

SCITUATE PLANNING BOARD MINUTES May 14, 2020

Members Present: Ann Burbine, Chairman; Stephen Pritchard, Vice Chairman; Patricia Lambert, Clerk; Benjamin Bornstein, William Limbacher and alternate member Rebecca Lewis.

Others Present: Karen Joseph, Town Planner; Shari Young, Planning Administrative Assistant.

Members absent:

See Sign-in List for names of others present at this meeting.

Location of meeting: Selectmen's Hearing Room, Town Hall, 600 C J Cushing Highway, Scituate.

Chairman Burbine called the meeting to order at 6:45 P.M. The meeting was conducted in compliance with the Governor's executive order modifying the Open Meeting Law regulations for remote participation during the COVID-19 health pandemic. The meeting was being recorded for airing on local cable television.

Documents

- 5/14/20 Planning Board Agenda

ACCEPTANCE OF AGENDA: Chairman Burbine indicated there was a posted agenda. Ms. Lambert seconded the motion for the posted agenda and the vote was unanimously in favor.

Roll Call to call the meeting to order:

A roll call vote was taken to open the meeting.

Ms. Burbine - yes
Mr. Pritchard – yes
Ms. Lambert – yes
Mr. Limbacher - yes
Mr. Bornstein – yes
Ms. Lewis – yes

Minutes

Documents

- Meeting minutes 4.23.20

Ms. Burbine moved to approve the meeting minutes for April 23, 2020.

Mr. Pritchard seconded the motion; a roll call vote was taken and was unanimously in favor.

Ms. Burbine - yes
Mr. Pritchard – yes
Ms. Lambert – yes
Mr. Limbacher - yes
Mr. Bornstein - yes

Accounting
Documents

PO #2009158 (\$2,325.00), PO #2009157 (\$1,350.00), PO # 2009153 (\$342.14), PO #2008971 (\$450.00), PO #2009238 (\$187.50), PO # 2009236 (\$125.00), PO #2009276 (\$4,373.00), PO #2009275 (\$762.40)

Ms. Burbine moved to approve the requisition of \$450.00 to Merrill Corporation for peer review of Benjamin Studley Farm as-built, for \$342.14 to J&R Graphic from Planning Board Letterhead and envelopes, for \$1,350.00 to Merrill Corporation for peer review of 61 Border Street stormwater, for \$2,325.00 to Merrill Corporation for peer review of Deer Common, for \$187.50 to Chessia Consulting Services LLC for peer review services for Country Way Residential Compound, for \$125.00 to Chessia Consulting Services LLC for peer review for Stormwater at 36 Barker Road, for \$4,373.00 to Horsley Witten Group Inc. for peer review services associated with Phase 2 associated with Seaside at Scituate, for \$762.40 to Horsley Witten Group Inc. for peer review services associated with Phase 1 at Seaside at Scituate.

Ms. Lewis seconded the motion; a roll call vote was taken and was unanimously in favor.

Ms. Burbine - yes
Mr. Pritchard – yes
Ms. Lambert – yes
Mr. Limbacher - yes
Mr. Bornstein – yes

Liaison Reports:

CPC – reported by Ms. Burbine:

- Mordecai Lincoln property moving forward
 - Will have short video at Town Meeting

Planning and Development – reported by Ms. Joseph:

- 5 New units added to the Subsidized Housing inventory
 - 4 units from 50 Country Way
 - 1 unit at 11 Nelson Road
- Curtis Estates Subdivision discussion regarding impervious area
 - Area of impervious listed on the plans is the impervious area allowed for each lot and the total development; Town Planner is using the information on the plans for sign-off of building permits and certificates of occupancy. Is it the Boards understanding that what is listed on the plan is the total impervious?
 - The Board agrees with Town Planners interpretation what is listed on the endorsed drawings is what is expected.
 - If changes are requested then the applicant will need to come back to the Board for approval.
- New projects coming in - special permits, site plan administrative review
 - 5 unit multi – family project
 - 1 mixed-use

Continued - Public Hearing – Special Permit – Common Driveway & Stormwater – 443 – 461

Chief justice Cushing Highway

Assessor's Map/Block/Lot: 47-2-26A to 26J

Applicant: David MacCready

Owner: Seven H. Trust

Documents

- PDF Construction Estimate and Plans
- Doc Draft Motion Common Drives CJC Approval 6
- Doc Draft Motion Form A 443-461 CJC
- Doc Transmittal 443-461 CJC Hwy
- Letter from abutter Chessia dated 5.13.20
- Letter from abutter Aronson dated 5.14.20
- Email from Vin O'Brien, Attorney dated 5.13.20
- Email from Peter Palmieri, Town's Consulting Engineer dated 5.11.20

Attendees via remote participation: Greg Morse, Morse Engineering; Vincent O'Brien, Attorney; Dave McCready, Applicant

Mr. Morse reviewed the plan starting with a colored rendering of the project.

- 8 Lot ANR Plan, proposing 3 Common Driveways
 - Driveways provide access to 8 duplex buildings (16 units)
- Applicant has appeared before the Board multiple times seeking permits for common driveway and stormwater
 - Submitted revised plans in January addressing all comments from peer review (Merrill)
 - Relocated homes on lots 1 and 2, rotated the homes and shortened the driveway
 - Increased the depth of the undisturbed area – depth now 40' (notated in green on the plan)
 - Relocated the septic system on lot 8 – provides 400' set back to Tack Factory Pond
 - Provided 2 parking spaces and an easement for access to historic graves
 - Provided a construction estimate
 - 3 Phased construction project
 - Phase 1 – lot 6, 7 and 8 and common driveway (lower area)
 - Driveway and drainage infrastructure estimate \$250,000
 - Phase 2 – lot 3, 4 and 5 and common driveway (middle area)
 - Driveway and drainage infrastructure estimate \$236,000
 - Phase 2 – lot 1 and 2 and common driveway (top area)
 - Driveway and drainage infrastructure estimate \$235, 0003
 - Approximately \$721,000 for total construction estimate

Mr. Morse opined the Town's Consulting Engineer (Merrill) is satisfied that their comments have been addressed and indicated any additional comments would be minor in nature and could be addressed as conditions of approval if the Board so chooses.

Board Comments:

Mr. Pritchard asked where the 400' set back line is located; Mr. Morse pointed it out on the plan. Mr. Pritchard asked if any building is in the 400' buffer. Ms. Joseph indicated that from her calculations part of the building would be in the 400' buffer area. Mr. Morse did confirm that a portion of the building is in the 400' buffer area. However, he indicated the 400' set back is an arbitrary set back and is not a regulatory requirement. He said that 400' is required for the septic system and the plan does comply.

Mr. Pritchard discussed the construction estimate noting that the estimate from Merrill had the cost of fill alone at \$581,000, \$721, 000 is a low estimate for the completion of the infrastructure for the project. Mr. Morse said they did see the estimate from Merrill and indicated the applicant's estimate came from the site contractor that would be doing the work. He believes their estimate is closer to what they will actually pay; Merrill's pricing is reflective of MassDOT pricing which is typically prevailing wage as opposed to a private project. Ms. Joseph confirmed that Merrill's pricing is reflective of MassDOT pricing per her direction.

Mr. Pritchard asked why the project is being done in phases. Mr. Morse indicated several reasons.

1. Financially the applicant does not want to have the financial outlay all at once.
2. They believed that was preferred by the Board, so there could be monitoring of impacts from each phase; build each stormwater system individually and monitor them as the project goes on and not have a large land disturbance at one time.

There was discussion about starting down at the bottom. Mr. Morse explained the drainage runs downhill and once it is built and completely stabilized they would move to the second phase, the middle driveway. The runoff would run into a completed stormwater drainage system versus a rough graded, unstabilized system that could cause erosion problems. Mr. Pritchard asked about retaining stormwater during construction. Mr. Morse indicated there would be erosion controls between the different phases and there are temporary sedimentation basins proposed.

Mr. Bornstein said the stormwater system seems to function as a linear treatment train that eventually empties out closer to the water supply; he questioned if the BMP's (Best Management Practices) are able to stand alone for each impervious treatment on each individual common driveway development or do they have to function as one unit. Mr. Morse indicated the lower system handles the lower common driveway and lots 6, 7 and 8, it provides 90% TSS removal and provides all the infiltration necessary for the three lots and is completely within the system, same happens with the middle system and the top system; each system handles the driveway and the houses surrounding it; the requirements are met. There are basins on either side of the driveway and infiltrators that are attached to the roofs. Mr. Bornstein asked if the intent is there would be no downhill linear flow towards the lower unit that the BMP's on Lot 2 will not over top down to lot 4 and 5 and then down the line; they will all be separated and there will not be any swales or things like that. Mr. Morse said it is a linear fashion; however, he pointed out an outflow on Lot 2 on the plan and said that from there the water would flow overland, as it naturally does now, to a naturally vegetated area and it is then directed to a culvert under the second driveway that flows under the driveway to a depression on the opposite side that has an outlet which then flows to a swale which goes to another natural area and it is then caught in another depression which has a culvert to a rain garden which ultimately discharges to the back of lot 8 via a stone overflow. He said it is in a linear fashion and was designed that way so there would be a redundancy if there ever were some sort of spill or contaminants in the drainage system. It would flow through through one drainage system, through another drainage system and then through a third drainage system so there is a safe guard in effect. He said each system in and of its self is designed to handle the road and the units around it;

each one could be a stand-alone system, but it does have triple redundancy built into it in a linear fashion.

Mr. Bornstein said one of his concerns is the linear flow of water is channelizing the stormwater and then discharging it closer to the water supply. He asked Mr. Morse to elaborate on how the individual BMP's are handling infiltrations before the water overtops and then goes down the hill. Mr. Morse indicated all roofs have their own subsurface infiltration system for roof runoff; each driveway has a catch basin at the front of it, if there was ever a spill the outlet at the catch basin could be blocked to control any contaminants in the catch basin, once in the catch basin water is directed to an infiltration device – a rain garden, after it leaves the rain garden there is a minimum of at least 50' of natural vegetation, natural topography before it is directed to the next depressed area; that is the case for each system they all discharge into natural areas and topography as opposed to swales.

Mr. Morse indicated each phase stands on its own and does not rely on the next phase for compliance. He said it meets the runoff and velocity limitations.

Ms. Lewis asked where the reserve systems are for the septic systems. Mr. Morse pointed out where they would be located on the plan. He said they would typically be adjacent to the chamber system shown at the plan. He indicated they would be shown on the Board of Health (BOH) septic plans when the time comes.

Mr. Pritchard asked where the reserve for the lower lot is located. Mr. Morse pointed it out on the plan and said it would be a trench system located behind and along the system of the existing system.

Public Comment:

Mr. Robert Chessia resident of 9 Stearns Road, read a letter he submitted to the Board.

I live at 9 Stearns Road and would like to address my concerns regarding this development.

Referring to the mounding analysis for the rain garden on lots 6-8 I have a question as to what is implied by the largest infiltration device. Since a mounding analysis is based on volume over area taking the shape into consideration. Wouldn't the shape of a dry-well be different than that of a rain garden?

This project could potentially have an adverse effect on our water supply. I feel that a mounding analysis should be done for all the dry wells. This would ensure that we are doing all we can to protect the Town's supply of drinking water.

As I have stated in my previous letters this is a huge development in a sensitive area and would be better addressed by fewer units and a reduced impact.

I urge you to think long and hard about permitting this development.

Sincerely,
Robert Chessia

Mr. Chessia asked if it is correct that 2 units can be on a common driveway without the approval of the Planning Board. Ms. Burbine indicated it is a special permit for all of them. Mr. Chessia said he hopes the Board says "no".

Ms. Pat Butler resident at 439 Chief Justice Cushing Hwy located at the bottom of the hill, said her concern is that back in January Mr. Morse said the water would be flowing in a southerly fashion and she lives southerly. She understands that some of the water is going to flow onto her property and asked what could be done to keep water from a major rainfall flowing on to her land.

Mr. Morse pointed out Ms. Butler's house on the plan. He indicated that water does run downhill on the site today without any development down to Tack Factory Pond. He indicated that the purpose of the calculations, which were reviewed by the Town's Engineer, is to show that there is no increase in the rate or volume of the water that runs over Ms. Butler's property. Mr. Morse said the entire 16 acres of land already drains onto Ms. Butler's property and the applicant is required to make up the difference for what the stormwater increase is for when the site is developed; that is what they account for in their detention basins and roof drywell area. They have included all the outfalls directed toward the back of the property they are not being directed towards Ms. Butler's house and they have given a voluntary area of natural vegetation buffer of 150'. Ms. Butler disagreed with Mr. Morse, saying that the water is already flowing onto her property and she believes the water that will flow onto her property will be in the back where currently there is no water. She asked if you can see the water, is it from the ground and how does the water get from one edge of the property to the pond. Mr. Morse discussed the existing conditions plan; water on the surface runs perpendicular to any contour lines or elevations, all lines on the plan point directly toward Ms. Butler's property. He pointed out the edge of Tack Factory Pond as it exists today and the proposed line for the edge of the pond if/when the pond is expanded, raising it approximately 18"; he pointed out the wetlands line and the FEMA flood plain line on Ms. Butler's property. He showed a point on the plan from where all the water on the proposed project site will discharge to the back of the applicant's property. The water will flow downhill, but they are retaining enough stormwater on the site that they are not increasing the rate or the volume to her property. Ms. Butler said that the water will flow to her property, but she wants to know if she is going to see the water, is it going to flow or will she have standing water after a rain storm. Mr. Morse said she will not see the water channelized at any locations because when it is discharged it goes through a level spreader and then a thick natural vegetative buffer area, it will be returned to sheet flow and Ms. Butler should not notice a difference. Ms. Joseph asked where the level spreader is. Mr. Morse indicated that during discussions with Merrill, the Town's Consulting Engineer, the applicant agreed to add a level spreader on lot 8; the level spreader is not shown on the drawings yet. Mr. Morse provided information about what a level spreader is; a stone device the helps return stormwater into a sheet flow condition to prevent any channelized flow.

Ms. Karen Canfield resident at 39 Surfside Road and member of the Board of Selectmen said that she was under the impression that Stormwater regulations required any stormwater must be retained on site during any new development. Mr. Pritchard responded that there can be no increase in the volume flow or the velocity flow across the property boundaries as existing pre-development. He said there is a certain volume flow and velocity flow with a 100 year storm across the Butler property and the new design can't increase either of those criteria. Mr. Morse said they are allowed to discharge off the site, but they cannot increase at a greater rate than what exists pre-development. Mr. Morse showed the stormwater calculations they did and said Merrill, the Town's Engineer, is in concurrence with their calculations. Mr. Morse presented a slide from the stormwater report with a

summary of the discharge rates for all of the storm events and said they comply with all events. He indicated that design point 1 was the Butler property and design point 2 was out on 3A.

Ms. Canfield asked if the impact of the development changes where the discharge of the water will be, assuming it is all the same amount of water does it matter where it goes as opposed to where it went. Mr. Morse said it does take that into consideration, but there is not a finite point along the Butler property or a specific discharge point; it is a rather flat contour all along the lot line, they are analyzing it across the lot line which is several hundred feet in length. He indicated that they are returning the water once it goes through their stormwater system into sheet flow as it does in the current condition. He said they are providing it in a non-channelized form and their intent was to send it as far back on the property as possible.

Ms. Joseph asked if every point along the Butler property has been analyzed; that there will be no increase of rate or volume along the whole Butler property. Mr. Morse said yes.

Ms. Canfield asked about the natural vegetation between the properties, will it be planted and if so what is the anticipated vegetation and does the Planning Board require it on their permit. Mr. Morse said the vegetation is whatever is out there today; it is natural, it is not being supplemented. He pointed out the tree line on the plan to show the amount buffer area, 150' of natural vegetation.

Mr. Pritchard asked if the 150' of buffer would be a permanent restriction on lot 8. Mr. Morse indicated that with the ANR Plan submitted there will be a restriction of all the hatched area on the plan in perpetuity that also runs along Stearns Road and Old Forge Road. He also said the special permit would have a proposed limit of work, proposed limit of clearing. Mr. Pritchard said he would be concerned that the homeowner would clear up to the easement. Mr. Morse said that is a restriction the Board could write into their special permit that there be signage or boulders along the no disturb area to prevent future encroachment.

Ms. Canfield opined the curb cuts on 3A are problematic, and inquired as to the Board's stance. Ms. Burbine indicated the Board does not have anything from MassDOT in terms of the curb cuts and the applicant has said there would be nothing provided until after the special permit is issued. She said she is sure Ms. Canfield will find things are addressed with regard to the common driveway in the Board's conditions.

Ms. Canfield said this is very close to a public water supply; are the buildings and septic systems in compliance with the Town's regulations to protect the water supply. Mr. Morse indicated the Scituate BOH (Board of Health) will have to approve the septic plans on each of the lots; the Scituate BOH requirements and the State DEP requirements are that systems are to be set back at least 200' from the Tack Factory Pond. He indicated they comply with a setback of 400' to the closest septic system.

Mr. Jim Hunt resident at 66 Mann Lot Road, made a statement that a project to of this magnitude proceeding in a venue with limited capacity and technologically complicated should be deferred until all parties can see the plans and interact one-on-one, face-to-face without the complications of this electronic medium. He asked that the project be deferred, continued or "laid on the table" until the current restrictions are eased and it can be discussed in an open meeting.

Ms. Burbine addressed Mr. Hunt's comments indicating there is an upcoming election in June and if the Board were to defer this project there would potentially be two new members to the Board and

the process would have to start all over again. She understands the concern, but the Board would prefer not to start again. She indicated there have been five public hearings on this project to date.

Mr. Hunt opined the inconvenience of a Board membership renewal is a concern, but this project presents significant impacts to the Town's public water supply and should not be relegated to the expedience of the upcoming election. He opined there is a lot of this that needs to be further explored and that proceeding in this venue with limited public participation is a big mistake.

Ms. Pat Butler asked how if the slope of the hill will be changing by bringing in fill and clearing out the middle, about 50% of the area, how is there going to be less water going down the hill. Mr. Morse said there are several things to consider:

1. The slope of the land – there are several locations where the ground has been flattened out, side yards around the septic systems, back yards, Ms. Butler would not be getting instant stormwater from the site; flat surface area promotes infiltration, promoting the water to go down into the soil in those locations.
2. Physically taking the roof areas of every building and directing them into subsurface dry well areas; directing the water into the ground.
3. Drainage associated with the driveways is going into grass depressions, 2 on each driveway for a total of 6, each one is a couple feet deep and promotes infiltration into the soil beneath them, they retain water up to a certain elevation before it over tops and goes into a surface runoff again.

Mr. Morse said they are retaining water in each of the stormwater basins, in the drywells and they are promoting infiltration through the site grading.

Ms. Butler asked if there is a plan to capture some of the water if it overflows onto her property. Mr. Morse said that Ms. Butler indicated there is already water that flows to her property and when the system is build there will still be water that flows onto her property, they are not capturing all of it.

Ms. Judi Aronson resident at 19 Cudworth Road, indicated that she grew up in Ms. Butler's home and said that the 150' buffer is very wide at the beginning of the property along 3A and gets narrower as the property goes back; she asked where the buffer line is from the pond. She said Mr. Morse cannot say he is going back 400' from the pond and said she knows the applicant does not have to because it is not the requirement. She opined that the small area in the back is where the water is going to flow and the small area goes right into our drinking water. She said she looked up rain gardens, headspace and retention basins and her research says it is not suitable for a slope more than 20 degrees. She does not know what the angle of the hill is, but if it is cleared, she feels there will be more water than they have felt before.

Mr. Limbacher asked if they were taking credit for any of the infiltration for the rain gardens and grass depressions. Mr. Morse said yes; they all comply with the 3' groundwater requirements.

Mr. Limbacher asked if there would be any infiltration across the hatched area on the plan. Mr. Morse said there would be some natural infiltration, but not significant infiltration given the contours of the land.

Mr. Limbacher asked how much difference there is between the bottoms of the rain gardens and the groundwater. Mr. Morse indicated 3', it is designed at 3', approximately half the bottom of the basin will have fill and the other half is cut into the natural grade; this is the case for all.

Mr. Bornstein indicated that he is in the landscape design trade and said frequently on new construction lots he deals with hard and compacted soils in otherwise seemingly lawn areas that would be credited for some level of infiltration that effectively have zero infiltration; he asked what the applicant is going to do during construction sequencing and phasing to ensure the developed areas are not highly compacted particularly in the areas for stormwater BMP's so that those areas do not become impermeable and ineffective for infiltration. Mr. Morse said the areas for the basins would be staked out and they would limit any heavy machinery in those areas and limit disturbance in those areas until the time the basins are constructed. He indicated they propose temporary basins to be constructed during construction and pointed them out on the plan so the areas that would be used for permanent basins is not disturbed, they would be off limits. Mr. Morse said there would be someone on site to ensure the proper measures/protocol are being followed.

Mr. Bornstein also asked about the cleared lawn and landscape areas around the buildings; how is the applicant going to ensure these areas are receiving the amount of infiltration they are credited with in the stormwater modeling calculations. Mr. Morse said they are designed for the driveways to drain to the rain garden areas and the roofs all drain to the subsurface drywell. Mr. Bornstein clarified his questions and said he is asking about the loamed and seeded areas and the landscaped areas. Mr. Morse said they would be required to submit as-built plans as they go along. There would be construction phase stakeouts with grades on them for the roads and the proposed foundations as long as the grading is in substantial compliance with what is designed all the areas they have assumed are draining in their analysis would come to fruition. It is reliant on the grades being laid out so that everything is draining in the appropriate fashion.

Ms. Burbine asked how much more disturbance there would be for the temporary basins. Mr. Morse approximated half to three quarters of an acre.

Mr. Pritchard asked how the compaction of the fill that will be brought in will impact the permeability of the non-roof and road areas. Mr. Morse said the compaction would be limited to the areas under the common driveways; in the rain gardens, it would be limited to the berms around it; there would not be any compaction in the floor areas or areas where infiltration is needed. He said you would have to limit where the compaction happens. Mr. Pritchard asked if that is planned; Mr. Morse indicated yes. Mr. Pritchard asked in the areas where the lawns are going if there were would be fill brought in. Mr. Morse said yes, fill would be brought in in lifts; bring fill in and grade it off and compact the areas of fill, but there would be no compaction in the areas proposed for the septic systems, roof drywells or drainage basins. He said typically, there would be a 12" lift and then compact it; this would include lawn areas, driveway areas, all of the roadway.

Mr. Limbacher opined the temporary basins would be right at groundwater level. Mr. Morse said that generally they are; he indicated on the plan the proposed contours and where they are building up a berm on the downhill side and digging out slightly on the uphill side; he agreed that the temporary basins are at ground level so they will hold water from up gradient. Mr. Morse said the temporary basins are not required to be 3' above ground water because they are not infiltrating devices. He noted from the plan the top temporary basin is dropping from existing grade 91 to 89.

Mr. Pritchard asked if the stormwater calculations were done with only the operation of the temporary basins. Mr. Morse indicated they have done calculations based on the construction phase using just the temporary basins and they have also been done using only the final development stormwater systems. Mr. Pritchard asked with utilizing the temporary basin calculations along the whole Butler property line if there are any net increases in volume or velocity. Mr. Morse said no,

but during the construction phase, the temporary basins are sized for a 10-year storm. Mr. Pritchard asked what happens if there is a 100-year storm, does that flow into the drinking water. Mr. Morse opined no and said that is one of the reasons why they want to phase the project; to go in and do limited clearing at any time; the closet basin to the reservoir is 300' away and the closet septic is 400' and there is natural vegetation the entire way. He indicate they also propose a silt sock that would be constructed that would help hold any erosion on the site; he said other implementations methods could be used, i.e. hay bales, temporary netting that could be put up if there was prediction of 100 yr. storm.

Ms. Burbine asked if there is back-up for a catastrophic event. Mr. Morse said yes.

Ms. Lambert said that she has a concern about all of the private streets that are being approved; she indicated she lives on one and it is of great concern to her in an HOA (Homeowner's Association) where people really do not know anything about stormwater management and how to take care of it. She said there is no town oversight and at what point does this system fail completely and the homeowner's say "we didn't know we were supposed to do that"; that is her big concern with all these private developments.

Hearing no additional comments from the Board, the Board moved into a draft motion.

Motion:

Ms. Burbine moved to make the following Findings of Fact:

1. David MacCready (the "Applicant") filed an application for a special permit and stormwater permit for three common driveways serving eight lots at 443 – 461 C J Cushing Highway known as Assessor's Map/Block/Lot 47-2-26A-26J (the "Property") with the Town Clerk on June 21, 2019. The Property is owned by the Seven H Trust, William Harrington, Jr. and Angela Harrington Trustees. Kathleen P. Muncey of Delaney & Muncey, P.C. signed the letter of authorization to file for her client Seven H Trust. The Applicant's deed is recorded with the Plymouth County Registry of Deeds at Book 16306, p.11. The public hearing dates and the plans are listed in the procedural summary and plan summary.
2. Three common driveways are proposed. According to the application each driveway is measured from the property line. The first driveway, located at the south end of the site is 339 feet long and serves 3 lots. The second driveway, located in the middle of the site is 243 feet long and serves 3 lots. The third driveway, located at the north end of the site is 140 feet long. It serves 2 lots. The common driveways will serve 8 duplex units or 16 units in total. The property is intended to be developed in a condominium form of ownership administered by a condominium unit owners trust (hereafter Wade Commons Condominium Trust).
3. The Property has an area of approximately 15.3 acres. The Property is located in the Residence R-1 Zoning District and in the Water Resource Protection District with the southern portion of the Property also located in the Zone A Surface Water Protection Zone. A small portion of the Property along its southern border is in the Floodplain & Watershed Protection District. The Property was divided into eight parcels in accordance with a Form A Plan, which plan was endorsed by the Planning Board on June 27, 2019.
4. Old Oaken Bucket Pond is a Class A water body and has a 400-foot surface water protection zone in accordance with the Drinking Water Regulations in 310 CMR 22. The Applicant,

however, claims that Tack Factory Pond is a tributary to Old Oaken Bucket Pond and is therefore, a tributary to the surface water source, which sources require only a 200-foot protection zone. The Applicant's engineer indicated, in a letter to the Planning Board dated 2/4/2020, that Tack Factory Pond is not a surface water supply. Upon further review, the Town's zoning bylaw under Section 520.2 A. and G. states that "Old Oaken Bucket Pond, Tack Factory Pond and The Reservoir and their watersheds and tributaries, and the groundwater underlying Scituate are the primary source of Scituate's existing and future drinking water supply;" and it is "of critical importance to the Town that both the surface water supply and its Zones of Contribution to the public water supply wells be protected from contamination by human activities to the greatest extent possible." In addition, the Town's Zoning Bylaw establishes a Water Resource Protection District "to include areas significant to the Town's drinking water supply source which require zoning protection." Based on this information, the Water Resources Commission, Department of Public Works (DPW), DPW Engineering Division and Water Department commented (see comments from the DPW Engineering Division dated 12/11/2019 and from an email from Becky Malamut, Chair of the Water Resources Committee dated 1/23/20) that, while Tack Factory Pond is a tributary to a public water supply, it is in itself a Surface Water Source as that term is defined in regulations and should be treated as such. According to 310 CMR 22, a tributary has a specific definition as follows: "Tributary" means any body of running, or intermittently running, water which moves in a definite channel, naturally or artificially created, in the ground due to a hydraulic gradient, and which ultimately flows into a Class A Surface Water Source, as defined in 314 CMR 4.05 (3)(a): Class A. Tack Factory Pond does not fit this definition as it does not run in a definite channel but rather has the characteristics of a Class A Surface Water Source, a naturally impounded water body that is contained by naturally created boundaries.

Consequently, DPW and the Water Resources Committee recommended that the 400-foot protection zone be maintained and such protection zone be measured from the proposed Tack Factory Pond expansion project boundaries (as described immediately below).

Furthermore, the Applicant appropriately identified that the future water's edge of the drinking water supply will be approximately 18" higher than the existing water edge. This elevation increase estimate was provided by the Town of Scituate DPW (and its consultant) as was filed for in the Reservoir Dam Water Storage and Fish Passage Improvements project, EEA Number 15711. This project proposes to raise Reservoir Pond and Tack Factory Pond maximum water levels by 1.5 feet in order to provide greater surface water storage capacity for the Town's drinking water. In the ENF Certificate issued by the Secretary of the Secretary of Energy and Environmental Affairs in response to the Environmental Notification Form (ENF) for that project dated July 21, 2017, the Secretary stated that the project described in the ENF is intended to "provide water storage for the Town of Scituate's public water supply and improve fish passage at the Reservoir Dam fishway and downstream locations." The Secretary's Certificate further provides that according to the ENF the reservoir dam was constructed as a storage reservoir for the Town of Scituate's public water supply. The Certificate also states that "Reservoir Pond and Tack Factory Pond are classified as Zone A Surface Water Supply Protection Areas and Outstanding Resource Waters (ORW) of the Commonwealth to protect the public drinking water supply." Based on this information, the Board concluded that i) the protection zone should be 400 feet; and ii) such protection zone should be measured, as proposed by the Applicant, from the water's edge created by the 1.5 feet increase in the reservoirs' maximum water elevation.

5. The Project shows on-site waste disposal systems including 8 septic systems but the systems do not all show the reserve systems as required by Title V. All of these systems are located inside the Water Resource Protection District; but they are located out of the 400-foot protection zone. As not all the reserve systems are shown, there is no information to show that all of the reserve systems are out of the 400-foot protection zone.
6. The Water Resource Protection District requires all runoff from impervious surfaces to be recharged on the site, diverted toward areas covered with vegetation from surface infiltration to the extent possible or as otherwise directed from the Scituate DPW. The DPW has commented, in a letter to the Board dated 12/11/2019, that “the density and future loading on the parcel with a 400 foot protection setback should be considered and elimination of the development of Lots 1 & 2 (the northernmost parcels) will allow the development to shift uphill and provide a greater buffer to the drinking water supply.” This would help with a purpose of the common driveway bylaw to protect “sensitive natural areas from disturbance, including stormwater runoff”.
7. The zoning bylaw (in Section 520.5F) restricts the rendering of impervious surface of any lot/parcel to no more than 15% or 2,500 sq. ft., whichever is greater, unless a system of artificial recharge of precipitation is provided that meets the design requirements of Section 520.5 F. The bylaw further restricts the rendering impervious in Zone A to no more than 20% with artificial recharge. The Applicant states that no more than 12.3% of the property is rendered impervious for the entire development and the water quality will not be degraded as evidenced in a signed and stamped statement by engineer Gregory P. Morse, dated 10-25-19. Subsequently, on 2-4-20, Mr. Morse submitted a revision to the original statement, which revision stated that the overall impervious coverage is 13.3% of the Property and that with Lot 4 and Lot 7 exceeded the 15% limit, at 23% and 26% respectively; but, indicated a system of artificial recharge has been provided. 1” of roof runoff is recharged and the first inch of runoff is recharged for all impervious areas according to DEP requirements.
8. The zoning requirements of a common driveway require that the location and construction of any common driveway should minimize soil disturbance, vegetation removal, and drainage impacts, and preserve existing trees over 12” caliper and other natural features of special significance. The plan shows soil disturbance and vegetation removal as generally limited to what is necessary for constructing the common driveways, their drainage systems, 8 duplexes for a total of 16 units and 8 septic systems. The proposed stormwater management system has been reviewed by the Town’s consulting engineer, Merrill Engineers and Land Surveyors whose comments indicate the stormwater system has been adequately addressed with the latest revised plans; although no mounding analysis was provided for the subsurface roof infiltration units. The Applicant states that soil disturbances are minimized, vegetation removal is minimized as there is proposed an undisturbed buffer, in excess of the Applicant’s proposed 200-foot buffer, which varies in width from approximately 60 feet to 160 feet in width confined to one area at the south end of the site closest to Tack Factory Pond. Project Engineer, Gregory Morse also maintains drainage impacts are minimized as the drainage system mitigates impacts so that post construction rates and volumes are less than preconstruction rates and volumes, that trees over 12” caliper are only disturbed in the development area and other natural features of special significance are protected, i.e. Tack Factory Pond. Sedimentation sumps are provided to minimize erosion and sedimentation during construction. Although, their proposed sizing meets SWPPP/NPDES requirements of 3,600 cubic feet of storage per acre, it does not address the Town’s concerns regarding protecting the drinking water supply and Tack Factory Pond as natural features of special

significance. Moreover, the plan does not afford protection of adjoining premises against detrimental methods of utilizing the site as a purpose of a common driveway is also to protect "sensitive natural areas from disturbance, including stormwater runoff". Based on the Findings of Fact presented in numbers 1-8, the common driveways **does not meet** the standards of Section 720.7A.

9. The proposed common driveways are 24 feet in width with two-foot grass shoulders on each side. There is a one-foot wide bituminous concrete berm at the entries of the common drives on the south side of them to direct water away from the site entries of the state highway to the site drainage system. The common driveways meet the requirements of Section 720.7B.
10. The common driveways are proposed to access Chief Justice Cushing Highway, a public road in Scituate and a State Highway that is owned and controlled by the Massachusetts Department of Transportation (MDOT), which access requires a permit from MDOT. The common driveways are not connected to each other and are not allowed, by the zoning bylaws, to be connected. A permit from MDOT has not been obtained yet for the 3 driveways as the Applicant has indicated a permit will not be issued without Town approval of the development. There is also no correspondence or permit applications with MDOT, as requested by the Board, to evidence that MDOT would consider permitting the curb cuts for the proposed common driveways or eight curb cut permits for Form A lots. The common driveways **does not meet** the requirements of Section 720.7 C.
11. A common driveway is required to be located in an easement that allows space for both the driveway and for the installation of water lines and utilities. A water line is shown on each common driveway plan in the easement along with a gas and an electric line. Thus, water lines and utilities are shown as underground utilities. The common driveways meet the requirements of Section 720.7 D.
12. The common driveway cross section shows a top course of 1 ½" of bituminous concrete top coarse Type I-1 over a 1 ½ bituminous base Type I-1 over a 12" processed gravel base Type C gravel borrow per Mass DOT Spec M1.03.1. The common driveways meet the requirements of Section 720.7 E.
13. The common driveways are approximately 339', 243' and 140' long measured from end of cul-de-sac to the Property line. Each distance is less than 1,000 feet and meets the requirements of Section 720.7 F.
14. The Applicant has indicated there will be no increase in rate or volume of runoff to abutting properties for the 1, 2, 10 and 100 year 24 hour storm events. The Town's consulting engineer, Merrill Engineers and Land Surveyors, indicated the stormwater management system is satisfactory and runoff draining to abutting properties will not exceed that which existed prior to construction of each of the common driveways. Therefore, the common driveways meet the requirements of Section 720.7 G.
15. No impervious areas are located above the major components of the proposed septic systems. The common driveways therefore meet the requirements of Section 720.7 H, as no impervious areas are above the proposed septic systems.
16. The common driveways are proposed to be buffered from Chief Justice Cushing Highway by a 50-foot "no disturbance" buffer. This will provide better traffic safety and reduce visual impacts on abutting properties due to the setback from the property with existing trees providing a buffer. The common driveways meet the requirement of Section 720.7 I for screening.

17. Turnarounds for emergency vehicles shall be provided with a minimum length of 30' and width of 20' in locations approved by the Fire Chief. The common driveways each have cul-de-sacs that enable sufficient turnaround area for the Scituate Fire Department. The Scituate Deputy Fire Chief stated that the Fire Department had no issue with the cul-de-sacs. The common driveways meet the requirements of Section 720.7 J.
18. The Town's consulting engineer has indicated that stopping sight distance requirements and intersection sight distances at each common driveway entrance meet American Association of State Highway and Transportation Officials (AASHTO) standards. The plans also indicate that vegetation within the sight triangles will be removed and such removal maintained as necessary to ensure adequate sight distances are provided. The common driveways meet the requirements of Section 720.7 K.
19. Lot width for the lots served by each common driveway may be measured parallel to a common driveway, except in the case of fifty foot frontage lots. The lot width of lots 2, 3, 5, 6 and 8 are measured parallel to the common driveway. The common driveways meet the requirements of Section 720.7 L.
20. Two historic graves have been identified on site in an area surrounded by stone wall at the northwest corner of the site. Foot access as well as vehicular access for repairs and maintenance will be provided to the graves so that the Town of Scituate may maintain them.
21. Based on these findings and information submitted by the Applicant and reviewed by the Board, the common driveways **do not meet** the requirements of Section 720 of the Scituate Zoning Bylaw.

Ms. Burbine moved to have a vote on the findings of fact, Mr. Pritchard seconded the motion. There was no discussion from the Board.

All those in favor that the findings of fact **do not meet** the requirements of Section 720 of the Scituate Zoning Bylaw.

Roll call vote:

Ms. Burbine – yes
Mr. Pritchard – yes
Mr. Limbacher – yes
Ms. Lambert – yes
Mr. Bornstein - yes

Based upon the testimony presented at the Public Hearing, plans, documents and comments submitted and the Findings of Fact, Ms. Burbine moved to approve the Special Permit for three common driveways at 443 – 461 Chief Justice Cushing Highway subject to the following conditions:

1. Three Common Driveways shall be constructed according to plans entitled Proposed Common Driveways Lots 1-8 Chief Justice Cushing Highway Assessor's Parcel 47-2-26A – 26 J, prepared for The Applicant by Morse Engineering Co., Inc. dated 4/24/19 with revisions through 1/29/2020 consisting of 8 sheets and as further revised to meet these conditions.
2. Lots 1 and 2, Lots 3, 4 and 5 and Lots 6, 7 and 8 shall access over the three Common Driveways as depicted on the plans. No additional extensions or attachments of any other roadways or

Common Driveways, or access to any lot other than those specifically created by and shown on the plan shall be permitted. The Common Driveways shall remain private in perpetuity and shall never be considered for acceptance as a Town road. All maintenance and repair of the Common Driveway and drainage facilities shall be the sole responsibility of the property owners who comprise the Condominium Association. A note shall be placed on the plan and deed for each lot serviced by the Common Driveway stating the above with proof provided to the Planning Board prior to occupancy of the first unit.

3. The Applicant shall mean the current applicant and all its successors in interest (the Applicant). This special permit shall lapse within two years from the date of its issuance, which shall not include such time required to pursue or await the determination of any appeal under M.G.L. c. 40A, from the grant thereof unless substantial use or construction has commenced prior to that time in accordance with M.G.L. c. 40A, s. 9. The Planning Board may extend such period, for good cause shown, upon receiving a written request from the Applicant prior to the expiration of said period, which shall provide a detailed description of good cause necessitating an extension.
4. The Applicant shall be responsible for maintaining all driveways, stormwater systems and utilities within the development until such time as maintenance becomes the responsibility of the Condominium Association which shall then maintain all driveways, stormwater systems and utilities. Such responsibility includes, but is not limited to, the period when and if individual lots are sold for, and are under construction of homes by other builders. As party of this transfer of responsibility, the Applicant shall provide the Condominium Association the initial amount of \$25,000 as insurance against any rain garden or stormwater issues occurring in the first three years. At the end of the third year, the balance shall be refunded to the Applicant, if all the units have been sold. If all of the units are not sold, then an agreed upon prorated portion shall remain in the account and be funded by the Applicant. This money is not intended to replace any other project requirement, but rather augment it by creating an initial base level. The Condominium Association shall furnish proof to the Town Planner that the funds are in an account and to meet their responsibilities on an annual basis.
5. The Post Construction Operation and Maintenance Plan shall be strictly adhered to so that 90% Total Suspended Solids (TSS) is achieved at all times. An annual report shall be provided to the Planning Board yearly by March 30 certifying all required maintenance has been completed per the Plan by a licensed stormwater professional. The Condominium Association shall contract to provide bi-annual street sweeping and bi-annual inspection and maintenance including vacuuming of the roof drywells. Turf management contracts shall also be provided with a prohibition on use of pesticides, herbicides, fungicides and fertilizers.
6. The Applicant shall obtain the endorsement of the Planning Board on the special permit plans within 180 days of expiration of the appeal period and this decision becoming final.
7. There shall be no further division or subdivision of any lot shown on the plan for purposes of constructing additional units or buildings. There shall be no further expansion of any building or impervious surface on the site. No additional dwelling units other than the 16 approved by this permit and served by the three Common Driveways, as shown on the Plans, shall be constructed. The total number of bedrooms in these units shall not exceed 48. No additional expansion of the limit of work is allowed without further approval of the Scituate Planning Board. These restrictions shall be contained in the Master Deed for the condominium association and shall be noted on the plans to be signed by the Board and recorded at the Registry of Deeds.

8. The Applicant shall allow members and Town officials from the Planning Board and other persons acting under the Planning Board or its agents, to enter upon any lands and carry out such surveys and inspections as may be deemed necessary, and place and maintain monuments. The Applicant shall cooperate with the Planning Board and Town officials and assist them in their effort to verify that the layout, design and construction work for the special permit are satisfactory and conform to Town specifications and requirements of the Board.
9. Prior to the pre-construction conference, the Applicant shall obtain all necessary approvals from the Board of Health (BOH), Conservation Commission, Fire Department, Building Department and Department of Public Works (DPW), and these shall be deemed conditions of the Planning Board approval. Any state and federal permits must be obtained including Mass DOT and NPDES permits and supplied to the Planning Office prior to scheduling the preconstruction conference and are also deemed to be conditions of the Planning Board approval.
10. Construction shall meet all requirements of the Scituate Zoning Bylaw. All conditions of approval shall be inscribed on the special permit plan prior to Planning Board endorsement. All contractors are responsible for all conditions shown on the plan and in the written decision.
11. No new in ground irrigation systems are allowed to connect to the Town's water distribution system or in any manner use municipal water. In accordance with this policy rule, all irrigation systems installed in Scituate must be supplied by on-site sources at the expense of the property owner. Fines for violating this rule may be levied on the homeowner as well as the system installer.
12. Prior to the preconstruction conference, the Applicant shall retain a professional geologist, water resource engineer, hydrogeologist or hydrologist approved by the Planning Board to confirm there are no direct or intermittent tributaries on site that would constitute a tributary to Tack Factory Pond and, therefore, require a 150-foot buffer as required by the Water Resource Protection Zoning Bylaw. Said professional opinion must be supported by a review of current data and actual site information. Should a tributary be found, a modification of the special permit will be required.
13. Two historic graves on the site, which are currently surrounded by stone walls, shall be preserved. The Applicant is providing a Grave Access Easement for the Town to maintain the graves. The Applicant has provided two parking spaces at the end of the Lot 1 and Lot 2 cul-de-sac for grave parking. Access to the graves is by foot with vehicular access to be provided for repairs and maintenance only. A sign shall be provided by the Applicant that the parking is for the exclusive use for access to the graves. A grave access easement shall be recorded with the deed to the property, special permit plans, decision, condominium master deed and condominium association.
14. The septic systems shall be located no closer to Tack Factory Pond than the approximate 405 feet to the liner of the proposed system on Lot 8 as shown on the Plan, including a reserve area. The septic system shall meet all the requirements of Title V and 310 CMR 22 including locating the reserve area outside of the 400' buffer. If required by the BOH, the Applicant shall also provide phosphate removal and additional treatment to insure the protection of water quality of Tack Factory Pond. The final septic system design and provisions for inspection and maintenance shall be subject to approval by the BOH. Any changes to the Plan necessitated by compliance

with any BOH provision, requires written notification to the Town Planner to determine if the change is significant and requires further input from the Planning Board prior to obtaining a building permit.

15. The Master Deed for the Condominium Association shall specifically require an annual Title V inspection of the septic system(s) and provide yearly funding for replacement, repair and pumping costs of the system in an amount to be provided by the Applicant subject to approval by the BOH. Provisions for maintenance of the systems shall be the responsibility of the Condominium Association.
16. No unit shall contain a garbage disposal. The Master Deed shall include a prohibition on the installation and use of garbage disposals for all units on the site.
17. All areas identified in the vegetated easement are non-disturbance areas. This includes the area in the 50 foot buffer to C J Cushing Highway except as needed for access as part of the common driveway easement. No removal of trees or vegetation is allowed in the area except for removal of dead trees by hand. The Condominium Association shall maintain sufficient funds to replace screening as shown on the Plans between common driveways to maintain an effective screen in perpetuity. A physical delineation on the ground shall be provided with signage and fencing and or boulders/rocks so that the no disturbance zone is clearly marked. The signage and fencing/boulders/rocks/ shall be installed prior to issuance of the first building permit at approximately 50 foot intervals. The signs shall be white with dark green lettering, constructed of durable weatherproof material, a minimum of 1 sq. ft. in area and 4' in height or as otherwise approved by the Town Planner. The signs shall state Open Space/No Disturb Zone.
18. No additional alteration is permitted in the drainage easement area other than the drainage as shown on the Plan.
19. No work is allowed beyond the limit of work/tree line without prior written approval of the Planning Board. The entire limit of work is to be staked with erosion control during each phase of the Project. Any disturbance beyond the limit of work shall be fully restored in accordance with a restoration plan submitted to and approved by the Planning Board; and a fine of \$5,000 as well.

Common Driveway Agreement

20. A Common Driveway Agreement shall assign to the owners of Lots 1 - 8 the responsibilities and costs of maintenance and repair of the Common Driveways (including snowplowing), as well as the catchbasin(s), rain garden, drainage devices, grading and all other improvements for stormwater management in the Common Driveway Easement and drainage easements.

The responsibilities of maintenance in the Common Driveway Agreement shall include all requirements of the Operation & Maintenance Plan, which shall be attached to the Agreement together with other typical maintenance such as snow-plowing, driveway repair and any cape cod berm repair.

The Agreement shall require annual certification by a certified licensed engineer that the stormwater system is being properly inspected and maintained per the Operation & Maintenance Plan. The Operation & Maintenance Plan shall also be provided to the Planning Board as a stand-alone document.

The standard format from the Planning Office shall be used. A final draft of the Agreement shall be provided to the Planning Board within two weeks of the approval of this special permit. The Agreement shall be recorded at the Registry of Deeds and any material changes to the Agreement shall require Planning Board approval prior to any such change.

21. The Applicant has provided the Planning Board with a Common Driveway Agreement for Wade Commons Condominium, a Wade Commons Condominium Trust, a Master Deed for Wade Commons Condominium and a Grave Access Easement governing the development. The Applicant shall file the final executed Condominium Trust document, which shall not vary substantially from the document provided to the Board, with the Registry of Deeds. The filing shall occur prior to the first occupancy permit. The Applicant shall provide the Town Planner and Building Inspector with copies of duly filed documents. Any material changes to the filed document shall require Planning Board approval prior to any such change.
22. The Master Deed filed with the Registry shall contain language granting an easement to the Town of Scituate consistent with the draft Master Deed language approved by the Planning Board, a copy of which is attached hereto.
23. The vegetated easement which is intended to remain in its undisturbed natural state, as depicted on the approved Plans, shall be incorporated into the Master Deed and Condominium Trust in perpetuity. The Condominium Trust is to be referenced in all deeds conveyed. This condition confers upon the Town of Scituate the right to enforce this easement in perpetuity. If the easement is altered in any way or manner, it shall be fully replicated and the Association fined.
24. A utility easement shall be provided to the Town of Scituate for maintenance of all stormwater and water infrastructure prior to occupancy.
25. The Applicant shall meet with the Design Review Committee for review of building design and materials prior to applying for a building permit.

Finalization of Documents

26. The plans for the Common Driveway shall be submitted to the Planning Board for their signature after the expiration of the twenty day appeal period of this Special Permit. The plans and special permit shall be recorded together at the Plymouth County Registry of Deeds. All plan sheets of the common driveway special permit shall be recorded.

Required Prior to Planning Board Signing Plans

27. The following notes and changes shall be added to the Plan in addition to other conditions:
 - The lots on this Plan shall not be further divided or subdivided;
 - The Common Driveways shall always be owned by the homeowners, shall always remain private and shall never be maintained by the Town or request to be accepted by the Town. A Common Driveway Agreement assigns to the owners of Lots 1-8 the responsibilities and costs of maintenance and repair of the Common Driveways (including snowplowing), as well as the rain garden, infiltration basin, grading and all other improvements for stormwater management in the Common Driveway Easement;
 - No new underground irrigation systems are allowed to connect to the Town's water distribution system or in any manner use municipal water, in accordance with the policy

of the Board of Selectmen effective October 8, 2014. In accordance with this policy, all irrigation systems installed in Scituate must be supplied by on-site sources at the expense of the property owner;

- The use of pesticides and fertilizers are strictly prohibited on the entire parcel. This prohibition shall also be incorporated in the Condominium Association documents;
- Use of road salt is strictly prohibited;
- The source of the contours on the Existing Conditions Plan shall be added to the plan;
- Reserve areas for septic systems shall be shown on the Overall Layout Plan out of the 400 foot buffer to Tack Factory Pond;
- Plan and calculations for restoration of temporary sedimentation areas;
- Plan and detail for level spreader/energy dissipater at ends of rip rap swales;
- Revised Operation and Maintenance Plan to include organic mosquito control if required and road salt and fertilizer prohibition;
- Delineation of no disturb zones with rocks/boulders/fencing and signage and no disturb areas noted on plans;
- Revision of the drain lines at the entry of the common driveways for Lots 1 and 2 and 3, 4 and 5 to keep more of the 50-foot no disturb buffer to Chief Justice Cushing Highway;
- Clear delineation of the projected border to Tack Factory Pond following the increase in the storage capacity of the Pond as well as the delineation of the 400 ft. buffer from such border.

28. The locations of the dwellings shown on the Plans show general location and grading of the dwelling to conform to the stormwater design and minimize impacts on surrounding neighbors. Any material deviations from the Plans require notification of the Town Planner and impacts from the proposed deviations shall be addressed prior to issuance of any building permits. Material deviations include but are not limited to moving of a dwelling by more than four feet and changing grading by more than 1 foot. The Applicant shall certify that such changes shall result in no impact on the drainage system and shall not increase runoff onto Chief Justice Cushing Highway, abutting lots, or the rate and volume of the post condition from the predevelopment condition.
29. Prior to the start of construction for each phase, the limits of work shall be staked in the field. No trespass into open space to be preserved or into an additional phase is allowed. The staked area shall include a buffer around mature trees that are intended to be saved to prevent damage from storing equipment or stockpiling loam. The location of the stakes shall be reviewed in the field by the Planning Board consulting engineer in conjunction with the Town Planner and DPW.
30. A mounding analysis shall be provided for the roof drywell infiltration units prior to any construction.
31. The project shall be phased according to the Applicant's Phasing Schedule. Phase 1 is lots 6, 7 & 8. Phase 2 is Lots 4, 5 and 6 and Phase 3 is Lots 1 and 2. The three phases are separate and distinct phases. Each phase must be completed, stabilized and occupied prior to commencing the next phase; this includes clearing and grubbing. The Applicant must appear before the Planning Board at a public meeting prior to being given permission to proceed with an additional phase.

For each of the three Common Driveways the following procedure is required:

Before any clearing or grubbing begins, a minimum of 3 test pits witnessed by the Town's designee shall be conducted to confirm the required three foot separation exists between the bottom of the rain garden, outlet and any drainage device and the maximum groundwater elevation as required for a drainage device in the Water Resource Protection District. The infiltration rates of the parent subsoil must also be confirmed.

The Applicant shall provide to the Planning Board an interim as-built plan, prepared and stamped by a licensed professional engineer, as soon as the rain garden is rough graded to further confirm the required 3' separation between the bottom of the basin and the maximum groundwater elevation exists as required in the Water Resource Protection District. The interim As-Built Plans shall be reviewed and approved by the Planning Board or its agent. No further site work or construction shall take place until the required 3' minimum separation has been confirmed by an additional 3 test pits and the infiltration rates are confirmed. No building permits shall be issued until this has been verified by the Planning Board or its designee.

Construction of the Common Driveways, drainage systems and all utilities shall be supervised by a registered professional engineer approved by the Planning Board who shall certify in writing to the Planning Board during construction and at completion that the driveways, grading, drainage structures, utilities and dwellings were constructed in accordance with the approved Plans. This certification shall be accompanied by as-built plans, signed and stamped by a registered professional land surveyor and the supervising professional engineer. An additional 3 test pits shall be required to confirm that the required 3' minimum of separation to from the bottom of the rain garden to the maximum groundwater elevation exists. No further site work or construction (including going into an additional phase) shall take place until the required 3' minimum separation has been confirmed by the additional 3 test pits along with the infiltration rates.

Upon start and completion of subsequent phases, 3 additional test pits shall be taken in the lowest rain garden and outlet structure to verify the 3' of separation to groundwater is being maintained throughout the project along with the infiltration rates as certified by the Applicant's engineer and confirmed by the Town's consulting engineer..

32. A plan for restoration of the temporary sedimentation basin areas shall be provided prior and approved prior to endorsement. Since the basins require clearing of a substantial area and the ground cover will change in these areas from the existing woods to grass or other landscaping, the impact upon the stormwater management system calculations should be reviewed with updated calculations provided and approved prior to endorsement. A landscape plan, inclusive of evergreen and deciduous trees and shrubs, to restore the area should be provided stamped by a registered landscape architect and approved prior to endorsement.
33. The rip rap swales which discharge flows from the rain gardens will have significant velocities. A level spreader/energy dissipater shall be incorporated into the design at the end of each swale prior to endorsement. The design shall be reviewed and approved prior to endorsement.

Construction

34. A pre-construction conference will be required prior to the start of construction including the Planning Board's consulting engineer, a representative of DPW, the site design engineer, the Owner, the site contractor and the Town Planner.

35. Prior to scheduling the pre-construction conference, the Applicant shall provide to the Town Planner:
- a. Proof that the endorsed plans and decision have been recorded at the Plymouth County Registry of Deeds;
 - b. Copies of the NPDES Permit including the Stormwater Pollution Prevention Plan (SWPPP). The SWPPP must be submitted at least 21 days prior to any land disturbance. The authorized person doing the SWPPP inspections shall be noted;
 - c. An initial deposit with the Town Planner of \$ 30,000 under M.G.L. c. 44 s 53G to secure construction review and inspections by the Town of Scituate consulting engineer. The deposit shall be applied toward the cost of construction inspections for all three common driveways. The specific amount provided to the Planning Department shall be based on the consulting engineer's estimate and shall be subject to amendment from time to time and be supplemented by the Applicant as requested;
 - d. The Applicant shall provide surety for \$1,000,000.00 in a form acceptable to the Planning Board prior to beginning construction of the Common Driveways to guarantee completion of the common driveway(s), the drainage system(s), site work, landscaping and clean-up of the site. After the Town Planner has inspected the site and found grading, loaming and seeding, cleanup of earth materials and construction debris to be complete, these funds shall be returned to the Applicant; and
 - e. A schedule of construction activities including approximate dates for installation of erosion control and other site stabilization features for all phases of the project and all applicable items in the Subdivision Rules and Regulations 9.1.3 shall be given to the Town Planner and the Applicant shall provide funds to cover the cost of inspections and attendance at the pre-construction conference by the Town's consulting engineer.
36. The Town Planner shall be notified prior to commencement of construction and upon completion of construction.
37. Prior to scheduling the preconstruction conference, the Applicant shall provide the Town Planner with permits from the MDOT for access and utility crossings and the Scituate DPW for street openings and water system connections to the town's water system. Installation of all water mains and appurtenances shall be performed according to the specifications of the DPW Water Division. Any upgrades, modifications, or connections shall be at the Applicant's expense. The consulting engineer along with the Town shall review the construction activity to assure compliance with the Town's rules and regulations.
38. The property line and boundary of the limit of clearing shall be marked or flagged in the field under the direction of a licensed professional surveyor and notification given to the Town Planner and Consulting Engineer a minimum of five days prior to the start of construction.
39. A stabilized construction entrance as shown on the Plans must be installed prior to any earth disturbing activities on site including but not limited to clearing and grubbing. Construction access must be clearly identified with site signage approved by the Town Planner.
40. All clearing and earth moving operations shall only occur while erosion and sedimentation control measures, approved by the Town Planner and shown on the Plan are in place. Such control measures shall remain in place until the Town Planner determines that the danger of erosion or sedimentation no longer exists.

41. Erosion control shall remain in place and be maintained during the entire construction phase. Limits of disturbance shall be staked in the field and inspected prior to the start of any tree clearing and maintained throughout the project life. Special attention shall be made to the erosion control placed at the southerly limit of the Project until all slopes are vegetated and stable.
42. No additional disturbance beyond that shown on the Plan is allowed.
43. All lawns shall have a minimum of 6" of screened loam.
44. No use of hydrants on-site or on adjacent roads off-site is allowed for construction use. A hydrant is available at the water treatment plant for construction use.
45. There shall be no rock crushing onsite. Blasting, if necessary, shall only occur after all necessary permits have been obtained and all the requirements of the Scituate Fire Department have been met.
46. The plantings for the rain gardens shall be confirmed by a wetland scientist who shall field locate the plants in the rain gardens during construction and certify to the Planning Board that the size, amount and location are per the plans.
47. The rain garden and swales shall be fully constructed and fully vegetated before stormwater is directed to them.
48. All imported fill, compost, loam, soil amendments etc. must be accompanied by soil test results to verify physical characteristics and chemical composition. The Applicant must verify that materials used on the site do not contain contaminants such as excess nutrients, pesticides, metals, construction debris, invasive plant seeds or vegetation. Such materials shall be provided by a licensed supplier/processor and be accompanied by a statement of origin and/or bill of lading.
49. The inspections for this development shall be done in accordance with Section 9.1.3 of the Town of Scituate Subdivision Rules and Regulations. The Town's consulting engineer shall perform these inspections with costs paid by the Applicant. All required inspections shall take place and be inspected by the consulting engineer including water system components (along with DPW). Weekly reports shall be submitted to the Applicant and Planning Board stating the results of all required inspections including test pits unless more frequent reports are needed.
50. Construction of the Common Driveways, site drainage systems and water system shall be supervised by a registered professional engineer approved by the Planning Board who shall certify in writing to the Planning Board at completion that the driveways, grading, drainage structures and utilities were constructed in accordance with the approved Plans. This certification shall be accompanied by as-built plans, signed and stamped by a registered professional land surveyor and the supervising professional engineer. No Certificate of Occupancy shall be issued until the Planning Board is satisfied that access, construction of the driveways, grading, installation of drainage structures and stormwater management features, installation of utilities and site stabilization are in full compliance with the approved Plans, special permit and 3' separation to the maximum groundwater exists. The stormwater system

must be functioning in accordance with design requirements and the as-built certification must include a statement that any variation in grade is immaterial and does not materially alter the performance of the stormwater system.

51. Prior to the issuance of an occupancy permit, the Board's Consulting Engineer shall inspect the lots and notify the Board and Building Commissioner that the common driveways, grading drainage, site utilities and stabilization conforms to that shown on the Common Driveway Plan.
52. Construction work shall not begin prior to 7:00 am on weekdays and 8:00 am on weekends and shall cease no later than 7:00 pm or sunset whichever is earlier. No construction is permitted on Sundays and federal and state legal holidays. Construction work includes any operation of machinery and idling of vehicles. The name and phone number of a 24 hour contact shall be provided to the Town Planner, Building Department, Police Department and Department of Public Works to be used in the event of an emergency.
53. Police details may be required for construction access to the site. The Applicant shall notify the Town 48 hours in advance of significant equipment and construction material arrival to the site which may cause a safety hazard or material disruption of the public way such that a police detail is necessary to ensure safe passage. Any Police detail required shall be provided at the sole expense of the Applicant.
54. There shall be no parking, staging or idling of vehicles on Chief Justice Cushing Highway or adjacent public roads during construction.
55. Stockpiles shall be located as shown on the Plans and must be protected with erosion controls including but not limited to silt socks and temporary seeding.
56. Inspections and observations made according to the Stormwater Pollution Prevention Plan (SWPPP) shall be submitted to the Board within 48 hours after inspections. The Board reserves the right to require the consulting engineer to visit the site as frequently as necessary during times when construction inspections are further than one week apart. Because this is an environmentally sensitive area, an engineering/construction engineer shall be hired by the Applicant to ensure the project is built according to the plans before, during and after construction.
57. Construction activities shall be conducted in a workman like manner at all times. Noise mitigation and proper dust controls shall be taken so that levels conform to Mass DEP policies. All equipment that emanates sound shall be kept in proper working order through regular maintenance. Street sweeping shall be used to control dust from leaving the site. A wheel wash station may be required to prevent sediment from leaving the site. Blowing dust or debris shall be controlled by the Applicant through stabilization, wetting down or other proper storage and disposal methods.
58. Construction activities on site shall conform to Town of Scituate General Bylaws.
59. Signage shall be installed on each Common Driveway indicating that road salt is not in use to protect the Town's water supply. The Condominium Master Deed shall include the required perpetual maintenance of the signage and shall state that use of road salt on the Common Driveways is prohibited.

60. Signage identifying house numbers shall be provided as submitted unless otherwise recommended to be changed for 911 purposes. House numbers shall be reflective and visible from approaching the driveways from the north and south. Shop drawings shall be submitted for approval to the Town Planner who will forward them to appropriate 911 personnel for approval.
61. Sight lines on Chief Justice Cushing Highway shall be maintained per the Plans.
62. No construction other than the common driveway entrances shall be permitted in the 50 foot buffer to Chief Justice Cushing Highway. Except for driveways and approved landscaping shown on the Plans, the buffer shall be a non-disturbance zone.
63. All construction shall comply with all applicable requirements of the Water Resource Protection District. No finished slopes shall exceed 4:1.
64. Spill control provisions shall be provided for each common driveway a certification of such installation shall be provided to the Town Planner.
65. No Certificate of Occupancy shall be issued until both the Planning Board and Building Commissioner are satisfied that access, construction of the Common Driveway(s) and installation of necessary utilities are in full compliance with the approved Plans and the conditions of the Special Permit.
66. Any mosquito control required shall be organic in nature.

Administration

67. This special permit shall run with the land and be void if it is not recorded at the Registry of Deeds within 90 days of the expiration of the appeal period. The Applicant shall provide proof of this recording to the Planning Board.
68. Failure to comply with any condition of this special permit shall cause it to be deemed invalid.

Mr. Limbacher seconded the motion for discussion.

Mr. Pritchard opined there is a long list of conditions, but at the end of the day the findings of fact do not meet the requirements for zoning, he mentioned the 400' buffer and suggest the Board should not approve this permit.

Mr. Limbacher opined it does not meet some of the specific requirements for a common driveway special permit. He said he does not think it addresses the sensitivity to the water supply or adequately protects the wetlands from disturbance. He opined the proposed design is very aggressive and relies on three large rain gardens. He does not think that most homeowners associations would be cognizant of what exactly they have to do and when they need to do it; the rain gardens will take a lot of day-to-day maintenance - cleaning them out of dead trees, debris, outlets, inlets and berms, erosion control and he is particularly concerned with plant replacement. He also indicated he is concerned with how the project is built in phases.

Mr. Pritchard was in agreement with all Mr. Limbacher's points and said he thinks it is clear there should be a 400' buffer as indicated by multiple parties; part of the development is in the 400' buffer and he opined there is nothing that can be done here to fix that issue. He said it a significant development within a water protection zone and getting closer if the reservoir is raised, the phasing starts in the closets places to the reservoir. He opined there are multiple components that make this a project that the Board should not approve.

Mr. Limbacher referred to #4 of the Findings of Fact – definitions for the project area – but said whatever it is being called it will still have an impact on the water supply. Mr. Pritchard agreed.

Mr. Pritchard said that in the conditions there are notations about the 400' buffer, but there is development in the 400' buffer and opined it is a fatal flaw for the development.

Ms. Lambert agreed.

Mr. Bornstein said he agreed, but he is not opposed to development of the site and thinks there are an infinite number of ways it could be developed; he opined throughout this process the Board has reiterated that this is an overly aggressive use of this site.

Ms. Lewis was in agreement with Mr. Bornstein's comments.

Ms. Burbine was in agreement with Mr. Bornstein; this is a very aggressive plan and that maybe something a little smaller would have been better.

Mr. Morse indicated that three other projects have been approved on this property in the past; the projects were significantly larger and disturbed almost twice the land area that this project does. He indicated the proposal for common driveways reduces the impervious areas; they did duplex units to cluster the development and preserve over 50% of the land area. He disagreed that the project does not comply with sections of the zoning bylaw; section 720.7 outlines the requirement for a special permit and he said the project complies with all of them. He discussed the 400' setback and said the regulatory setback is 200' confirmed by DEP and the Town's DPW; he said the project provides a 400' setback to the septic system; he said there is nowhere in the bylaw that prohibits a house or land clearing within the 400' setback to the Tack Factory Pond. He said it is allowed and it is done all the time and asked for the Board to point out in Section 720 where the project does not comply.

Ms. Joseph said the decision was based on the Board's desire to have the 400' buffer respected; the DEP may say only 200' is required, but the Secretary of Environmental Affairs said Tack Factory Pond is a public water supply and the Board has determined there should be a 400' protection zone. She also noted that common driveways are supposed to protect sensitive natural areas from disturbance including stormwater runoff; based on that and the findings of fact numbers 1-8 the Board did not feel the project met the standards of a common driveway. Ms. Joseph specifically noted section 720.7.A.

Ms. Burbine commented that she understands 3 other projects have been approved on this property, but times have changed and the water supply is now more important than it has ever been and the Board must do everything in our power to ensure the maintenance and the viability of our water resources. Today this cannot be allowed in the water resource protection area; people are very concerned about water. Ms. Burbine said she cannot support this project, because of the water more than anything else.

Motion on the floor was to approve the project, a roll call vote was taken.

Ms. Burbine – no
Mr. Pritchard – no
Mr. Limbacher – no
Mr. Bornstein – no
Ms. Lambert – no

The vote was unanimously no to not approve the project, the special permit failed.

Mr. Pritchard moved to close the public hearing, Ms. Lambert seconded the motion; the vote was unanimously in favor.

Ms. Burbine – yes
Mr. Pritchard – yes
Mr. Limbacher – yes
Mr. Bornstein – yes
Ms. Lambert – yes

Form A – ANR Plan – 443 – 461 Chief justice Cushing Highway
Assessor's Map/Block/Lot: 47-2-26A to 26J
Applicant: David MacCready
Owner: Seven H. Trust

Mr. Morse indicated he was seeking endorsement for the Form A plan, it meets all requirements; although the special permit failed, he seeks endorsement so development can be done sometime in the future.

Motion:

Ms. Burbine moved to endorse as Approval Not Required a Plan of Land in the Town of Scituate, MA 443-461 Chief Justice Cushing Highway prepared by Morse Engineering Co., Inc. for applicant David MacCready and owner Seven H Trust, dated 4-24-19 with a revision date of 1-29-2020 as the division of land shown on the accompanying plan is not a subdivision because it shows every lot on the plan has frontage of at least the distance presently required under the Scituate Zoning Bylaw on the public way of Chief Justice Cushing Highway with the Planning Board stamp added that Planning Board endorsement of the plan is not a determination as to the conformance with zoning regulations.

Mr. Bornstein seconded the motion; the vote was 4 to 1 in favor.

Ms. Burbine – yes
Mr. Pritchard – yes
Ms. Lambert – no
Mr. Limbacher - yes
Mr. Bornstein – yes

**Continued - Public Hearing – Special Permit – Residential Compound Development & Stormwater Permit – 0 Country Way, 0 Rear Country Way
Assessor's Map/Block/Lot: 32-7-21 and 32-7-13-B
Applicant/Owner: Bradford Merritt**

Documents

- Doc DRAFT Motion

Motion:

Ms. Burbine moved to accept the applicant's request to continue the public hearing for the Residential Compound Special Permit for 0 Country Way until May 28, 2020 at 7:02 pm and to continue the time for action for filing with the Town Clerk until June 30, 2020.

Mr. Pritchard seconded the motion; a roll call vote was taken and was unanimously in favor.

Ms. Burbine - yes
Mr. Pritchard – yes
Ms. Lambert – yes
Mr. Limbacher - yes
Mr. Bornstein – yes

Documents

- Email to the Board from Shari Young dated 5.8.20 with agenda for 5.14.20 and meeting minutes 4.23.20.
- Email to the Board from Karen Joseph date 5.8.20 with meeting materials for 443-461 Chief Justice Cushing Highway and 0 Country, 0 Rear Country Way.
- Email to the Board from Shari Young dated 5.13.20 with meeting minutes for 4.23.20.
- Email to the Board from Karen Joseph dated 5.14.20 with meeting materials for 443-461 Chief Justice Cushing Highway.
- Email to the Board from Shari Young dated 5.14.20 with meeting materials for 443-461 Chief Justice Cushing Highway.
- Email to the Board from Shari Young dated 5.14.20 with AMENDED agenda for 5.14.20.

These items were distributed to the Board electronically.

Mr. Pritchard moved to adjourn the meeting at 9:30 p.m. Ms. Lambert seconded the motion; the vote was unanimously in favor.

Ms. Burbine - yes
Mr. Pritchard – yes
Ms. Lambert – yes
Mr. Limbacher - yes
Mr. Bornstein – yes

Respectfully submitted,

Shari Young

Planning Board Administrative Assistant

Ann Burbine, Chair

Date Approved: June 11, 2020