

TOWN OF BEDFORD
June 10, 2019
PLANNING BOARD
MINUTES

A meeting of the Bedford Planning Board was held on June 10, 2019 at the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH. Present were: Jon Levenstein (Chairman), Harold Newberry (Vice Chairman), Karen McGinley (Secretary), Chris Bandazian (Town Council), Rick Sawyer (Town Manager), Jeff Foote (Public Works Director), Mac McMahan, Kelleigh Murphy, Charlie Fairman (Alternate), Matt Sullivan (Alternate), Priscilla Malcolm (Alternate), Becky Hebert (Planning Director), and Mark Connors (Assistant Planning Director)

I. Call to Order and Roll Call:

Chairman Levenstein called the meeting to order at 7:00 p.m. Regular member Randy Hawkins, Public Works Director Jeff Foote, and Town Council Alternate Phil Greazzo were absent. Mr. Fairman and Ms. Malcolm were appointed to vote.

II. Old Business & Continued Hearings:

1. **American Tower Corp./T-Mobile (Applicant), Richard and Elizabeth Morgan (Owners)** – Request for site plan approval to construct a 130-foot monopole telecommunications tower and associated site improvements at 25 Tirrell Road, Lot 26-1, Zoned R&A. *Tabled from May 6, 2019 meeting*
2. **206 Route 101, LLC & Bow Lane Bedford, LLC (Owners)** – Request for approval of a site plan and lot consolidation for a restaurant and a proposed 93-unit workforce housing development, consisting of three 3-story apartment buildings and associated site improvements at 206 Route 101, Chestnut Drive, and Bow Lane, Lots 20-22-14, 20-99-1, 20-99-2, 20-99-3, and 20-99-4, Zoned CO. *Tabled from May 20, 2019 meeting*

III. New Business: None

IV. Concept Proposals and Other Business: None

Mr. Connors stated the Board has already determined that both applications are complete. They did so for the telecommunications tower at their May 6th meeting and they did so for the Bow Lane application at their May 20th meeting. Because both applications were tabled to a date certain, the abutters were not re-notified, and because the Board has already determined the applications to be complete, it is not necessary to accept the agenda.

MOTION by Councilor Bandazian to accept the agenda as read. Mr. Fairman duly seconded the motion. Vote taken – all in favor. Motion carried.

- 1. American Tower Corp./T-Mobile (Applicant), Richard and Elizabeth Morgan (Owners) – Request for site plan approval to construct a 130-foot monopole telecommunications tower and associated site improvements at 25 Tirrell Road, Lot 26-1, Zoned R&A. Tabled from May 6, 2019 meeting**

Attorney Will Dodge from Down Rachlin Martin law firm was present to address this continuation of a request for site plan approval, on behalf of the applicant. John Rogers from American Tower Corporation was also present.

Attorney Dodge stated when we last left you there were basically four issues. One was the issue of single-use, whether there is a primary use restriction that would require dismantling of the residence and the accessory buildings. I think we addressed that in a memorandum, and I understand from speaking with staff that the Board is dealing with that separately. The other issue was the question of documentation for the additional pole that we need to basically put on the edge of Tirrell Road in order to provide utilities into the compound. We have provided that letter and it is included in your packet. The third item, and probably the one that we maybe struggled with, or that we have invested the most time into, is the question of whether we need an equipment shelter, what equipment shelter means and what is the best way to ultimately address the issue. What I will say is, consistent with what we discussed last time, we looked very closely at what has been done elsewhere in Bedford in terms of other shelters at other communicators facilities, we have looked at what we think the ordinance means and we have compared that to other ordinances of other towns in Hillsborough county, but I think the main thing that we have argued is that the combination of raising the fence to a height of 8 feet and changing the landscaping in accordance with what Planning staff had requested of us, is the best way to ultimately shelter this visually from the neighbors and the public on the road but also for sound. What we explained is that if we were to put a full-fledged 10 x 12 equipment shelter on this property, the noise levels of it would be three to five times what they would be using the equipment cabinet that we are proposing to use. On top of that since we made our filing, we have discussed with the Planning Director and the Assistant Planning Director the idea of putting some kind of a canopy over the equipment shelter. It would basically be an open-air structure, four posts and some type of rooftop. We haven't quite figured out exactly what that would be; we would try to make it as consistent as possible with the other buildings on the property knowing that we are never going to get it quite perfect just because of the nature of the beast, but we are confident that either some combination of like a corrugated metal or a corrugated fiberglass and getting the right slope will work to ultimately satisfy what the Zoning Ordinance is seeking by way of screening and sheltering from the elements and from the public as much as possible. There is one last issue; which we talked about, which I thought in fairness was going to end up on the final plan, did not, but it was a subject of a lot of our discussions and that is the question of the precise location of the septic system on the property and specifically where it is going to cross in comparison to the access road. What we determined is that even though we have much better definition of where that is, and John Rogers can talk a little bit on that, we think the best way to go about ultimately nipping this in the bud is a combination of mapping it

and getting it on the plan before we apply for a building permit, but also using a steel plate to protect that pipe for when the roadwork takes place. Mr. Rogers stated we thought the best way of handling that is to steel plate it. We have come to learn that it is actually closer to the house than we expected, so I don't even think it is a non-issue at this point, it is just for future use, so I think the steel plate, keeping utilities where we are running it now is our best option.

Attorney Dodge stated we are happy to take any questions. We didn't do any type of presentation tonight, but I think you have the revised exhibits and that includes a revised vegetation plan that is consistent with the sketch that the Planning staff mapped out for us of where they would like the trees. So rather than having a row of trees on the north side or the rear of the equipment compound, those trees are now on the frontage and some of them are in front or basically circling the stormwater pond that is at the edge of the compound.

Chairman Levenstein asked is there something that shows where that the septic is? Attorney Dodge replied no; that is what I was just saying. We did not end up getting that on the plan. I apologize for that. It was on the agenda and a lot of focus went into some of the other questions, it didn't get there, but we are confident that we could put that on, if the Board would accept a condition where we have to get that properly mapped and show where the steel plate goes on the plan before we apply for a building permit. Again, now that we have spoken with Mr. Morgan, who is actually here tonight, and he knows where it is and could answer some further questions. Now that we have spoken with him, walked it through, we are much more confident than we were at the last hearing.

Chairman Levenstein asked is there something that shows what the shelter you are talking about would look like? Attorney Dodge replied it is imperfect. I think if you think about the word canopy, that is getting closer to the idea. If you look at Exhibit R that we provided, there are several examples. There is one in particular; there is a site that is on Chestnut Drive in Bedford, it is about halfway through that memorandum as shown on the screen, you can see on Image 5301 there is effectively a canopy. Is that the canopy that you want on this property? Probably not because it looks more commercial. So I think the general idea is we are going to have something that is serving the same function, that has more of a tilt to it so that it looks a little more residential and that we will use a different material. The reason that we agree with the proposed condition is because this is something that we need to be able to work out with Planning staff and T-Mobile, who is our tenant, to make sure that we are not going to blow any warranty, that everything is going to be able to work as it is supposed to and that everyone is comfortable with it.

Chairman Levenstein asked for any questions from the Board.

Councilor Bandazian asked do you have a plan that shows where the deck is on the westerly side of the property? Chairman Levenstein asked do you mean on the house? Councilor Bandazian replied yes. Attorney Dodge stated it is not on the site plan, it may be in some of the pictures of the house that we provided. If you look at Exhibit K, there are a few pictures of the house that shows what we basically feel is a walk-in, it is really more of a porch than a deck. Councilor Bandazian asked is there something that shows it on a plot plan indicating where it is in relation to the lot line? Attorney Dodge replied it does not. Councilor Bandazian asked could you add it

to your plan? Attorney Dodge replied I guess a question that I have in looking at it is it is not clear to me that it is a structure that is extending out of the footprint of the house. It looks to me like it is actually part of the footprint or within the footprint of the house. Councilor Bandazian stated it doesn't appear that way to me on the Assessor's site, and it doesn't appear that way to me on Page 7 of the staff memo. Attorney Dodge stated we believe that that is actually a driveway not a deck per say. Councilor Bandazian stated I can tell you that it has a white painted railing, which I can see from the road, which is unusual for a driveway. Attorney Dodge stated I think we would like Mr. Morgan maybe to clarify that. Richard Morgan, owner, stated what you are looking at appears to be a deck, it is not, it has no structural framing. It is deck boards laid in the sand and what you are seeing is a white fence not a rail. Councilor Bandazian stated the Assessor lists it as a deck that is something like 14 x 19 feet. We can pull up that record. Mr. Morgan responded I think once we had the reassessment I came in on several points and I was reassessed from their initial assessment. I believe you are talking about the back of the house? Councilor Bandazian replied I am talking the side of the house. Ms. Hebert stated just to the left of the #2; it appears to encroach off from the property. Mr. Morgan responded yes.

Town Manager Sawyer stated I would like to clarify on the leach field. It is between the driveway and access road and the underground utilities? Mr. Morgan replied I believe the end is, if you can see that second building to the right, to the best of my knowledge is right where that driveway comes down. It is a brick driveway. It starts towards the other side of that same building. Town Manager Sawyer asked so in that case it is actually to the west of the proposed access road heading back? Mr. Morgan replied yes. Town Manager Sawyer responded okay, thank you.

Councilor Bandazian stated I am just looking at the Assessor's webpage, which has a building layout with a 14- x 19-foot structure that is not on your plot plan, WDK is deck wood. Mr. Morgan responded I don't believe on the reassessment that they actually walked the property. They may have. It is basically wood decking laid down on the flat. Councilor Bandazian asked isn't that on your neighbor's property primarily? Mr. Morgan replied yes. I asked him, his name is Dave Paisner, and years ago I asked him if he minded if I mowed that back area and used it and he said he had no problem whatsoever.

Chairman Levenstein asked for any comments or questions from the audience.

Dorothy Caza-Michaud, 21 Tirrell Road, stated we border Mr. Morgan's property. I have eight things here, so that is why I didn't know if I should wait and see what you are going to go through. Should I ask one at a time and wait for an answer or should I just go through and then you take over after? Chairman Levenstein replied why don't you start and we will see how it goes.

Ms. Caza-Michaud stated one thing I would ask; I am totally against all of this but I know it is out of our hands now because of the higher court, however, I would ask for housing of the generators to be made of brick or be a material as soundproof as possible since I am the one that is going to have to be listening to it. How often am I going to have to be listening to the testing of the generators? Can somebody answer that? Attorney Dodge replied they test it once a week for about a half hour and they always set the timer so that it is like in the middle of a weekday,

not on the weekend. Ms. Caza-Michaud asked is that each company that is going to be placed on that tower or is that all at once? Attorney Dodge replied it would usually be all at once. To extent that there would be another generator, it would all be timed. Ms. Caza-Michaud stated it would all be timed all at once so that would be really loud, but it would be all at once, so yes, I would want the materials surrounding whatever is going to be tested to be as soundproof as possible, enclosed with a roof, maybe brick, I don't know, soundproof material. I don't think I am asking a lot.

Ms. Caza-Michaud stated I would hate to think that I am going to be having to inhale diesel fumes for the rest of my life or as long as I live on that property. That is a real issue to me; it makes me sick to my stomach and I am sure there are other people that feel that way. I do believe that it may have been stated in the past that diesel is the way they usually go, it is cheaper, etc. I don't care. I don't want to smell that. I don't know what else they can do, but that will be a real issue for me is having to smell that diesel fuel. I ask that you hopefully do something other than diesel fuel.

Ms. Caza-Michaud stated so the road to get to the tower that they are talking about putting in, is that going to be a gated road, is that a road that just anybody and everybody is going to be able to go up to and access at any time of the day or night, whether they belong there or not, because that is like 50 or maybe a little more feet from my house. I am uncomfortable with that if it is not gated. I may be asking too much. Attorney Dodge responded there is not a gate that is going to be right on Tirrell Road but what we are doing is redesigning the two driveways now, making it into one, putting trees on the front and then the access road itself as you go up and you get to the compound, that will be completely gated with security devices, warning signs, etc.

Ms. Caza-Michaud asked are there any laws in place now in Bedford as to how close a road leading to a commercial site can be adjacent to my property line? Can they go right up against my property line? I want it as far away as possible. There are going to be trucks in and out and this is terrible. Chairman Levenstein asked how often are you going to have trucks going back and forth? Mr. Rogers replied not very often. If they go and they upgrade, it is probably one tech, especially with one carrier right now, maybe once every couple of months. It is not very often that somebody should be up there. Chairman Levenstein stated I think that they can put it right against the property line. Is that right? Ms. Hebert replied in this district I don't believe we have a pavement setback. In other districts we try to keep the pavement at least 30 feet from the property line but they are meeting that standard. Chairman Levenstein asked how far is it from the property line to their house? Mr. Connors replied it is at least 80 feet from that property line, closer to 90 or 100 feet. Chairman Levenstein stated it is 70 to 80 feet away from the property line.

Ms. Caza-Michaud stated in the past it has been said but not proven that my property value should not be affected but what if it is. How will I be compensated or is that on me? I know they said it shouldn't be, but I really want an answer. That is not really an answer. Town Manager Sawyer stated I think their attorney will tell you it is not before this Board. That was a matter before the Zoning Board with a Special Exception. This Board can only look at aesthetics and drainage. Ms. Caza-Michaud stated I don't think the attorneys did all that they could do to begin with, but okay, thank you for not answering.

Ms. Caza-Michaud stated fencing to hide the existing mess regardless if the tower is going to go up or not. Seven months out of the year we can see right through to the other side and people have a right to keep things on their property, but I don't want to have to look at it. The fencing that you are talking about and the trees and everything to hide the tower, where is that going to begin? Will that go along the side of my house on his property? Attorney Dodge replied no; we are not proposing a fence along any of the property boundaries. The fence is basically only around the 100 x 100 compound. The idea is that we want to leave as many of the existing trees as we can and let that vegetation be what is doing most of the work as far as covering things, and then the new vegetation that we are putting in doing the rest, and that includes the vegetation around the compound, so we are not proposing to put any more fencing on the property lines. Ms. Caza-Michaud stated okay, so for seven months out of the year I still have look at it. Thank you. Just making a point.

Ms. Caza-Michaud stated back in the day when this all first started, I think it was the Zoning Board, they talked about testing for radiation. I know you call it EMF's or whatever, but we are really talking about radiation was mentioned and that they do it. How often will they do it and how can I get those results? Attorney Dodge replied we included those results of our predictive, which is basically a worst-case scenario of what the maximum would ever be that you would get off from one of these facilities with the Zoning Board of Adjustment submissions, and we can supply that again if that is something you want to look at. And basically, like it is with almost all wireless tower sites, the levels were basically at about 5 percent of the safety threshold in a worst-case scenario. So most of the non-ionizing radiation guidelines that the FCC puts into place are designed to deal with things like FM radios and basically antenna systems that have much, much higher output than what we are talking about. This is very low power, and we are doing what we are required to do per the Town regulations, per State regulations, which is to show that we comply. There is no real testing done on it per say, but what happens is in the event that a new installation is put in, let's say another party comes along, they will have to do a test, or if we modify the equipment that we are going to be using with substantially greater power output, then that is looked at again. Ms. Caza-Michaud asked so how often are readings done? Every time a new tenant comes onto the tower? Attorney Dodge replied or a change is made. Ms. Caza-Michaud asked and how do I get those results? Attorney Dodge replied again, I think if you speak with the Town staff, we can definitely make sure that you get a copy of what we provided. Ms. Caza-Michaud responded I would ask for that.

Ms. Caza-Michaud stated I have other things on here, but they are not very nice, so I am just going to close my book. Thank you for hearing me. I appreciate it.

Ron Michaud, 21 Tirrell Road, stated I am Ms. Caza-Michaud husband. Just to touch base; I know the attorney for T-Mobile is always talking about the noise level on Chestnut Drive, how it doesn't affect that. My question is that that is totally commercial, Chestnut Drive. Now the reason my wife asked about really enclosing this is where they are locating their platform is 50 feet off from our bedroom window, so does that mean we can't open our windows at nighttime on a nice sunny day because we are going to be listening to fans and if they have five, six different receivers up here, they said that they each have to have their own fans, so we are looking at five or six fans running constantly 50 feet away from the window because where they

are putting the platform is outside the tower, closer to our house. So basically 50 feet off from our bedroom window is what we are going to have to listen to. As far as Chestnut Drive, that is commercial, and I know a lot of people say it is not that noisy at the safety complex, but you know what, again, that is commercial. In the summertime they have their air conditioner on, this is 24/7 50 feet, 60 feet away from our bedroom window. That is why I really want something superficial as far as sound-wise. Again, the diesel thing; I know they can use propane because there are so many propane generators out there, which you are not going to smell that.

Mr. Michaud continued my major question, and this is in regard to the appearance of the property. Last month he was told to clean his mess. In that 30 days I think he moved like eight or ten tires. Now there is a bunch, there is a boat, there are plows, and my biggest concern is if they have to stay off from the road to go to the tower, he only has one place to move that stuff and that is closer to our property line, which in my books needs a fence, because if he has to move equipment closer to the property line, right now they are probably sitting about 45 feet away, but we are looking at bricks and ladders and plows and a boat that hasn't run in years, a couple of dead trucks, and I know he has no place to move them, so my biggest concern is, is he going to move them closer to my property line and if he does, that is why I want a fence because I don't want to have to look at it. I think that is it. Basically, it is the appearance of the property because I know I had requested a fence put in because I know that is where all of this stuff is going to go is closer to my property line unless Town Manager Sawyer wants to tell me that he guarantees it is not going to be. He has no place because it is all ledge. Mr. Morgan responded first of all, I wasn't told to clean up anything. After 22 years of me running a business somebody had complained about some commercial stuff. I have backhoe, I have a Bobcat parked there personally, I don't rent it out, I don't go to other jobs, people can borrow it and that was the biggest complaint it seems is my backhoe. I was told that it was fine, I am allowed to keep it wherever I want. I wouldn't do that to you, Mr. Michaud. If you ever told me that it bothered you, I would take care of it and these guys are very nice. If you said you wanted four trees, they would probably do it or something. I don't want to put up a fence; if I was going to put up a fence, it would be 8 feet from your house. We will work through that. Mr. Michaud responded I just want to make sure that it doesn't come closer to my property line. Chairman Levenstein stated I don't think we can handle that here tonight. Mr. Michaud stated that was my biggest complaint, and I think that sound-wise is really the most critical and propane for generator backup.

Attorney Dodge stated let me address a couple of those, Mr. Chairman. Regarding the fan noise; first of all, the level of fan noise is not dissimilar to the Fujitsu's that you guys have outside the door here. So if you go outside afterwards and listen, it is pretty light, but the more important point is that with an 8-foot fence and if we put a canopy and we've got trees that are going around the compound, plus we keep as many of those existing trees as possible, it is not going to be audible from other properties, even in the dead of night. We have looked at that and that is consistent with the manufacturer specs. The other point being that with respect to the concern about moving other things on the property closer to that boundary line, one of the conditions that is proposed is that we need to furnish language to basically put an easement in place to keep as many trees on the property as possible, other than where the compound is cleared. So that is something that we were going to work on assuming that the Planning Board approves. And what I would say about that is just from experience, the less that we can disturb the better, whereas if

we have to start cutting a line in order to get equipment in to put in a fence, we are probably going to make things worse than if we simply concentrate our screening efforts around the compound itself.

Attorney Dodge continued with respect to the fumes; I can't make any promise that we could switch to propane. We can certainly ask. We have to do what is consistent with ultimately having T-Mobile maintain its entire network, so you can't have kind of a patchwork. I think they use diesel now; it is not a typical generator like you would find even in a large commercial application or even a home generator. It is very contained, it has a belly tank, and it is not all that much louder really than the fans. Chairman Levenstein stated see if you can do it. Attorney Dodge replied we would commit to doing that for sure. Mr. Michaud stated thank you. Ms. Hebert stated just for the audience, if you can see the plan on the screen, the hatched area is that no-cut zone, so it does extend down the side lot line and would provide some buffering to your house, just so you understand that those trees would need to be preserved as part of any type of Planning Board approval. Mr. Michaud responded I agree; the least amount of trees, because right now being summer we are really not going to see the site, maybe the base a little bit, but other than that everything has been covered. It is just a winter issue and that is it.

Chairman Levenstein asked for any further comments or questions from the audience or the Board. There were no further comments or questions at this time.

MOTION by Vice Chairman Newberry that the Planning Board grant the following waivers from the Bedford Land Development Control Regulations:

- 1. Section 317.1.11, to waive the requirement to provide a High Intensity Soil Survey (HISS)**
- 2. Section 326.3.1, to permit one additional utility pole along Tirrell Road where underground utilities are required.**
- 3. Section 321.2.1, to permit a 12-foot wide driveway where commercial driveways are required to be a minimum 20-foot width.**

Ms. McGinley duly seconded the motion. Vote taken; motion carried, with Ms. Murphy voting in opposition.

MOTION by Vice Chairman Newberry that the Planning Board grant final site plan approval for a 130-foot tall monopole telecommunications tower to be constructed at 25 Tirrell Road, Lot 26-1, Zoned R&A, as shown on the site plans by A.T. Engineering Service, PLLC, last revised May 22, 2019, and consistent with the photo-simulations by Caron & Associates Design included in the plan materials submitted April 18, 2019, with the following precedent conditions to be fulfilled within one year and prior to plan signature:

- 1. The applicant shall address all outstanding technical review comments to the satisfaction of the Planning Director and the Director of Public Works.**
- 2. The applicant shall submit a removal bond issued to the Town to ensure the facility is removed and returned to its pre-construction condition within 90**

- days of a cessation of telecommunications use pursuant to the requirements of Section 275-44(1) of the Zoning Ordinance. The applicant shall provide the Planning Director with a revised cost estimate every five years pursuant to the requirements of Section 275-44(2) and provide a new bond if necessary.
3. The applicant shall provide a detail for the exterior light, note the location and height of the light on the plan and confirm that illumination levels will not extend on to abutting properties.
 4. The applicant shall update the plan to note the selected tower design of grey consistent with the visual photo-simulations submitted by Caron Associates Design.
 5. The applicant shall pay any outstanding engineering review fees, if any, to the Town.
 6. All waivers granted by the Planning Board shall be noted on the plan along with date of approval.
 7. The applicant shall work with the Department of Public Works to revise the driveway design so it is consistent with current Town standards.
 8. The applicant shall provide an easement to preserve existing woodland areas surrounding the tower compound as shown on the site plan. The easement language shall be to the satisfaction of the Planning Director.
 9. The applicant shall revise the plan to house the equipment cabinet within a shelter consistent with the requirements of Section 275-43 of the Zoning Ordinance. The design shall be to the satisfaction of the Planning Director.
 10. Testing of generators for telecommunications use shall be limited to no more than 40 minutes per week and only between the hours of 8 am and 8 pm.
 11. Prior to the issuance of a certificate of occupancy or use of the site, all site improvements depicted on the plan shall be completed.
 12. The applicant shall map the existing septic system and show where it will be steel plated for protection during construction.

Mr. McMahon duly seconded the motion.

Vice Chairman Newberry stated I have one comment. In regard to the neighbor's concern with how close this proposed structure is to their residence. Just a quick thumbnail off from the plan, it looks like it is close to 150 feet away from you. That is in accordance to the plan. Ms. Caza-Michaud responded that is wrong. Vice Chairman Newberry stated it has to be built to the plan. Ms. Caza-Michaud asked it has to be built 150 feet away? Chairman Levenstein replied it has to be built to the plan. I think Vice Chairman Newberry was just eyeballing what it was. Vice Chairman Newberry stated I just eyeballed off from the scale and it looks like it is about 150 feet to the proposed structure. I am looking at Sheet C101. Mr. Connors stated where indicated on the posted plan, this is 80 feet here at the bottom and this shows your residence and the generator will be somewhere in this vicinity. It looks like at least 150 feet. Mr. Michaud asked so it is going further back than where they did the balloon test? Attorney Dodge stated we did the balloon test in the right location, exactly where it is shown on that map. Chairman Levenstein stated the Building Department will make sure that it is built according to whatever the plan is, and they are very strict about that.

Councilor Bandazian stated there is a great deal of procedural history to this case. I am disappointed in what has not been addressed in the record prior to reaching the Planning Board on the site plan issue alone. This particular property with its existing use doesn't meet the minimum density requirement for the Agricultural and Residential zone. It is a 1.4-acre parcel, where 1.5 is required, so it already is more intensively used than we have allowed in Bedford for 30 years under our Zoning Ordinance. This proposes to increase the intensity; it also clearly does not meet the side setback on the westerly side. It appears from assessing records that the house was built in 1952, one year before Bedford had zoning, but in 1953 it was a 10-foot setback and the existing residence clearly hasn't met that setback for 66 years. We don't have on any plot plans what the front setback is, but it probably has not met the front setback requirement either for either 66 or 31 years, I can't tell because we are not given that information by the applicant, unfortunately. And there is also a significant encroachment on the westerly abutter's property with the existing use. I can't ever recall in 28 years, two-thirds of which are on the Zoning Board of Adjustment, looking not only at telecommunication applications but simply things like a garden shed, and we have never, in my experience, granted an additional use without asking an applicant to correct non-conformities that haven't been approved. I would at the very least require as additional condition that the applicant submit an easement from the westerly abutter allowing the encroachment that everyone knows exists and that the Assessor taxes as a wooden deck. Unfortunately, this has gotten way too far without a lot being addressed and I am disappointed.

Chairman Levenstein asked are you requesting to amend the motion? Councilor Bandazian replied I would like to add a Condition #13 to the stated motion with the submission of an easement. Ms. McGinley stated I think the audience should be given a description of what this is and why it is being done because they don't have what we are looking at. If you could describe the area that you were referring to on the issues. Chairman Levenstein stated they actually do have what we are looking at. Councilor Bandazian stated there is an area on which there is a structure that the Assessor says is 14 x 19 that is in the main rectangular area on that diagram, which is almost entirely over the lot line. In addition to that, there appears to be some landscaped area that the owner indicated that he is allowed to use. I would want to see some legal entitlement to do that, certainly a non-conformity has been increased without, to my knowledge, Planning Department approval or Zoning Board of Adjustment approval. Ms. McGinley responded but if you look at the sketch on this plan, it is not clear that it is over. Councilor Bandazian stated it is the structure. Ms. McGinley asked the building on my left side was not a structure? Councilor Bandazian replied it omits the deck. Attorney Dodge stated I would like to address Condition #13; all the other conditions we are fine with and appreciate. The issue is that conditioning the approval of our facility based on obtaining an easement from a party who is in no way involved with our project and which is off property, effectively makes it possible that we cannot proceed with building. And obviously with the court order it is extremely important, recognizing the gap in service that we have in this section of Bedford, that we proceed. Now, if there is a zoning violation here, which it sounds like that is essentially the route of the allegation, then it seems to me that the Town already has what it needs to address that, or, on the other hand, we haven't had the opportunity to address this issue. It may be that Mr. Morgan does have the permission that he already needs to move that forward. But what I would implore you not to do is to make that particular condition for a party that is not here and

can't be heard and without us having done any investigation, that that should be the premise upon which that condition is added.

Mr. McMahon stated point of order. Vice Chairman Newberry, have you accepted the amendment? Vice Chairman Newberry replied I have not. As my motion, I do not accept the proposed additional Condition #13. Mr. McMahon stated my second still stands.

Chairman Levenstein asked for further discussion.

Town Manager Sawyer stated I would look for an amendment to address the propane generator if possible. It is obviously up to the people who made the motion, but I would recommend it read something like this: 'The applicant shall utilize a propane generator unless evidence can be provided to the Planning Director that proves why it cannot be done.' Vice Chairman Newberry accepted that amendment to the motion and it be added as Condition #13. Mr. McMahon asked cannot be or feasible? Town Manager Sawyer responded I would accept feasible. Vice Chairman Newberry stated the condition is just intended to make sure that a propane alternative be investigated. Mr. McMahon accepted as his second the addition of Condition #13 as stated above but changed as follows, 'The applicant shall utilize a propane generator unless evidence can be provided to the Planning Director that it is not feasible.'

Councilor Bandazian stated I would like to amend my condition. In the alternative provide that the owner be required to remove the encroaching encroachment if unable to obtain an easement. Ms. McGinley asked that is the encroachment on the neighbor's property? Vice Chairman Newberry stated I need to understand your proposed condition, Councilor Bandazian. Doesn't the Town have the ability without involving this application to address this apparent encroachment? Councilor Bandazian responded I don't know. Vice Chairman Newberry asked does the staff have any opinion on that? Ms. Hebert stated we certainly can review the encroachment and send the landowner a letter if we feel like something has been constructed without authorization of a permit. Vice Chairman Newberry stated my take, Councilor Bandazian, would be that that would be a better way of addressing the issue that you are raising, which I think is something that needs to be addressed and corrected. Councilor Bandazian stated generally in the past I have seen these things cleaned up in this step. Ms. Murphy stated as have I. I have seen conditions attached that specifically clean up issues like this. Chairman Levenstein stated I think my biggest problem with it, Councilor Bandazian, is that you were basing it on an Assessor's map and an overhead picture, and obviously it would be a lot cleaner if it was shown on some plan. Also, as to what it is, if it is a couple of planks laid out, that is a big difference from some deck that is attached to the house, and I know that the Assessor says it is, but I don't know that it is up to us to decide that and make those decisions here based upon what we have in front of us. Anybody else on that? Ms. McGinley stated that goes back to what I said is because I was looking at just the house, is that in our purview today to make a decision about. Vice Chairman Newberry stated I think there is probably a better way of addressing that issue. At least for my motion, I do not accept it. Mr. McMahon stated with my second I concur with Vice Chairman Newberry.

Vice Chairman Newberry stated as far as voting on the motion, we have the motion to grant with 12 conditions as stated by myself, plus the proposed Condition #13 for exploring the propane

alternative. Ms. McGinley stated even I don't know what you mean when you say exploring it. I can't imagine that the audience would understand. Vice Chairman Newberry stated I think it was proposed as that they would use propane unless they could demonstrate to the Planning Director why that would not be feasible.

Chairman Levenstein called for a vote on the stated motion, which shall include proposed Condition #13 as follows:

13. The applicant shall utilize a propane generator unless evidence can be provided to the Planning Director that it is not feasible.

The motion carried; with Councilor Bandazian and Ms. Murphy voting in opposition.

- 2. 206 Route 101, LLC & Bow Lane Bedford, LLC (Owners) – Request for approval of a site plan and lot consolidation for a restaurant and a proposed 93-unit workforce housing development, consisting of three 3-story apartment buildings and associated site improvements at 206 Route 101, Chestnut Drive, and Bow Lane, Lots 20-22-14, 20-99-1, 20-99-2, 20-99-3, and 20-99-4, Zoned CO. Tabled from May 20, 2019 meeting**

Mr. Sullivan stated I will recuse myself from this application.

Ms. Murphy stated Mr. Chairman, I am recusing myself from this application due in part to a text message I received from Bill Greiner on Wednesday, January 16, 2019 at 5:00 p.m. which read as follows, and by way of background information, I am a 25 percent owner of a restaurant that rents space from Dick Anagnost, my ex-husband is a 25 percent owner of a restaurant that rents space from Dick Anagnost: "I know you are not running. If you were, I couldn't support you after the Shorty's issue. You crossed a line as an elected official and a legal line as well. Keith might have some fence mending to do with Dick when his lease comes up. You did make the statement last week that school teams would pay to use Town fields, Joppa was even used as an example, and I have no clue if school teams even use Joppa, but I heard what I heard as did others. I have no ill will towards you and like you as a person, but a mine, and I think he means, line, was crossed as it came to our development in anti-competition. That didn't sit well with Dick or Tom either. I have chosen not to make that a public issue at this point because of implications it could have. The only two on the Town Council with clean hands as it relates to our project are Chris and Melissa. I suspect Catherine will find next year's race to be bumpy. I am happy to enter the entire exchange into the record upon request. Thank you."

Bob Duval of TF Moran, Dick Anagnost entity principal, and Attorney John Cronin, were present to address this continuation of a request for approval of a site plan. Mr. Michael was also present.

Attorney Cronin stated to give you a little background. This project started back in the summer of 2018. It was initially proposed as a workforce housing project with 115 to 120 units with a road of much greater length. That initial plan was going to require a few different variances to

move forward. There was opposition to the variances at various stages. Mr. Duval, Mr. Anagnost and their respective teams went back to the drawing board to address the concerns with the variances and came up with this amended plan, which reduces the number of buildings, reduces the number of units, still a workforce housing project, but they were able to avoid any impacts on the wetland or the need to have any variances for the number of units. We spent a great deal of time on this particular application at the last meeting; I think we covered a lot of ground and a lot of bases. There were some issues with respect to traffic that were open, awaiting some comments back from VHB on the traffic reports that were submitted, also some Public Works issues.

Attorney Cronin continued we do have the staff report that was prepared and had the opportunity to go through it. This evening we would be asking you for conditional approval of this particular application. We know there are a number of conditions, most of them are traditional, standard and we have no issue with. There are some that we want to take up in minimal detail.

Attorney Cronin continued one of the open items that was addressed related to the configuration of Chestnut Drive and the width there. As we discussed at the last meeting, the width will be coming from an easement granted at the corner property there, the CMC property, in which Mr. Greiner has an interest. That easement will allow the width of that road at the intersection of Route 101 to be widened. At the meeting we had said that we had no preferences as to how the configuration of those lanes were going to be in the end result, whether we wanted to have a dedicated turn lane coming out or whether we wanted to have 1-way in and 1-way out did not matter to us. We do it as the Town preferred. There was some discussion at that time about the bus movements and it was my understanding that at that last meeting the conclusion was made to not have a dedicated turn lane and to go with two separate lanes. Reviewing the recent report from VHB, I think the consultant supports that and says the preference would be to go with one lane in and one lane out, which is acceptable.

Attorney Cronin stated there is also a note that is in the staff report that talks about one of the issues with respect to the impression that Chestnut Drive was going to be straightened. We are somewhat at a loss as to where that impression came from because a lot of the discussion was about the safety of Chestnut Drive, part of it being due to its configuration, and I specifically recall a discussion that if it were straightened out, it would drastically increase the grade, so there was no intent on our part to straighten out the road. In fact, because it is not being straightened, there were requirements to get some sight distance easements, which were obtained, which would allow the full sight distance coming out onto Chestnut Drive looking left. It is a little short on the right, but it goes to a cul-de-sac, which is not intended to be extended in any way.

Attorney Cronin stated with respect to a few other comments. I think there was an issue with a plan being delivered, an offsite improvement plan. My understanding is that was delivered electronically last week, which was initially acceptable, and a paper copy was delivered Monday at the request of Mr. Foote. There are also some comments in the staff report about the compliance with the sewer master plan. Based on Councilor Bandazian's comments at the last meeting I did a little bit of homework on the sewer master plan, so to speak, and I wasn't certain prior to that meeting that the sewer issues were not contained in the express master plan but were in a capital improvements type master plan, which my recollection is that the Council has

decided not to follow through with that. The cost benefit analysis didn't support that master plan. I went a little bit deeper and looked at what the initial phase of that particular capital improvements of utilities was, and it set up a criteria to look at it with various timelines, and one of the things was they were going to come up with budgeting or some CIP numbers to support the utility expansion. I couldn't find that that ever happened, and based on what Councilor Bandazian said, my suspicion is that you didn't need to get that far to determine the cost benefit didn't support it. To the extent we have referring to a sewer master plan, my belief is that the Town has looked into it and determined that it is not justifiable for the Town to invest in this. So, we think as a private applicant certainly if there was that there would be a nexus or a fair share application or we would have to pay for getting it to our own property from existing sources. Based on the request of the Dumas's, the sizing of the pipe has been increased and the utilities have been extended to assist them with their future development plans. We don't know specifically what they plan to do, but to the extent that we could, we have worked with them cooperatively to try and come up with an agreement, and I think we are about there. Attorney Sokul, who has appeared a number of times before the Board at different hearings, is out of state on business but his able colleague Attorney Arnold is here and present and my hope is that he will concur that we are just about there. We have tweaked a couple of the terms in our back and forth, but I think we are pretty good. Attorney Tilsley is also here, and we received a letter today from one of his clients, who I think is new to the discussion, that has a property down on Wallace Road, and I think they were citing to Mr. Foote's comments of the prior meeting about a hearing to this sewer master plan. I compliment them for willing to bear some of the cost burden for that and it appears that their only ask in that letter was to confirm that the pipe sizing was sufficient to make an extension and with the 6-inch pipe size, that would accommodate them. So I think that is pretty much resolved.

Attorney Cronin stated before we get to some of the follow-up engineering details, I just wanted to talk about a couple of these conditions of approval that I think warrant some discussion. *Condition #11 - The site plan shall be modified to include not more than the required number of parking spaces (186 spaces).* I get it that everybody wants more green area and less impervious. The parking, when you have these types of developments, you want to have sufficient parking, you would like to have a little extra parking so you never get in a situation where your residents or their visitors don't have parking that they need or get into a debate over it. It is our contention that we meet the lot coverage requirements, the impervious coverage requirements and that 186 spaces would not run afoul of any regulation that is in force, so we would ask that the Board consider not adding that condition. Chairman Levenstein stated the way I am reading this is that 186 are required. How many are actually proposed? Attorney Cronin stated I would ask Mr. Duval to respond to that. Mr. Duval replied I believe there are 204.

Attorney Cronin stated next is *Condition #15 - The Applicant shall provide a letter from the EPA confirming that the Town is not responsible for the outfall conveying stormwater from the High School detention basin to the tributary of Riddle Brook.* When I first read this, I thought of the Mona Lisa veto there on the stand, if anyone is a fan of that movie, where she talks about a question that doesn't have a real answer. My understanding is that EPA is not in the business of giving advisory letters. Maybe they will, maybe they won't, but we don't want to agree to something that we can't accomplish. When we were here at the last meeting, we said that we would like to have as a condition a meeting with the Town, with Mr. Foote, Ms. Hebert or

whoever, and the EPA to determine that the Town's concerns are satisfied. We are not looking to shirk any burdens with response to this. As you may know, right now the School District sheds their water over the subject property without the benefit of an easement and that flows into Riddle Brook, flows downhill gravity fed. All that is happening with this plan is that is being captured and treated on our property, it is being piped in the outlet and it will eventually get to Riddle Brook where it would go anyway. The velocity and the volume are not changing, and in fact, it is being slightly reduced. As far as that goes, we are happy to meet with the EPA and get whatever type of information. If they give us a letter, great, if they give us something else, as long as it is acceptable to the Town, we would prefer that in the way that condition is worded.

Attorney Cronin stated I think that covers most of my issues, and I would like to turn it over to Mr. Duval for a moment to update you on some of the comments that he has responded to and some of the concerns that he has addressed.

Mr. Duval stated we did receive a letter today with some additional comments from Public Works. I think the simplest thing to do, there are only nine of them, would be to go through them and go through my responses. Chairman Levenstein stated have you provided responses? I see now that they are here.

Ms. Hebert stated I may just want to interrupt for a minute and just clarify or give the Board an update on the new information that was distributed tonight so you know what was passed out and to give you just a quick update on the technical review for the project. As you know, the 2-week turnaround for plan review is very tight and it puts a lot of time constraints on the applicant, Town staff and our consulting engineers. Tonight, you received a memo from VHB that would be the technical review memo in response to plans that were delivered to our office on May 31st. The applicant actually hasn't received those comments yet. They were delivered to my office around quarter of five today, so they are hot off the press, but I did review them and most of the issues are nearing resolution. As we move forward in the meeting, I can highlight some of the staff concerns that might be outstanding in that technical review memo. You also have a review memo from VHB regarding traffic and the turn lane or no-turn lane option and the bus turning movements onto Chestnut Drive from Route 101. There are some diagrams and some good information in that memo. You have a memo from DPW outlining their remaining technical comments and you have a response memo from TF Moran, which I think Mr. Duval was about to review, so you do have a copy of that in your stack of new information. You also have two correspondences from abutters, a letter from Attorney John Sokul regarding the Dumas property, and an email from Susan Fullen-Winder regarding her family's land at the corner of Wallace Road and Route 101. That is everything.

Mr. Duval stated starting off with the first comment with regard to two lanes versus one. I think the consensus seems to be emerging that a single lane is better than one lane, but one of the comments regarding the single-lane approach was what happens when a bus makes a right-turn out. As you can see, the right-turn in pretty much stays within lanes. This dashed line here represents the double yellow line, so you can see that as a bus turns in, it can stay within its right lane on Route 101 and stay within the right lane on Chestnut Drive. When a bus turns out, it has to turn slightly into the opposing lane, which is nothing unique to Chestnut Drive. It happens all over the town and all over the world actually because that is just the nature of urban roadways

built with standard openings. In fact, this roadway throat, which has a fairly gentle curve radii, is 38 feet wide, which is wider than most, so this is not an unusual situation. What happens is as the bus in a single-lane approaches, waits to make that movement, they would just have to wait until both lanes are clear before he starts his turn, just like every truck driver or bus driver elsewhere in the town and city. The good thing about the single lane approach is there would be no car parked to the right of the bus trying to squeeze out before he made his turn, so there is a slight advantage to the single-lane approach in that perspective. There are probably going to be two or three bus trips a day in the weekday during the school year. There is a slight penalty to pay in terms of level of service, but it is a tradeoff that really is up to the Board and the Town to make. It seems to be the consensus talking this through now at several meetings that the single-lane approach is preferable. The added delays by not having the separate left and right turn lanes are only 10 to 20 seconds average delay, so it is not that big a deal. We certainly support either option, and in Ms. Bousa's memo it seems to indicate a preference for this single-lane approach.

Mr. Duval stated the sewer master plan that Attorney Cronin already mentioned is a dramatic increase in cost and represents an unreasonable financial burden to the project when sewer is so close in the back to the project at a much reduced cost.

Mr. Duval stated next is the geometry for Chestnut Drive is a cause for concern, 9 percent slope and so forth. All I can say about that is that there are certainly lots of 9 percent roads in town and in New Hampshire generally. Even in southern New Hampshire 9 percent is not unheard of, and we have driveways on them all the time, and this is a relatively low volume driveway. Even if there were to be an extension of Bow Lane in the future, given the likely density of development on the Dumas property just south plus this development, which is 40 and 50 trips peak hour, that is less than one a minute. Even if you were to double that, you are still talking about cars rarely encountering each other at the intersection. That is the level of traffic that we are talking about. There just isn't enough traffic since a car passes through the intersection and in just a matter of a few seconds there will be long periods where no cars are in the intersection, more than half the time, and then most of the time cars will not encounter each other, and even when they do, one is making a left turn, one is making a right turn, there is very little through-volume, except for emergency vehicles, and there is very little volume coming from the right, the cul-de-sac. So if ever we were to have a 9 percent roadway with a 3 percent driveway, I would say this is about as safe a location and safe a geometry and layout as you can have. There is good sight distance with the easements, you can see all the way to the cul-de-sac on the right and you can see 400+ feet actually to the left, with the appropriate site clearing easements.

Ms. Malcolm stated you have had discussions with the Dumas family as to their use of Bow Lane. Do you have any rough idea of what it is they want to do on their land so we have an idea of how much more travel there is going to be on Bow Lane? Mr. Duval replied no. They have only talked about the type of development and they are thinking low density residential development, and possibly some commercial development on the commercial land, but the commercial land that there is, is just this little triangle here, so I am not sure how much commercial interest there would be on that property. The discussions have been very general, and I believe they are represented here tonight by counsel and possibly in person, so maybe they can shed some more light on that if they would like to. Councilor Bandazian stated I would be curious to know if West County Road is going to be constructed so that there would be a second

means of egress. Has that come up in discussion? Mr. Duval replied no; only very conceptually we have talked about what their access to the south might be from and they have talked about extending one of the existing streets in that area and they have also talked about extending County Road, but nothing definitive, nothing that would approach what you would call a plan. Just ideas at this point.

Mr. McMahon stated back to the previous one. When we were out on the site walk, wasn't there some discussion about the left-hand turn out of Bow Lane onto Chestnut Drive, some discussion about excavation or removing trees from one of the property owner's property? Mr. Duval replied yes. There are some easements required that are shown on the posted plan, and the one that we were talking about that actually involves some removing of trees, actually brush more than trees, was this narrow triangle here looking right towards the cul-de-sac because the sight line passes just behind the right-of-way line and there was a larger boulder here with a pile of dirt around it and a handful of small trees. An easement has been obtained by that abutter; that was submitted actually last meeting, and then looking left there is a small wedge here also, just 130 square feet. Mr. McMahon asked that would give you the 400 feet? Mr. Duval replied no, actually that is kind of a little technical detail, but that would allow you to see the cars as they are coming around the corner because it would momentarily pass out of sight as it came around this corner, after having been visible here in this piece. Mr. McMahon asked so to be able to do that are you going to have to shave at all? Mr. Duval replied no; this is well below the driver's eye, so this one you are just looking over the land, just like you are to the left here. The sight line here encompasses this little wedge, which is also quite a bit below, 10 feet or more actually, the ground is 10 feet or more below the driver's eye looking down at the 400-foot mark, which is about halfway down to Route 101. The vehicle would be visible here, then as it approaches here, there would be some brush that could obscure it, there is a parking lot here, and a parking lot here, but the spaces that are in that parking lot are a minimum of 8 feet to 11 feet below the sight line itself as it comes around the corner. So that easement would be provided by the CMC property, 188 Route 101, and these easements here are provided by this abutter here in the back and both have been submitted to Ms. Hebert.

Ms. Hebert stated Mr. Duval, we did have comments on the sight distance looking to the left from VHB, and they do note in their plan review that the sight line and plan view was only 365 feet long but the sight line in the profile is drawn to be 400 feet long, so there may be an error on the plan in how that was sketched up, and we would want to be careful to address that should the Board act on any waivers. Mr. Duval responded yes. I did notice that based on hearing secondhand about that comment earlier today, and the labeling is wrong on that line, but I did check it and by hand replotted it. I confirmed the 8-foot and 11-foot clearance. Ms. Hebert asked you feel confident you can provide a plan with 400 feet of sight distance looking left? Mr. Duval replied yes.

Mr. Duval the next item #3, there is a concern that a profile of Chestnut Drive was not provided, but in fact it was Sheet #14 in the package that was delivered both in paper and electronically last week. I have a copy here just to reassure the Board that that is there. Sheet #14 was posted on the screen. I know you can instantly recognize this from your chairs as a plan and profile view, and in case you can't, here is a plan view of Chestnut Drive going all the way to Bow Lane, and in fact, past Bow Lane to the school driveway and then continuing on, here is the profile view

that shows the 9 and 10 percent grade and finally is the title of the plan, so I think it may have been overlooked because it is part of the package.

Mr. Duval stated going to the next one in regard to the sewer and water line. This is a discussion that we have had several times in front of the Board about the directional bore. There is an intent to directional bore, which is similar to jacking a pipe under the brook, that is going to cross here where the two properties come together. One of the pipes will be a sewer force main from a pump station on the Shorty's site up, that will pump up to this site and then from there be pumped in turn up to the high school. The other is a water line that will feed enough water to Shorty's for domestic and sprinkler use. Typically, those lines are installed 10 feet apart by State regulation, but in the case of jacking and boring under a brook or a roadway or some other obstruction, it is not uncommon to bundle those pipes into a single casing, and the way that is done, or had been done and approved by DES, is to put the sewer line inside another sewer line, if you will, so that you have a double line sewer, you test both pipes and then you can get a waiver to put both under the brook. So we have already entered into discussions with DES about that, we have started putting that waiver application together, there is a standard format and a standard regulation for seeking this type of waiver. That is in process, and we certainly understand that it would need to be a condition of approval if that happened. I should point out that if the waiver were not to be granted for some reason, all that would mean is another parallel bore 10 feet apart, and I think that is easily doable because there is an existing bore already out there for the well that is on the property, so we could simply use that bore, either use that pipe, test and use that pipe for one of the lines and just install the waterline 10 feet away from it, in the unlikely event the waiver is not approved. So it is not a necessary condition that we get that waiver, but I think it would be in everybody's best interest, including the general public, to have new lines doubly protected, and I think that would be better than two separate bores and far more economical.

Mr. Duval stated the next one has to do with just the water line as it is not shown on Sheet #7, but the water line is shown on the utility plan Sheets #5 and #8. There is an old note from before of connecting to a pump station on the high school property, but we have now relocated the line so we don't connect to a pump station on school property, we bypass it to the nearest gravity manhole but appears that on one sheet the label was not removed. That will be corrected.

Mr. Duval stated with Comment #7 there is confusion about where the gas line is connected to the existing gas main. That appears to be new and it connects to something off-sheet and that is exactly correct. We have been discussing with Liberty Utilities their proposal to run gas service through the school property along the way serving the schools and the SAU building with gas, as a side benefit at no expense to the schools. We have identified their proposed route on our plan and that is where we show matching in. So Liberty Utilities will be responsible for bringing it to a point and then they are going to leave a stub for us, then we take that into our property, and by the way, make a future connection available for our abutters.

Mr. Duval stated finally with Comment #8 there was some light printing on one of the sheets. Those have been reprinted and passed out to Public Works with a darker ink. Finally, there is another note about an incorrect invert on one of the sheets. That will be corrected.

Attorney Cronin stated Mr. Duval, please put up the plan for the CMC property at 188 Route 101 and just explain what is going on there to improve the safety of that configuration. There is some information in your staff report that talks about it and what is going to happen there, which the applicants are willing to do. Mr. Duval stated posted is the offsite plan that shows it good. With Route 101 running top to bottom on the screen on the left, Chestnut Drive running horizontally across the screen, and then this 188 Route 101, the CMC Wellness Center. Right now as you know there is a front parking area and a rear parking area. The front parking area comes in and out here, it is almost indistinguishable from Chestnut Drive and the shoulder of Route 101, but the proposal is to channelize that, put a curbed island to restrict the driveway to an entrance only, put a sidewalk, and traffic can come in, park here in a more organized front parking lot, and then not exit here but exit up a 1-way aisle with additional diagonal parking in front of the building, to an exit-only driveway here, and then it would continue its exit back to Route 101. This was an agreement between Mr. Foote and Mr. Greiner that was reached in the field several months ago about this configuration. We have worked with Mr. Greiner and actually a different engineering company, Meridian, that did the original site plan here, and we have worked with them to coordinate a site plan that we are showing here on this plan, and Ms. Hebert has some condition about approval of this plan that we can discuss at this point or later, as the Board may choose. Basically, the idea is that a waiver has been submitted, because in organizing and improving the safety of this intersection, the roadway has been pushed actually slightly into this property. You can see the right-of-way here, the sidewalk comes very close to the edge of the roadway itself, it will be located on the private property, and an easement will be provided to provide for the sidewalk and snow storage behind the sidewalk in these perimeter islands. They are, of course, less than the 30 feet typically required for a front yard setback but even if the road were left alone, there is no 30 feet of plantings there, and the added benefit of this being a safer layout of this roadway is certainly worth the benefit. So that is being shown on this plan but because it is really part of the offsite improvements and part of the Chestnut Drive safety improvements, the intent is to show it on this plan, have it approved by this plan, knowing that a site plan application would be filed for an amended site plan to be handled administratively after this plan is approved.

Attorney Cronin asked Mr. Duval, do you also want to share the results of your meeting with Mr. Foote about what is going to happen with Chestnut Drive as far as the pavement and shimming and things. Mr. Duval responded yes. It was agreed that the first 400 feet or so of Chestnut Drive will be reconstructed, and that is the part that is shown here in this heavier dot pattern that ends just about at this driveway here. As you recall from the site walk, you could clearly see a line where there is a little broken up pavement and newer pavement in good shape. That line is approximately right here; this broken up section would be reclaimed and then repaved on existing gravels with 4 inches of new pavement, in accordance with Town standards. This next section here, which is in good shape, would just be shimmed and overlaid as it comes up around the corner to just past the emergency entrance to the high school. This section here is in good shape and the work is really being done to allow construction of a sidewalk here on the west side of Chestnut Drive. The sidewalk is actually continuing all the way down to Route 101, and also there is a drainage structure here to collect runoff that now goes into a ditch alongside Chestnut Drive and that will be collected in the gutter and put into the existing system. All of the runoff from Chestnut Drive is still going to the same place. Those ditches were picked up by catch basins, so the existing drainage system is adequate. There are no significant additional flows

being introduced, other than the width of the sidewalk, and a little widening at the end, but the drainage system itself is adequately sized to handle that. And then also at the end of Chestnut Drive, you can see there is a bit of a widening of a cul-de-sac and that is to accommodate the school bus used here by the Bedford School Department, and essentially it widens the cul-de-sac, which is currently kind of oblong, but it is roughly about a 76-foot radius, more or less, 78-foot radius, and the widening would bring it out to 82 feet of pavement and then a 2-foot shoulder on each side, so that would be 86 feet of total width, which leaves plenty of additional room for a school bus to make that turn. In addition, there will be a bus stop provided just on the near side of the high school emergency entrance. A 5- x 10-foot pad will be provided as a bus stop here for picking up children from the Bow Lane development. Attorney Cronin stated when we were talking about this roadwork at the last meeting, I think I raised the issue about the use of Chestnut Drive, the historical use, it's current condition and the rational nexus and fair share allocation, and the discussions with Mr. Foote, Mr. Anagnost and Mr. Duval backed away from that and the applicant is willing to do that at their own expense.

Mr. Duval stated that summarizes the offsite improvements as well as the response to comments from Public Works. We have also responded to a 9- or 10-page letter from VHB that had a number of technical comments, we have responded to all of those, and would be happy to go through whatever remaining issues there may be with Ms. Hebert and VHB and resolve 100 percent of those conditions as conditions of approval. I have to believe that we are very close to resolution on all of these issues, and as a matter of fact, even with the 9-page memo response, very little has changed onsite.

Mr. Duval stated one additional thing that I should point out that did change onsite, and this was not due to any requirement to do so but really just our own suggestion, our own idea, of how to try to move this forward and resolve some of these outstanding issues that seem to be coming up meeting after meeting. It was to take the discharge that comes from the high school detention system and we have added a small bioretention area just downstream of that. You can see where the high school drainage system of this quadrant, the northwest quadrant of the high school, comes to an average size detention pond just at the northwest corner, immediately adjacent to the site, and that pond discharges through this pipe onto a little apron that comes right up to the property line and then the flow comes into the site where it eventually goes into the wetlands and the railroad easement, then heads south through that easement, then flows into the Dumas property, and then flows over land, over the bank into Riddle Brook. What we have done to try to assure everybody that there will be adequate protection of the Town's interest and seeing that its discharge is properly handled, is take that discharge, put it into this bioretention area, this is an area where there is actually very good infiltration, very good soils, so there is a good recharge that goes on here, before it goes any further. Then the overflow from that bioretention area gets caught in this overflow structure here that is then conveyed through the site and comingled with the drainage system from the site itself, and then eventually treated, infiltrated and discharged into Riddle Brook. As Attorney Cronin mentioned in his opening summary, we believe that this should take care of any remaining concerns about the quality and responsibility of the Town for that water as it traverses across our clients' site. However, we are certainly willing to set up a meeting with the EPA and the DES, if necessary, and the Town Public Works Department, to resolve this to everyone's satisfaction and have that as a condition of approval.

Chairman Levenstein asked Ms. Hebert, the other technical details, are you confident that these are things that can be worked out between staff, VHB and the applicant? Ms. Hebert replied I am comfortable that we are getting close. We probably have one more round of review, but I believe we are getting very close to satisfying the technical comments. Chairman Levenstein asked so if it was made a condition of approval that they be resolved, you would feel comfortable that that could be done? Ms. Hebert replied yes. Vice Chairman Newberry asked if it couldn't be resolved, they would have to come back anyway wouldn't they? Ms. Hebert replied that is correct. Town Manager Sawyer stated that is Condition #2 currently proposed.

Chairman Levenstein asked what are the waivers you are requesting? Attorney Cronin replied there are four waivers. 1) Section 321.1.3 of the Bedford Land Development Control Regulations, to allow 295 feet of sight distance looking to the right at the site driveway intersection with Chestnut Drive, where 400 feet is required for a commercial driveway. 2) Section 322.2.1 of the Bedford Land Development Control Regulations, to not provide any covered parking spaces where 93 covered parking spaces are required. 3) Section 322.1.9 of the Bedford Land Development Control Regulations, to allow parking and circulation driveways to be within 30 feet of the property line as shown on the plans for the reconfiguration of the parking area serving 188 Route 101 associated with the Chestnut Drive off-site improvements. This is the one where Mr. Duval showed you the 1-way in, 1-way out and the islands. 4) The applicant has requested the Board waive the Bedford Road Construction Standards to allow the alignment of Bow Lane to have a tangent section between reverse curves that is less than 100 feet. The 100-foot tangent section is not required for commercial driveways, but to the extent that Bow Lane is being designed to meet the Bedford Road Construction Standards for possible future use as a public road, the Board should acknowledge this aspect of the design.

Mr. Duval stated since Waiver #4 sounds very technical and daunting, let me just show you what we are talking about here. We are talking about how the Town roadway standard requires 100-foot tangent between two horizontal curves, so technically this slight curve here, and this curve here, by the way, was introduced in an attempt to comply with the other Town standard, which is to have a 90-degree approach to Chestnut Drive. Even the alignment is straight here, you can actually see the straight lines of the easement, we introduced this slight S-curvature to make a better approach here, which I think all are agreed is a better condition. The tangent distance between horizontal curves is to allow drivers to recover from making one turn before they start making the other, but as you can see with this little bit of deflection here, in fact it is probably better to see it at a distance, you can see with that little bit of deflection, you don't need any recovery. This is a little curvature of the road is more of an amenity almost, it makes the road a little more pleasing to the eye as you are driving down it, it certainly doesn't introduce any traffic hazards, and that is why we believe it is really not necessary. Plus, you are so close to the stop bar here that you are unlikely to be traveling more than 15 or 20 miles an hour as you pass through those curves, so it is not an AASHTO situation where there is a safety hazard introduced. In fact, I think it makes a more pleasing entrance. Attorney Cronin stated I believe that was, correct me if I am wrong, required to get that 90 degree, which the Town requested. Mr. Duval responded yes.

Chairman Levenstein asked Attorney Cronin, were there any other conditions that you wanted to address? Attorney Cronin replied I think I have touched them all, but I did want to mention that

there was a request of the Dumas family to add some notations on the plan relative to the future intent of their development to seek approval of Bow Lane. We didn't have any objection to that and we are willing to add those comments. They are not on the plan, but I just wanted to say that in the open forum, for the benefit of the Dumas family and Mr. Arnold who hasn't been here before. Ms. Hebert stated that is Condition #20 on the staff report.

Vice Chairman Newberry stated your request for Waiver #4 is only for the 100-foot tangent section issue in the road construction standards? It is not a waiver of the entire standard? Mr. Duval replied no. The specific waiver is for that tangent length between two adjacent horizontal curves. Vice Chairman Newberry responded that is what I thought. I just wanted to make sure I was clear. Ms. Hebert stated just a point, a technicality, the Land Development Control Regulations do not require driveways to be built to Town of Bedford Road Construction Standards, so this application wouldn't technically need a waiver, but we thought it was very important for the Board to discuss the design and discuss if this were a public road, because the intent is that Bow Lane would someday become a public road, that you understand that this waiver would be required. So I kept it listed in the waiver section of your staff report, but technically there is no waiver required.

Mr. Fairman stated I have a question relative to the gas line. You mentioned again the commitments of the school. Where is that commitment legally documented? It is not in this document that we are approving? I know everybody's intent, and I don't question your intent or commitment, but I do think it should be legally documented some place. Mr. Anagnost responded there is a memorandum of understanding, Mr. Fairman, with the School Department. Mr. Fairman stated I sit at that School Board meeting but that is fine. Mr. Anagnost stated the first criteria that we have to meet in order to get to the next step is to get an approval from this Board. Mr. Fairman stated thank you. Town Manager Sawyer stated just to add to that, Condition #23 as proposed would require the easements necessary from the School District to be supplied, so it is tied to Condition #23 as well.

Town Manager Sawyer stated I would like to ask Attorney Cronin to clarify that you didn't understand where the straightening of Chestnut Drive came from because it is probably before your involvement in the case, but it comes straight out of the conditions from the School Board's approval. Attorney Cronin responded we have been talking about Chestnut Drive, I wasn't involved with the School Board piece of it, but I think at the last meeting we had a lengthy conversation about the configuration of that road and why, and why that was still out there; I don't know. Town Manager Sawyer responded I think it is still out there because it is a condition of the School Board's action. I just wanted to make sure that was clear. Chairman Levenstein asked what condition is that? Town Manager Sawyer responded it is not a condition of ours, it is a condition of the School Board's action or the School Board made it a condition of theirs. It is not our condition, but that is why the staff and VHB were asking about it in their various review comments because they understood that there was a potential or the likelihood that the road was going to be straightened because it was a condition of the School Board's requirements. Attorney Cronin stated got it. Mr. Duval stated if I could just clarify that a little bit. It was never an intent to straighten Chestnut Drive. What was started at the earliest discussions involving this project and the school and the Fire Department had made a request to provide a straighter driveway access, and I am showing where that was intended here. In the

earliest versions of this plan did show constructing a new driveway access, it was going to be a land transfer of this piece from the school to the project to support greater density in return for constructing this new access. When that land transfer went away, then the plan immediately left the property line alone, the density did not increase and the existing driveway was retained. So it was never an attempt to straighten Chestnut Drive. It would have stayed where it was. It was just an alternate driveway location for consideration of a land transfer that fell away. Chairman Levenstein stated it sounds like if you are going to have an issue, it is going to be with the school, not with us. Mr. Duval responded right. Town Manager Sawyer stated agreed.

Mr. Fairman stated Mr. Chairman, I have something I would like to add. As you know, about 8 percent of the residents of Bedford have signed a petition against the use of this property for the apartment complex. With this in mind, I decided as part of my preparation for tonight's meeting to review other permitted uses of this property, which is primarily zoned commercial. Among other uses, this property could be developed for a retail establishment, such as a shopping center, grocery store, a Walmart or a Sam's Club, a hospital, multiple medical and dental clinics and offices, establishments that do general services and repair, restaurants, including fast food restaurants, a hotel or a motel. Among things that are not permitted are single family homes. As a result of this review, I concluded that the use of this property for any of these other permitted uses would have more impact on the area, including the impact on schools, traffic and safety, than the planned apartments. I will, therefore, be voting to approve this project. Thank you, Mr. Chairman.

Chairman Levenstein asked for any comments or questions from the audience.

Kevin Gagne, 51 Federation Road, stated I am speaking as a resident, not on behalf of my employer. First I want to say as a man and his family that was victimized by Mr. Greiner, I want to express my sympathy to Ms. Murphy based on what she said about the threat against her restaurant lease. I know it must have been very difficult for her and her family just as it was for mine. I am sorry that this is still happening. Chairman Levenstein stated why don't you discuss what the issues are, Mr. Gagne. Mr. Gagne responded excuse me Sir, I did stand at a meeting where I listened for about 15 minutes to a woman who was a member of one of these apartments while you were Chair, jaunting on about how she was a personal trainer and she was single and loves apartments and we listened, and we listened, and we listened. The only person you try to muzzle is myself or Ms. Soule when we speak at these meetings. Chairman Levenstein responded I have never tried to muzzle you. This is the first time I have ever asked you not to do it and every time you say the same thing. Mr. Gagne responded the first night I spoke, August 27th, look at the tape, you also tried to stop me; you said I was getting into too much detail. Chairman Levenstein responded I am not trying to stop you from addressing the issues. Please do so. Mr. Gagne responded if it is okay with you, and maybe with the developers' attorney, can I continue to speak and say something that hasn't been said before. Chairman Levenstein replied I would appreciate it. Mr. Gagne responded thank you, and what I just said wasn't something I had said before.

Mr. Gagne stated thank you Town Manager Sawyer for paying attention, pointing out that the straightening of the road was part of the proposal that was presented to the School Board when they "approved" the utility tie-ins. Certainly the project has changed substantially since then. It

was quickly mentioned that there was no recovery in that S-curve and it was not a big deal. I wonder if it would be a big deal to someone coming out of that driveway in the snow as they enter Chestnut Drive on the 9 percent grade. The applicant has stated in the staff report it was quoted that the sewer utilities installing them per the Town's Master Plan is "cost prohibitive." That means bringing the utility main to Wallace Road. Mr. Foote made it clear that the Master Plan was followed by all prior developments since it was adapted. He said it does need to be done eventually, so if it is not done by this large development, the cost would pass onto the next development to the west. I don't know what development that would be, we don't know yet, but I bet it would be something smaller requiring much less capacity than 90+ units and a restaurant. We know the Walgreen's area is already developed, so whoever wants a project west of there would essentially be having to pay, not just the incremental cost to extend sewer from Wallace Road, but now the whole cost to extend it from the current limit. If two of the Town's richest developers can't afford to do the job right for one of the largest developments we have seen, then what makes you think the next project will. They won't I'm sure. We are going to have to pay for this charity you are giving out and that was not the intent of the Master Plan. Whoever votes yes tonight is certainly enabling an end-around by a truly sick, unethical individual.

Kim Brown, 21 Wiggin Road, stated my question to the Board is, if developers came in from say Boston and they asked you if they could ignore the Master Plan, would you let them. Would you let someone else just ignore the Town's Master Plan, because you didn't before. All of these other businesses have followed the Master Plan, so why now, why should that change now. Chairman Levenstein asked what Master Plan are you referring to? Ms. Brown replied the sewerage Master Plan that they want to ignore. Chairman Levenstein asked Ms. Hebert, is there a sewerage Master Plan? Ms. Hebert replied there is a sewer master plan. It is different from the Master Plan that the Planning Board adopts, which dictates long-range planning for the Town. Town Manager Sawyer as Town Manager probably knows a lot more about this sewer master plan than I do. I am sorry that Mr. Foote is not here tonight to speak to this issue. Town Manager Sawyer stated there certainly is a sewer master plan that was adopted by the Council as part of the update to the full sewer ordinance about five or six years ago. It is when we had purchased additional flow rights with the City of Manchester and changed what we could flow, the percentage of solids and all of that, and at the time, we were looking to see if we could provide water and sewer on Route 101. Councilor Bandazian spoke about this at the last meeting very well. The Council looked at it very extensively, looking at betterment districts for all of the properties in the area to see what it would cost to do and what the impacts on those property owners be, and determined it wasn't a project that they wanted to bring forward to the voters to make a decision on. It would have cost or required the bonding of millions of dollars to complete those improvements that the abutters, the property owners, would have to pay back over time. Ms. Brown stated it seems to me the reason they don't want to follow what, I don't know if it is the plan or what was expected, is because it would cost them more money and frankly it is not the Town's responsibility or the Planning Board's responsibility to protect their investment.

Ms. Brown stated I would also like, as another victim, that something be in place in all the boards where a developer, whether they are from Hooksett or Boston or right here in Bedford, not be allowed to manipulate, insult other Town boards, harass, threaten and bully citizens who are in opposition and they need to stop these behaviors or they will not be allowed to continue on

this journey on the agenda. This should just not be tolerated, and I would request that at some way somehow, something like this is put in place because we have a right to get up and oppose. Chairman Levenstein responded absolutely you do.

Linda Camarota stated I am a 35-year resident in this beautiful town. I want to first compliment the Planning Board for all of your due diligence with regard to this proposal. It has been going on forever, so I do appreciate it. I stand today to look at school bus safety. I was here last time and I could swear that I heard that the school bus stop was going to be within the Bow Lane development and now I hear tonight it is going to be in the cul-de-sac. Is that accurate? Chairman Levenstein replied I am not sure. Ms. Hebert stated the school bus stops are typically in the public right-of-way, so it is my understanding the bus won't drive into the development and come back out. Ms. Camarota stated maybe I heard that there was going to be a covered area within the development for the kids to stand. Town Manager Sawyer stated that is a misunderstanding. Mr. Duval stated we were told categorically that the buses would not enter a private road, private property, and what is proposed is a concrete pad just before the high school driveway, not all the way into the cul-de-sac. Ms. Camarota responded okay, that is good.

Ms. Camarota stated with respect to the cul-de-sac; I used to live on a cul-de-sac and was told back then that the cul-de-sac is made to open. I heard tonight that that is never going to be opened. Is there some Town requirement that keeps that a cul-de-sac and not go up to the high school? Town Manager Sawyer responded just looking at the tax map, the cul-de-sac currently ends inside a privately held property. They would have to come forward with a plan to extend the cul-de-sac. A lot of cul-de-sacs that the Planning Board has approved over decades end on a property line so that they can be extended into the next property. This one does not. It terminates in the middle of a privately held lot. Ms. Camarota stated so it probably will stay that way. Town Manager Sawyer stated and there are topography issues there. There is quite a bit of a hillside that drops off significantly on the back side of that privately held property. Ms. Camarota stated okay, so now that I understand the bus coming and going around that cul-de-sac, has that met all of our standards or is there a waiver with regard to turnaround capability, etc.? Ms. Hebert replied the developers are proposing to widen the cul-de-sac by a few feet to meet the standard. Mr. Camarota responded okay, thank you very much.

Kathleen Bemis, 37 Magazine Street, stated I just have two quick things. The first one is, when I watched the last meeting about this, one of the conditions was that they would come back here tonight with something in writing in hand from the School Board saying that yes the water and sewer was a done deal. And now I think what I am hearing is they don't have that but it is a condition of approval. Please correct me if I am wrong, but I do think that that was stipulated at the last meeting that they would come and have it in hand. Am I incorrect? Chairman Levenstein replied I don't remember specifically but the conditional of approval serves the same purpose. They can't build without it. Mr. Bemis replied I understand that, but it is almost like we tell them to do something and they just don't do it. Chairman Levenstein responded sometimes you have the other side to deal with too.

Ms. Bemis stated my other question is really necessarily about this development, but I think that he said it is not on the plan but it is in your memo, which I think is #20, some of the stipulations that the Dumas family would like. Could you read that to us because it might give us insight into

what further development might be, not related to this project. Chairman Levenstein responded I can read it. ‘A note shall be added to the site plan explaining that Bow Lane has been designed to substantially meet Town of Bedford road construction standards to accommodate a possible future public roadway connection through the remainder of the Bow Lane access easement, to connect with the property to the west with Chestnut Drive.’ It is pretty vague.

Steve Clough, 5 Hunters Road, stated I do not agree with the counsel with regard to the EPA. I have worked with the EPA my whole career and they do issue letters of compliance all of the time and they have very good points, by the way. Their number one priority is regarding non-point pollution, which is stormwater. With regard to the sewer plan versus the Town’s Master Plan, I am surprised that you asked if there was a sewer plan because Mr. Foote spent 15 minutes talking about it three weeks ago, so obviously you guys aren’t listening at all. Chairman Levenstein responded there is a difference between a Master Plan that the Town has voted on and adopted and what they are calling a master plan for the sewer. I just wanted that distinction made. Mr. Clough stated yeah, but he talked about it. If you look at the tape of three weeks ago, Mr. Foote talked about it. I would request a no vote tonight be made in the absence of Mr. Foote because I don’t think it is fair that he is not here as he is the Town engineer, because the way I hear it, is that they need to comply with the Master Plan. Mr. Foote said failure to comply shifts the financial burden to future owners, as Mr. Gagne talked about, and I find it rich that the applicant’s reasoning for not complying with the Master Plan is that it is not financially feasible. And this is coming from a guy that, to use a common phrase, owns half of Bedford.

Mr. Clough stated they have also planned on hooking up to our taxpayer funded sewer at the high school, because as you can see here from the get go, they have planned on horizontally drilling a sewer pipe uphill from Shorty’s to Bow Lane and then passing the combination of that sewerage onto the high school. So a priority, they have always planned on hooking up to the high school, if you use logic and reasoning.

Mr. Clough continued finally, it is clear from the Planning Board’s report that the traffic study A) isn’t even close to being done, and B) isn’t based on actual traffic counts. I heard Mr. Duval say that the bus will simply wait until both lanes are clear. Has anyone ever waited until both lanes are clear coming out Chestnut Drive? I live on Hunters Road and I have waited for five minutes for both lanes to clear and that is down at Hunters, that is not as busy. I would encourage all of you to really think about this. Eventually there is going to have to be a stop light there, is my guess. And I also agree that you have done a very good job with your due diligence, and I praise the Planning Board; they did a good job. Thank you.

Bob MacPherson, 93 Wallace Road, stated I have a couple of points. I was at the November 13th meeting of the School Board, and it was very clearly stated that a condition would be the straightening of Bow Lane, that was clear as a bell. Secondly, and all due respect to Mr. Duval, I am not trying to argue, but what he says there is very little traffic going up Chestnut Drive. From my own personal observations, at the two critical times of the day when people are going to school and when the high school lets out, because it is such a congested area up by the high school trying to get in there for parents trying to drop off kids, they do drive up Chestnut Drive in the morning. I have counted over 30 cars come up there in the morning to drop off the kids and then leave. In the afternoon it is even worse. You have just as many parents coming up

there to pick up the kids and on two occasions I wanted to validate my first observation because I have been up there to personally observe, it is not a study, it is my personal observation, that there are over 60 kids as soon as school is out, and that may be at best a 30-minute time period, walking right down Bow Lane. Mr. Duval is right, maybe during the other times of the day, not a lot of traffic, but at the critical times it is very serious, and I say we should not downplay safety and I ask that you not put our kids in harm's way. Thank you.

Becky Soule, 327 New Boston Road, stated I also have been a victim of Mr. Grenier's harassment. I was sent a private message calling me a vile elitist after I only made a mention that building apartments in Bedford is going to cause the school to be over capacity, which it, as I believe, already is. I did present the private message that Mr. Greiner had sent to me at a February board meeting, and when I presented the message to the front of the meeting room, I was interrupted by Chairman Levenstein, who I am not sure what his intention was interrupting me. Anyway, I just would like to kind of reinforce Mr. Gagne's point that we have been interrupted and tried not to get to make our own points. There is a petition with over 1,100 residents of Bedford who have requested that this project not go through, and I believe that the Town Board needs to pay attention to that. The residents own Bedford, not these two developers.

Attorney John Arnold, Hinckley Allen Law Firm, stated I am here representing the Dumas family. I am subbing in for Attorney John Sokul tonight. I just wanted to make a brief comment. We had submitted a letter to the Board late this afternoon, I believe it has been distributed, but I suspect that you probably haven't had a chance to read it yet, so I just wanted to make a brief point. We have had a number of discussions with the developer over the last weeks and days; we are generally supportive of the project and the application; we feel like we have made good progress, and we are still working through some of the issues that have come up at prior hearings. The one issue I wanted to raise for you tonight. There were a couple in the letter that I believe have been fairly well addressed by the staff report, but specifically with respect to Condition #14. That condition says, *'The Applicant shall provide an engineer's assessment of the existing town sewer pump stations to certify that adequate capacity is available to handle the additional flow.'* One kind of clarification we just wanted to make on that point was that the assessment that is done take account for reasonable future development on the Dumas property, with the understanding and intent that they would eventually connect in when they do their development to these lines and it would make sense to have an understanding of what the capacity is and what type of development it could support on the Dumas property. Chairman Levenstein asked is that a problem to do? Attorney Cronin replied conceptually no, but technically it is. We have been asking for what the plans are for that site. Without knowing what they are doing, you really can't get a handle on what reasonably acceptable accommodation is. We have requested it from the town sewer and we have been advised there is enough capacity to meet this project and then some. What 'and then some' means, I think is dependent on what you are going to put there. They have Jen McCourt, who is a very capable engineer, that has been working with us, said she should meet with the folks at the Town and get a handle on that herself so there is nothing lost in the translation, because we simply can't do it without knowing. Attorney Arnold responded that is generally acceptable. We are willing to work with them on that. I think that Ms. McCourt has some follow-up on it for purposes of thinking about a reasonable future development given the size of the property and the potential uses, we would

suggest that something comparable to the density that is going in as part of this project would be reasonable. Jennifer McCourt, McCourt Engineering, stated I also represent the Dumas family. I have spoken with the DPW regarding the flow and I haven't been able to get at, just as Mr. Duval, we have been trying to get the information on what the capacity of those pump stations were and what it was based upon. Per DES there should have been a study that was done to basically create why those volumes were made in those pump stations, and that is what we were trying to figure out. It would have been done basically in zoning, basically what those lots were zoned and the land use on those. A little bit of commercial with a larger piece of residential, which can only hold a certain density. So that is what we meant by reasonable use of the property, and we were just trying to get a hold of that study to be able to take a look at it to make sure that we are all on Page 1. Chairman Levenstein asked is that a study from the Town? Ms. McCourt replied the Town. The Town would have done it when those pump stations were created so they knew how large to make them. Ms. Hebert stated I know Mr. Foote does have this information and was planning to have it updated as part of his work regarding his due diligence for the pump station, and it was something that Hoyle-Tanner, who does some consulting services for the Town, could easily put together. Attorney Cronin stated we have no objection to sharing that if that is a condition. We have no problem that we can't make any commitments whether it will be sufficient with what they ultimately do there or not.

Chairman Levenstein asked Attorney Tilsley, do you have anything you have to say? Attorney Roy Tilsley, Bernstein Shur Law Firm, replied I am here on behalf of Susan Fullen-Winder, Priscilla French Curry, and Thomas French Curry, regarding 257 Wallace Road. I think Attorney Cronin really stated our position that is set forth in Susan's letter in your packet. There is a 6-inch sewer proposed, we would like to see it stay that way so at least we have the possibility of connecting to it when and if we develop the property in the future and when and if there is capacity. Other than that, we are generally supportive of the project.

Mr. Clough stated I know this is being pumped to the Town of Bedford but if the Dumas's go through or if their conditions are met, the applicant very aptly avoided the wetland issue, but if the Dumas's go through with their easement, I don't know how it works legally, but the wetlands will have to be destroyed. I just want everybody on the Board to realize that.

Chairman Levenstein asked for any further comments or questions from the audience. There were none.

Chairman Levenstein asked for anything further from the Board.

Vice Chairman Newberry stated I have a couple of comments and observations. I agree with the points that Mr. Fairman raised earlier. I think also that if you look at this not simply as a particular project but you look at it as a neighborhood, this adds a significant dimension to the entire neighborhood in that it creates residents who are in the neighborhood, who have pretty easy walking access to Town facilities, the school, the recreation on the other side of the school, a number of retail establishments that are all within walking distance, and I think that that is a dimension to this which is really pretty valuable in terms of it being a step toward generating real neighborhoods, toward generating mixed-use that is economically viable. I think Councilor Bandazian spoke to the sewer issue last meeting and as I understood it, the Town Council had

looked at that issue some time ago and had determined that extending it in the manner as it is in the Master Plan was not economically feasible given the potential development past it. Finally, I would like to say that it is really not the Board's ability to deny an application because there is opposition to it. The Board's responsibility, and we have talked about this before but I will say it again, it is the Board's responsibility to make sure that the application meets the Town requirements, works with the applicant to address issues that are raised by the Board, by technical reviews and by residents, but if the Board denies an application without sufficient reason to give that denial, it is simply going to be overturned by the courts and that makes no sense at all. Just because there is opposition to a project, the Board can't say no because we don't like it. I voted in the past for things which I personally did not care for, but it was not up to me to vote as my personal opinion on a proposed development. And it is also outside the purview, I believe, of the Board to address any personal animosities that go on between any people involved in any of these applications. It is not the Board's responsibility to try to address those which are really civil matters, in my opinion. That is all, Mr. Chairman.

Town Manager Sawyer stated I have a question I didn't hear addressed what was raised by Mr. Gagne about existing traffic and grades at the site driveway during snow conditions. If we could just address that. I just didn't hear an answer; maybe I missed it or maybe we didn't ask them for an answer, but I feel like it should be addressed by the design engineer. Mr. Duval responded the grade of Chestnut Drive is 9 to 10 percent as it passes through this section of frontage. The grade of Chestnut Drive, which before at that meeting was 3 percent down away from the edge of the road, caused some concern to Mr. Foote who suggested that going from 9 percent up to 3 percent, down was 12 percent of rollover, so called, and he felt that that was over the 10 percent benchmark that DOT calls for as going through intersections. Discussed at the last meeting that is really for thru-traffic across an intersection not for turning movements, but in any event, in an effort to resolve this matter, we did redesign the approach to Chestnut Drive from Bow Lane so that it goes 3 percent up for a short distance and then the remainder goes 3 percent down, and because of the vertical curve, it is actually even flatter than that. So, as you are approaching the stop sign, you are essentially traveling a flat section of roadway as you approach the stop sign, stopping on essentially 3 percent or less pavement before you then proceed from a stop condition to enter Chestnut Drive from Bow Lane. So you are never stopping on a 9 percent grade unless you are coming from the cul-de-sac, slowing down to make a turn into Bow Lane, which is certainly infrequent, not impossible, but it is no worse than some of the other driveways a little bit farther down just off this page here, and traffic safety is always a question of conditions and volumes. In this case the conditions, 9 percent is not an exceptional grade, and the volumes are exceptionally low, so we see no traffic safety problem with these grades, and the specific condition that Mr. Gagne mentioned doesn't exist because as you are approaching this stop sign, you are on essentially level pavement.

Chairman Levenstein asked do you have traffic counts as to how many cars are going to be coming out of those apartments the time that school lets out? Mr. Duval asked traffic counts on Chestnut Drive? Chairman Levenstein replied yes. Mr. Duval replied we did take traffic counts and we did actually count the school peaks. I want to say we did 6:00am to 9:00am, which captures the school peak and the roadway peak, and then I want to say we did 2:00pm to 6:00pm, which captures the school afternoon peak plus the roadway peak. Chairman Levenstein asked what would be the estimate of the additional traffic? Attorney Cronin stated while he is looking

for that I will just mention in response to some of the comments. There is a traffic study that was done, has been reviewed not only by your consultant and approved, but also by Mr. Pernaw, who was an independent consultant. Mr. Duval stated in the AM peak hour, 7:00 to 9:00 peak hour, there is 34 trips generated by this development, and in the PM peak hour, there is 41 trips. Chairman Levenstein asked what time is the PM peak hour? Mr. Duval replied the PM peak hour is 5:00 to 6:00 or 4:45 to 5:45, so during the school peak, there is actually less traffic on that generated by this development. Let's say perhaps $\frac{3}{4}$ of that amount, maybe 30 generated by this development, so they are small numbers.

Mr. Fairman stated there has been some indication I believe in the paper, but I think I saw it elsewhere, that you might want to increase the percentage of workforce housing from 25 percent to 40 percent. I certainly applaud that thinking but I would like you to address it please. Attorney Cronin responded that was something that came up with the last meeting. I think one member, it might have been Councilor Bandazian, pointed that out that was the initial percentage and we went back and said we should supplement the impact statement, which we did do. We went back to Mr. Fougere and asked him specifically what that impact would be if it went all the way up to 40, which we would say would be a max line, and it was pretty nominal. Mr. Anagnost stated it was around \$9,000. Councilor Bandazian stated it was \$9,978 maximum. Attorney Cronin stated that was the impact and we will see how that goes, but we didn't want to leave it out there at the 25 percent if there was a benefit to go up to 40. Mr. Fairman stated thank you very much. Town Manager Sawyer asked is there any further information as to why you would or how you would make that decision? Attorney Cronin stated I will defer to Mr. Anagnost. Mr. Anagnost stated actually the decision will ultimately be made by market demand. It will also be made by potentially some financing that we are pursuing that would influence it. Town Manager Sawyer asked so the tax credit program would require 40 percent? Mr. Anagnost replied no. The tax credit program would probably require 100 percent.

Mr. McMahon stated just to be able to address one of the questions. Mr. MacPherson talked about the parents coming and picking them up. Just for some history; the kids used to park on Chestnut Drive and when complaints were made, and it was taken to the superintendent, that was able to be solved. It is not the purview of the Board, obviously, but I suspect that in coordination with the school that they may be able to curb what the parents are doing right now because I agree it is going to be a problem. But that is just to address your concern and not the opinion of the Board. Mr. MacPherson responded if it is a public road, I don't know how they can stop people from going up there. Mr. McMahon stated if it causes a problem that is proven to be a problem, it is something that could be addressed. I am not going to speak for the school. Mr. MacPherson stated nor am I, but I agree with you. It is a mess.

Chris Pattison, 5 Dorothis Way, stated I am one of those parents that have taken a late child up the back road to get them to school on time. This is more just a safety question. Picking them up in the afternoon there are a ton of children that walk down the road because there is no sidewalk, and you have had to be super careful when you go around that curve where you are proposing the entrance to Bow Lane to make sure you are not hitting a student that is coming down that edge of that road. Was there any consideration of a sidewalk or something that will go along the road so they won't walk down the middle of the road or in the lane? Chairman Levenstein stated there is a sidewalk that is part of the plan. Ms. Pattison responded okay, great.

Thank you. Mr. Fairman stated and I think just to add to that, my experience, and I am at the school a fair amount, I have been very surprised at how well the kids follow the sidewalks. When we put in the new ones on Nashua Road, they do very well following the sidewalks and even the ones up around the school, which is surprising to me, the kids do really well following the sidewalks and crosswalks. I think the sidewalk down Chestnut Drive will actually make it safer than it is now.

Town Manager Sawyer stated I would like to speak to Chestnut Drive one more time and the school drop-off. Currently the Town Council has a no parking ordinance for Chestnut Drive so there is no parking allowed and the School District was very helpful in getting that word out to the parents a number of years ago. The next step would have to be a no standing ordinance, which would mean you wouldn't be able to sit there and wait to pick up your kids. At this point in time, nobody has brought that forward but that would be our next option. Right now it does act as a little bit of a relief valve to the main driveway, and I think we would have to look at that overall as to whether it is better to allow this relief or not to Nashua Road and the school's driveway. Nobody has studied that, nobody has brought that forward, but that would be the next step to implement a no standing ordinance. But that is not this Board; that is the Town Council.

Mr. MacPherson stated I would like to give you a statistic. One fatal accident, one person getting paralyzed, is one too many. We cannot downplay the safety issue here. Thank you.

Attorney Cronin stated I would just respond to some of the comments for the record. I think in our discussions at the various meetings and the input from the Board, we have addressed most of them but I will take some responsibility for some of the confusion with Master Plan. When I speak about Master Plan, I speak a Master Plan that is proposed by a Planning Board and goes before the vote of the Town and it is used as a guide, it is a long-term plan to try and fashion how development works. With respect to the sewer, recognize that there may be some goals of Mr. Foote and the Town to extend sewer where someone else is paying for it, but as far as the charity comment, if there was an extension to Wallace Road, we would be having a discussion about fair share and what the Town's contribution would be, and I think it has been settled by the Council that that is not a contribution that the taxpayers in general want to foot the bill for. So if we were to extend it, we certainly would have to foot our fair share of the cost, which the developer is doing in this circumstance. With respect to signatures on a petition and a percentage; I know Mr. Fairman mentioned a percentage, and you could look at it in the inverse too. If it is 8 or 9 percent of people, I think it was less than that, that you said that signed the petition. Does that mean that 92 percent of the people either aren't concerned about this or aren't concerned enough to come and speak against it? I don't think either way you look at, you look at the regulations, and what is lost and what we probably didn't address enough is that this is a different type of project under our zoning laws. It is a workforce housing project, which has some special considerations. It is the only type of project that I know of where there is an enabling statute that says even if a regulation exists, it shouldn't be interpreted or enforced to diminish reasonable opportunities for workforce housing, because there is such a need in this state to have workforce housing. It is talked about all the time up in Concord that we need to find more ways to have our workforce live in communities, live in great communities like Bedford, so this is a really special type of housing, and I think the applicant here has done a lot. I know he has been subject to some criticism, which is typical for these types of things and he can take it, but they have done a

lot in redesign, they went back to the drawing board several times, and they have done a lot of work to alleviate some of the concerns, big concerns that people have with respect to wetlands and other things. Thank you for your time and attention.

Ms. Brown stated in regard to the change in the number of workforce housing units; are you, the developers going to ask for a low-income designation, because that would devastate the Town finances as they will not pay taxes for 10 years. Mr. Anagnost replied I am not sure what a low-income housing designation is, but these are workforce units and it is pretty set in the statute what a workforce unit is described to be. Ms. Hebert stated that is correct. I think she is probably referring to the 100 percent low income tax credit projects. Ms. Brown responded yes. Mr. Anagnost stated we are not pursuing that at this time. Ms. Brown stated okay; thank you.

Ms. McGinley stated I just want to make a comment. The applicant has developed a lot of property in this town and having daughters that went through college and come out of college with not enough money in their new job to live in Bedford. One of my daughters is in the workforce unit in his project near the end of Route 101, and I think it is very important. Not only is it required by law but it is very important for developments like this be built in a manner that can be sustained and is good for Bedford, and I think this one does.

MOTION by Vice Chairman Newberry that the Planning Board grant the following waivers:

- 1. LDCR Section 321.1.3, to allow 295 feet of sight distance looking to the right at the site driveway intersection with Chestnut Drive, where 400 feet is required for a commercial driveway.**
- 2. LDCR Section 322.2.1, to not provide any covered parking spaces where 93 covered parking spaces are required.**
- 3. LDCR Section 322.1.9, to allow parking and circulation driveways to be within 30 feet of the property line as shown on the plans for the reconfiguration of the parking area serving 188 Route 101 associated with the Chestnut Drive off-site improvements.**
- 4. The Planning Board waive the Bedford Road Construction Standards to allow the alignment of Bow Lane to have a tangent section between reverse curves that is less than 100 feet.**

Ms. Malcolm duly seconded the motion.

Town Manager Sawyer stated I just want to note a couple of things. With regard to the waiver for sight distance; I believe at an earlier meeting, and certainly in earlier documents, that the applicant had shown that the sight distance did meet AASHTO standards. What we are really talking about here at this point in time is that the road doesn't continue any further, there is not further traffic that can be seen coming from any further away because we are looking at the cul-de-sac. For #3, the waiver from parking within 30 feet of property line, it is not for the new housing so to speak, but for the 188 Route 101, the CMC medical center, and it is to provide for a safer condition on Chestnut Drive in my opinion, where we are eliminating exiting traffic right

at the intersection of Chestnut Drive and Route 101. In my opinion, I would certainly support that waiver to make a safer condition.

Chairman Levenstein called for a vote on the motion as stated. With all members voting in the affirmative, the motion carried.

MOTION by Vice Chairman Newberry that the Planning Board grant final approval for the site plan for a 93 unit workforce housing project and the renovation of the restaurant at 206 Route 101, together with associated site improvements, prepared for 206 Route 101, LLC and Bow Lane Bedford, LLC, Lots 20-22-14, 20-99-1, 2, 3 and 4, in accordance with engineering plans prepared by T.F. Moran, Inc. last revised May 29, 2019, and the architectural plans prepared by Burnell Johnson Architects dated February 19, 2019, and Market Square Architects dated July 23, 2018, with the following conditions to be fulfilled within one year and prior to plan signature, and the remaining conditions of approval to be fulfilled as noted:

- 1. In the event that the Planning Board approves the waivers, the plan shall be updated to list any waivers granted as approved.**
- 2. The Director of Public Works and the Planning Director shall determine that the applicant has addressed all remaining technical review comments to the Town's satisfaction.**
- 3. The NHDES Sewer Discharge Permit number and approval shall be noted on the plan.**
- 4. The NHDES Alteration of Terrain Permit number and approval shall be noted on the plan.**
- 5. The NHDOT Driveway Permit number and approval of the work in the state right-of-way and modifications to the Chestnut Drive & Route 101 intersection shall be noted on the plan.**
- 6. A lot merger application shall be approved by the Planning Board to combine the parcels as shown on the plan.**
- 7. A letter from Pennichuck stating that they will be able to serve this project shall be submitted to the Planning Department.**
- 8. A landscape plan and lighting plan shall be provided for the restaurant site to update and improve the landscaping around the parking lot and restaurant building.**
- 9. The Applicant shall modify the landscape plan to rebuild portions of the stone walls (*up to \$10,000*) at the workforce housing site and include additional tree plantings behind building #3 and the adjacent parking lot. The final landscape plan shall be approved by the Planning Director.**
- 10. The architectural plans shall be modified to clarify that the darker cedar shakes will be placed on the large gable ends of building #3.**

- 11. The site plan shall be modified to include not more than the required number of parking spaces (201 spaces).**
- 12. The Applicant shall modify the plan to address all of the outstanding Fire Department comments as outlined in the email from Captain Thatcher Plante, dated May 9, 2019.**
- 13. The Applicant shall obtain the necessary sight distance easements to achieve the 400 feet & 295 feet of sight distance at the Bow Lane & Chestnut Drive intersection.**
- 14. The Applicant shall provide an engineer's assessment of the existing town sewer pump stations to certify that adequate capacity is available to handle the additional flow.**
- 15. The Applicant shall meet with Department of Public Works, the Planning Department and**
- 16. The Applicant shall submit any outstanding engineering review fees to the Planning Department.**
- 17. A performance guarantee in an amount approved by the Town for onsite maintenance of erosion and sedimentation controls shall be placed on file.**
- 18. A performance guarantee in an amount approved by the Public Works Director for the proposed off-site improvements shall be provided.**
- 19. Arrangements will be made with the Planning Department and Public Works Department regarding payment and coordination of third party inspections for both the on and offsite improvements.**
- 20. A note shall be added to the Site Plan explaining that Bow Lane has been designed to substantially meet Town of Bedford Road Construction Standards, to accommodate a possible future public roadway connection through the remainder of the Bow Lane access easement, to connect with the property to the west with Chestnut Drive.**
- 21. The applicant shall provide a deed restriction, easement or other suitable legal documents to restrict the units to workforce housing and to demonstrate compliance with the affordability requirements of Article 275-21B(4) for a minimum period of 30 years. All documents shall be reviewed and approved by the Town's legal counsel.**
- 22. The applicant shall establish a procedure acceptable to the Planning Department for reporting that the workforce housing units are meeting all necessary requirements.**
- 23. The applicant shall provide the necessary utility easements from the Bedford School District, indicating their final approval of the utility extension as shown on the site plan.**
- 24. The applicant shall apply for administrative approval for the proposed parking lot improvements at 188 Route 101.**

- 25. The applicant shall provide the necessary access and snow storage easements from the owner of 188 Route 101 to the Town of Bedford for the widening of Chestnut Drive and sidewalk construction.**
- 26. The parking lots and driveways at the restaurant and apartment sites shall be plowed and maintained by a contractor who utilizes low salt practices and is a NHDES Certified Salt Applicator.**
- 27. Prior to commencement of work, a pre-construction meeting shall be held with the Planning Department, Department of Public Works and the Building Department.**
- 28. Prior to the issuance of a Certificate of Occupancy, the sewer accessibility fee shall be paid.**
- 29. Prior to the issuance of a Certificate of Occupancy for the apartment building or restaurant, all site improvements (associated with each use) depicted on the plan shall be completed or in the case of winter conditions, bonded with the appropriate financial guarantees.**
- 30. Prior to the issuance of a Certificate of Occupancy for the apartment buildings, the off-site improvements to Chestnut Drive shall be completed.**
- 31. Prior to the issuance of a Certificate of Occupancy for the apartment buildings, the school and recreation impact fees shall be paid.**

Mr. Fairman duly seconded the motion. Vote taken - all in favor. Motion carried.

Ms. Murphy and Mr. Sullivan returned to the meeting.

V. Approval of Minutes of Previous Meetings:

MOTION by Town Manager Sawyer to approve the minutes of the May 20, 2019 Planning Board meeting as submitted. Councilor Bandazian duly seconded the motion. Vote taken; motion carried, with Ms. Murphy and Mr. McMahon abstained.

VI. Communications to the Board:

Ms. Hebert stated you have a notice from the Department of Transportation regarding a public informational meeting on June 20th here at the BCTV building starting at 6:30pm with an open house and at 7:00pm with a presentation regarding the replacement of the bridge over Pulpit Brook. This is at the intersection of Twin Lane with Route 101.

VII. Reports of Committees: None

VIII. Adjournment:

MOTION by Councilor Bandazian to adjourn at 9:40 p.m. Ms. Murphy duly seconded the motion. Vote taken – all in favor. Motion carried.

Respectfully submitted by
Valerie J. Emmons