

TOWN OF BEDFORD
PLANNING BOARD MEETING MINUTES
November 2, 2009
BEDFORD MEETING ROOM

A meeting of the Bedford Planning Board was held on Monday, November 2, 2009, at the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH. Present were: Paul Goldberg (Chairman), Robert Young (Town Council), Russ Marcoux (Town Manager), Jim Stanford (Public Works Director), Harold Newberry, Karen McGinley, Erik Anderson, Chris Riley (Alternate), Neal Casale (Alternate), Bill Dermody (Town Council Alternate), Rick Sawyer (Town Planner), and Cynthia A. May (Planner II).

I. Call to Order and Roll Call

Chairman Goldberg opened the meeting at 7:00p.m. Jon Levenstein and Debbie Anne Sklar were absent. Chris Riley and Neal Casale were appointed voting members. Ms. May read the agenda.

II. Old Business:

A. Continued Hearings:

III. New Business

B. Application Acceptance and/or Public Hearings on Applications:

1. Cellco Partnership d/b/a Verizon Wireless (Applicant), 470 Route 101 West, LLC (Owner) – Request for final site plan approval for the installation of a proposed wireless telecommunications facility, 470 Route 101, Lot 31-14, Zoned HC.

C. Concept Proposals and Other Business:

2. Jonny Burgess (Applicant), Kevin & Michelle Chauvette (Owner) – Conceptual review of a proposed subdivision of an existing single-family lot into two lots, 18 Amber Lane, Lot 40-8-14, Zoned R&A.
3. Recommendation to the Town Council for a Planning Board representative and an alternate representative to the Conservation Commission (**Tabled from the October 19, 2009**).

Ms. May said the application for Cellco Partnership is complete, and in the Planning staff's opinion is ready for application acceptance. The Town sent notification to abutters as required for Cellco Partnership's application, as well as to the governing bodies of all municipalities

within a 20 mile radius in accordance with RSA 12-K:7. It is also Planning staff's opinion that there are no new items of regional impact.

MOTION made by Mr. Marcoux to accept the agenda as written. Seconded by Mr. Casale. Vote taken – all in favor. Motion carries.

- 1. Cellco Partnership d/b/a Verizon Wireless (Applicant), 470 Route 101 West, LLC (Owner) – Request for final site plan approval for the installation of a proposed wireless telecommunications facility, 470 Route 101, Lot 31-14, Zoned HC.**

A staff report from Rick Sawyer, Planning Director, dated November 2, 2009 as follows:

I. Project Statistics:

*Applicant: Cellco Partnership, d/b/a Verizon Wireless
Owners: 470 Route 101 West, LLC
Proposal: Final Site Plan Amendment approval for a new cell tower
Location: 470 Route 101, Lot 31-14
Existing Zoning: "HC" – Highway Commercial
Surrounding Uses: Restaurant, Office, Retail, & Residential*

II. Background Information:

On May 7, 2001 the Planning Board approved the site plan for the reconfiguration of the site as it exists today with 8 automotive fueling stations, a convenience store, Dunkin Donuts and office space. Previously the site had been used for automotive repair, a carwash and Dunkin Donuts with site plan approvals in 1995, 1993 and 1992. Representatives for Cellco Partnership appeared before the Planning Board on August 10, 2009 for a conceptual review of the proposed plan. On September 15, 2009, the Zoning Board of Adjustment approved the Special Exception as required by the Zoning Ordinance (please see details under Project Description below).

Reminder of Planning Board Jurisdiction – Required Documentation for Site Plan Review:

- Submission of a Non-residential site plan application. Planning Board review of easements, setbacks, road or driveway access to/from the site (including sight distance), lighting, utilities, review of any waiver requests, etc.*
- Submission of Bond for Removal. Reviews of the bond estimate and verification that it satisfies the Zoning Ordinance requirements, and acceptance of bond.*
- Submission of a copy of the relevant portion of a signed lease which requires the applicant to remove the tower and associated facilities upon cessation of operations.*

III. Project Description:

The applicant is seeking approval of a telecommunications facility on an undeveloped portion of an existing Route 101 commercial site near the Amherst and Merrimack Town lines. The proposed development area is currently open, relatively flat and grassed. Woods predominately surround the proposed facility, with The Bedford West Convenience Center being located approximately 150' to the east. This lot is zoned Highway Commercial with Commercially zoned land abutting to the east, south and west. The land across from the site on

the east side of Route 101 is zoned Residential and Agricultural and contains single family homes.

As part of the Planning Board submittal, the applicant provided a transmittal letter that includes the applicant's responses to Planning Staff and Consulting Engineer review comments, as well as, the waiver request (see below). The binder also contains a copy of the amended site plan, equipment shelter elevations, stockade fence details, a copy of the FAA TOWAIR determination letter, a copy of a letter from the Manchester-Boston Regional Airport, FAA Form 7460-1, site photos, the view shed analysis photos, a copy of the signed lease agreement, a copy of a sample removal bond, and a letter from the project engineer regarding the cost to remove the facility.

The attached site plan shows the addition of a 130' monopole cell tower within a 40 foot by 40 foot fenced compound to the east of the existing parking lot at 470 Route 101. The facility will support 12 panel antennas at the 127 foot height and a microwave dish at a height to be determined later. Details show that the compound, housing a 12 foot by 30 foot equipment shelter, meter bank and telephone cabinet, will be surrounded by a six foot high stockade fence. The 10 foot six inch high shelter has a flat roof, precast concrete pebblestone finish, two doors, two windows, and two HVAC units on the exterior (please see the attached elevation sketches, item #4 in the binder.) A proposed 40 foot lease area is shown on the plan.

An access easement is depicted on the plan from the existing property entrance to the compound gate, with a segment between the edge of the parking lot and the gate shown over the grass surface. The applicant proposes to construct a temporary gravel construction access in this location, to be finished with loam and seed after construction (please see the attached site plan.) Staff had previously requested construction of a permanent paved or gravel vehicular drive, but the applicant indicated that there was no need for this because Verizon Wireless personnel will utilize the adjacent parking spaces for monthly maintenance of the facility. Verizon Wireless estimates that there will be one or two site inspections per month.

Prior to submitting the Planning Board application, the applicant appeared before the Zoning Board of Adjustment to request a Special Exception as required by Article 45-7-3(b)(5). The first hearing was on August 18, 2009. A publicly noticed crane test was performed as required by Article 45-7-5(d) on September 10, 2009. As part of the notification for the ZBA hearing, all towns within a 20 mile radius of the site were notified in accordance with RSA 12-K:7. The second ZBA hearing occurred on September 15, 2009, at which time the Special Exception was approved.

The plans indicate a traditional monopole design without the use of any camouflage techniques like making it look like a tree, a silo or a flagpole, and as requested by the Planning Board, the applicant provided updated photo simulations showing three co-locators on the pole (please see item #10 in the attached binder). As part of their review for the Special Exception, the Zoning Board of Adjustment (ZBA) determined that the natural surroundings of the proposed monopole location provided adequate visual mitigation, and no further stealth measures were required. The applicant also sought approval for reduced fall zone setbacks in accordance with Article 45-7-7. The proposed 130' fall zone would extend over a portion of the Route 101 right of way and the property lines to the east and south. The application materials indicate that the tower will be designed to collapse down rather than to fall over. In addition to the visual mitigation conclusion, the ZBA found that the engineering report supported the applicant's request to reduce the fall zone to 130 feet as follows:

“MOTION made by Mr. Walsh that the Zoning Board of Adjustment approve the application of Cellco Partnership d/b/a Verizon Wireless (Applicant), 470 Route 101 West, LLC (Owner) seeking a Special Exception as outlined in Article 45-7-3(b)(5) for a 130-foot tall wireless telecommunications facility, 470 Route 101, Lot 31-14, Zone HC, continued from August 18, 2009 Zoning Board of Adjustment meeting, for the reasons it has met the criteria for a Special Exception where stealth features were sufficient and the engineering report satisfied the Board to accept reducing the fall zone requirement; seconded by Mr. Jean; vote taken – motion carries, with Ms. Stirling voting in opposition.” (For a complete discussion, please see the minutes of the Zoning Board of Adjustment for September 15, 2009, attached, and August 18, 2009, which are available on the Town’s web site.)

During the August 10th conceptual discussion, the Planning Board requested the applicant to confirm whether or not the Town’s Emergency Services desired to locate on the proposed tower. The applicant contacted the Fire Chief and the discussion about the Town’s needs is still in progress, with a condition of approval provided in the draft motion to ensure that the opportunity is fully explored prior to issuance of a building permit. The Board also asked the applicant to provide an image of a monopole with internal antennas for the ZBA to consider. The issue was discussed with the ZBA, but after the crane test, it appears that this option was dropped, where the ZBA determined the external antenna arrays would be adequately screened by surrounding natural features.

IV. Waiver Requests:

The applicant is requesting a waiver (please see the attached letter from John Weaver, Attorney with McLane, Graf, Raulerson & Middleton, for the applicant’s justification) from the Land Development Control Regulations, for which the Board will need to take action:

1. Section 317.1 requiring a High Intensity Soils Survey.

In staff’s opinion, granting these waivers will not have the effect of nullifying the intent of the regulations. This is consistent with the findings of the Planning Board’s engineering review consultant, Steve Keach that the proposed telecommunications facility will be unmanned and will not have water supply or sanitary sewer accommodations, and soils mapping would not be used to facilitate the design or review of the application.

V. Staff Recommendations:

The Planning Board needs to vote on whether or not to grant the waiver from the Bedford Land Development Control Regulations, for Sections 317.1 as previously described.

The Planning Staff recommends that the Planning Board grant final approval of the proposed site plan amendment for the addition of a telecommunications facility as shown on the plan prepared by SFC Engineering Partnership, Inc, dated August 28, 2009, last revised October 15, 2009, 470 Route 101, Lot 31-14, with the following conditions precedent (to be fulfilled within 180-days as noted and prior to signing the plan by the Planning Board):

1. Copies of draft utility and access easement deeds shall be provided for Planning Staff review. All final easement documents shall be executed and submitted to the Planning Department for recording in the Registry of Deeds.

2. *The applicant shall provide metes and bounds descriptions of the lease area, utility easement and access easement on the plan and in the deeds.*
3. *The applicant shall submit a fully executed removal bond issued to the Town of Bedford to guarantee that the facility will be dismantled and removed within 90 days of cessation of wireless telecommunications use, in accordance with Article 45-7-8(b) of the Zoning Ordinance.*
4. *The applicant shall submit any outstanding engineering review fees to the Public Works Director.*

The following conditions subsequent to plan signature shall be completed as noted:

5. *Prior to commencing any work on site, including tree clearing, a pre-construction conference shall be held with the Planning Department, Public Works Department, and Building Department.*
6. *Prior to issuance of a building permit, the applicant shall meet with the Fire Chief to determine any need that the Town of Bedford's emergency management program might have for space on the proposed facility. The applicant shall provide correspondence from the Fire Chief or his designated representative regarding the outcome of this meeting to the Planning Department, stating whether or not the Town may need to locate equipment on this facility along with a description of those needs, now or in the future.*

Chairman Goldberg said the Planning Board does not approve the location of the cell tower. That is under the Zoning Board of Adjustment approving it as a Special Exception. They approved the tower at their September 15, 2009 meeting. The Planning Board's jurisdiction is non-residential site plan review; we have to check for a bond of removal if the cell tower is abandoned and also a copy of the relevant portion of the sign lease.

Tom Hildreth, counsel for Verizon Wireless, said with me is Chip Fredette, the site acquisition specialist in this area. We met a number of you folks back in early August for our initial conceptual presentation of this project. We have had three stops with the Zoning Board since then, one of which was a crane test to demonstrate where the facility could be seen from at this location. As the Chairman mentioned, they approved the Special Exception and a related waiver in terms of the setback requirement under the wireless ordinance in Bedford at their meeting on September 15, 2009. I hope that everyone has had a chance to read Ms. May's staff report. We had one conversation before the meeting about a suggested condition of approval, which was to record a copy of an access easement. We don't have a separate access easement from our landowner; we do have access rights defined in our lease. We have a recorded notice of lease to describe our rights at the property. I talked with Ms. May about an alternative to doing an amended notice of lease that would reflect the metes and bounds of the actual access course. She thought that would be an agreeable substitute to doing a separate easement deed. Our access rights will expire when our lease rights expire, so if they stand together in one instrument, it will just be a more logical place to put that.

Mr. Hildreth reviewed the plans. Posted on the screen is a satellite view of where the site for the cell tower is. We are at the western end of Route 101 in Bedford near the town line with Amherst and Merrimack. The site on the left is the host parcel; the site of an existing Mobil gas

station and Dunkin Donuts, to the right is a convenience store, and in the grassy area just off the edge of the parking lot is the area proposed for this 40' X 40' fenced facility. The facility would contain a 130' standard monopole with external devices; that was a conversation we had with the Zoning Board at some length, it would contain our standard issue utility building. That is a 360 square foot pebble aggregate, pre-cast concrete structure that contains back-up power sources, computing equipment, switching equipment, the electronics that are the brains of the facility. Although it will be fenced by a 6' stockade fence, on the two sides that are nearest the gas station/Dunkin Donuts use, we will put some arborvitae ground plantings to screen the fence and soften the look. Within the circle shown on the plan, the circle representing the 130' radius from the center of the small circle, which is the proposed tower, that's where all the action occurs. You see the arborvitae running on one side and then across on the north side. You can see the equipment shelter at the bottom of the picture and the 40' X 40' fence surrounding it. It is a very busy plan. There is a 20' access easement that comes in off from Route 101, kind of an irregular rectangular pattern, dumping you at the site. There is a 6' wide utility easement coming in directly from Route 101 as shown on the plan, which will bring underground electric and telephone wires. There are no new poles proposed for this site, the utilities will come underground from that existing pole location. I think those would be the key elements to bring to your attention.

Chairman Goldberg said all the Planning Board is doing is site plan review; the tower itself has been approved by the Zoning Board of Adjustment.

Ms. May said I wanted to mention regarding the statement that Mr. Hildreth made about the meets and bounds description. We think it's covered under Condition #2 already. Ms. McGinley said I'm fine with that being added to the notice of lease because then the parties don't have to re-describe something that's already described in the lease.

Mr. Casale asked Ms. May, in your staff report on Page 2, it says staff had previously requested construction of a permanent paved or gravel vehicular drive. What was the reason for that? Ms. May replied that was when Mr. Sawyer was reviewing it, it is to allow some sort of a vehicle to service the facility up to the gate, but apparently they don't have a need for that so we took away that request.

Mr. Young asked what is the status of the bond? Mr. Hildreth replied we have submitted a cost estimate for the removal of the facility, which is approximately \$31,500, we submitted a sample of a removal bond provided to another jurisdiction, not Bedford, and if this is approved, we'll get one that's tailored to this site referencing this case number. Mr. Sawyer said that is Condition #3 in the staff report. Mr. Young asked around \$31,500 is where everyone is focusing. Mr. Sawyer replied we are comfortable with what has been presented. We just didn't make them get the bond just in case for some reason this gets denied or turned down or tabled, it would be silly to have a bond in place at this point. This makes a perfect reason for a condition.

Ms. McGinley said I looked at the bond and it can be terminated by the issuer without recourse from the Town without any say. Mr. Sawyer, from a practical point of view, that puts the tower out of compliance? Mr. Sawyer replied yes, I think our language actually does require it to not be a self-terminating bond. We would have to check that language. Ms. McGinley said like a

letter of credit, that could say that it could be terminated but you have a certain amount of time to draw on the letter of credit before the termination or expiration. Mr. Hildreth said what we have often seen in these circumstances is a 30-day notice provision, which we would get at the same time the Town would get and it would be incumbent on us to provide a replacement bond that would serve the same purpose or risk having a non-compliance determination found. I have to guess given the number of facilities we have in Town already, that if we go and look at the records, we will find a sample bond and bonding company that satisfies the Town of Bedford requirements, and if we have to use them, we will. There are a few different vendors that we go to and this is often an issue that is subject to some negotiation. I'm sure we'll find one that works. Ms. McGinley said I don't have a problem with the issuer; I do have a problem with it terminating without a right to draw. Mr. Sawyer said that's a good point, and we'll make sure that that's corrected.

Chairman Goldberg asked for comments or questions from the audience.

MOTION made by Mr. Young that the Planning Board approve the waiver of Section 317.1, requiring a High Intensity Soils Survey, from the Bedford Land Development Control Regulations. Seconded by Mr. Casale. Vote taken – all in favor. Motion carries.

MOTION made by Ms. McGinley that the Planning Board grant final approval of the proposed site plan amendment for the addition of a telecommunications facility as shown on the plan prepared by SFC Engineering Partnership, Inc., dated August 28, 2009, last revised October 15, 2009, 470 Route 101, Lot 31-14, with the following conditions to be fulfilled within 180-days and prior to signing the plan by the Planning Board:

- 1. Copies of draft utility and access easement deeds shall be provided for Planning Staff review. All final easement documents shall be executed and submitted to the Planning Department for recording in the Registry of Deeds.**
- 2. The applicant shall provide metes and bounds descriptions of the lease area, utility easement and access easement on the plan and in the deeds.**
- 3. The applicant shall submit a fully executed removal bond issued to the Town of Bedford to guarantee that the facility will be dismantled and removed within 90 days of cessation of wireless telecommunications use, in accordance with Article 45-7-8(b) of the Zoning Ordinance. This bond issued for removal of the tower will contain a provision that would allow a drawing of the bond if there is notice of termination.**
- 4. The applicant shall submit any outstanding engineering review fees to the Public Works Director.**
- 5. Prior to commencing any work on site, including tree clearing, a pre-construction conference shall be held with the Planning Department, Public Works Department, and Building Department.**
- 6. Prior to issuance of a building permit, the applicant shall meet with the Fire Chief to determine any need that the Town of Bedford's emergency management program might have for space on the proposed facility. The applicant shall provide correspondence from the Fire Chief or his designated representative**

regarding the outcome of this meeting to the Planning Department, stating whether or not the Town may need to locate equipment on this facility along with a description of those needs, now or in the future.

Seconded by Mr. Marcoux. Vote taken – all in favor. Motion carries.

- 2. Jonny Burgess (Applicant), Kevin & Michelle Chauvette (Owner) – Conceptual review of a proposed subdivision of an existing single-family lot into two lots, 18 Amber Lane, Lot 40-8-14, Zoned R&A.**

A staff report from Cynthia A. May, Planner II, dated November 2, 2009 as follows:

I. Project Statistics:

*Applicant: Jonny Burgess
Owners: Kevin and Michelle Chauvette
Proposal: Conceptual Review – Subdivision of one lot into two
Location: 18 Amber Lane, Lot 40-8-14
Existing Zoning: “R&A” – Residential and Agricultural
Surrounding Uses: Residential/Merrimack Transfer Station*

II. Background Information:

18 Amber Lane is part of the Pamela E. Cooke Plan approved by the Planning Board on June 21, 2004 as a 6-lot residential subdivision on a new cul-de-sac road off Gage Girls Road near the Merrimack Town Line. An earlier version of the plan, which proposed 5 new frontage lots along Gage Girls Road, was withdrawn because of unresolved drainage issues and the inability to secure a drainage easement from an adjacent property owner. A condition of subdivision approval for that plan required a 35-foot “no tree cutting/no access” buffer along Gage Girls Road, which was delineated on the plan and added as a restrictive covenant in the lot deeds of the double frontage lots.

III. Project Description:

The attached application is for the conceptual review of a proposed subdivision of one lot with an existing residence into two lots. Lot 40-8-14 is at the end of the Amber Lane cul-de-sac, with the southerly property boundary along the Merrimack Town line. There is a narrow residential lot situated between the subject parcel and the Merrimack Transfer Station, and an undeveloped 50 acre parcel to the northeast across Gage Girls Road. The 3.84 acre lot has undulating terrain, with trees covering the majority of the undeveloped portion, and a wetland area separating the buildable area from the cul-de-sac. Driveway access is over a wetland crossing to the house, which was placed at the western end of the buildable area, leaving approximately ¾ of the buildable area undeveloped (please see the attached certified plot plan.) Gage Girls Road is unpaved between the entrance to Amber Lane and the Town line. The Public Works Director communicated that if this lot had been considered as part of the original application, the Planning Board would have likely required improvements to Gage Girls Road. The Planning Board might also consider requiring a fair share contribution for future road improvements based on the rational nexus formulas.

The existing subdivision lots range in size from 1.5 acres to 3.84 acres. It appears feasible that further subdivision of Lot 40-8-14 could result in a new lot with approximately 1.5 acres, leaving

2.34 acres for the existing lot, given the lot shape, soils mapping, house, well, and septic system location, and the size and configuration of the current building envelope. The applicant would be required to provide evidence that both lots meet the minimum lot requirements of section 231.2 of the Land Development Control Regulations. Lot 40-8-14 has legal frontage on the Amber Lane cul-de-sac and on Gage Girls Road, which would allow the lot to be bisected as shown on the attached plot plan and permit driveway access from the latter. It does not appear that any waiver would be needed to create this subdivision.

Jonny Burgess, 18 Amber Lane, said I am proposing the initial step of being able to subdivide our property. I believe I meet the preliminary qualifications as far as frontage, size, Sandford Surveying, who did the original survey, said there are no wetlands. I am here for the first step of getting this approved.

Chairman Goldberg said I did notice that if it is subdivided, one lot would have approximately 1.5 acres so they would have to do soils and slopes. Ms. May replied absolutely. The part of the lot I'm indicating on the plan does have wetlands. There are 3.8 acres altogether, and given the buildable area that's noted, it appears that there's enough to do two, but again, this would all be subject to the soils investigation. Chairman Goldberg asked the proposed lot on the right-hand side would be the one that would be 1.5 acres just about meeting our minimum requirements. Ms. May replied yes. Looking at the soils in this area, the requirements for the types of soils that are here are all less than an acre and a half. There is another lot at the beginning of the subdivision that's also just a little over an acre and a half, so the soils must be similar for that one as well. Chairman Goldberg asked Mr. Burgess, you understand that? Mr. Burgess replied yes I do. In laymen's terms, I understand that Sandford said he was confident it was approvable.

Ms. May said there are a couple of issues with this particular site. The first one being the fact that they have, which is not part of the Planning Board's purview, existing covenants for the Amber Lane subdivision that says no further subdivision. That's a hurdle they'll have to overcome. The other issue is the fact that Gage Girl's Road from the point of the entrance to Amber Lane basically to the end of the property is not paved and that's one reason why this subdivision is not a frontage lot subdivision. There is a certain distance where Gage Girl's Road that is not paved. On the other hand, there's only a short area of pavement from the entrance to Amber Lane up to the next cross street, and then it's not paved from there. Mr. Stanford said I can speak to this because I do recall when this subdivision went through. If I'm not mistaken, the developer of the initial subdivision looked at putting frontage lots in at the time and part of the problem with Gage Girl's Road is that they didn't have water rights to transfer water from one side of Gage Girl's Road onto the other. So the developer proposed paving just a certain distance beyond. They did have to upgrade Gage Girl's Road from the intersection with Beal's Road just past the subdivision opening. That was pretty tricky to upgrade the road, and part of the justification not going to the limits of the property line is that they wouldn't be adding any traffic going the other way. I guess seeing how this is a relatively new subdivision, had they proposed putting that frontage lot, I believe the Board's requirements would have been to pave that road, upgrade it all the way to the Town line, if anything. I guess if they were going to move forward with subdividing, I'd have to recommend that we make them upgrade the road just as we would have at the original subdividing. Mr. Riley asked Mr. Stanford, is it reasonable to have a one-lot subdivision pay for the entire cost of upgrading the remainder of the road or is there an

amount that would satisfy your department that the applicant could contribute toward improvements on that road or other areas of the Town that you saw fit? Mr. Stanford replied you could do it either way. I don't know how you would arrive at that amount. I suppose you could do a rational nexus. We don't have any plans to upgrade that road. I don't know what it would cost. You certainly would need some easements. I don't think you could upgrade it without getting easements from across the road. Certainly you would probably want to look at the other development potential within the roadway. Chances are we'd be sitting on an offsite improvement that the Town would never be able to collect on. Chairman Goldberg asked where does the Town maintain to now? Just the paved portion? Mr. Stanford replied no, we maintain down to the Town line. Again, using an ordinary gravel section, we supplement with gravel. Chairman Goldberg asked do we plow? Mr. Stanford replied yes. Chairman Goldberg asked is Lawrence Road in Merrimack paved to the Town line or is that also a gravel road? Mr. Sawyer replied it is paved. There is a gap section between the end of Amber Lane down to the Merrimack line that is not paved. I have to agree with Mr. Stanford, if this lot was part of the original subdivision, this Board would have had improvements made to that road and most likely pave the entire stretch.

Mr. Riley asked Mr. Burgess, are you willing to upgrade the road? Mr. Burgess replied it wouldn't be conducive to do the whole thing, maybe with the mindset of a portion thereof like you were suggesting. Also the first question about the development itself having to approve it, I have the consent of the neighbors. Two of the three neighbors would like to take this half of the land and make it a project and build a fairly nice property on it upgrading the value of all of the homes on Amber Lane. I do have the cooperation of my neighbors. Ms. McGinley asked how many houses are there? Mr. Burgess replied I am one of four. Ms. May said there is one lot that is not built on in between Mr. Burgess's house and two lots. The posted photo was taken in 2007, so it's not necessarily completely up to date, not that that really matters. Mr. Young said I don't know how many houses there are, but there are supposedly six buildable lots on Amber Lane on this plan. Ms. May said I think the top one was an existing lot. Chairman Goldberg said it created five new lots.

Ms. McGinley said Mr. Stanford, trying to reach something that would be relative to this particular lot, would it work for you, although I know it didn't connect to Bedford, if the frontage were paved to connect to Lawrence Road? Mr. Stanford replied I think if you were never going to turn left out of your driveway and travel in Bedford, maybe, but that really doesn't do anything. Since I've been here, and it predates me, Bedford would like to get rid of all its gravel roads eventually, and it was going to be paid for by developers. That's why within the roads program and the road bonds we've never appropriated any money towards upgrading gravel roads because it was being driven by developers. Ms. McGinley asked it is vacant on the other side of Gage Girl's Road? Mr. Stanford replied yes. I think when this subdivision initially came in; I believe they tried to work out some kind of agreement with the abutter. In fact, on the subdivision on Gage Girl's Road upgrade we did allow a deviation. I'm not sure if it was voted on by the Board, I don't recall that. But they couldn't meet all the specs for upgrading Gage Girl's Road because the abutter would give the additional property and the drainage. Down in the area of this subdivision there is a major problem as far as water flow that would certainly make it problematic to upgrade the road without some sort of easement across the street. Again, I think all of that entered into the decision. I want to say when this first came through, they

didn't want to put a subdivision road, they would have rather just upgraded Gage Girl's Road, got the frontage lots. Mr. Sawyer said that's true. The original concept was just frontage lots along Gage Girl's Road, and that didn't work with the Planning Board. They came back with this proposal.

Mr. Young said Ms. May, did you say the covenants preclude subdivision or was it part of the conditions of approval? Ms. May replied it was not the conditions of approval, it is the covenants. It is private.

Mr. Anderson asked is it safe to say that the reason for the no cutting, no access buffer along Gage Girl's Road, was solely because of the fact that this road is not paved? Mr. Stanford asked as far as the driveways? Mr. Anderson replied yes. Mr. Stanford said I think it fell into a couple of categories. First of all the Town doesn't typically like curb cuts on collector roads, and clearly this would be classified as a collector road. It does have a fair amount of traffic between Merrimack and the Town line, even beyond the Town line up to Beal's. I'd have to say that probably entered into it. Mr. Anderson said I have reservations nullifying a condition that this Planning Board put on this approval five years ago unless something has changed that would justify that. It sounds like there's good reason for this condition of approval. What would the reason be? Ms. May replied the largest reason is because they were double-frontage lots and it kept them from using either/or and a lot had to do with the reasons that Mr. Stanford just mentioned. And the no cutting actually carried from an earlier phase. This is the second phase of a much larger subdivision that happened years ago, and I believe that that condition was carried from that previous approval. Ms. McGinley asked do we have the ability to remove a condition that was placed on a subdivision five years ago? Mr. Sawyer replied it essentially has to be treated as an amended subdivision, amending the condition of a subdivision approval as part of the new subdivision. It would have to be advertised that way. Ms. May said the condition of double-frontage lots goes away there when you create this new subdivision, if that happens. The largest reason for having that condition for that particular lot is no longer valid because that is their point of access. Ms. McGinley said it is that you didn't want a driveway going all the way through Amber Lane to Gage Girl's Road. Ms. May said either that or exclusively from Gage Girl's Road versus having it from Amber Lane, which was the reason for putting the road in. Chairman Goldberg said but that condition was part of the sale of that lot. Mr. Sawyer replied it was. Ms. McGinley said the problem that I have is not just unique to this. If we open the door and say we'll reconsider a subdivision condition placed on any subdivision within the Town, then we could have a lot of people back before us.

Mr. Burgess asked do you know if the property on the other side of Gage Girl's Road is all buildable property or wetlands. You said at one point that it was Bedford's hope to have everything paved eventually, but if that wasn't ever built on the other side, would that ever happen on a high traffic road. How would that ever happen if it wasn't a buildable stretch of land? Chairman Goldberg said I don't know if you could never say never, but probably in the foreseeable future, but given the times I can't see it happening.

Mr. Sawyer said to summarize is to give the applicant some suggestions. He would have a lot to overcome if he wanted to go forward with this. Chairman Goldberg said I think the biggest problem is what Ms. McGinley brought up that the original subdivision was approved that that

lot would remain as one lot. Ms. McGinley said that it remain as one lot was not the condition, it was the clearing portion. Mr. Sawyer said the part that we don't have before us tonight is the engineering to prove that they can overcome some of these issues that the Board dealt with at great length the last time the frontage lots came in. I think you would have to see all of that to show how the water could drain across the street. Right now we don't know that it could without securing some easements. Chairman Goldberg said there are some hurdles. Ms. May said probably the largest one is whether or not they would be required to construct or reconstruct Gage Girl's Road and pave it to the Town line. Chairman Goldberg said I think it's a good point that if that lot came in with the original subdivision, something would have been done. Ms. May said exactly.

Mr. Burgess asked would I need to come back with a surveyor saying the drainage could be redirected and won't be a problem? Ms. May replied that would be part of reconstructing that road and paving it, which can be pretty costly. Mr. Burgess said I would assume paving a portion of that would be more than the sale of the property. Mr. Sawyer said it could be. Mr. Burgess said I don't know how that would work for me or somebody on the other side of the street. Mr. Sawyer said that's why the regulations would have called for it to be done as part of an overall subdivision of six lots, not one lot trying to make that same improvement.

Ms. McGinley asked Mr. Stanford, is there a 50' right-of-way between the property lines? Mr. Stanford replied I don't believe there is. That was part of the problem in the original subdivision. Ms. McGinley said they could have gone southwesterly and onto these properties to make the right-of-way. You can't do that anymore. Mr. Sawyer said at the intersection of Amber Lane they put a pretty substantial easement into the lot to create that better right-of-way. They did not extend it all the way down to the Merrimack line. It looks like it is a pretty consistent line on the other side, but the opposite side on the Dumas land is pretty irregular.

Chairman Goldberg said I don't want to encourage, but if you did any more, it would be at your own risk. I think there are a lot of hurdles on this property. Mr. Burgess asked how many lots are on the other side of Gage Girl's Road? Chairman Goldberg replied I think it is just one big lot of the Dumas'. Mr. Burgess said your hope is to get it paved by a developer, is that reasonable to expect on the other side also? Ms. McGinley replied when the economy turns. Mr. Burgess asked is that big enough for a subdivision? Mr. Sawyer said it is quite sizable. Even though there is a lot of wetland near the road, they could get approval to bridge McQuade Brook or one of the wetland areas and get to some upland in the lot. Ms. McGinley asked is it fairly level? Mr. Sawyer replied I don't know, but it's a large lot. There may be other ways to access it because it does have a lot of frontage on Beal's Road as well. It may be that they don't gain access from Gage Girl's Road but rather from Beal's. Ms. McGinley asked is that side of Beal's road developed now? Mr. Sawyer replied no. This is a very large lot that takes up that whole corner. The land opposite of Federation Road is all wooded in there. That is the same Dumas lot that we're talking about.

Mr. Sawyer said I would suggest that you come in and meet with Ms. May and myself some more and talk about it. I think there are some major hurdles that the Board is not comfortable with telling you that they'd be able to support it at this point in time.

Mr. Marcoux said I went out there today to take a look. I went around in circles. I couldn't find that last piece of Gage Girl's Road to get on. I haven't even seen it and I'd like to at least drive through there to know what I'm talking about.

3. Recommendation to the Town Council for a Planning Board representative and an alternate representative to the Conservation Commission (Tabled from the October 19, 2009).

Mr. Sawyer said no one has come forward and contacted us. Mr. Marcoux said the Conservation Commission meets once a month. This is not a voting position. Mr. Newberry said it's a chance to get to see how the Conservation Commission looks at things a little more closely. Mr. Riley said I would consider serving as the alternate representative. Mr. Newberry said I will consider serving as the regular member.

MOTION made by Mr. Marcoux that the Planning Board recommend to the Town Council appointment of Harold Newberry as the regular Planning Board representative to the Conservation Commission and Chris Riley as the alternate member. Seconded by Chairman Goldberg. Vote on motion carried, with Mr. Young abstaining.

IV. Approval of Minutes of the October 19, 2009 Planning Board Meeting

MOTION made by Mr. Marcoux to approve the minutes of the October 19, 2009 Planning Board meeting as written. Seconded by Mr. Young. Vote taken – motion carries, with Mr. Casale and Mr. Riley abstaining.

V. Communications to the Board

The November 16, 2009 Planning Board meeting has been cancelled.

VI. Reports of Committees

MOTION made by Mr. Newberry, seconded by Mr. Marcoux, to adjourn at 7:38pm. Motion carries.

Respectfully Submitted by Valerie E. Fysh