

TOWN OF CHESTER
DEVELOPMENT REVIEW BOARD
MINUTES

September 25, 2017

BOARD MEMBERS PRESENT: Carla Westine, Amy O'Neil, Harry Goodell, Frank Bidwell, Phil Perlah, Mark Curran.

STAFF PRESENT: Cathy Hasbrouck, Recording Secretary, Michael Normyle, Zoning Administrator.

OTHERS PRESENT: Kathy Goodell, Tucker Mullholland, Raymond Stearns, Jr, Shawn Cunningham, Cynthia Farnsworth, Richard Farnsworth, Amanda George, William Lindsay, A. Lee Gustafson, Jacques Dodier, Tim Knapp, Randy Miles.

CALL TO ORDER

The meeting was called to order at 6:00 P.M. by Chair Carla Westine. She introduced the members of the Development Review Board, including alternate Mark Curran. She read the agenda for the meeting. It included a site visit which took place at 5:25 PM at 81 Gold River Road. The Board and audience members recited the Pledge of Allegiance.

Agenda Item 1 Citizen Comments

There were no citizen comments.

Agenda Item 2 August 28, 2017 Minutes

Carla Westine opened the discussion of the September 11, 2017 minutes. There was no discussion. Harry Goodell moved to accept the minutes. Mark Curran seconded the motion. A vote was taken and the motion passed.

Agenda Item 3 Conditional Use Application #509

Chair Carla Westine polled the Board to see if any member had had any *ex parte* communication on this matter or any potential conflict of interest. Harry Goodell stated that he was an abutter to the property and offered to step down if the applicant so chose. Tucker Mullholland did not ask Harry to step down. Amy O'Neil, a board member seated in the audience said she had a conflict of interest and would not sit for this hearing. Frank Bidwell, an alternate member, was asked to join the board for the hearing.

Tucker Mullholland, Richard Stearns, Jr. Richard and Cynthia Farnsworth and Amy O'Neil were sworn in to give testimony in the hearing.

Zoning Administrator Michael Normyle gave a summary of the application thus far. He accepted the application on July 25, 2017. The application was considered complete and the notice was posted at the Town Hall and sent to the Message for publication on August 29, 2017. The notice to abutters had been sent on Wednesday September 20, which was later than is customary.

Seven exhibits were then considered for acceptance as evidence.

The first document was a Town of Chester Notice of Public Hearing dated August 29, 2017. The Property Owner is Tucker Mullholland, the Action Requested is Shop facility for Mullholland Welding and Fabrication, Inc. It is signed by Michael Normyle, Zoning Administrator. Phil Perlah moved to accept the document as Exhibit A. Mark Curran seconded the motion. A vote was taken and the motion passed.

The second document is an Application for hearing before the Development Review Board dated July 25, 2017. The appellants are Raymond Stearns, Jr. and Tucker Mullholland. The landowner is Tucker Mullholland. It is signed by Tucker Mullholland and Michael Normyle. Phil Perlah moved to accept the document as Exhibit B. Mark Curran seconded the motion. A vote was taken and the motion passed.

The third exhibit was a letter from Mullholland Welding and Fabrication describing the proposed business, and logistical details associated with it. Tucker Mullholland read the letter to the Board, adding more information as he read. He amended the hours of operation to Monday – Friday 7:00 AM to 5:00 PM, Saturday 7:00 AM to 3:00 PM and Sunday from 7:00 – 12:00 PM. He said he now has 6 employees, many of whom work off-site. There are usually 2 – 3 people at the shop. Carla Westine noted that the letter was doing double duty. At the bottom of the letter is a hand-written note reading “I don’t see a problem as far as the Highway Department”. The note was signed Graham Kennedy. Phil Perlah moved to accept the letter with an OK from the Highway Superintendent at the bottom as Exhibit C. Mark Curran seconded the motion. A vote was taken and the motion passed.

The fourth exhibit was a letter from Chester Police Chief Richard Cloud to Michael Normyle, Zoning Administrator, dated August 29, 2017. It states that traffic safety and parking will not be an issue for the permit. Phil Perlah moved to accept the document as Exhibit D. Mark Curran seconded the motion. A vote was taken and the motion passed.

The fifth exhibit is a letter from the Chester Fire Chief Matt Wilson to Tucker Mullholland dated July 25, 2017, stating that the Chief sees little impact to the Chester Fire Department from this project. Phil Perlah moved to accept the document as Exhibit E. Mark Curran seconded the motion. A vote was taken and the motion passed.

A letter from Tucker Mulholland detailing his efforts to obtain a Fire and Safety inspection from The Vermont Department of Public Safety was not accepted as an exhibit, since the inspection certificate had been issued just before the Hearing.

The sixth exhibit is a certificate of Fire Inspection Results from the Vermont Department of Public Safety. The Inspector is Steven J. Dumont, the Inspection date is July 6, 2017. Two violations are listed. Tucker Mulholland noted the error in the Owner information which listed his name as Chad Mulholland. He said a corrected copy of the certificate is coming. Phil Perlah moved to accept the document as Exhibit F. Mark Curran seconded the motion. A vote was taken and the motion passed.

The last exhibit presented was a site plan titled Gold River WW Permit Overall Site Plan dated March 27, 2017. Phil Perlah moved to accept the document as Exhibit G. Mark Curran seconded the motion. A vote was taken and the motion passed.

Chair Carla Westine then considered the requirements for the Commercial Industrial District where the project is located. She listed the uses permitted in the Commercial Industrial District and asked Tucker Mulholland which uses he felt his business fit under. Tucker said His business was a mixture of light industry and construction trades. Carla Westine noted that this is a pre-existing lot whose size was approved at a prior time. She asked Tucker Mulholland if he was going to be changing the footprint of the building. Tucker said he would be extending the overhang at the back of the building to carry all the way across the building. Carla noted that he will need a fifty-foot setback based on the extension of the overhang. After checking the site plan she saw that the requirement would be met.

Chair Carla Westine then considered the Commercial Industrial District Supplemental Standards as follows:

E. Supplemental Standards:

1. **Character of Development.** New development and modifications to existing buildings and uses shall be consistent with the existing character of the area and compatible with adjacent land uses with respect to traffic, noise, vibrations, or other impacts in conflict with residential and commercial uses.

Tucker stated most of the work he plans to do on the building will be done to the interior.

At this point, Phil Perlah asked to return to the consideration of permitted uses and quoted the definition of heavy construction trades, "Includes, but not limited to, earth moving, excavation, trucking and paving." Phil questioned whether the definition of heavy construction trades applied to this proposed use. Tucker Mulholland said he occasionally repairs heavy construction equipment at the shop. While much of his work falls under light industry, the heavy machinery may also be on his lot. Phil agreed that the use would be covered in this zoning district.

2. **Landscaping and Screening.** The Development Review Board shall require landscaping or other screening between incompatible uses or structures.

Carla Westine listed the residential properties that abutted the Mulholland lot: Harry and Kathy Goodell and Richard and Cynthia Farnsworth. (Later during the meeting Harry Goodell corrected this. Richard and Cynthia Farnsworth's property does not actually abut the Mulholland property. It abuts the Gold River Partners property.) Carla observed at the site visit that there was a quantity of fence and natural screening along a large share of the boundary. Tucker Mulholland said he planned to leave the brush and trees along the boundary alone and would either leave the fence alone or extend it. He said he may clear some brush to maintain a swale at the back of the property. Harry Goodell said the swale Tucker referred to should be shown on the site plan, since it was part of an act 250 permit. Carla asked Tucker if he could sketch in the swale on the site plan. He said he could. Frank Bidwell said a chain link fence shown on the site plan was not present on the lot. Carla Westine said she would X out the line marking the non-existent chain link fence on the site plan.

3. **Rail Oriented Uses.** No setbacks shall be required for railroad-related uses from any lot line that abuts the Railroad.

As there was no abutting railroad, this was not discussed.

Carla Westine then addressed Section 4.8, Conditional Uses.

1. General Standards

These general standards shall require that any conditional use proposed for any district created under these Bylaws shall not result in an undue adverse effect to:

- a. The capacity of existing or planned community facilities;

Carla Westine reminded Tucker Mulholland about the letters received from the Fire and Police Chiefs. So far there has been no letter received from the Water/Wastewater department. Tucker said he had asked for a letter from them a week before the meeting and so far has not received one. Carla asked him if he was going to be flushing any grease or other unusual substances into the wastewater system. Tucker said he would not be doing that. Mark Curran asked if there would be floor drains in the shop. Tucker said there would not be floor drains.

- b. The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located;

Carla Westine asked Tucker Mulholland how he felt the project would fit into the neighborhood. Tucker said he thought it would fit in well. He was not planning to make substantial changes to the building, he was only going to tidy it up. Carla Westine asked about the neighboring properties and the uses thereon. Tucker said the neighbor which stands out for him is the Pizza Stone. On the other side of the property are the excavation and other businesses in the industrial park.

Phil Perlah asked what the two buildings on the map southeast of the property in question were. Harry Goodell said the buildings were his house and garage.

- c. Traffic on roads and highways in the vicinity;

Carla Westine asked Tucker Mulholland how his project would affect traffic on the roads and highways. He said he thought it would add another 1 – 2 trucks per week to the traffic flow.

- d. Bylaws and ordinances then in effect; and,

Carla Westine said the Board had already established that this was a pre-existing lot and building.

- e. Utilization of renewable energy resources.

Tucker Mulholland said he had no plans to use solar or wind power.

2. Specific Standards

Specific standards will include consideration with respect to:

- a. Minimum lot size;

Carla Westine noted that the lot is 1.95 acres, which is greater than the minimum lot size of 30,000 square feet.

- b. Distance from adjacent or nearby uses;

Carla Westine measured the distance between the Mulholland building and the boundary with the Hume property, the closest neighbor. It was about 40 feet from the building to the Hume boundary line. The next closest neighbor is Harry and Kathy Goodell. Harry estimated that his house was 200 feet from the Mulholland boundary.

c. Minimum off-street parking and loading facilities;

Tucker Mulholland said there were 9 parking spaces along the stockade fence where DRB members had parked at the site visit. The driveway is circular, making it easy for trucks to enter and leave.

d. Landscaping and fencing;

Tucker Mulholland said the current fencing will remain. He plans on mowing the lawn weekly and on tidying up the area. He does not plan any changes to the landscaping.

e. Design and location of structures and service area;

Tucker Mulholland said he plans to add a bathroom and extend the overhang. He may later add new insulation, overhead doors, siding and do some electrical work.

f. Size, location and design of signs;

Tucker Mulholland said he will be adding an entry to the existing Gold River sign.

g. Performance Standards under Section 4.9 and,

h. Other such factors as these Bylaws may include.

3. Special Criteria

The following Special Criteria shall be considered by the Development Review Board when considering an application for a conditional use permit in the (VC) Village Center, (SV) Stone Village, (R-C) Residential-Commercial, Districts:

4.9 PERFORMANCE STANDARDS

A. Noise: noise volume shall be limited to the specified decibel levels listed below measured at the property line. Noise levels or frequencies which are not customary in the district or neighborhood or which represent a repeated disturbance to others shall not be permitted. Limited exceptions are allowed for incidental and customary activities, such as the occasional use of lawn mowers and snow blowers for regular property maintenance.

1. Noise shall not exceed 60 dB between 8:00 p.m. and 7 a.m.;
2. Noise shall not exceed 70 dB during the day between 7 a.m. and 8:00 p.m.

Tucker Mulholland said he has walked the property boundary while his equipment was running and found he could easily have a conversation. He and Carla Westine discussed what equipment would be running and how noisy it might be. Tucker said one of the loudest pieces of equipment was a hand grinder. He estimated that it generated 90 dB of sound. Another piece of equipment was about as noisy as a diesel tractor. Carla Westine said that a lawn mower or tractor generated 90 dB of sound. Tucker said he thought his equipment was quieter than a lawn mower. Carla Westine asked how close the property line with the Hume parcel was. Tucker thought it was about 50 feet from his building. Carla asked if co-applicant Raymond Stearns could calculate the decibel level of the grinder 50 feet from the source. Raymond Stearns tried to look it up, but was not able to find an answer.

Tucker Mulholland said that the equipment would be mainly operated inside the building. Carla Westine asked if the doors were kept open or closed. Tucker said the doors were often open. Carla Westine said this specific requirement, where the decibel level is specified, is relatively new. Given the hours of operation Tucker Mulholland is proposing, He would have to meet the 70-dB standard.

Randy Miles asked if the town was going to purchase a sound meter. Carla Westine said the town did not plan to purchase one at this time. She said the experts at the sound presentation given the week before had been clear that burden of proof is on the applicants. They must bring information to the Board for review, the Board cannot do the measuring. One thing Tucker Mulholland could do is look up the equipment he is running, find its decibel level and compute the level of that sound at the boundary line, however many feet away that is.

Carla Westine asked the Board if it had any questions. Mark Curran said he had downloaded an app onto his phone and checked sound levels that way. It seemed reasonably accurate to him. He thought an applicant could do that to see if they are close to the allowed decibel level, or not. Carla re-iterated that the town would not purchase a meter to assist an applicant in establishing the decibel level of their business. The town may purchase a meter to help in enforcing the noise standard.

Carla Westine said the Board would return to this topic and moved on to discuss other requirements.

B. Air Pollution: no use shall create emissions, such as dust, fly ash, fumes, vapors, gases and other forms of air pollution, which:

1. Constitute a nuisance to other landowners, businesses or residents;
2. Endanger or adversely affect public health, safety or welfare;
3. Cause damage to property or vegetation; or,
4. Are offensive or uncharacteristic of the area.

Outdoor wood-fired boilers are exempt from this provision.

Tucker Mulholland said he didn't think the business creates air pollution. He does not spray paint anything. Phil Perlah asked if the welders produce smoke. Tucker said the smoke dissipates quickly. Tucker said some dust will be produced, but it is heavy and settles quickly. Phil Perlah asked about exhaust fans in the building. Tucker said the fans were portable. Phil Perlah observed that air quality inside the building would be an OSHA issue.

C. Glare, Light or Reflection: illumination from lighting fixtures or other light sources shall be shielded or of such low intensity as not to cause undue glare, reflected glare, sky glow or a nuisance to traffic or abutting properties. Lights used to illuminate parking areas and drives shall be so arranged and designed as to deflect light downward and away from adjacent residential areas and public highways. Lights shall be of a "down shield luminaire" type where the light source is not visible from any public highway or from adjacent properties. Only fixtures which are shielded to not expose a light source, and which do not allow light to "flood" the property, are permitted to be attached to buildings. Searchlights are not permitted. The Development Review Board may require a lighting plan under conditional use or planned unit development review procedures.

Tucker Mulholland said there were only 2 downward facing shielded lightbulbs on the exterior of the building. No yard lights were planned. Most of the work is done inside the building.

Harry Goodell asked where the exterior lights were located. Tucker Mulholland said they were near the overhead doors. Frank Bidwell said he saw 2 floodlights on the exterior of the building. Tucker Mulholland said the lights were never turned on. Harry Goodell said the position of the outside lights should be marked on the site plan.

D. Safety Hazards: Fire, explosive and similar safety hazards which would substantially increase the risk to an abutting property, or which would place an unreasonable burden on the Fire Department, shall be prohibited.

Tucker Mulholland said the greatest hazard was bottles of compressed oxyacetylene. He keeps them chained up as OSHA required. The solvents he uses are contained in a metal canister. Harry Goodell asked how the hazardous materials are disposed of. Tucker Mulholland said they aren't set up yet to deal with that. Phil Perlah asked how he would dispose of them in the future. Tucker Mulholland said he doesn't know the regulations yet and hasn't made plans.

E. Electromagnetic disturbances: any electromagnetic disturbances or electronic emissions or signals which will repeatedly and substantially interfere with the reception of radio, television, or other electronic signals, or which are otherwise detrimental to the public health, safety and welfare, beyond the property lines of the property on which it is located, except as specifically licensed and regulated through the Federal Communications Commission.

Tucker Mulholland said the business does not generate electromagnetic disturbances.

F. Underground Storage Tanks, Ground/Surface Water Pollution: No use shall result in burying or seepage into the ground of material which endangers the health, comfort, safety or welfare of any person, or which has a tendency to cause injury or damage to property, plants or animals. Commercial, industrial or institutional facilities having underground fuel storage shall maintain all tanks and related equipment with leak detection and spill control systems incorporating the best available safety practices and technology, consistent with government and industry standards.

Tucker Mulholland there were no underground storage tanks. Carla Westine asked he uses a hose to wash things down outside. Tucker said they didn't do that now, but they will when the water is hooked up. He would use it to wash vehicles as needed. Carla Westine warned him he was responsible for catching the runoff so it doesn't go onto the neighbor's property.

Carla Westine proposed to continue the hearing so the applicant may collect information about noise, and modify the site plan to include the swale and exterior lights and remove the fence. Frank Bidwell noted that on the letter from the Police Chief, the business is referred to as a new business, but on other documents it is an existing facility. Michael Normyle said the business is new, but the building is pre-existing. Frank also noted that the application said there were 4 employees mentioned on the application, but parking spaces had been drawn for more on the site plan. Carla Westine said that the application was some time ago and since it was filed, two new employees have been added. Given that the water and wastewater connections were to the town system, this will not be a problem. Harry Goodell pointed out that the parking requirement is based on the number of square feet in the building. Phil Perlah said he interpreted the limit of 10 on the parking as an upper limit.

Carla Westine said the Special Criteria in the bylaws did not apply to the Commercial Industrial district and that section would not be reviewed. She said the applicant still needed to obtain information about the decibel levels of the machinery at his property boundaries and make some

changes to the site plan. Carla Westine asked if the Board or the audience had any more questions. None did. Harry Goodell moved to recess the hearing until Monday, October 9, 2017 at 6:00 PM. Frank Bidwell seconded the motion. A vote was taken and the motion passed.

Richard Farnsworth asked what the business hours would be. Tucker Mulholland said they would be Monday to Friday 7:00 AM to 5:00 PM and Saturday 7:00 AM to 3:00 PM. Carla Westine reminded those present that the hearing had been recessed and if they had more questions they should return on October 9, 2017.

Agenda Item 4 Continuation of Conditional Use Review (#507) Jacques Dodier

Amy O'Neil rejoined the Board for the continuation of this hearing and Frank Bidwell returned to the audience. Tim Knapp was sworn in to give testimony. The other citizens present to give testimony were reminded that they were still under oath from the portion of the hearing conducted on September 11, 2017.

Chair Carla Westine asked if any progress had been made with the Agency of Transportation regarding highway access. Amanda George said that both she and Tim Knapp had tried to reach Mark Pickering and neither had been able to contact him. Tim Knapp had filed the application for the access permit with the AOT.

The following items were considered for evidence.

The first was a letter from the Town of Chester Water Department to the Dufresne Group dated June 27, 2017. It gives details for the proposed water service and states that the Town has capacity for the proposed usage at 512 South Main Street. Amy O'Neil moved to accept the letter as Exhibit P. Harry Goodell seconded the motion. A vote was taken and the motion passed.

The second exhibit was a revised proposed site plan titled Figure 1 with a revision date of 9/18/17. Amy O'Neil moved to accept the letter as Exhibit Q. Phil Perlah seconded the motion. A vote was taken and the motion passed.

The third exhibit was a revised proposed site grading plan titled Figure 2 with a revision date of 9/18/17. Amy O'Neil moved to accept the letter as Exhibit R. Phil Perlah seconded the motion. A vote was taken and the motion passed.

was a revised elevation sheet numbered A201 with a revision date of 9/11/17. Amy O'Neil moved to accept the letter as Exhibit S. Phil Perlah seconded the motion. A vote was taken and the motion passed.

Looking at the exhibits, Carla Westine sought to verify that the building height had been certified. On Figure 1 the elevation of the top of the building was given as 134.48 feet. Tim Knapp said the proposed grade elevation was 99.5, giving a building height of 34.98 feet. Amy O'Neil asked if any additional grading had to be done to get that height figure. Tim Knapp said

it did. He said it hadn't been done yet, it was proposed. Amy asked how much the soil around the building would be built up. Tim Knapp said 6 – 8 inches.

Carla Westine read Note 13 on Figure 1, which said that the total building footprint was 5,305 square feet and the percentage of lot coverage was 10.6 %. She noted that 5,305 square feet exceeded the limit of 5,000 square feet per building element. Tim Knapp said the 5,305 square feet figure includes the house on the property, not just the new building. Harry Goodell asked if that meant the new building was 4, 283 square feet. Tim Knapp said it did.

Carla Westine asked about a possible barrier to prevent people from exiting from the parking lot via Pineview Drive, which belongs to Robert Parker. Tim Knapp said nothing has been added. Amy O'Neil asked if the boulders in place now are on Robert Parker's land. Tim Knapp said they were. Amanda George said they were open to working with Mr. Parker on this issue. Jacques Dodier said he might build a stone wall there.

Next Carla Westine asked Tim Knapp about drainage. She asked if he had learned anything about the volume of water coming on to the property and if, over the years, changes had been made to the property which changed the areas where the water ponded. Tim directed the Board's attention to Figure 2, the drainage plan. He said more detail had been added to the plan. There were now arrows showing the direction of drainage flow. He said he used HydroCAD software to model the existing and proposed conditions. He said there was no change in runoff leaving the site. They modeled the flow of runoff coming onto the property from every direction it would come on, including from the pipe from Mountain View. The goal of the grading is to keep the flow pattern the same. He did not plan to concentrate any flow. In the modeling there is no change in the runoff between the existing and proposed systems. He is not proposing any ponding system or treatment system. He looked into detention methods, but the property has high ground water and a detention system could result in standing water which would not be desirable.

Carla Westine asked if the grading plan in Figure 2 reflects the changes needed to make the height of the building meet the 35-foot requirement. Tim said Figure 2 has additional spot elevations around the building and the grading is different from the last version of the plan presented to better match the existing drainage patterns around the building.

Carla said she understood that the plan does nothing to increase the amount of water running onto the site. Tim Knapp said the plan did not increase the amount of water leaving the site, which would flow toward the Parker side of the property. Carla asked if the enlargement of the building changed the amount of runoff. Tim said the size of the building and the impervious areas were taken into account on the plan. He added that they modeled the plan with a 10-year storm, a 3.7-inch storm, which is the standard required by a permit from the state.

Harry Goodell asked why the plan did not connect into the present 18-inch culvert that goes across Pineview Drive. Tim Knapp said, first of all he could not find the culvert, and secondly, he didn't want to increase any flow at any one point on the site. He didn't want to adversely affect Junker's ponds on the other side of the driveway. He was trying to keep the flow going the same way it's going now.

Harry said the ponds were designed to take the expected flow from the 18-inch culvert. The expected flow was the reason the ponds were created. Tim said he could not speak for the reason the culvert was there, but he was not increasing the flow of water from the Dodier lot over what it currently is. Harry asked if the water was going to flow across Robert Parker's drive. Tim Knapp said it would follow the same pattern it does now. Harry Goodell said Robert Parker does not want the water flowing across the road. That is why he put the culvert in.

Carla Westine said the Board had sought information about drainage plans from when the sub-divisions of the property were done. Conditional use hearings did not generally discuss drainage plans, only toxic runoff issues. Sub-divisions do, and always have, required drainage plans. The culvert which was discussed at the site visit and at the last meeting with Mr. Parker, was present on the drainage plan for the sub-division. When Mr. Junker bought Lot 5 of the sub-division from Mr. Parker, he designed a drainage plan that took into account the water coming onto his property through the 18-inch culvert. He designed a series of retention areas to move the water further down his property toward the culvert under Route 103. She wanted to know why Tim Knapp did not elect to use the culvert, which was the intent of the original drainage plan, and instead he is choosing to continue to have the water flow across Pineview Drive.

Tim said he was concerned that by concentrating the flow from the Dodier property to the culvert it could have an adverse effect on the retention ponds. He is not sure that the ponds were designed to take that much flow. He was trying to maintain the current flow pattern.

Amy O'Neil said she understood that Tim Knapp has created a design that did not increase the flow of water from the site. Tim said that was correct. Amy said the Board heard concerns from abutters that there was water leaving the site currently that was causing problems. Tim said he was not familiar with their problems. Amy said the Junkers didn't want any more water coming onto their property. Mr. Parker didn't want the water going over his road and washing his road out. Amy asked if there was testimony from the last hearing that his road was currently being washed out. Carla Westine said Mr. Parker did not say his road was being washed out, he said he didn't want it to be washed out. Mark Curran recalled that one of the concerns was with algae infested water. Tim Knapp said that several years ago when he met with the Junkers they had discussed piping some of the flow coming from Mountain View into their pond area, and they didn't want that. Amy said there was testimony that there was a lot of water coming from Mountain View and she wanted to know how that water was going to be handled on the Dodier site. Tim Knapp said it would sheet flow across the site. Harry Goodell said it would sheet flow across Parker's driveway. He said that the culvert has been plugged up and the original drainage plan has been disturbed as a result.

Carla Westine asked Tim if he had researched any of the previous permits for the land. Tim said he had not. He was just looking at the difference between now and what was proposed. Amy O'Neil asked if sheet flow would wash out the driveway (Pineview Drive) next to the Dodier lot. Tim Knapp said he couldn't tell whether it would wash out the driveway or not. Harry Goodell said at the site visit he could see that the driveway was settling because the water was not going into the culvert.

Michael Normyle said he thought that the grassy areas on either edge of the property would reduce the area of hard-pack and do something toward soaking up the water. Tim said that putting in grass does help, but the area has bad soils for infiltration and high ground water. Not much water will be absorbed. He also thought that toward the back of the lot there was going to be a kind of swale built to absorb some of the water. Tim Knapp said there was no plan to concentrate the flow into a swale.

Carla asked if it would be beneficial to the site to utilize the culvert. Tim Knapp said it possibly would, but there was still concern that in a storm the concentrated flow would do damage. Carla encouraged Tim Knapp to look at the sub-division permits. The culvert and retention areas were put in for a reason.

Amy O'Neil said she was still confused by the intent of the plan. She said it seemed that the plan's goal was not to increase the flow of water to the Parker or Junker properties. Was that the extent of the Board's responsibility? She said if Mr. Parker's driveway is being washed out, he should probably clean his culvert out. She said if the engineer is saying he is not increasing the flow of water to the next properties, then is the Board's duty fulfilled. Harry Goodell said, the plan increases the flow of water across the end of the Parker's driveway and the flow should be corrected to go to the culvert.

Harry Goodell recapped the drainage history of the area: The water from Mountain View was flowing across the Dodier property to the area that is now the Parker and Junker properties. When Robert Parker built Pineview Drive as a driveway for the lots he sub-divided, he installed a culvert to direct the water under the driveway to the lot that is now the Junker's. When the Junkers bought their property they build the retention ponds to contain the water and direct it to the culvert under Route 103. At some point after that, the flow of water across the Dodier property was interrupted, causing water to sheet over Pineview Drive and back up into the Mountain View neighborhood.

Amanda George said she believed that Tim Knapp spoke to Mr. Parker in an effort to find where that culvert is. To date the culvert has not been found. If Mr. Parker wants to locate the culvert and finds that something needs to be done on the Dodier property to have the culvert work properly then they would be willing to discuss it. Until that happens, the proposed plan will not increase the current flow of water to the Parker and Junker properties.

Amy O'Neil said she felt the Board had no recourse here, it had to accept the proposal as written. Harry Goodell said the culvert needs to be found. Phil Perlah said he thought he had seen the culvert at the site visit two weeks ago. Tim Knapp said he went back after the last meeting and saw the area Phil was talking about. He said the structure was plastic, not metal and he was reluctant to disturb anything on another person's property. The area was clearly on Robert Parker's property.

Amy O'Neil asked who has responsibility for the water? She asked if the water is going over the driveway because the culvert under the driveway is plugged. She asked if the amount of water passing to the Parker property is the same as it was years ago when the culvert was first installed. Tim Knapp said he couldn't answer that question. Harry Goodell said the culvert needs to be

located and the water sent in the direction of the culvert to address the problem Robert Parker is complaining about now.

Michael Normyle asked about the grassy area planned to run parallel to Pineview Drive. Could a swale be put there to direct the water? Jacques Dodier said a stone wall could be built there. Carla Westine verified that Jacques Dodier said he could build a two- or three-foot-wide stone wall to keep water from going onto the Parker property in that area. Tim Knapp said there could still be concentrated flow in that area. Harry Goodell said it could push the water out onto Route 103. Several people agreed with that analysis. Tim Knapp said building a swale wouldn't help very much. There was no good place for the water to go so close to the road. The state was not willing to allow a more direct channel to be built toward the culvert that passes under Route 103 because the swale or culvert would be in their right of way and they would end up maintaining it. Carla Westine asked Jack Dodier if he had ever seen the culvert on his side of the property. He said he had not.

Amy O'Neil said if there is going to be a stone wall there, it needs to be incorporated into the drainage plan. The engineer needs to model the stone wall as part of the drainage plan. She said the Board would not allow a wall to be built if it wasn't part of the drainage plan.

Randy Miles asked a question about where the snow would be piled. Would the snow be removed at a certain point or would it just be piled to melt in the spring? Tim Knapp said there was a snow storage area on the right side of the plan, behind parking spots 33 – 38.

Amy O'Neil reviewed her understanding of the situation. The Junkers didn't want any more water coming onto their property. The Parkers didn't want their road washed out. Was there any testimony about water backing up in Mountain View? Tim Knapp said that even if water started ponding around the culvert, it didn't fill up the first catch basin on Mountain View. Amy asked if they meant the Parker culvert. Tim said no, he meant the one in the other corner of the property, the right, rear corner if you face the property from the road. He said that culvert was sunken down about a foot. Based on elevations, blocking the culvert there would still not cause an overflow on Mountain View. The water would go elsewhere.

Mark Curran referred to a memo entitled Revised Drainage Proposal dated July 30, 2004. The memo gives information about an existing 12-inch culvert running from the ESMA Corp. property (which now belongs to Jacques Dodier) to the primary holding area on Payne Junker's property. Mark felt the memo implies that the culvert belonged to the ESMA Corp. property. Amy O'Neil pointed out no one has been able to locate the approved drainage proposal yet. It was clear that the Zoning Board of Adjustment put a condition on the Conditional Use Permit that a drainage plan be put in place. Harry Goodell said the drainage plan was designed by Payne Junker himself, who is not an engineer. Harry didn't believe that Payne Junker referred to any standards in his design.

Carla Westine asked Tim Knapp whether, if the culvert was located on the former ESMA Corp. property and cleaned out, it would address the Parker's concern about Pineview Drive being washed out. Tim could not confirm with certainty that cleaning the culvert would benefit Pineview Drive. He thought it was possible that increased flow might be detrimental to the retention ponds. There was discussion about the size of the culvert. The documentation refers to

a 12-inch culvert. Amy O'Neil said the state was requiring 12-inch culverts at that time for highway access. At the site visit, people thought they saw an 18-inch culvert, and no one saw both ends of the culvert. Tim Knapp believes water would still sheet onto the Parker property whether the culvert was opened or not. Harry Goodell said he thought there was more of a swale across the Dodier property bringing water to the culvert running between the Dodier and Parker property.

Michael Normyle asked Harry if he was referring to a swale mentioned in 2011 documents. Harry said he was and it appears that the swale has been covered over and leveled out, creating a different flow pattern.

Amy O'Neil asked Tim Knapp how the Board would know, once the additional parking places are constructed, that in a heavy storm, the Dodier property would not be under several inches of water. Tim Knapp said the grading would move the water from the Mountain View side of the property to the Pineview Drive side. Amy said the grading plan showed water arrows going across parking places. Tim Knapp said he couldn't be sure, but the plan means to have the water sheet flow across the site and not pond. Amy asked if the elevation is such that this will not happen. Tim Knapp said there were no low spots in which water will pond.

Michael Normyle reminded the Board that the applicant had no control over the amount of water coming to his property. He asked what the change in elevation was from the north to the south side of the property. Tim Knapp thought it was about a foot. Michael Normyle suggested that a swale be constructed along the property line between the Dodier and Parker properties to encourage water to flow to the culvert under Pineview Drive on the Parker property. If Robert Parker kept the culvert open and some sheeting still occurred on the Dodier property would that both drain the water off the Dodier property and protect Pineview Drive and the Junker property.

Carla Westine summarized the history as follows. When the now-Dodier parcel was carved out of the larger parcel several decades ago, there was some plan in place to use a swale to conduct the water from Mountain View over the Dodier property and further south along Route 103. When Robert Parker bought the parcel that remained after the now-Dodier was carved out, he eventually built Pineview Drive and constructed a culvert to carry the water from Mountain View which crossed the now-Dodier property. At some later point, the swale on the now-Dodier property was filled in and drainage problems ensued. Phil Perlah said the correspondence from the folder suggests the problem started in 2007. He quoted a letter dated April 26, 2007 from Susan Spaulding to Jacques Dodier stating that the drainage across his property from Mountain View had been blocked and was causing problems for Mountain View residents. This letter was followed up a month later by a letter from Julie Hance as Zoning Administrator denying a permit to move the house on the Dodier property back from the road and onto the area where the Mountain View drainage flowed. Phil said this brought up the question of whether the culvert from Mountain View was open. Carla Westine asked Tim Knapp if he found the culvert on the Mountain View side and if the culvert was functioning. Tim said the culvert can back up through the pipe, but it will not overflow out of the first catch basin. Phil Perlah asked if the Dodier side of the culvert was open. Tim Knapp said it was slightly below grade, but it's not buried, it has been opened up, it's in a depression. Carla Westine asked Tim Knapp if he was aware there had been a swale there. He said when he first met with his client, Jacques Dodier

there was some discussion about what had been on the property. He said there is still some evidence of a swale and the water flow diagram reflects that the water still moves in the same direction. Carla Westine asked if putting in a new swale would have any further benefit than letting it sheet across. Tim said that concentrating the water flow would send the same volume of water through faster. Not knowing what the downstream culvert was designed for is of some concern to him. In the past he had looked at taking the flow directly from Mountain View to Junker's ponds or to the state culvert at Route 103. Neither the Junkers nor the state were willing to allow that. Carla Westine said although Mr. Junker is opposed to taking the water into his ponds, looking back at the permits which run with the land, that's what the permits required. Tim Knapp said if the planned capacity of the ponds on Junker's land was known it would be easier to predict what effects water coming from the Dodier property would have. Harry Goodell said that if Mr. Junker designed the drainage plan to take water from the culvert, then spreading the flow of water across more of Pineview Drive would be going against the plan.

Amy O'Neil said if there was a 12-inch culvert and the culvert were unplugged, some of the water would go through. Tim Knapp said the water was currently sheeting across the Parker property and the Dodier property might need some additional grading to have more water move through the culvert under the Parker's Pineview Drive. Amy O'Neil then paraphrased Tim Knapp's testimony, saying, in his opinion the plan does not affect any off-site properties, and it's the best way to have the water flow on the Dodier property and still be able to use the parking areas. Tim agreed. Carla Westine asked if the plan does not impact the neighboring properties or does not impact the neighboring properties any worse than they are impacted now. Tim said the plan does not change the current impact.

Carla Westine asked if the Board had any more questions. Mark Curran said he was surprised that the engineer did not investigate the possibly existing culvert under Pineview Drive. Tim Knapp said he spoke about the culvert with Robert Parker at the end of 2013 and he did not know where the culvert was. He said no one knew if the culvert was functional or what it's intended purpose was. The intent of the Dodier project is to keep the drainage the same and not increase the runoff.

Michael Normyle said he agreed with Mark Curran's comment and Robert Parker had put a culvert under Pineview Drive for a reason. Robert Parker has a responsibility to keep the culvert clear. Keeping the culvert clear could not hurt his road. Phil Perlah pointed out that Robert Parker is not a party here. Michael Normyle said Robert Parker is an interested party to the application because he was present at the first part of the hearing. Amy O'Neil said the Board had an engineer's opinion that if the culvert were to be unplugged there would be damage to downstream structures. Tim Knapp said it could help the condition of Robert Parker's driveway, but it could possibly impact the Junker's retention ponds. Harry Goodell said that if the proposed engineering plan to spread the water flow is used it may not help the Parker's situation and the Junker property will not be affected. He asked who the Board is protecting, the Parker property, which originally had a culvert in place or the Junker property with a drainage plan he designed himself. Phil Perlah suggested that the proposed plan maintains the status quo. The water would continue doing what it has been doing for the past several years. If Robert Parker cleaned out his culvert, he might then have to deal with Mr. Junker. Harry Goodell said that if

the culvert were cleaned out, not much more water would go through because the swale on the Dodier property that brought the water to the culvert has at least been partly filled in. Amy O'Neil pointed out that the proposed design does not take into account the possible culvert on Robert Parker's property.

Randy Miles asked if the grading plan involved 8 inches of grading around the entire parking area or just around the building. Tim Knapp said the grading was primarily around the building. Harry Goodell asked if the Town had gone into the Dodier property to do some measurements because of complaints about drainage from the neighborhood. Bill Lindsay was then sworn in to give testimony. He said he was on the Planning Commission when Mr. Junker bought the lot next to the diner on Route 103. Bill Lindsay said the Planning Commission required a drainage plan from Mr. Junker. When the culvert under Pineview Drive was installed it relieved a problem of mud in the swale on the now-Dodier property. The arrangement handled small- and medium-size storms well. Bill Lindsay said at some point the swale on the Dodier property was worked on. He looked at the proposed site plan now and saw that the area that had been the swale is planned to be parking. He knows that the Planning Commission required the drainage plan for Payne Junker. Bill Lindsay said there are currently property owners in Mountain View who have water in their basement after storms. He doesn't know what the condition of the first Mountain View catch basin is. He thought someone should check with the town. Tim Knapp agreed that there is high ground water in the area. The wet basements may not be caused by issues with the swale on the Dodier property or the culvert on the Parker property. Bill Lindsay said it was clear from the homeowner's complaints that the catch basin wasn't doing a good job. Tim Knapp agreed that it was likely to be true, but it was a separate issue from the drainage on the Dodier property.

Carla Westine asked whether Tim Knapp had ever considered reinstalling the swale on the Dodier property. Tim Knapp said no, he was just looking at what was happening currently. He said as he was studying the site, he considered whether a swale to move water would be helpful, but he did not want to concentrate the flow and increase the peak flow off site. Harry Goodell said that if the swale were rebuilt, it would reduce the amount of parking available. Amanda George said there was some concern that Parker's culvert was not working properly, causing the water to back up onto the Dodier property. The proposed design will not increase any current burden on anyone.

Carla Westine asked if there were any further questions about water. She noted that the project still needed a permit from the Agency of Transportation for a curb cut. Amanda George said the current drainage plan had been designed keeping in mind what the Agency of Transportation might require. Amy O'Neil asked whether the AOT generally accepts the design presented to them. Tim Knapp said it depends on the project. This project is fairly straightforward. He pointed to the proposed island to block the current wide entrance. He said he made an allowance for a possible sidewalk in the design. Carla Westine said the flow of traffic in the parking lot requires vehicles to pull in and go around the back of the building. People who park in the front of the building would have to return back around the building to exit the parking lot. Carla Westine asked if there were any further questions about the drainage plan from the Board, the applicants and the audience.

Carla Westine said she was reluctant to close the hearing not having heard from the Agency of Transportation. Tim Knapp said he has filed a permit application, and has not yet met with anyone at AOT. After some discussion it was decided to recess the hearing in order for the Board to be able to deliberate and to give some time for the AOT letter of intent to be sent. The hearing was recessed to Monday October 9, 2017 at 6:00 PM.

At this point the meeting went into deliberative session.