

ATKINSON PLANNING BOARD

Atkinson, New Hampshire

Public Hearing Meeting

Wednesday October 21, 2009

Present: Sue Killam, Chairman; Paul DiMaggio, Vice Chairman; Regular Members: Ted Stewart; Joseph Guisnard; Tim Dziechowski

Alternate: John Wolters; Mike Turell

Selectman Ex-Officio: William Bennett

Ms. Killam called the meeting to order at 7:35 PM

Correspondence

Incoming

2009-2010 Zoning Ordinance Amendment Schedule.

Stantec Consulting dated 10/12/09 re: 6 Main Street Site Plan – Erosion Control Bond Estimate, Map 5, Lot 47.

State of NH, Approval for Subdivision #SA2009009191 dated 10/7/09 re: Estate of Johan Debeshe.

State of NH Approval for Subdivision #SA2009009176 dated 9/29/09 re: Gary Witley.

Sumner Kalman dated 10/13/09 re: Murphy v. Town of Atkinson Court's Order granting Motion to Continue Merits Hearing.

Stantec Consulting dated 10/16/09 re: Bond Reduction Tuck Woods Subdivision.

Letter from M. Osborn to Selectmen dated 10/15/09 re: Cease and Desist Valcat Lane.

Letter from M. Osborn to Selectmen dated 10/15/09 re: Request item on Agenda

State of NH, Dept. of environmental Services dated 10/14/09 re: DES Wetland File #2009-2278, 8 Valcat Lane non-compliance items.

Stantec Consulting dated 10/20/09 re: 9 East Road Subdivision review, Map 10, Lot 1.

Stantec Consulting dated 10/20/09 re: 46 Main Street Subdivision review.

Stantec Consulting dated 10/19/09 re: 117 Main Street Site Plan review.

Letter from Jonathan Longchamp dated 10/20/09 re: Site Plan Review, Main Street, Map 13, Lot 15.

Rockingham Planning Commission memo dated 10/20/09 re: Site Plan Review- Gagnon, 24 Industrial Way.

Rockingham Planning Commission memo dated 10/20/09 re: Whitley, 45 & 50 Main Street.

Rockingham Planning Commission memo dated 10/20/09 re: MJK Realty, 117 Main Street.

Rockingham Planning Commission memo dated 10/20/09 re: DeBesche, 9 East Road.

Printout of Impact Files.

Outgoing

Memo to Selectmen dated 10/8/09 re: Raczka, 47 Boulder Cove Road, Map 23, lot 79.

State of NH, DOT dated 10/16/09 re: Kevin Barden, Driveway Permit, 6 Main Street.

Approval of Minutes: Chairman Killam requested the Board that approval of minutes be moved to the end of the meeting.

Public Hearings – Continued from September 16

Gilles Gagnon continued review of a proposed Commercial Site Plan of a 3,500 sq. ft. Addition to existing building at 12 Industrial Way, Map 16, Lot 50 CI Zone. Taken Under Jurisdiction – 7/15/09, Jurisdiction extended to 10/21/09

Mr. James Lavelle representing Mr. Gilles Gagnon requested that the hearing be continued pending a review from Stantec and further notice from his client, who was not present. Mr. Lavelle also stated that additional money was needed for the review fee escrow. He also stated that he had received the review from Rockingham Planning Commission.

Chairman Killam suggested that an extension of jurisdiction for another 62 days would be appropriate and Mr. Lavelle agreed. Chairman Killam requested a motion for continuance until November 18, 2009.

Mr. Mike Turell made the motion to extend jurisdiction until November 18, 2009. The Motion was seconded by John Wolters and the Board voted unanimously to extend jurisdiction and move the hearing until November 18, 2009.

MJK Realty, LLC submission of an Application for Consideration and Approval of a proposed office building on property located at 121 Main Street, Map 13, Lot 15 TC Zone. Taken under jurisdiction - 9/16/09

Mr. James Lavelle represented the applicant, MJK Realty. Present were MJK Realty (Thomas Hart) and Lavelle Associates.

Mr. Lavelle passed out small sets of new plans for the Board to review. Mr. Lavelle stated that a large revision to the plan was made, removing the driveway to Pages Lane. Mr. Lavelle also stated that he had received an extensive review letter from Stantec Engineering on October 19, 2009 and one from Rockingham Planning Commission as well. Ms. Julie LaBranche gave a copy of the memo from Rockingham Planning Commission regarding the proposal to the members of the Planning Board. Mr. Lavelle stated that he had no dispute with any of the comments and would address any changes to Stantec and RPC for approval.

Mr. Lavelle stated that the Rockingham Planning Commission review made the same suggestions as the Stantec Review with the exception of Comment No. 2 on the Rockingham Planning Commission Memo. He stated that approval for alteration of terrain was not required because terrain disturbance covered only 60,000 square feet and a permit was required only if there was 100,000 square feet of disturbance or greater. The lot itself is only 102,000 square feet and less than half of that would be disturbed.

Mr. Lavelle added that the parking lot revisions were included in Note 6. Mr. Lavelle requested comments from the Board.

Chairman Killam stated that she had some items in correspondence including a drainage calculation and erosion

sediment control plan done by Steven Cummings. Also, a memo from the Police Department, Chief Consentino, and read it into the minutes. One other memo from John Longchamp, a person in the neighborhood and read it into the minutes. In his letter, Mr. Longchamp stated that the plan did not accurately reflect the zone boundary. He stated that the zone boundary line between Town Center and RR2 was not accurately shown on the drawings. He stated in the letter that the northernmost boundary of the zones runs along the center of Pages Lane.

Chairman Killam asked Mr. Lavelle to show her the northern most boundary of the zones running along Pages Lane. Mr. Lavelle showed her where the line was on the plot plan, and it was not fully depicted as running along the center of Pages Lane as shown on the town zoning maps. Chairman Killam asked Mr. Lavelle to correct the drawings and he agreed.

Mr. Longchamp went on to say in his letter that although the driveway had been removed from the required 100 foot buffer on Pages Lane, the detention pond, the dumpster pad, snow storage area and a corner of the parking lot remain within the 100 foot buffer and should be removed per Section 690 of the Zoning Ordinance. The 100 foot buffer line should be shown on the plans and there should be no encroachment of use within the line.

Mr. Lavelle stated that if the buffer line is on Pages Lane, then the residential use does not occur until the North side of Pages Lane and that everything was within 100 feet of the buffer zone. Ms. Killam asked him to take another look. Mr. Lavelle stated that if you look at the detention pond, then the grading goes into the buffer zone but the actual structure does not. Ms. Killam asked Mr. Lavelle to place the scale and a marker on the plan so that the boundaries could be more clearly shown. Ms. Killam stated that parking and circulation should also be kept out of the buffer zone.

Ms. Killam then read from Mr. Longchamp's letter which stated that the note on the plan states "office building" and should be amended to state that it is a professional office building in order to coincide with wording in zoning requirements. Mr. Longchamp also requested that the applicant should be required to submit a statement of understanding to the Board and that any tenants be required to submit to an abbreviated site plan review to ensure that the use fits a professional office building.

Ms. Killam stated that changes in tenancy are overseen by the Building Department and the Planning Board should not require site plan reviews for tenants. The Planning Board is not the code enforcement body in this town. Member Dziechowski stated that the Board reviewed tenant use on Industrial Drive. Chairman Killam stated that the code would have to be amended in order to require site plans for tenants. Mr. Dziechowski stated that there should be tenant review. Chairman Killam stated that annual inspections should be sufficient. Mr. Bennett also stated that there should be some sort of a mechanism of review. Member Turell stated that the building inspectors should know. Chairman Killam suggested that tenant review would be a good topic for a workshop and that the code enforcers and fire inspectors should be invited. The Board then discussed what type of inspections were currently being conducted. Selectman Bennett and Member Turell agreed. Mr. Wolters stated that the building owner is responsible for tenant use. Mr. Dziechowski stated that most building owners were not interested in compliance. Chairman Killam disagreed. Mr. Wolters stated that the building insurance was rated for the use and if the use changed, then the policy rating would change.

Mr. Longchamp's letter next addressed the waiver for reducing parking spaces and stated that the current plan only plans for 26 spaces and should have 46 spaces per the ordinance on parking requirements. Mr. Lavelle stated that there would be one space for every 300 square feet and 1 space for each employee and that this would be a low impact business without a lot of office traffic. There would be 20 employees which would leave 6 spaces for people to come and go.

Chairman Killam asked if the building were designed as one office with no rentals. Mr. Lavelle affirmed. Mr. Lavelle stated that the Board had asked a prior applicant to reduce parking on the site. Vice Chairman DiMaggio stated "but not by 60%". Mr. Lavelle replied that parking was reduced by half and six extra spaces would be enough.

Mr. Wolters asked what the business was. Mr. Hart replied that it was called Landmark Benefits and they provided employee benefits, the business has grown to 10 employees but their traffic would be very low because his employees go to the clients. Chairman Killam replied that the site needs to fit the ordinance, not the use fitting the site, so a discussion would be needed. Mr. Hart stated that the letter proved his own point; the reason for the ordinance was

client traffic. The plan currently provided for one space for every 300 square feet, they had more parking on an earlier version but was asked to reduce the number of spaces, now the Board is requesting more.

Selectman Bennett stated that as long as there was no overflow, then less parking should not be an issue. Mr. Lavelle stated that additional parking could be added to the plan, but a retaining wall would have to be added to meet the rule. Chairman Killam asked how many spaces were on the earlier plan. Mr. Lavelle stated that there were around 30 spaces and that the parking lot would have to be expanded. Chairman Killam asked if there were a written waiver request. Mr. Lavelle stated that there should have been one in the original package and if not he could write one for the next review with an explanation of why the applicant was requesting the waiver. Chairman Killam stated that she could not find a copy of a waiver in the application file.

Mr. Dziechowski stated that he had no problem with granting a waiver as long as the final conditions of approval of the plan require that the applicant come back for a modified site plan if the number of employees increases to the point where parking is an issue. Mr. Turell stated that if the use should change at some point in the future with a different type of professional business, then they should come back to modify the site plan for the necessary parking, especially if they have outside people coming in. Member Wolters asked what the difference was between the number of spaces required by the ordinance and the number on the plan. Chairman Killam replied they are proposing 26 spaces and the regulations require 46. Mr. Lavelle responded that the number of spaces should be 42 spaces for 20 employees so that the site plan showed 16 spaces less than what was required. Mr. Wolters stated that he was uncomfortable giving a waiver for that many spaces forever and ever. Member Guischard stated that he was also uncomfortable that there was no provision preventing the site from being subdivided to bring in more traffic.

Selectman Bennett stated that parking was adequate as long as spillover was prevented and that it would put pressure on parking enforcement. Mr. Dziechowski asked if there were ever parking overflow. Mr. Bennett stated that storm parking required overflows. Mr. Bennett stated that if parking overflowed on 121 then everyone would be up in arms and if it overflowed on Pages Lane then the abutters would complain.

Chairman Killam stated that there should be a note on the plan that a waiver was granted based on the current use. Vice Chairman DiMaggio stated that areas for future parking should be plotted on the plan. Member Turell stated that there was no guarantee that the current use and owner would be the use and owner in perpetuity. Vice Chairman DiMaggio suggested that the applicant plot the 42 spaces, and call the additional spaces "future parking." Chairman Killam agreed that the spaces should be included as future parking on the plan with notes and that a formal waiver should be included. Mr. Lavelle stated that he would rewrite it. Chairman Killam asked Ms. LaBranche if she had seen a waiver and Chairman LaBranche stated that Sheet One, Note 6 on the plan stated that a waiver had been requested from Section 670:8 in order to reduce the number of parking spaces.

Chairman Killam suggested that Mr. Lavelle write a formal waiver request that the Planning Board could act on. The rest of the Board agreed. Mr. Turell stated that the setback line should also be shown. Mr. Lavelle stated that he would also make the zone line clear on the cover sheet.

Chairman Killam also suggested that the applicant propose and plot where no parking signs could be placed so that no one parks on the street. Mr. Lavelle agreed. Mr. DiMaggio suggested NH Route 121. Chairman Killam asked Mr. Stewart for his opinion on parking. Mr. Stewart mentioned the no parking signs on Main Street and stated that they could be placed after the fact. Selectman Bennett asked if the Town could enforce no parking on the state road. Chairman Killam requested that Mr. Stewart ask what the process for placing no parking signs consisted of. Mr. Lavelle stated that he had to call the District Engineer about the new permit for the parking lot and stated that he would ask about no parking signs at the same time. Mr. Bennett stated that no parking signs could be put up by the Town if parking on Pages Lane became a problem.

Chairman Killam asked if Mr. Lavelle could go on to Ms. LaBranche's memo. Mr. Lavelle responded that the other items on Ms. LaBranche's memo had been taken care of. The septic plan had been approved and he would give a copy to the Board. The storm drainage issues were being taken care of. Chairman Killam stated that no alteration of terrain permit would be needed because the area was not large enough to require it. The driveway permit has not been finalized. Chairman Killam asked if Ms. LaBranche had anything else to add. Ms. LaBranche asked about having Page

One be signed by a certified soil scientist and Mr. Lavelle responded that the plans submitted to the Board at the meeting were signed by a soil scientist. Chairman LaBranche asked if there were any sign details. Mr. Lavelle responded that the sign details were not included but would be provided. Ms. LaBranche asked if they would be provided before the plans were approved. Mr. Lavelle stated that he hoped to have all revisions completed and submitted to Rockingham Planning Commission and Stantec Engineering by next week.

Chairman Killam requested that the Board look at the memo from Stantec Engineering. Mr. LaChance stated that he would go through the items to see if there were any issues. The first issue was parking, which the board had already discussed. He then brought up landscaping comments, the street trees and landscape strip on comment 29 of the plan. Mr. LaChance stated that the quality of the existing vegetation on Pages Lane might not be sufficient and that additional plantings might be required and on the front landscape strip as well and asked the Board for input. Mr. LaChance asked if the Board wished to discuss any of the comments, but that most issues were engineering items which could be resolved without discussion with the Board.

Chairman Killam asked if there was anything else to be discussed. Mr. Lavelle stated that there was no letter from the Fire Chief, but Mr. Lavelle had spoken to him and shown him the new plan and the Fire Chief had requested a fire hydrant be put in front of the property, which will be shown on the next set of plans. Mr. Lavelle stated that the memo from Mr. LaChance mentioned that the water main was not shown on the plan and stated that it would also be shown on the next set. Mr. LaChance asked if the Fire Chief was comfortable that the turning radius for the fire truck was sufficient and Mr. Lavelle stated that it was. Chairman Killam stated that Mr. Lavelle should get a memo from the chief and Mr. Lavelle stated that he would once all the revisions were in place.

Mr. Wolters asked to address the Board. He stated that he had read the Master Plan from the Energy Committee and stated that it seemed to him that the Energy Committee was asking the Planning Board for help. He stated that a second dumpster might be put in for recycling. Chairman Killam asked Mr. Hart how he felt about a second dumpster and he agreed.

Chairman Killam asked for discussion from the audience. Mr. Hart asked for clarification as to how the additional parking places should be shown on the plan. Chairman Killam responded that the applicant needed to show where they would go if they were required but did not need to be added to the site once a waiver is granted.

Mr. Dziechowski asked where the 100 foot buffer between the Town Center and residential zones should be. Mr. DiMaggio asked for clarification on where the property lines and zones are. He stated that some plantings would be needed on the boundary on the other road as well. Member Turell agreed, but stated that he was opposed to more plantings on Main Street because it would reduce line of sight. The Board agreed. Mr. Lavelle asked if it was direction from the Board that the applicant should be more interested in the Pages Lane plantings than in other areas. Chairman Killam responded in the affirmative.

Chairman Killam asked if the Board was satisfied. She then requested two motions, one for extension of jurisdiction and one to continue, but then realized that the Board had jurisdiction until November 18, 2009 and requested a motion to continue.

Member Ted Dziechowski made a motion to continue the hearing until November 18, 2009. The motion was seconded by Member John Wolters and the Board voted unanimously to continue the hearing until November 18, 2009.

New Applications

James Lavelle for Estate of Johan DeBesche submission of an Application for Consideration and Approval of a proposed 2 Lot Subdivision of a 6.06A lot, one with/2A and 4.06A to remain with existing dwelling on property located at 9 East Road, Map 10, Lot 1, TR2 Zone.

Chairman Killam introduced the above application to the Board and read the abutters list. Abutters present were the Estate of Johan DeBesche and James and Sidney Garrity. Consultants present were Tim Lavelle, James Lavelle Associates.

Chairman Killam read the memo from the State of New Hampshire for Subdivision #SA2009009191 approval dated October 7, 2009. Mr. Lavelle passed out copies of revised plans and copies of the memo from the State. Chairman Killam reminded the audience that the question before the board was whether or not to take the new application under jurisdiction.

Mr. Lavelle explained that the applicant was proposing to cut off a two acre lot with a two hundred foot frontage from the existing lot with buildings. Mr. Lavelle stated that a driveway permit from the State was still pending due to some questions regarding deeds, but should be received shortly.

Mr. Lavelle then proposed to review the letter from Rockingham Planning Commission for the Board. Mr. Lavelle stated that the items in both the letter from Rockingham Planning Commission and from Stantec Engineering had been addressed. He then reviewed the requested changes in the plan for the Board starting with the letter from Rockingham Planning Commission.

Mr. Lavelle stated that the first comment in the letter from Ms. LaBranche had been addressed on the plan in Note #4, a zoning chart had been placed in the middle of the front sheet.

Note #3 was changed to Note #5, the high intensity soil mapping by Tim Ferwerda, as requested in the second comment. The note was expanded to show the methods he used, and the large set of plans was stamped by Mr. Ferwerda.

The sheets are numbered as requested in comment three.

As requested by comment four, lot area, dimension requirements and wetland setbacks were added to as shown on Sheet #2, all dimensions were added and shown on the sheet. Chairman Killam requested that Mr. Lavelle point out the wetlands on the plan and Mr. Lavelle complied, stating that there was one in the middle of the field and one by Bryant Woods. The Board agreed that the setbacks complied with zoning ordinances. Ms. LaBranche also agreed and stated that a note should be placed on the plan that the required documents were not applicable and that a waiver was not required. Mr. Lavelle agreed to place a note on the plan as requested. The Board did not require a written waiver. Ms. LaBranche agreed.

Member Dziechowski stated that the subdivision was eligible for expedited approval.

Vice Chairman DiMaggio asked if the lot consisted of two dry acres. Mr. Lavelle responded that the soils were all dry, 3,2,1 and 1,1,1 soils. Mr. Lavelle stated that the 1,1,1 soil is very good, behind the pool. Chairman DiMaggio asked where the well and leach field was plotted. Mr. Lavelle responded that the leach field was next to the driveway where it says 361. Vice Chairman DiMaggio asked if that were sufficient, and Mr. Lavelle responded yes, that there were two test pits and 4000 square feet for a septic system and that the lot and soil only required 1,000 square feet for a four bedroom home because the soil was good.

Chairman Killam asked Mr. Dziechowski about expedited approval and requested that he cite the RSA. He stated that he did not have the RSA, but a simple subdivision up to three lots can be subdivided in one meeting. Ms. LaBranche stated that Mr. LaChance had brought up some items. Mr. LaChance stated that the comments were in his memo of October 20, 2009. Chairman Killam stated that it was subdivision regulation 530:4 and read the Atkinson regulation into the minutes.

Mr. Lavelle stated that there was one item on the memo from Ms. LaBranche, the Department of Transportation permit was still pending and stated that he would like to address the comments from Mr. Aaron LaChance.

The first comment on the memo from Mr. LaChance had also been addressed in the memo from Rockingham Planning Commission.

Mr. LaChance stated that the second comment regarding the zone division lot size was added to the cover sheet. Reference plans and their recording numbers were added to the plan.

Chairman Killam asked about comment three. Mr. Lavelle responded that the dimensions to the right of ways had been added, that there was no specific width to East Road on Sheet 2, and Bryant Woods Road was a fifty foot right of way.

Mr. Lavelle stated that house numbers had been added to Sheet 2, showing Number 9 East Road in the existing drawing and the new lot would be Number 11 East Road. Chairman Killam stated that fortunately, there was a gap so there would be no disruption of house numbers.

Mr. Lavelle then quickly reviewed comments 6 and 7, and stated that the requests had been addressed. He stated that as required by comment 8, the type and location of monuments delineating the existing property corners were labeled and identified but the monumentation was not bonded. Mr. Lavelle stated that as required by comment 9, a legend was added to each sheet. Mr. Lavelle then reviewed comment 10, stating that the setback dimensions were added to Sheets 2 and 3. In comment 11, the building setbacks were corrected.

The Board discussed comment 12 regarding fire protection. It was stated that a fire pond was directly across the street and that there was a fire hydrant on Bryant Woods, less than 500 feet and certainly within 1000 feet from the property. Member Stewart stated that he believed that was the recommendation of the Fire Chief. Chairman Killam stated that this issue raised the question of whether the Board should ever do expedited approvals if the Fire Chief had not had a chance to review the plan. Member Stewart stated that fire hydrants and ponds were never required for subdivisions of less than 4 lots. Member Dziechowski stated that the Fire Chief or Fire Marshall had the authority to waive many of the provisions of single family and two family situations.

Chairman Killam asked if the Board had more to discuss. Chairman Killam then asked Ms. LaBranche and Mr. LaChance if they wished to add anything, and they responded that they did not. Ms. Killam then addressed the audience. Mr. Jim Garrity spoke and stated that he lived directly across from the proposed subdivision at 14 East Road, across the street from the said property and offered his full support, stating the applicants should be able to do whatever they wanted with their property because he believed in private property rights. Chairman Killam asked if there were more comments. There were none.

Chairman Killam asked the Board for their decision.

Mr. Ted Stewart made a motion for expedited approval with the following conditions: 1) Department of Transportation approval for a driveway permit; 2) a letter from Lavelle Associates providing verification that monumentation had been set; and 3) a satisfactory opinion letter from the fire chief.

Chairman Killam asked if a letter from the Fire Chief was necessary. The Board agreed that it was. Mr. Wolters inquired about septic approval and Chairman Killam stated that septic approval was included in state subdivision approval.

The Motion was seconded by Member Mike Turell. There was no more discussion and the Board voted unanimously to allow expedited approval with the conditions stated in the motion by Mr. Stewart.

Chairman Killam then stated that as a point of order the Board needed to take the application under jurisdiction. Mr. Mike Turell then made the motion to take the application under jurisdiction retroactive to the motion to expedite approval. Mr. Paul DiMaggio seconded the motion and the Board voted unanimously to take the application under jurisdiction.

James Lavelle for Gary Witley and Robert Evans submission of an Application for Consideration and Approval of a proposed 2 Lot Subdivision of a 37.85A Lot and Lot Line Adjustment (to correct abutter encroachment) one Lot of 2A and remaining 33.85A with existing dwelling on property located at 46 & 50 Main Street, Map 4, Lots 14 & 16, RR2 Zone.

Chairman Killam read the abutter list into the minutes. Abutters present were Margaret Bibbins, Trustee of Bibbins Realty Trust and Gary Witley.

Chairman Killam then informed Mr. Lavelle that there should be two signatures on the application and that Mr. Evans

had not signed. Mr. Lavelle stated that he had a letter of authorization from Mr. Evans since he did not sign the application. Chairman Killam then read the letter from Mr. Gary Witley authorizing Mr. Lavelle of James Lavelle Associates and a letter from Mr. Robert Evans also authorizing Mr. Lavelle to represent him. Chairman Killam then stated that she would like Mr. Evans signature on the application.

Mr. Lavelle then summarized the application for the Board. Mr. Lavelle stated that when the property was surveyed, there were some encroachments, an area of about 150 by 200 feet on the lower left of Mr. Evans' property which had been occupied from the very beginning and no one caught it because the deed did not match the map. Mr. Lavelle then showed the Board the original lot lines and stated that in order to clear up the encroachments, they are swapping some land away from the area that had been cut out and added to another section of Mr. Evans' plot. Chairman Killam requested that the deeds be changed to reflect the changes in the lot lines.

Mr. Lavelle stated that the applicant proposes to create a two acre lot from the original plot around an existing dwelling and garage allowing for it to legally be on its own. The large lot will be 33.85 acres and the new lot would be two acres exactly and have its own well and septic. Mr. Lavelle stated the last sheet showed the test pits, septic areas and proposed wells for both lots.

Selectman Bennett asked Mr. Lavelle where the applicant was getting water from now. Mr. LaChance also asked Mr. Lavelle where the water was coming from and Mr. Lavelle responded that there was a municipal water line to the farm house and then a private line to the dwelling on the proposed two acre lot.

Mr. Lavelle stated that he received letters from Rockingham Planning and Stantec Engineering and he had addressed the comments in the letters.

Mr. Lavelle first reviewed the letter from Rockingham Planning Commission. Zoning information had been added to sheet one as requested in comment one. The date and method for conducting the soil survey and the signature of the surveyor were added to Note 3, Sheet 1 as requested in comment 2. Sheet numbers were added as requested in comment 3.

Mr. Lavelle stated that the setbacks had been corrected and the dimensions added as requested in comment 4 of the Rockingham Planning Commission memo. Mr. Lavelle stated that the previous plans had fifty foot setbacks and there was confusion because the setback requirements are thirty feet minimum on the side, 100 feet total. Therefore, if a structure has a thirty foot setback on one side, then a seventy foot setback is needed on the other side. Chairman Killam stated that the plan showed a thirty foot setback on the left and asked if it were an absolute thirty. Mr. Lavelle stated that it was an absolute thirty. Chairman Killam asked about the seventy foot setback. Mr. LaChance stated that there should be a seventy foot setback shown on the right side of the parcel. Mr. Lavelle stated that it was not necessary because the garage has to meet the thirty foot set back on one side and seventy on the right, but the house does not need to meet the seventy foot setback because they are separate structures. The house just needs to have at least a thirty foot setback and 100 feet setback total. Mr. Lavelle stated that he could not draw the plan exactly according to the rule. Mr. Lavelle stated that the side line set back was thirty feet with a total of 100 feet. Chairman Killam stated that the sideline setback was one hundred feet in two portions. Mr. Lavelle stated that the sideline setback was thirty feet with a total of one hundred feet. Chairman Killam stated that the drawing did not show a total of 100 feet.

Vice Chairman DiMaggio stated that the buildings on the lot have to be within the foot print and asked if there were seventy feet from the house to the lot line. Mr. Lavelle responded that there were but if he drew the seventy foot setback, it would not be real because another structure would be within 30 feet of it or the structures could be ripped down, allowing both structures on the lot to fit into the same foot print. Mr. Lavelle stated that he had brought this before the Town before, and he had to show the thirty foot minimum setback.

Vice Chairman DiMaggio requested that Mr. Lavelle dash in a seventy foot setback from the right hand boundary for the lot. Mr. Lavelle responded that because the garage is forty feet from the lot line, he would sketch in a sixty foot setback. Vice Chairman DiMaggio disagreed. Chairman Killam stated that the conflict existed because Mr. Lavelle is stating that the setback should be per structure and the opinion of the Board was that the setback should be drawn according to utilization of the lot needs to have one hundred feet around things built there and if there was a thirty foot setback on one side then there had to be a seventy foot setback on the other. Mr. Lavelle agreed and stated that if there

were a forty foot setback on one side then he only needed a sixty foot setback on the other.

Chairman Killam stated that the situation was unusual because he was creating a lot with existing structures. Mr. Lavelle suggested that he dimension both structures from either side. Mr. DiMaggio suggested that Mr. Lavelle show both the zoning setback and the requirements to meet the thirty and seventy foot setbacks. Mr. Lavelle stated that the setbacks were drawn wrong on the first plan, then he showed that the dwelling was within a fifty foot setback. Chairman Killam asked how far the garage was from the lot line on the left. Mr. Lavelle responded that it was forty feet. Chairman Killam stated that in that case the plan needed a sixty foot setback on the other side and it would be good to show that with preexisting structures but the Board did not want future builders to think they could build anywhere on the lot.

Mr. Lavelle stated that Stantec Engineering and the Planning Board had already requested that a note be placed on the Cover Sheet of the Plan showing the setback dimensions, which had already been added to the plan. Vice Chairman DiMaggio stated that forty foot and sixty foot setbacks be added to the plan. Chairman Killam agreed. Mr. Lavelle stated that if those setbacks were added to the plan, then if the existing structures were ripped down it would create problems because the zoning ordinance stated that there had to be a thirty foot minimum setback. Chairman Killam and Vice Chairman DiMaggio did not agree that the thirty foot minimum setback should be for each structure.

Ms. Julie LaBranche requested to speak. Ms. LaBranche stated that this is not a typical situation because there are structures on the new lot that the applicant was creating and the new lot has to meet all the dimension requirements and lot area requirements of the district and all buildings have to meet minimum setback requirements of the district. However, this district has floating side setback requirements and in order to make this lot conforming without a variance, the applicant needed to decide where the setbacks would go and it was a one time decision. Ms. LaBranche stated that the applicant had to choose a setback and could divide it up however they wanted with a choice of sixty and forty foot setbacks or thirty and seventy foot setbacks, which would be the same as if it were a new lot with no structures. Ms. LaBranche stated that once the decision was made, those would be the setbacks unless an application was made to amend the subdivision plan. Member Mike Turell asked if the house and garage were 100 feet apart on the lot would the Board be having this discussion. Ms. LaBranche replied that it would depend on how far the structures were from the lot line.

Mr. Stewart asked if Mr. Lavelle could draw a thirty foot setback on the plan and add the existing setbacks as well because it would show both where the structures stand now and also what the minimum zoning requirements are if the buildings were torn down. Mr. Lavelle responded that he could dimension the structures from the lot lines and show that they have met the setbacks, but the point he is trying to make is that the setback to the line for a structure is thirty feet provided there is seventy feet on the other side and to draft a setback on a plan somewhere other than thirty feet is not a true setback. Chairman Killam stated that in this case it was an existing condition. Mr. Lavelle responded that the existing structures were very likely to come down. Mr. DiMaggio stated that it might not be fair but that was what the regulations stated. Mr. Lavelle responded that there are other developments where the setbacks on the drawings differed from the actual distance from the building to the lot line. Mr. DiMaggio stated that he would not approve unless the setbacks showed the actual distance of the buildings from the lot lines. Member Turell asked Vice Chairman DiMaggio if he was considering the two buildings as one unit and Mr. DiMaggio replied yes.

Chairman Killam allowed Mr. Witley to address the Board. Mr. Witley stated that he did not agree with the Board and that the setbacks should be drawn according to the Code. Member Stewart stated that the board should keep the 30 foot minimum setback as drawn on the plan and add the pre-existing buildings and if the buildings get torn down, then the thirty foot setback will be shown. Chairman Killam explained that in a normal subdivision, a lot is shown with thirty foot setbacks on each side and if a new structure is going to be built, the Board would hold the applicant to the thirty/seventy foot requirement but the Board always shows the setback on the plan as thirty and thirty. Chairman Killam suggested that we could accomplish what the applicant requested, by showing the minimum thirty foot setbacks on the plan but add a note to the plan stating that these pre-existing structures must continue to meet current ordinances, which require a total of a 100 foot setback. Mr. DiMaggio objected stating that if there were a subdivision with a floating sideline in any district, then the Board would request that the applicant plot where the existing structures existed on the Plan. Chairman Killam responded that the Board did not require applicants to plot structures in residential zones. Mr. Lavelle stated that the structures do meet the thirty foot setback minimum, they are both over

thirty feet from the lot line and both have over a one hundred foot setback. Mr. Lavelle further stated that the drawings he gave to Mr. LaChance and Ms. LaBranche were drawn with fifty foot setbacks, but the present plans are drawn with thirty foot setbacks. Chairman Killam stated that all the setbacks in Atkinson are floating and the board leaves it to the Building Inspector to enforce that there is a total one hundred foot setback for the entire lot. Chairman Killam stated that she was speaking of residential lots. Selectman Bennett stated that floating setbacks should be noted on all drawings. Mr. Lavelle stated that he would be willing to add a bigger note to ensure that future applicants would have a 100 foot total setback. Chairman Killam stated that a note would be necessary and should be close to the setback area. Selectman Bennett stated that the note should be clear to a future buyer or heir. Mr. Lavelle stated that he would place the note in the middle of the lot so that future buyers would not be able to miss it.

Regarding comment 7, the water line going from the big house to the little house, Ms. LaBranche suggested that if the applicant was planning on leaving the water line, then an easement would be required. Mr. Lavelle stated that the applicant would get an easement and the water line was shown on the other lot. Chairman Killam requested that Mr. Lavelle show her the existing water lines. Mr. Lavelle stated that the existing water line came from the street to the farm house on the first lot and then a waterline extended from the house on the first lot to the house on the second lot and the applicant did not wish to extinguish that right. Chairman Killam asked how the water company meters the water. The applicant replied that there was one meter. Chairman Killam stated that for civil issues, the applicant should have a meter for the second lot. Mr. Lavelle stated that he would note on the plan that the existing water line from the farmhouse on the first lot to the structure on the second lot would be abandoned.

Regarding comment 8, the Board agreed that Section 600 Preliminary Layout parts l-r, did not pertain and Mr. Lavelle stated that a note would be added to the plan that it did not pertain.

Subdivision approval had been obtained as requested in Comment 7 and monumentation would be set.

Mr. Lavelle then started to address the comments in the letter from Stantec Engineering.

Ms. LaBranche asked to clarify that the decision regarding setbacks would apply to both properties in the subdivision.

Chairman Killam asked if the Board should take the application under jurisdiction. Mr. Dziechowski asked about the existing farmhouse. Ms. LaBranche replied that the front setback was already nonconforming. Vice Chairman DiMaggio asked if Map 4, Lot 17 was an existing lot and Chairman Killam replied that it was. Mr. DiMaggio recommended that the lot line change be a separate hearing and a separate motion and action should be made. That way the Board did not have to consider the nonconforming lot at this time.

Chairman Killam asked Mr. DiMaggio if he wanted to divide the applications into two separate applications and take the application under jurisdiction in two parts. Ms. Killam then asked Ms. LaBranche if the lot lines on the left could be dealt with separately. Ms. LaBranche stated that it could be dealt with as two applications as long as the hearing was continued to allow time for reapplication. Mr. Turell asked if the Board could just take it as one application in two parts. Ms. LaBranche stated that since it was one plot, the Board would be taking the risk that if there were indecision or denial by either party of the subdivision then the plot would no longer be valid. Mr. Lavelle asked if the side line was an issue. Chairman Killam responded that it was how the setbacks were drawn. Ms. LaBranche stated that her comments on the side lot setbacks did not apply since the setback lines had been drawn. She stated that a setback is a static number and is not based on where a building is placed. A building should be placed according to the setbacks. She stated that to draw a set back and then place buildings anywhere did not make sense and that once the setback was established it should remain the same. Chairman Killam responded that the Building Inspector verifies that the float is maintained when he issues a building permit. Member Turell stated that the area between the setbacks is the floating area and the distance was measured from either side. Therefore a building could be placed anywhere within the thirty foot minimum setback. Vice Chairman DiMaggio suggested that the minimum setback and the actual setback could be color coded. Ms. LaBranche stated that it would defeat the intent of the zoning regulations. Vice Chairman DiMaggio asked what her opinion was of dividing the application into two. Ms. LaBranche responded that you can keep both boundary adjustments in the same application but it would have to be amended before anyone could sign it. Vice Chairman DiMaggio stated that if it were legal, then he would prefer that the application be kept as one.

Mr. Tim Dziechowski made a motion to take the application under jurisdiction. Mr. Mike Turell seconded the

motion. Mr. John Wolters opposed the motion, with Mr. Dziechowski, Mr. Turell, Ms. Killam, Mr. Stewart, Mr. Guischard and Selectman Bennett in favor.

Chairman Killam asked Member Wolters why he opposed and he stated that he would prefer that the application be divided into two. Vice Chairman DiMaggio stated that he would prefer two applications, but it was apparent that the issues involved would not be settled at one Planning Board Meeting.

Chairman Killam again requested a show of hands and this time the Board voted unanimously to approve the Motion by Mr. Dziechowski to take the application under jurisdiction.

Chairman Killam then asked that the Board discuss the report by Mr. LaChance. Mr. LaChance stated that he had nothing new to bring to the Board. Mr. Lavelle reviewed the notes in the memo from Mr. LaChance. Notes 1 through 5 were already addressed in the memo from Rockingham Planning Commission. Note 6 pertains to the sideline and setback issue and was previously discussed. Note 7 was corrected. In Note 8, it was noted which lot lines would be abandoned. Note 9, was corrected to show that 33.85 acres would be left in Mr. Evans' lot.

Selectman Bennett asked if the changes being made were in response to the memo from Mr. LaChance and Mr. Lavelle responded that they were in response to the memos Mr. LaChance and Ms. LaBranche. Selectman Bennett asked if it were possible to get a second review. Mr. LaChance stated that Stantec Engineering typically did subsequent reviews.

Note 10 regarding the water main had been addressed in Mr. Lavelle's response to the memo by Ms. LaBranche and the water main would be abandoned.

In regard to Note 11, there is a fire hydrant directly across the street. Regarding Note 12, the summary tables were added as were the recommendations in Note 13. Note 14 regarding soil based lot size was changed as recommended in the note. Chairman DiMaggio asked about lot size and soils base. Mr. Lavelle responded that the soils were 3,2,1 b and c, so the two acre minimum lot size would still apply.

Mr. Stewart asked to summarize the conditions and asked if he were adding notes. Mr. Lavelle responded that as far as the side line set backs, he stated that he would add notes requesting to see the zoning ordinance regarding required set backs and put the note on both lots so that someone looking at the plan years from now will be aware. Mr. Stewart asked if the lots had met all other conditions with Department of Environmental Services and septic approval. Chairman Killam stated that only subdivision approval was required. Chairman Killam asked if the applicant was altering driveways and Mr. Lavelle responded no, there were no changes in use and the subdivision plan only cleaned up and clarified an existing plot with two structures.

Mr. Dziechowski asked if the Board could approve the application. Mr. Stewart stated that he did not see why not. Mr. Dziechowski stated that the disagreement was about zoning setbacks and the building inspector could deal with that. Mr. Stewart agreed. Mr. Stewart then stated that he had a question regarding the pre-existing nonconforming use not owned by the Witleys. Chairman Killam responded that the large lot was being made better because the new plans drew a line around the encroachment so that it is eliminated. The smaller lot stays nonconforming. Mr. Lavelle stated that it would bring the smaller lot more into compliance. Mr. Stewart stated that the proposed plan was making everything better, so why not approve it? Vice Chairman DiMaggio asked if he had more questions. Mr. LaChance asked he would like approval on the condition that he and Ms. LaBranche signing off on the new plans.

Chairman Killam requested a motion. Vice Chairman DiMaggio made a motion to approve the lot line adjustment and subdivision of one lot conditioned on: 1) gaining Mr. Evans signature on the application; 2) the final plan to be accompanied by the deeds reflecting the lot line changes; 3) certification that the monumentation has been set; 4) additional notes defining side line setback conditions; and 5) for Rockingham Planning Commission and Stantec Engineering to approve the final version of the plan before it's brought to the Planning Board for signature.

The abutter, Margaret Bibbins, 5 Maple Avenue asked if the stone wall at the boundary of her property would be affected. Mr. Lavelle assured her that the stone wall would not be affected. Chairman Killam asked if other abutters

would like to comment. There were no more comments.

Mr. Mike Turell seconded the motion. Chairman Killam asked if there were more discussion. Vice Chairman DiMaggio stated that balloon notes were not sufficient to demarcate the floating setback lines from the setback lines required by zoning regulations. Mr. Dziechowski stated that he would look into it.

The Board voted six in favor with Vice Chairman DiMaggio opposing.

Mr. Ted Stewart made a motion to adjourn the meeting. The motion was seconded by Vice Chairman Paul DiMaggio and the Board voted unanimously to adjourn the meeting.