I further certify that I am not a relative or
9 employee of any of the parties, nor am I financially
10 interested in the action.

11 I declare under penalty of perjury that the
12 foregoing is true and correct.

13 Dated this 17th day of February, 2015.

14 _____
15 Kristen Krakofsky, Notary Public

16 My commission expires November 3, 2017.

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