

1 **TOWN OF SKANEATELES PLANNING BOARD**
2 **SPECIAL MEETING**
3 **LOVELESS FARM DEVELOPMENT**
4 **January 13, 2015**

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6 Mark J. Tucker, Chairman
7 Elizabeth Estes
8 Donald Kasper
9 Joseph Southern
10 Scott Winkelman
11 Scott Molnar, Legal Counsel
12 John Camp, P.E. (C&S Engineers)
13 Howard Brodsky, Town Planner
14 Karen Barkdull, P&Z Clerk

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16 **Chairman Tucker** opened the meeting at 7:30 p.m. Written comments must be received ten
17 days prior to a scheduled meeting regarding the Loveless Farm Development application may be
18 submitted to the Board. Submissions made after the ten-day period will be held to the following
19 meeting. For this meeting all comments received will be considered.

20
21 **Continued Review: Major Subdivision**

22 Applicant: Tim Green/owner Loveless Farm Development	Property: 2783 West Lake Rd
23 1194 Greenfield Lane	West side 051.-02-18.1
24 Skaneateles, New York 13152	Vacant land:
	East side 053.-01-39.1

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26
27 Present: Andy Leja, Legal Counsel; Joanne Gagliano, EDR; Thomas Dussing, EDR; Benjamin
28 Brazell, EDR;

29
30 **Mr. Molnar:** If the Board would like we can review submissions by the applicant from the last
31 meeting and then my recommendation is to proceed with the conservation analysis. Perhaps the
32 applicant's representative can summarize where we have been and where we are.

33
34 **Mr. Leja:** Sure. Good evening members of the Board. Andrew Leja, of Hiscock and Barclay,
35 counsel for the applicant. With me tonight are members of Environmental Design and Research
36 (EDR), the applicant's consultants. President, Joanne Gagliano: project manager, Tom Dussing;
37 and environmental specialist, Ben Brazell. We come here tonight, hopefully at conclusion of a
38 long environmental process. As the Board knows, you have spent many long hours reviewing
39 submittals from the applicant as well as submittals by persons commenting on the project from
40 outside. You have also spent time with your own engineering consultant and your own Town
41 planner, and your own counsel to be able to go over the various aspects of this. Accordingly, to
42 your subdivision regulations, for an open space subdivision, such as been proposed here, a
43 conservation analysis is part of the required submittals from the applicant. That was submitted in
44 2010 and at the Board's request that has been updated since then. In addition to all of the other
45 materials provided by the applicant, there are SEQR materials that you have been able to review.
46 And at this point, I believe that the Board is well positioned to be able to make its requisite
47 findings under the law on the conservation analysis, and use that as a prelude to making findings
48 with respect to SEQR on the project. And from SEQR findings, necessarily follow the sketch

49 plan or site plan approval decision-making by the Board. Our responses have been submitted
50 including various informational submittals and the updated conservation analysis in front of you.
51 We are here to answer any questions you may have with respect to prior submittals. With
52 respect to materials just recently received, by us and the Board over the last several days, we are
53 not in a position to address detailed substantive issues as we did not have enough time to do
54 address nor did the Board have enough time to delve into it. Nevertheless, if the Board has any
55 questions we will do our best to answer the questions and hopefully we can finish the
56 conservation analysis findings tonight and then move on to the next stage in the process.

57
58 **Chmn. Tucker:** Does anyone from the Board have any comments to make at this time.

59
60 **Mr. Molnar:** I would recommend to the applicant that in view of the recent submissions,
61 yesterday and previous days, that if the applicant would kindly review that and submit its own
62 response or reply if you will within the next seven days or so. It will be my recommendation to
63 the Board, if timing permits, that the Board had on its agenda this evening a request from the
64 applicant to complete the conservation analysis and continue on with SEQ based upon the
65 application that is presented with the number of lots on the east side and the number of lots on
66 the west side in the configuration you have seen in all of the materials. The applicant has also
67 asked the Board to move forward with the SEQR based upon that plan. The late submission of
68 documentation makes it hard for both the Board and applicant to manage. In order to continue
69 the meeting process efficiently, I would recommend that the Board schedule a special meeting
70 for another night in the next couple of weeks in order to address either the conservation analysis
71 if it is not complete this evening or move on to SEQR, but to cooperative with to the best of its
72 ability the requests that are pending before the Board.

73
74 **Chmn. Tucker:** Is there a meeting date that we could set up at this time?

75
76 **Mbr. Estes:** The regular planning board meeting is next week, we could go the week after.

77
78 **Chmn. Tucker** That would be January 27, 2015, is everyone available?

79
80 **WHEREFORE,** a motion was made by Chairman Tucker and seconded by Member
81 Estes to schedule a special meeting on *Tuesday, January 27, 2015 at 7:30 p.m.* The
82 Board having been polled resulted in the unanimous affirmation of said motion.

83
84 **Mr. Leja:** Mr. Chairman, in response to Counsel Molnar's request, we never, as you know,
85 shied away from responding to substantive comments about the application and we don't intend
86 to now. We would be more than happy to respond, however, I would point out to the Board,
87 respectively, in my cursory review of the submittals that have come in, many of them have
88 touched upon areas that have already been studied to death and been gone over. So, if the Board
89 has specific areas or specific concepts that it wants us to address, perhaps that would help us both
90 on trying to narrow down the wheat from the chaff, so to speak.

91
92 **Chmn. Tucker:** Part of what the Board is thinking is that the steep slope on the east side on the
93 upper part. I am not sure of what has been submitted, whether it is high conservation value or
94 low. Some of the Board members have been expressing high conservation value on that steep
95 slope, which is one thing that might be addressed in terms of the conservation analysis of this
96 area.

97

98 **Mr. Leja:** Addressed in what way? There is some that claim that it is high conservation value
99 and our experts disagreed since 2010. The Board is looking for what from us with respect that
100 the slope themselves have been established in the plans, the erosion sedimentation protection has
101 been addressed in terms of additional submittals from our engineers, the stormwater SWPP
102 issues have been addressed as well per your regulations. To the extent to provide you additional
103 information, can you give us some direction of what you are looking for.

104

105 **Mbr. Winkelman:** Let's go through the conservation analysis and we will find out by the end
106 of the meeting.

107

108 **Mbr. Estes:** I was not able go through each one of these and how they compare, but even the
109 numerous responses we got on discussion of the road, right of ways, and the open space. There
110 seems to be a lot of conflicting information from both what you submitted and what has been
111 submitted. Even with the submittals we got, they didn't agree. So I think that what needs to be
112 cleared up in my mind as to where this is. Your submittal of November 7, 2014, which answered
113 some questions and then there was a response back saying that it didn't answer correctly and
114 then the nineteenth, there not all meshing. We also need to take a good look at those roads and
115 the driveways, and the right of ways and find out what it is you're looking at and how it either
116 matches or doesn't match what the regulations says and what is being proposed. I think we need
117 to look at what is being submitted to us.

118

119 **Mbr. Kasper:** I think we need to determine the conservation value of everything before we go
120 any farther.

121

122 **Chmn. Tucker:** That is what we need to do tonight, if we have time tonight or whether we
123 need to study it more.

124

125 **Mbr. Winkelman:** How many pages are in the new conservation analysis. I only have five for
126 some reason.

127

128 **Mr. Molnar:** There is the two-page analysis and this is reviewed against the prior submission of
129 March 24. This is the original submission from March 24 without the highlighted changes. It
130 includes six pages plus a seventh with a list of attachments and the color attachments. This
131 would come out of the binder attachment F. The conservation analysis presented is a series of
132 drawings with the various elements of the conservation analysis and you will see them parked in
133 the upper right hand corner. For instance, the slope analysis, open space and moving on through
134 soil analysis.

135

136 So you know Andy, we have reviewed the March 24, 2014 conservation analysis against the
137 2010 conservation analysis and highlighted changes.

138

139 **Mbr. Winkelman:** I got on the Board two and a half years ago and I say the same thing I said
140 back then. Vistas from the public highway, its mentioned in the comprehensive plan and in the
141 zoning code a bunch of times, and I know you had your analysis and say you're going 55 mph in
142 a car and there are no sidewalks up there, but there are a lot of walkers, and bikers, and joggers,
143 and passengers in those cars that can take their eye off the road and that still is a nice vista.
144 Steep slopes on the lakeside, I totally disagree that it is low, and the agriculture land is

145 mentioned a thousand times in our comprehensive plan and zoning. That hayfield is pastoral
146 and the steep slopes are for that part to come out as low conservation value.

147

148 **Chmn. Tucker:** That area is medium conservation value, they changed it.

149

150 **Mr. Leja:** We appreciated the Board's concern about that vista and that is why we did that
151 visual impact assessment that included that particular portion and why we incorporated
152 mitigative measures in the latest submittals from last November that actually relocated the
153 building envelopes and lowered the maximum heights of the buildings to be constructed to once
154 again completely reveal that lake vista from passersby on the road.

155

156 **Chmn. Tucker:** Looking at that myself, I feel that this is probably close to what it should be.
157 That is my opinion on the conservation analysis of this property.

158

159 **Mbr. Winkelman:** The dark green is high, and the buffer around, I still think it should be a
160 buffer around the wetland and I consider the slopes immediately next to West Lake Road and the
161 lane going down as being of high conservation value.

162

163 **Chmn. Tucker:** I think the wetlands should be more conservation value than medium.

164

165 **Mr. Leja:** Part of the reason it is medium conservation value is that those wetlands are isolated.
166 They are not part of the larger chain or part of a larger.

167

168 **Mbr. Winkelman:** There are two smaller ones on the north that were excluded.

169

170 **Chmn. Tucker:** The water starts coming out of there and runs south across Greenfields.

171

172 **Mr. Leja:** The wetlands themselves are not part of a larger wetland feature.

173

174 **Mbr. Winkelman:** In the conservation area that includes 300 feet of the neighbor's property, it
175 looks like we classified those lands as well. I would think Ag land is of medium to high value all
176 around there.

177

178 **Mr. Leja:** Again, what this Board does in terms of conservation analysis not only applies to
179 here but will apply going forward to the future. Unlike, the ZBA, this Board does set precedence
180 so if you declare that all agriculture land is of high conservation value, that means most of the
181 Town becomes high conservation value. I would submit that that in turn dilutes the whole
182 classification. Making everything high means nothing actually stands out.

183

184 **Mbr. Winkelman:** This is an agricultural district, basically, and Onondaga County has advised
185 us that this kind of suburban development in the agricultural district leads to conflict between the
186 farmer and the residences. The traditional development has been along the road and towards the
187 lakefront. This stuff up top is near the farmland.

188

189 **Mr. Leja:** Again, back in 2010 this Board raised that very issue about the location of the lots on
190 the west side. The questions was asked, where would you site those appropriately. There were
191 two different options given to a developer under your code. You can follow the Hamlet siting
192 principles or you can follow the rural siting principles. The Board was asked and if we followed

193 the Hamlet siting principles, we would be siting those lots close to Route 41A. If rural siting
194 principles then those lots get set back into the woods and leaves the area immediately adjacent to
195 Route 41A more open. The Board was asked which way you want us to go on that. We were
196 told in no uncertain terms, we prefer the rural siting principles, and that dictated that layout of
197 the west side from 2010 all the way forward. Those discussions were held in May and July 2010
198 according to the minutes.

199

200 **Chmn. Tucker:** That is what our Board determined at the time as we were trying to keep it from
201 being seen along the road.

202

203 **Mbr. Winkelman:** You can barely see it along the road as it is at a higher elevation and it is
204 also land of low conservation value. We moved it from low conservation value to medium
205 conservation value.

206

207 **Mbr. Southern:** It was a sacrifice we knowingly made at the time.

208

209 **Mr. Molnar:** The configuration also takes into consideration the wetlands issues that were
210 encountered in 2013 which required the re-mapping and redelineation of the wetlands on that
211 side which moved the lots farther away and more towards the west

212

213 **Mr. Leja:** Not too much further. There was one lot affected by its proximity to the wetland that
214 was relocated. A couple were adjusted because of it, but it really was only one lot. The rest of it
215 in the edges of the woods themselves remain generally the same. The relocation was to the
216 north, the northern side of the western parcel.

217

218 **Mbr. Winkelman:** The colors on this are a little strange. You've got three different categories
219 to conservation value, high, medium and low. The woods down near the lake are definitely high,
220 what are these woods up here, what color is that.

221

222 **Mr. Brazell:** That's medium.

223

224 **Mbr. Winkelman:** So that's low. That's not the same color as here.

225

226 **Mr. Leja:** Maybe you want to come up and show him.

227

228 **Mr. Brazell:** The color, because there is a layer of transparency, the color is somewhat
229 influenced by the aerial photography underneath. Basically, the dark green is high, the lighter
230 green is medium, and the yellow is low.

231

232 **Chmn. Tucker:** These are considered high, the wetlands.

233

234 **Mr. Brazell:** That is correct.

235

236 **Mbr. Winkelman:** That's low, but a different color.

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238 **Mr. Brazell:** That's low, this is all low. All of the yellow is low.

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240 **Mbr. Estes:** This is low right here? Or is it medium?

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MR. Brazell: It's low.

Mbr. Winkelman: And the slopes on the east side - -

Mbr. Estes: This is low, this is medium.

Mr. Brazell: No, this is low.

Mbr. Winkelman: See that why the colors are mixed up.

Mr.; Brazell: So if you look at the aerial photograph underneath, you see how there is green? That green is influencing the yellow to a certain degree. I apologize for the confusion that has caused.

Mbr. Winkelman: So those steep slopes afford the views, the agriculture land and beautiful view of the lake, steep slopes, all that is low conservation value.

Mr. Brazell: I can run through a few of the reasons why we categorized that as such. First of all that area, specifically to the east of 41A, it is a relatively small area within the specific parcel area, parcel B. It is a relatively small area that is privately owned, there is currently no public access to that open space. It has very little wildlife or ecological value, there is no defined ecologically corridor, and to that end, immediately adjacent to it to the south, there are ten built structures within the 300' study area, that's defined in the Town's conservation analysis regulations. In addition, as we mentioned, it is adjacent to the state highway, there is a posted speed limit of 50 mph on the highway, there is no public pull offs or public access for stopping and enjoying the view. So the view is basically only available to those who are using the state designated highway.

Mbr. Estes: This is the criteria for why you are classifying this as low conservation value?

Mr. Brazell: That is some of the reasons, that is correct.

Chmn. Tucker: It is 50 mph, I believe.

Mbr. Winkelman: Some of the land features I would think that would influence the conservation value would be one. It is in the lake watershed, 2. Its Ag land, and been Ag land for a long time. 3. It has steep slopes, 4. It has vistas and visibility from across the lake, and it doesn't have any wetlands, mature woodlands, historical architecture. So, I mean in our code it specifies those things on there and that piece of property has it in spades. That specific piece of land right there with the steep slopes in the watershed and agriculture, it's just land of high conservation value. At least medium conservation value but not low.

Mr. Brazell: If we look at the slopes issue, that is something that can be addressed and impacts associated with that can be avoided and/or mitigated completely through engineering practices.

Mbr. Estes: Doesn't it seem counter-intuitive that if we are going through mitigation efforts on a medium or high conservation when we have low conservation areas right there. Why go

289 through the extra effort to ruin a nice piece of land and mitigate to pretend you are bringing back
290 to where it was to begin with. I mean if you have low conservation area to build in.

291
292 **Mr. Brazell:** That's what we are saying according to the analysis we conducted, we are building
293 in low conservation value area and as a result of the rural siting principals on the west side, we
294 are building in medium conservation value area. Just to go back to the list you were mentioning,
295 if you think about it, some of those criteria act in conflict. Steep slopes with active agriculture
296 can result in less than ideal water quality issues. We are going to use engineering practices that
297 will minimize and/or eliminate water quality issues.

298
299 **Mbr. Winkelman:** I think it has been a hayfield for a long time, I don't think it has been tilled
300 for years.

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302 **Chmn. Tucker:** But it has not been an agricultural field for years.

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304 **Mbr. Winkelman:** It's a hayfield.

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306 **Chmn. Tucker:** A hayfield has to be turned over occasionally, otherwise you have a weed field.

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308 **Mr. Brazell:** I believe, Tom correct me if I'm wrong, there is a drainage issue going into
309 Bentley Brook. Isn't there some level of erosion and sedimentation happening as a result of the
310 current site conditions?

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312 **Chmn. Tucker:** there is an area that concentrating to a certain area near where your bridge is
313 being proposed.

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315 **Mbr. Kasper:** Wouldn't that make it a medium value then because of the water runoff critical
316 to going into the lake? You're setting the conservation value pre-construction. So you are
317 saying that we can mitigate it.

318
319 **Mr. Leja:** But a situation of erosion going into the lake is not conservation, its anti-conservation
320 as it lessens the value of that land if left alone.

321
322 **Mbr. Winkelman:** Why would the code consider slopes over 12% as unbuildable when you are
323 figuring out your density thing.

324
325 **Mr. Dussing:** That's your code, 12% is very buildable with the right techniques, engineering,
326 erosion control and structural practices, I think there very buildable.

327
328 **Mbr. Winkelman:** You can build on anything, we have the engineering to build anything. Is it
329 desirable in the watershed and when you are doing an open space subdivision when there is land
330 that is not supposed to be buildable and steep slopes, beautiful vista and all that combination. I
331 think that changes the conservation value of that land especially up close to the road, not so
332 much towards the flats but definitely up on the steep slopes. We've been trying to get these
333 houses pushed down a little bit more and that's what we are looking to protect conservation
334 value in that. I just see it mentioned so many times in the code and the comprehensive plan and
335 vistas to the lake, steep slopes, Ag land, all that stuff. And for you guys to just slap up low
336 conservation value on it is mind-boggling.

337

338 **Mr. Molnar:** If I may, I would like to refresh the Board's recollection on the code and the
339 conservation analysis criteria. It is 148-9G Standards for open space subdivisions. Standards
340 for open space subdivisions. In order to approve an open space subdivision, the Planning Board
341 must find that the proposed subdivision meets the standards in this section. (1) Conservation
342 analysis. (a) As part of any sketch plan submission for an open space development (or as
343 required for a conventional subdivision in § 148-9C), an applicant shall submit a conservation
344 analysis, consisting of inventory maps, description of the land, and an analysis of the
345 conservation value of various site features. The conservation analysis shall show lands with
346 conservation value on the parcel and within 300 feet of the boundaries of the parcel, including
347 but not limited to the following: [1] Land that is not buildable land, as defined in § 148-56. [2]
348 Farmland, trail corridors, stream corridors, scenic view sheds, public water supply watersheds
349 and wellheads, park and recreation land, unfragmented forestland, and historic and
350 archaeological sites identified in the Comprehensive Plan or any adopted open space or farmland
351 protection plan. [3] Buffer areas necessary for screening new development from adjoining
352 parcels. [4] Stone walls and trees 12 inches diameter at breast height (dbh) or larger. [5] Other
353 land exhibiting present or potential future recreational, historic, ecological, agricultural, water
354 resource, scenic or other natural resource value, as determined by the Planning Board. Those are
355 the criteria for the Planning Board discussion concerning the conservation analysis presented
356 before you.

357

358 **Mbr. Estes:** Did you follow this same list when you prepared your conservation analysis?

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360 **Mr. Leja:** We followed your code.

361

362 **Mbr. Estes:** That's not what I asked. Did you go through the same list because that's not is not
363 the criteria . That's what I asked when you first started speaking. Is that the criteria you went
364 through for the conservation analysis. Because there were certain items, you were listing when
365 we asked why you were classifying as a low conservation.

366

367 **Mr. Brazell:** Yes, all of those items are addressed in the analysis.

368

369 **Mbr. Estes:** For this low conservation area.

370

371 **Mr. Leja:** For the entire parcel.

372

373 **Mr. Brazell:** For all parcels A, B and the 300' buffer that is established that constitutes the site
374 area.

375

376 **Mbr. Estes:** So if I am hearing that, you're saying the criteria was applied to parts of the site.
377 Not all of the criteria was applied to each site. You sort of, this is high, this is low.

378

379 **Mr. Brazell:** No.

380

381 **Mr. Molnar:** If I may go on, the section provides for it. (b) The conservation analysis shall
382 describe the importance and the current and potential conservation value of all land on the site
383 identified in Subsection G(1)(a) above. In the course of its initial sketch plan review, the
384 Planning Board shall indicate to the applicant which of the lands identified as being of

385 conservation value are most important to preserve. You have a suggested conservation analysis
386 before you, which is subject to your review and approval, to identify the land of being the most
387 conservation value and most important to preserve.

388
389 **Mr. Leja:** In answer to your question if all of the elements applied to every portion of that land I
390 would say only to the point they made sense. It makes no sense applying a scenic vista in the
391 middle of a stand of woods because there is no scenic vista. But where there is a vista, that was
392 then evaluated for a specific purpose of the assignment of conservation value.

393
394 **Mr. Brazell:** An aesthetic resource was specifically analyzed in our document.

395
396 **Mbr. Winkelman:** I still consider the farm field on the east side of 41A of being at least a
397 medium conservation value and the farmland around the western parcel would at least be
398 medium in conservation value. The buffer zone around the wetland being of medium value.
399 That's my opinion with the information given to us.

400
401 **Mr. Molnar:** If I may go on, subsection (c) The outcome of the conservation analysis and the
402 Planning Board's determination shall be incorporated into the approved sketch plan showing land
403 to be permanently preserved by a conservation easement, as well as recommended conservation
404 uses, ownership, and management guidelines for such land. The sketch plan shall also show
405 preferred locations for intensive development as well as acceptable locations for less dense
406 development. With respect to measurement of what is high, medium and low, the Board still
407 has at its discretion the ability to identify preferred locations for intensive development as well as
408 acceptable locations for less dense development.

409
410 **Mr. Leja:** This is where respectively we get into the issue. The conservation analysis was
411 presented as part of the initial application process early on in 2010 presented to the Board as well
412 as a proposed site layout. The Board examined the site layout, and by your code, it suggests that
413 the conservation analysis should work to dictate how that site layout is designed. This Board at
414 the earliest opportunity should use the conservation analysis information to try to drive that
415 process. I think that is part of the reason this Board indicated that we should adopt the rural
416 siting guidelines as opposed to Hamlet, because of their own consideration of the visual impact
417 to be driving along 41A seeing a row of houses immediately adjacent to the road. No, we want
418 those set back further into the woods. That is sort of an interpretation of the conservation
419 analysis context. I think that is the sort of thing that has happened throughout the entire four and
420 a half year process of this. The Board has incorporated, maybe perhaps without expressly
421 acknowledging it or maybe even subconsciously. The Board has employed an appreciation of
422 the conservation merits of each portion of the site, in terms of guiding the applicant to what it
423 wanted to see in changes or modifications to the plan. The roadway running along the east side
424 off of fire lane 17, for example, early on this Board identified that they preferred that roadway to
425 be located further east from its original proposed location. Further down the slope, and that was
426 again, in consideration of slope issues, which were identified in the conservation plan originally
427 and brought up in the site plan. You've incorporated considerations in this conservation analysis
428 throughout your consideration of this site plan itself, this subdivision application. To now, I
429 don't think it would be fair to this Board to say you are now considering these things for the first
430 time., and I don't think I have heard anyone suggest that. You have been considering these
431 things throughout. They are good planning techniques design techniques, to factor these various

432 issues into consideration of what you want this thing to look like. The Board has done that in
433 excellent detail.

434
435 **Mr. Molnar:** If I may continue in that vein, I think it's a fair response to also indicate that the
436 Board has requested changes in the sketch plan in order to reduce the compressed development
437 that is all over on the site, in the hopes that the sketch plan would be, for lack of a better term
438 modified and be considered by the Board in due course. When the conservation analysis was
439 modified in March 2014, it set the stage. At that point we were still struggling with requests for
440 modifications to reduce the overall development and we have over the period of months have
441 come to this point. There is a little back and forth both ways, and now it is time for consider ion
442 by the Board the conservation analysis in the code section as required.

443
444 **Mbr. Winkelman:** You have been very flexible on the west side, but on the east side, it is still
445 like a two-acre conventional subdivision over there. You have offered to lower the buildings to
446 be able to see over the rooftops and things but there have been very little flexibility on that area.
447 I think the Board has been expressing interest in that parcel all along.

448
449
450 **Mr. Leja:** I respect your position, but I must disagree. I think we have been just as flexible on
451 the east side with the movement of the roadway, the reconfiguration of the building envelopes,
452 the voluntarily restrictions of the maximum building height restrictions beyond, over and above
453 what your code provides, the imposition of extensive stormwater and erosion control protections
454 for Bentley Brook and the areas immediately surrounding it, and the voluntarily offering of a
455 visual mitigation to the land immediately to the north where Brook farm is located as we offered
456 in the last meeting before you. I think there is a number of different mitigative measures we
457 have proposed and are more than willing to commit to in response to the Board's views on this. I
458 think the visual mitigation is the big one. You said, we want to see the lake from 41A, so that
459 led to a string of situations that we could give you exactly that. It wasn't easy, principally
460 because we are heavily constrained on the east side because of the low amount of buildable
461 acreage and by your own and exacting detailed and precise regulations. Again, if you had a very
462 bland or very generic zoning code, then that gives developers all sorts of flexibility to offer new
463 things because they are unhampered by existing regulations. But when you put in very detailed
464 and precise, numerous restrictions on what can and can't be done, which you are allowed to do,
465 you constrain development to move within the boundaries of that new arena, sort of speak. A
466 developer can come in and offer only so much before if you say why don't you move this over
467 here before that ruins the calculation of the acreage of buildable lot sizes and everything. It is
468 very much a puzzle where if you move one piece, everything else has to be shifted around which
469 is not as easy as take that, flop that over there. Again, your code is incredibly detailed as opposed
470 to other codes around the state and that is why it has taken us so long to be able to design
471 something that met your code.

472
473 **Mbr. Winkelman:** We were looking for an open space subdivision and what is on the east side
474 is very conventional.

475
476 **Mbr. Estes.;** When you mention unbuildable land and constraints, those constraints are harder
477 when you're trying to build so many lots at one time and one location. When you've got that
478 much unbuildable land then maybe a smaller number of building lots is what is required, as
479 opposed to trying to shift the same number of pieces of puzzle around in the same spot maybe

480 you take a few pieces of the puzzle out and make it work with the unbuildable land, the slopes,
481 the medium conservation areas and you change the way the puzzle looks like to begin with.
482
483 **Mr. Leja:** How many fewer lots?
484
485 **Mbr. Estes:** I'm not designing the puzzle for you.
486
487 **Mr. Leja:** Exactly. Your code provides that much
488
489 **Mbr. Estes:** It also says unbuildable land.
490
491 **Mr. Leja:** Our densities are much lower that the surrounding area. It is lower than what it
492 requires.
493
494 **Mbr. Estes:** It doesn't make it any better for that piece of land.
495
496 **Mr. Leja:** According to your code it does. When you are in compliance with the code, that is
497 what your developer has to go by. If you say I want fewer lots in this location, then how many
498 fewer and why. What is your rationale for saying.
499
500 **Mbr. Estes:** Because you just told us that, there is unbuildable land and the property doesn't fit
501 what you are trying to put on.
502
503 **Mr. Leja:** According to the code, it is buildable.
504
505 **Mbr. Estes:** You just said it wasn't buildable.
506
507 **Mr. Leja:** There is unbuildable land on the east side that we have avoided. That we are not
508 building on.
509
510 **Mbr. Estes:** You haven't built on it, your building right across the steep slopes, which is in our
511 code as unbuildable.
512
513 **Mr. Leja:** That's not true. Everything that is on there follows your code in terms of what is
514 buildable and what is not. It has been confirmed by your own experts.
515
516 **Chmn. Tucker:** Number wise but not by what the site is like.
517
518 **Mr. Dussing:** What this says is that you want to hit the 12% but if it is greater, then you want to
519 mitigate but you can't build on 30% slopes.
520
521 **Mr. Leja:** So then, 30% slopes are unbuildable, clearly, but 12% and up to 29% are buildable.
522 They are only buildable with appropriate protection. You could say it for any piece of land, it's
523 only if you employ the appropriate protections to preserve the ability of the land to be used
524 properly.
525
526 **Mbr. Winkelman:** In the open space subdivision, it is a no brainer to start with property that is
527 been labeled as unbuildable during the calculations.

528

529 **Mr. Leja:** That is what your code dictates. First of all, we have to figure out what s buildable
530 and what isn't, you do the calculations and then you go from there. That's not where we stop,
531 your code provides for several other categories of lands that may be buildable but under certain
532 conditions, which we have to factor in our overall design. When you say that there are too many
533 lots on the east side, and I say well how many does the Board want? And the Board says well we
534 can't design this, well we designed this according to what the code says is an appropriate number
535 of lots for that area. Your code says it, we didn't invent it.

536

537 **Mr. Molnar:** What the code provides are limitations, ceilings, thresholds which when charted
538 on a drawing would permit that applicant or anyone to develop the property to the maximum
539 extent. The challenge is taking that two dimensional view of the property and the application and
540 looking at it in terms of the three dimensional view of the property. The challenge here is for the
541 Planning Board to approve an application, which reconciles the two.

542

543 **Mr. Leja:** But in doing so, the Planning Board needs to start with what is permitted under your
544 code, and then, only under if there are extenuating circumstances that dictate that the code cannot
545 be followed,. The Board needs to point ;those out precisely, and say exactly why you can't build
546 six homes on the east side.

547

548 **Chmn. Tucker:** Part of that rural siting principles, that's what that east side is. We have been
549 trying to get you to move them down and you won't do it.

550

551 **Mbr. Estes:** It's not just that, it's putting it on the actual, I mean you can take lot of land
552 someplace else but when you start looking at the conservation analysis, the trees, the slopes, the
553 everything together, to what Scott said, the maximum you can put on. Then you start looking at
554 how does it fit of land.

555

556 **Mbr. Winkelman:** With an open space development.

557

558 **Mbr. Estes:** It says we may, it may be approved only if it fits the area. We're like squeezing
559 everything in.

560

561 **Mr. Leja:** Actually, the density there is less than any of the other residential development
562 around it.

563

564 **Mbr. Estes:** You're missing the point, it is not the density, it is the density for what the
565 character of the land is.

566

567 **Mr. Leja:** You say squeezing it in, look at the land immediately to the south.

568

569 **Mbr. Estes:** I'm saying squeezing it in because you have parts of the land that's not - -

570

571 **Chmn. Tucker:** That was different zoning at that time.

572

573 **Mbr. Kasper:** And it is not a steep slope. This is the steepest part of that whole area.

574

575 **Mr. Leja:** But your regs say that you can build on steep slopes up to 30%. Are you saying you
576 can't build on steep slopes up to 30%?
577

578 **Mbr. Winkelman:** We're saying we like to say that that's got conservation value to leave that
579 in its natural state. Steeps slope, the vista, the open field.
580

581 **Mr. Leja:** We are not proposing to flatten that out. We are leaving the steep slopes. Do you
582 want the steep slopes eroding into the lake or into Bentley Brook with an active Ag land under
583 it?
584

585 **Mbr. Winkelman:** No, you can do a smaller amount of development and still be able to address
586 that water.
587

588 **Mr. Leja:** If you were to reduce that from six houses down to five, it that - -
589

590 **Mbr. Kasper:** That would be a good start.
591

592 **Mr. Leja:** What would be the gain in that. What is the exact quantitative gain conservation
593 wise.
594

595 **Mbr. Kasper:** All you're doing is your taking an ice cream scoop out for every house. All you
596 are going to have are pockets of holes where the houses sit and have high elevations between the
597 houses because you are trying to lower them. I don't see how you can mitigate the water control
598 because you are going to have a scoop here, then a rise here, then this house will be scooped.
599

600 **Mr. Dussing:** That's not how it is graded. It's going to come across and then go up the steep
601 slope.
602

603 **Mbr. Kasper:** But then you are going to have more than a 30% wall behind these houses. You
604 are changing the whole topography of that whole area along that road line. In my opinion, that's
605 medium value. A couple of hundred feet off West Lake Road because of the vistas and also the
606 steep slopes.
607

608 **Mr. Leja:** In terms of moving them down from the road, remember the original design did have
609 tem far down the slope away from the road, but it required that access road to be there.
610

611 **Chmn. Tucker:** If they put that road in there it would put in some pretty good cuts.
612

613 **Mr. Leja:** Exactly, we adjusted it in relation to that at the Board's request.
614

615 **Mbr. Kasper:** You never showed us one lot less and moving the houses down.
616

617 **Mbr. Estes:** or two or three lots less.
618

619 **Mr. Leja:** Two or three lots less, then your code is meaningless. Well the code says you can
620 build this unless the Board wants you to build fewer.
621

622 **Mbr. Estes:** Unless you pick a piece of land that doesn't - -

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Mbr. Kasper: That's on a perfect piece of land, this is not a perfect piece of land.

Mr. Leja: The code doesn't say a perfect piece of land these apply. The code doesn't say that. You have to look at it from a point of what a reasonable person who is trying to develop something is looking at. What I have to look at is the code, that is what I go by. Those are the rules you set.

Mbr. Estes: Any maybe walk out onto the land.

Mr. Leja: Believe, me, there were considerable investigations of the site all through this, it was not done on a whim. No one who looks at these plans can say that.

Chmn. Tucker: The Board has been out numerous times too.

Mr. Leja: There was a tremendous amount of work that went into this. Much of that work was dictated because the code was so explicit as to what the demands were for steep slopes, for lake front areas, lake watershed areas, you've got codes for all of that. You have a different set of regulations for each of those environmental conditions, and a good engineer has to take all of that into account in developing an entire plan that meets everything. EDR did that. If you say well we just don't get a good feel for that and we think yeah it's a little squeezed, that is an arbitrary determination on your part to say we don't just like it. Point to me in code where we are in violation and then we work from there.

Mbr. Estes: We just went through it.

Mr. Leja: It doesn't say we are in violation anywhere.

Mr. Estes: You're not in violation because you haven't done it yet.

Mbr. Winkelman: Land that is unbuildable, in the watershed, Ag lands, steep slopes, just - -

Mr. Leja: All of those are in the analysis, all of those were factored in the analysis.

Mbr. Winkelman: so it is still low conservation value, that's what I don't get.

Mr. Leja: Even if its medium, will play devil's advocate here, it's medium, what does that mean in the long run?

Mbr. Kasper: It means it's critical, a little bit more critical than low value and the Board has to look at it more carefully. The density you are proposing - -

Mbr. Winkelman: You would like to discourage development in the high conservation value areas and minimize it in medium and concentrate it in the low value areas.

Mr. Leja: There is no formula for how to do that. If it is medium, that means you have to have the density requirements, or if it is high conservation value you have to cut them by a tenth.

670 There is no formula, there is no way for a developer to come up with a plan. This plan has been
671 on the table for four and a half years.

672

673 **Mbr. Kasper:** And that's why it has been on the table for four and a half years because we are
674 not happy with it.

675

676 **Mr. Leja:** There have been changes. There has been a number of lot reductions.

677

678 **Mr. Molnar:** Part of the code section 148-9 (2) Density calculation. Open space subdivisions
679 are intended to allow flexibility while preserving important natural attributes of the land.
680 Preserving the character of the land is an important issue to this Board.

681

682 **Mbr. Estes:** And to the community.

683

684 **Mr. Leja:** If you say, the character of the land is agricultural, then you are not going any allow
685 any development on it to preserve the agricultural character of the land. You can't, unfortunately
686 it is not reality. There are tradeoffs that have to be made, the Board has to responsibly apply the
687 code provisions and its own common sense and good judgement to a plan, but in turn the
688 developer should be apply to rely on the code as a guide for what is allowed and what isn't. The
689 code isn't just an amorphous thing, it's an exacting set of requirements that all function together.
690 You've got steep slope protections in there, you've got watershed protections in there, you've
691 got all these things spelled out. Most localities don't have that level of detail, they simply say,
692 well you're near the watershed, you probably should get an inspections more than once in three
693 years on your septic system. That's all they say, your don't do that, you go an nth degree beyond
694 that and when you are that specific, then you have to expect when you have someone coming in
695 develop has a right to rely on that specificity. This is what they want for appropriate
696 development, if I meet that I have full expectation that I should be able to get an approval based
697 on that. If we have to go through an iterative process of mitigation and I have to change a couple
698 of things here and there, and we have changed more than a few things at the Board's request
699 willingly. Moving the road, taking off a parcel on the west, re-arranging the layout of the homes,
700 adding extra precautions as requested by the Board, when you add those in, it is an iterative
701 process. To reach then end of the process and have the Board say, nah, we still think you have
702 too many lots on that one parcel, it is not the developer's fault nor the Board's fault. It's what is
703 in the code. If you want to change the code and reflect something totally different that reflects
704 more of the sensibility that agricultural lands must be preserved and development must be
705 discouraged on those, then the code is the vehicle to do that, first the comprehensive plan then
706 the code, but at the same time, a change in the code like that gives the developer fair warning
707 when he walks in that this is what we are expecting. We don't expect you to develop agricultural
708 land period or we expect you to cut all of the code requirements in half in density requirements
709 in terms of agricultural land. Okay, then now I know what the rules of the game are and I will
710 design something accordingly. That is what your open space subdivision regulations say in lieu
711 of a conventional subdivision you can do something like this that takes advantage of and try to
712 coalesce open space and give you some flexibility in some regard. That's why we went in right
713 from the very beginning taking that approach, not taking a conventional subdivision approach in
714 order to gain those extra benefits that your code allows us to have for an open space subdivision.

715

716 **Mbr. Winkelman:** It's very conventional as far as I'm looking at it, I think we can do better.
717 And this is a difficult piece of property that has been subdivided for over a hundred years, it's
718 what is left over, its steep slopes, its wet and things so it is a very difficult piece of property.

719
720 **Mr. Leja:** I would say that that's what requires very exhaustive engineering work and careful
721 planning and I would respectfully submit to this Board that that is exactly what you have before
722 you. A subdivision plan you have never seen before, you have never seen before you to this level
723 of detail.

724
725 **Mbr. Winkelman:** An open space subdivision wants to retain the natural features of a piece of
726 property, as best it can and design around it. Not manipulate it.

727
728 **Mr. Leja:** Exactly so, if you look at the layout, land that's fragmented - -

729
730 **Mbr. Estes:** You cut him off. Did you hear his last few words? Not manipulated, you're
731 changing the whole character of the land by what you're doing by all of the manipulations..

732
733 **Mr. Leja:** Not at all, if you're standing up here as a planning board and saying we're changing
734 the land. You're a Planning Board, that's your job to have applicants come before you, present
735 plans that you approve and those plans, invariably change the land. No one submits a plan that
736 doesn't change the land, there would be no reason to be here.

737
738 **Mbr. Kasper:** Let's say you are doing extreme changing.

739
740 **Mr. Leja:** There are degrees, and your code calls out those degrees, it says this is allowed and
741 this isn't. If you want to blame anything, blame the language in your code that dictates very
742 specifically, what you can and can't do.

743
744 **Mr. Molnar:** The code provides what you can and cannot do, it also includes these provisions
745 that we are trying to grapple with right now.

746
747 **Mr. Leja:** You say that there has been no protections, Bentley Brook is going to be unchanged.
748 We are not doing anything to Bentley Brook. You may feel differently, but we are putting in
749 stormwater protections that aren't there right now. Erosion will be reduced going into Bentley
750 Brook, I think that is a good thing and I am not the only one. We are also preserving stands of
751 forest that are existing there right now. The houses that will be built into the forest are done so
752 to minimize the amount of cut, we don't want to go in and cut forest - -

753
754 **Mbr. Winkelman:** It's not going to be a forest anymore it's just going to be trees. It is
755 somebody's private property, they're going in there and do what they want to do. Let's get back
756 to the conservation analysis so that we can make a determination. In your updated of the
757 conservation analysis, Brook Farm to the north has been changed to high conservation value,
758 that's good. I would make a motion to Board that we consider the farm field, the meadow field to
759 the east of 41A be considered medium, the farmland all around the outside of the property, the
760 Greenfield property, be considered medium conservation value as farmland, and some more of a
761 buffer around the wetlands on the west side parcel be considered medium also.

762
763 **Chmn. Tucker:** That's a motion Scott?

764
765 **Mbr. Estes:** Scott, can we, just so I make sure, I don't have a pointer. Just to make sure I
766 understand what you are saying, around the wetlands, are you saying this area?
767
768 **Mbr. Winkelman:** The hundred foot buffer.
769
770 **Mbr. Estes:** Put a buffer around the wetlands, but isn't there another wetlands area on the map,
771 are you not including that one?
772
773 **Mbr. Winkelman:** I think the ACOE determined that those were isolated and out of their
774 jurisdiction.
775
776 **Mr. Brazell:** Correct, they are not in their jurisdiction.
777
778 **Mbr. Estes:** Then you are talking about this buffer,
779
780 **Chmn. Tucker** Would be a medium.
781
782 **Mbr. Winkelman:** On their plan I think they labeled it low and I think medium - -
783
784 **Mbr. Estes:** This is a three hundred foot line here, are you saying the whole buffer or portions
785 of it?
786
787 **Mbr. Winkelman:** The whole area. The farm field.
788
789 **Mbr. Kasper:** Why would you say it's medium?
790
791 **Mbr. Winkelman:** Because it's an agriculture, that's an active agriculture and it's been named a
792 hundred times in our comprehensive plan to protect farmland so it's at least medium
793 conservation value.
794
795 **Chmn. Tucker:** It's a good type of field that can be worked for agriculture.
796
797 **Mbr. Estes:** And in that phrase of protecting farmland, protecting this farmland or is it added
798 protection to the farmland around it?
799
800 **Chmn. Tucker:** I believe what is around it., because the other does not have a lot of value.
801
802 **Mbr. Winkelman:** We are just making assessments on the conservation area. I still think the
803 meadow and the old farmstead is land of low conservation value.
804
805 **Chmn. Tucker:** I do too. You are proposing B to be all-medium. I would propose maybe a
806 hundred foot or two hundred foot off 41A as medium value.
807
808 **Mbr. Kasper:** the steep slope part.
809
810 **Mbr. Winkelman:** I would proposed the ravine would be B high.
811

812 **Mr. Molnar:** You are talking about the section of B, which is the open field and not the forest.

813

814 **Chmn. Tucker:** I would say that like here you could go a hundred or two hundred foot buffer
815 and come down like this to where all of the steep slopes are as medium and leave the other as
816 low.

817

818 **Mbr. Estes:** It does level out. It levels out on the bottom half and actually and doesn't it level
819 out a bit on the north side a little bit, I can't remember.

820

821 **Mbr. Kasper:** No.

822

823 **Mbr. Estes:** I thought I remember that from walking it. From this map, who did this one?

824

825 **Mbr. Winkelman:** That is from the March submission from EDR.

826

827 **Mbr. Kasper:** Actually right here. All this greater than 12% would be a medium, figure two of
828 the slope analysis.

829

830 **Mbr. Winkelman:** I would amend my motion to include that lower land to be lower
831 conservation value down at the bottom of the steep slopes.

832

833 **Mbr. Southern:** Where are you going to put it. Here's the thing, where are you going to cut it.

834

835 **Mbr. Winkelman:** Let's just leave it all medium, you still can do - -

836

837 **Mbr. Estes:** This motion is just for the conservation analysis.

838

839 **Chmn. Tucker:** That is correct.

840

841 **Mbr. Estes:** Just define the boundaries. So using the criteria we read off, it does meet the
842 criteria we talked about.

843

844 **Chmn. Tucker:** Are you looking at the 12% on that?

845

846 **Mbr. Estes:** I am in total agreement with the 12% and the surrounding of the wetlands. Walk
847 me through this entire buffer area. I'm not so sure I understand the - -

848

849 **Mbr. Winkelman:** Instead of just looking at the property by itself, they try to incorporate a little
850 bit of the neighborhood. And obviously on the east side, there is residential, the predominate.
851 On the west side its residential along the road and very very agricultural to the west. That three
852 hundred feet is just including the character of the neighborhood.

853

854 **Mbr. Estes:** But for the purposes of this, it is really not up to us to declare anything outside of
855 his property line what that conservation should be. You could say you know - -

856

857 **Mbr. Winkelman:** You could say it has an effect on it. You could say Brook Farm has high
858 conservation value because of the historical site and things and that and what you build next door
859 has an effect on the values.

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Chmn. Tucker: But he does show the value - -

Mbr. Estes: Because that what the conservation requirement is that he has to show three hundred feet out. But what I am saying for the purposes of this conservation planner since that property is not part of this application can we change

Mbr. Kasper: We shouldn't even label it.

Mbr. Estes: I don't think it should be labeled as part of this application.

Mbr. Kasper: It wouldn't be fair for that owner to label it - -

Mr. Molnar: To abrogate the value for an owner that is not part of this application.

Mbr. Estes: That's what I'm saying that's what I am questioning.

Mr. Molnar: If I may, section 148-9G(1) (d) The final determination as to which land has the most conservation value and should be protected from development by conservation easement shall be made by the Planning Board, which shall make written findings supporting its decision (the "conservation findings"). The Planning Board shall deny an application that does not include a complete conservation analysis sufficient for the Board to make its conservation findings. The Board may waive any requirements that it, in its sole discretion, deems unnecessary for a complete conservation analysis. My recommendation to the Board is as it is completing the analysis, taking into consideration the 300' buffer required by code, but placing their findings only applicable to the part that is applicable to this application. The finding will consider the 300' buffer, the property line within it and its value, but will render a determination in its findings relative to these parcels only, A and B. Furthermore, while we are on the topic, there is a motion pending, my recommendation to the Board is that we summarize these comments, we have detailed descriptive discussions on point, and that we put it in writing for review by the Board prior to the next meeting which is in two weeks. The written conservation findings be presented again in final form, reflecting the final comments from all of the Board members on all of the points of interest, and that they be adopted at that point. We have written findings that are agreed upon by all Board members reflective of the discussion points that constitute your findings.

Mbr. Estes: So to do that before we make a motion.

Mr. Molnar: I recommend that you continue with the motion and the discussion on the floor and prior to final adoption that it be subject to written findings being place in front of you summarizing all of this discussion so that the Board is comfortable with all of the findings it finally renders.

Chmn. Tucker: We'll just put that in the motion.

Mbr. Winkelman: The discussion we are still having is the determination of the conservation value for the hayfield on the east side. Whether the entire field should just be considered medium or whether it should be partitioned off. I think for just simplicity sake, I think it should

908 all be medium, it's all in the watershed, it's near the watercourse, it's Ag land, and generally
909 development is allowed in land of medium conservation value. It would just be a - -

910

911 **Mbr. Estes:** It would be a classification, it doesn't rule out any development if the rest of the
912 pieces were - -

913

914 **Chmn. Tucker:** It might be simpler as Scott is saying instead of a piece thing.

915

916 **Mbr. Estes:** Going back to the motion you listed, did you, how did you define on the east side,
917 all or part of parcel B?

918

919 **Mbr. Kasper:** No, what is labeled now is low value is medium.

920

921 **Mbr. Estes:** Parcel B includes the high conservation so we don't want to include parcel B or
922 that will reverse the determination so we need to delineate it somehow.

923

924 **Mbr. Winkelman:** I make a motion that we - -

925

926 **Mbr. Estes:** This is parcel B all the way over.

927

928 **Mbr. Winkelman** I make a motion that we amend EDR's conservations values figure four of
929 March 2014 of areas outside of high conservation value on the east side of 41, the meadow areas,
930 should be designated as medium conservation value. On the west side, the surrounding farmland
931 of the neighbor's property should be categorized as medium conservation value.

932

933 **Mr. Molnar:** You can observe as such but I don't think a finding is made concerning property
934 that is not the applicants.

935

936 **Mbr. Winkelman:** And also, of medium conservation value, it would be the hundred-foot
937 buffer around the wetlands that are designated as high conservation value.

938

939 **Chmn. Tucker:** Do we have a second?

940

941 **Mbr. Estes:** I'll second it.

942

943 **Chmn. Tucker:** Do we have any more discussion?

944

945 **Mbr. Kasper:** Do we want to wait to have it in writing before we vote on it?

946

947 **Chmn. Tucker:** Do we have to have written findings before we vote on it Scott, or can we vote
948 on it that way?

949

950 **Mr. Molnar:** Yes, the motion be framed as I would like some guidance and recommend that the
951 Board compete its determination subject to being set forth in writing to reflect all of the
952 discussion points and the findings and findings approved at your very next meeting.

953

954 **Chmn. Tucker:** We can add that into Scott's motion.

955

956 **Mbr. Kasper:** Or we can just table the motion until we get it in writing.

957
958 **Mbr. Southern:** I move we table the motion.

959
960 **Mbr. Winkelman:** It's the first thing you have said all night, Joe.

961
962 **Mr. Molnar:** Prior to tabling the motion, I have a few addition discussion points. Is the Board
963 satisfied with the conservation value assigned to the area which is the ravine bordering the Brook
964 Farm property?

965
966 **Mbr. Kasper:** That's high value and doesn't change.

967
968 **Mr. Molnar:** Does the Board have a preference concerning the allocation of development
969 concerning the three areas. We have high, medium and low. It is up to the Board to determine,
970 based upon the categories, the level of intensity of development in each of the three.

971
972 **Mbr. Estes:** In each of the tree conservation?

973
974 **Mr. Molnar:** Correct. And furthermore, management items. Reflecting again section 148-
975 9G(1) (d) The final determination as to which land has the most conservation value and should
976 be protected from development by conservation easement shall be made by the Planning Board,
977 which shall make written findings supporting its decision (the "conservation findings"). That
978 takes into consideration what is in section 148-9G(1)(b)he conservation analysis shall describe
979 the importance and the current and potential conservation value of all land on the site identified
980 in Subsection G(1)(a) above. In the course of its initial sketch plan review, the Planning Board
981 shall indicate to the applicant which of the lands identified as being of conservation value are
982 most important to preserve. Moving on to (c) The outcome of the conservation analysis and the
983 Planning Board's determination shall be incorporated into the approved sketch plan showing land
984 to be permanently preserved by a conservation easement, as well as recommended conservation
985 uses, ownership, and management guidelines for such land. The sketch plan shall also show
986 preferred locations for intensive development as well as acceptable locations for less dense
987 development. So if we have three categories, high, medium and low conservation value, what is
988 the Board's thinking on the permissive intensity of development on those three areas. Starting
989 first with high conservation value, is the Board willing to permit any development in high
990 conservation value areas.

991
992 **Mbr. Winkelman:** Probably no.

993
994
995 **Chmn. Tucker:** What we are looking at this time, I would say no in the high conservation as
996 submitted.

997
998 **Mbr. Southern:** How does that affect the submitted plan.

999
1000 **Mr. Molnar:** It has an effect.

1001
1002 **Mbr. Southern:** Does it eliminate the bridge? Does that eliminate the house?

1003

1004 **Mr. Molnar:** My next question to the Board is why. If there is no development in the high
1005 conservation value land, I am interested to hear it your findings so that we can articulate it in the
1006 written conservation findings.

1007
1008 **Mbr. Winkelman:** If we believe the conservation values and that, the ravine and the woodlands
1009 and that whole area would be negatively affected by the opening caused by the bridge and the
1010 clearing for the building lot. The ravine and the, basically the water quality and the banks and
1011 that area being natural to protect.

1012
1013 **Mbr. Estes:** I would like to add that the, because the first response back is that we can mitigate
1014 some of those things but I believe it also has an effect on elevation dimension that we talked
1015 about when we went and looked at the site, that in clearing for that bridge, the span, the trees, the
1016 whole over canopy of the ravine is also threatened with the development in that conservation
1017 area as well.

1018
1019 **Chmn. Tucker:** That was on January 3, we did a review of that again. EDR marked out the
1020 bridge and it was quite surprising what we found when we were there. As for the span, it is at
1021 the widest part of the ravine.

1022
1023 **Mbr. Winkelman:** And where it comes on the north side, it is very close to the boundary line
1024 with the neighbor to the north, which is a historical district and the place for the music festival.

1025
1026 **Mbr. Southern:** If you establish no construction within a high conservation area today,
1027 tomorrow, at our next meeting. Your establishing that for every project that comes before us.

1028
1029 **Mbr. Winkelman:** No, I think there is some wiggle room. There is some very high
1030 conservation.

1031
1032 **Mbr. Southern:** You're going to lend an argument to people who do not want development.

1033
1034 **Mbr. Kasper:** You've got to allow it but it doesn't mean you have to allow it on this property,
1035 case by case.

1036
1037 **Mbr. Southern:** Then that has to be put in the motion.

1038
1039 **Chmn. Tucker:** Into the findings.

1040
1041 **Mbr. Kasper:** We're just doing the value of the land right now.

1042
1043 **Mr. Molnar:** The high conservation value land being observed by the Board, is it determining
1044 that there would be no development in that land and my next question is why, what are the
1045 reasons, is it because of the unfragmented forestland, historical or archeological elements, is it
1046 because of construction of a bridge in that area would be anti-conservation?

1047
1048 **Chmn. Tucker:** Would change the character of the area, basically.

1049

1050 **Mr. Leja:** Mr., Chairman, I would respectfully note that the bases for the Board's decisions
1051 should be found from the record. Whatever you determine, the bases should come from the
1052 record.
1053
1054 **Mr. Molnar:** And all of these discussion items are based on your review of the record. Is that a
1055 fair statement?
1056
1057 **Chmn. Tucker:** Yes, it's what has been submitted by the applicant to the Board.
1058
1059 **Mr. Brodsky:** And your January 3, 2015 site visit.
1060
1061 **Chmn. Tucker:** Yes, that's right. They marked it out which made it a lot better and clearer to
1062 us when we did our site visit.
1063
1064 **Mbr. Winkelman:** Yes, there is unfragmented woods up there surrounding that tributary to the
1065 lake.
1066
1067 **Mbr. Southern:** How does it fragment the woodlands.
1068
1069 **Mbr. Winkelman:** It opens a big hole in the canopy for where the house is going and the lawn,
1070 and the septic field. It's very tiny, a one acre, it is a one and a half acre parcel there and most of
1071 it is going to be house and leach field. So that's going to open up the canopy and fragment it
1072 right in the middle of the area as well as the bridge is going across.
1073
1074 **Mr. Molnar:** Do you recall the visual assessment provided by the applicant and the alternate
1075 view of the house on lot one from the water.
1076
1077 **Mbr. Kasper:** Yes, you aren't going to see it.
1078
1079 **Chmn. Tucker:** It showed clear-cutting.
1080
1081 **Mr. Molnar:** Did it show if it was clear cut or - -
1082
1083 **Chmn. Tucker:** Clear-cut is what it showed.
1084
1085 **Mr. Dussing:** For the bridge?
1086
1087 **Mbr. Kasper:** No, for the house from the water.
1088
1089 **Mr. Dussing:** We reviewed a couple of different scenarios, But that in no means is it what
1090 would be developed there. Under site plan, you would have control over how it would end up.
1091 Based on our visualization, we show the ultimate, no vegetation removed. That is not any
1092 intention of what he is planning on developing for lot one as he hasn't even contemplated what
1093 he's planning on doing.
1094
1095 **Mbr. Winkelman:** He did it two different ways, one was the preserved vegetation between the
1096 shore and the house and one with the lawn.
1097

1098 **Mr. Dussing:** Those are just examples.

1099
1100 **Mr. Leja:** The building envelope is contained within the wooded area and doesn't stretch to the
1101 shoreline. Any preservation of vegetation at this point along the shoreline or around that area is
1102 all part of the site plan review, which would come back before this Board. We are at the
1103 subdivision level here. This is a level of detail that we are getting into here that exceeds anything
1104 we have ever done on a subdivision application.

1105
1106 **Mr. Molnar:** But considering the Conservation analysis on it.

1107
1108 **Mr. Leja:** But you are surmising what might be cut and what might not be cut and I think that's
1109 not advisable given the fact that we are at this very early stage, we haven't gone to site plan yet.

1110
1111 **Mr. Molnar:** My next question to the Board is would it make any difference if there are
1112 controls imposed by the Board such that if there is a house situated on lot one to not be permitted
1113 to clear cut to the water, does that make a difference in your assessment?

1114
1115 **Mbr. Winkelman:** No, I don't think. It would be very hard to be enforced and I think we are
1116 better off with cut and dried where we can monitor much easier. The land owner can do on his
1117 land what he wants to, it just gets too - -

1118
1119 **Mbr. Estes:** The clear cut to the water isn't for the conservation of that land as important as the
1120 actual conservation of the land, the ravine, and the actual wooded area. I think when we talk
1121 about the visuals, when you see the other parts of the site, you see clear cutting from the other
1122 side, When you are looking at the woods itself, you're right, the clear cut to the house you may
1123 not see so much right at the water but you will see it from high up from over on the west side,
1124 from over the east side looking over.

1125
1126 **Mr. Leja:** We are presuming a lot here. There's this word clear cutting, well it's pejorative.
1127 Second, you haven't gone to the stage of site plan review where you could actually advise the
1128 applicant what you found proper and what wasn't proper.

1129
1130 **Mbr. Estes:** No, but you can anticipate that if we are looking at the land, any building that is
1131 going to happen on that land, trees will be cut down.

1132
1133 **Mr. Brazell:** Selective.

1134
1135 **Mr. Leja:** But what will be the visual impact from those trees as seen from off the property.

1136
1137 **Mbr. Estes:** That's what I just said, the visual impact is - -

1138
1139 **Mr. Molnar:** Meaningless, it is pointless. It's the conservation analysis, the high conservation
1140 value, which is being considered, attributed to that land, what is its net effect. Is it developable
1141 or not under the code. Not so much, what we can see or can't see, it is the preservation and
1142 conservation of the land that I think is the important issue.

1143

1144 **Mr. Leja:** That lends to the larger question, is it developable or not, which you just identified,
1145 and developable means developable with the appropriate protections built into it as dictated by
1146 your code and by good engineering practices.

1147
1148 **Mr. Molnar:** Or is it developable with those and with restrictions, or is it not and what is the
1149 Board's findings in that regard and why.

1150
1151 **Mr. Brazell:** If I can just point out really quickly, the 300-foot analysis, the buffer around the
1152 project parcel includes the Brook Farm to the north, and as you can see, it is heavily forested. By
1153 its presence, obviously there is cutting of the forest. So selective cutting on lot one could very
1154 well mimic what is immediately to the north of that and still be considered high conservation
1155 value.

1156
1157 **Mbr. Winkelman:** But we're doing an open space subdivision here so - -

1158
1159 **Mbr. Estes:** And actually, we just trying to determine the value of the land.

1160
1161 **Mr. Molnar:** I think there is a motion pending for the Board to make a determination to the
1162 high, medium and low values of the land. In connection with the conservation findings and
1163 following section 148-9G(1)(b)(c)&(d). It flows that we attribute a value to the land we also
1164 determine the level of intensity of development and its important here, certain in terms of
1165 discussion of the forested land on parcel B what is considered lot one. If the Board makes a
1166 determination of the values but doesn't attribute controls or the level of intensity of building, we
1167 are not completing the analysis.

1168
1169 **Mbr. Winkelman:** I just think with an open space subdivision, you're supposed to be protecting
1170 sixty-five percent of the land in open space. If there was one little piece of high conservation
1171 value, you'd think that would be a no brainer to put it in to preserve and not make any
1172 development in it.

1173
1174 **Mbr. Southern:** If you're going to restrict building totally, that's what you, want to do Scott,
1175 right? In the high conservation area, am I hearing you right?

1176
1177 **Mbr. Winkelman:** In this particular one, yes.

1178
1179 **Mbr. Southern:** How about the west side of the road. You're going to throw all of those houses
1180 out of the wooded area, which are high conservation area?

1181
1182 **Mbr. Kasper:** The woods are medium.

1183
1184 **Mbr. Southern:** The woods are medium on one side of the road and they are high on the other?

1185
1186 **Mbr. Winkelman:** There is a ravine, there's steep slopes,

1187
1188 **Chmn. Tucker:** There is water flowing through it.

1189
1190 **Mbr. Winkelman:** There is lot more conservation. I think that's high over there as well. No,
1191 that's medium up there.

1192
1193 **Chmn. Tucker:** I guess my concern would be there could be some development with the right
1194 amount of stuff over there in the high conservation. How do you access it for safety, public
1195 safety, and services.
1196
1197 **Mbr. Kasper:** That's a whole other issue.
1198
1199 **Mbr. Estes:** It's not, because if we say it's high conservation value, and we are looking if we
1200 should build or not build, it's medium, and what the density is, you would have to look at what
1201 the infrastructure would do. Looking at a bigger picture, the high conservation area, we say, yeah
1202 we will allow some building, but then some building means roads, infrastructure, everything that
1203 goes to those structures.
1204
1205 **Mr. Molnar:** And in this case, it means bridge.
1206
1207 Mbr. Estes: And in this case, it means abridge. So if we say medium, you get more of a medium
1208 density, or at least you are considering what the road or infrastructure would do to those houses.
1209 It does play into the decision some.
1210
1211 **Mbr. Kasper:** Right, but what if he never builds a bridge and builds a lean to down there.
1212 You're saying nothing gets built down there.
1213
1214 **Mr. Molnar:** Does that require a permit?
1215
1216 **Mbr. Kasper:** They can build a walk path to get to it.
1217
1218 **Mbr. Southern:** They wouldn't because if you deny building in a high conservation area, they
1219 won't put anything in there.
1220
1221 **Mbr. Kasper:** Do we want that? You won't be able to do anything on the shoreline.
1222
1223 **Mbr. Southern:** A trail.
1224
1225 **Mbr. Kasper:** That's what I mean, if they can access this property by just walking it, it might
1226 not be a house but it could be a campground.
1227
1228 **Mbr. Southern:** You could access it from the water. Make it only water accessible.
1229
1230 **Mbr. Winkelman:** As long as long as the building doesn't interfere with the conservation value
1231 of the area. A residential house with a leach field and a bridge going across, yes that does
1232 interfere with the conservation values of the high conservation value area. A little lean to does
1233 not.
1234
1235 **Mbr. Southern:** How do we make that determination?
1236
1237 **Mbr. Winkelman:** When the time comes, I guess.
1238
1239 **Mbr. Kasper:** No, you are trying to determine now if you can build in high density.

1240
1241
1242 **Mbr. Southern:** Can we build in high density? high conservation. There are times when you
1243 want to make a trade off, and to permit someone to build in a high conservation area might be a
1244 trade-off in the future on another project.
1245
1246 **Mbr. Kasper:** Another project.
1247
1248 **Mbr. Southern:** In this project. If you deny any construction in the area, you deny yourself the
1249 ability to make those trade-offs.
1250
1251 **Mbr. Kasper:** Just because you determine that you can build there means they're going to build
1252 there. There are a thousand other things we have to consider before - -
1253
1254 **Mbr. Southern:** I think the assumption is that lot is going to be built on, lot one. As a trade-off
1255 we let you build on lot one and then kick one lot off of the four or five along the road.
1256
1257 **Mbr. Kasper:** I'm not saying that, I'm saying I wouldn't take the buildable rights off the
1258 property. Doesn't mean we are approving anything and maybe he'll come in by barge, who
1259 knows. To say no building on any high conservation is not right.
1260
1261 **Mr. Molnar:** Does defining that area as lot one of high conservation value, restrict the building
1262 of a bridge, not a house on the site but a bridge?
1263
1264 **Mbr. Kasper:** It could, it could restrict it.
1265
1266 **Mbr. Southern:** How? You say they can build a house but can't access it.
1267
1268 **Mbr. Kasper:** He can access it but it might not be by bridge. It could be by barge or boat. If
1269 you're going to spend a million dollars on a bridge. I hate to label something unbuildable.
1270
1271 **Mbr. Estes:** I think Scott's term of you can build something if it doesn't change the value of the
1272 land, but then I think you have to add something there because you're going to have an engineer
1273 or an attorney say that we can mitigate any changes out of it. You're back to taking high
1274 conservation and destroying it and then trying to mitigate it back again.
1275
1276 **Mbr. Southern:** How do we treat high conservation value now? Just open with approval of the
1277 Board?
1278
1279 **Mr. Molnar:** The open space subdivisions previously reviewed by the Board that had high
1280 conservation value, but there never was any building on that land.
1281
1282 **Mbr. Southern:** But not an imposed stipulation by us that there would be no building. In
1283 Butters Farm, we put a trail through high conservation value area. There is a structure permitted
1284 within the high conservation value.
1285
1286 **Mbr. Estes:** A trail?
1287

1288 **Mbr. Winkelman:** And some people would say that trail enhances the conservation value, for
1289 education and - -
1290

1291 **Mbr. Southern:** Yeah, that would be the argument, but my point is you need to allow
1292 construction in those areas.
1293

1294 **Mbr. Kasper:** We're not saying, we're not giving the okay to build a house, I'm just saying a
1295 lean to or a footpath. There is a structure on the property already.
1296

1297 **Mbr. Winkelman:** On a case-by-case basis. Just this open space in the context of an open
1298 space subdivision, seems like this is a no brainer. How many acres is that, six, seven acres in the
1299 high conservation value of the whole forty-eight acres, it seems like a no brainer to me to put that
1300 into reservation, set that aside
1301

1302 **Mr. Molnar:** If I may, I'll ask you why so that we can articulate the reasons.
1303

1304 **Mbr. Winkelman:** Because the conservation values would be preserved. The whole purpose of
1305 the subdivision is to protect natural features of the land and property that has high conservation
1306 value, which is tributary to the lake, steep slopes, unfragmented woodlands, proximity to
1307 historical site, and the shoreline of the lake being pristine. Is that what you are looking for?
1308

1309 **Mr. Molnar:** Essentially, yes. You are helping me to draft the document with your thoughts.
1310

1311 **Mbr. Winkelman:** Also, because there are other parts on the property that are more suitable and
1312 more buildable.
1313

1314 **Mbr. Estes:** I think that is a key point to your first question of the three different levels of
1315 conservation and then the building density is whether there is other land of lower density that can
1316 be used instead of building on the high density. When you look at an overall piece of land, if you
1317 look at an overall piece of land and the applicant has all three conservation areas, and yet they
1318 choose to build in the high conservation, somehow we need to phase that's not what we want by
1319 our code and by our definition. You choose the lower conservation, and if the lot of land has
1320 medium and high then you have to start looking at those with the mitigating things you can do.
1321 But to take high conservation and just say we want to build there when we have all this other
1322 land you could be using, why are we choosing that one.
1323

1324 **Mbr. Kasper:** He's using all of the other land. There is no more land to put lots on. He is using
1325 every bit of it that he can.
1326

1327 **Mbr. Southern:** That's a high value lot right there, it has the lake view.
1328

1329 **Mr. Leja:** You buy a lot on the lakefront so that you can enjoy the lakefront.
1330

1331 **Mbr. Southern:** I can go along with high conservation, but I cannot support no construction
1332 whatsoever.
1333

1334 **Mr. Brodsky:** If I may, in all of the conservation areas, low, medium and high, I would like to
1335 reminded you there are cluster or spectrum of multiple features that all come together. It's not

1336 just visual, it's not just wetlands, it's all those things and they have an interplay that you are
1337 balancing out in your minds individually and collectively. When you look at the ravine, for
1338 example, I would suggest you looking at it as a wooded area, as a steep slope area, as a water
1339 feature, you are looking at, also the aesthetic, all those things come together. Maybe to Scott's
1340 questioning and probing you say, and to Joe's point, maybe there is something we can tolerate
1341 there that has a lighter footprint or lighter impact, part of the recreation area for the subdivision.
1342 A shared recreation area, or common recreations area maybe with a picnic shelter, and a walking
1343 path. Something that has less physical impact upon the water, the slope, and the vegetation. It's
1344 the balancing that you are trying to search for in the words you are debating over. The same
1345 thing applies to the field area over on the east side. It is not just the visual impact of the lake, it
1346 is the slope that is being affected.

1347
1348 **Mbr. Southern:** That's the lot we are talking about. That's the east side. When we say steep
1349 slopes, left to right, that's the steep slopes we are talking about. Now is that steep, just asking the
1350 question? Here's a shot from the Brook Farm side looking through the woods. If you look
1351 through the light area on the top, you can see the line of trees up above, that is the subdivision
1352 straight on the other side. That is what you would see from that point. That is a different shot of
1353 the steep slopes. That would give you a good feel of what the actual areas are that we are talking
1354 about preserving.

1355
1356 **Mbr. Kasper:** Is that where the bridge comes in.

1357
1358 **Mbr. Southern:** That where the bridge would go across. That's pretty close to the spot.

1359
1360 **Mbr. Winkelman:** That's looking southwest?

1361
1362 **Chmn. Tucker:** Yes.

1363
1364 **Mbr. Winkelman:** I think the dovetail in the ravine could do, it could, it has the potential if not
1365 already, harbor some species of interest. The deep ravine and the old trees, things like that it
1366 could. I know the applicant has done a quick review of the endangered species and things but
1367 there could be bat habitat down there whether it is now or in the future. A big woodlands like
1368 this The bigger the woods the more species it can hold, not just the edge for species of birds.

1369
1370 **Mr. Leja:** I would just note that the habitat review was not a quick review. Respectfully, it was
1371 a detailed review. We went down into that ravine, and I want to make it clear for the record that
1372 it was not a quick summary little thing that we just didn't see a bald eagle on the bottom so we
1373 just said oh no there's nothing there, it was detailed.

1374
1375 **Mr. Molnar:** Understood.

1376
1377 **Mr. Brazell:** We consulted federal and state agencies and endangered species databases and
1378 looked at any possible occurrence. There is a detailed analysis in the expanded EAF.

1379
1380 **Mbr. Winkelman:** The Indiana bat wasn't around?

1381
1382 **Mr. Leja:** It's not a good habitat for it.

1383

1384 **Mbr. Winkelman:** The ACOE seems to be looking for the Indiana bat and the different bat
1385 species that are.
1386
1387 **Mbr. Southern:** Where are we with the conservation analysis.
1388
1389 **Mr. Molnar:** My next question, is it a fair statement to the Board that it's considering
1390 determination the high conservation value of the area which is lot one of this subdivision of
1391 parcel B, and because of that determination it would restrict intensity of development on that lot
1392 to exclude or prohibit the construction of a bridge to that site and the development of a lot to the
1393 full buildable envelope which is considered necessary for construction of a home up there, but
1394 otherwise would permit development of a significantly less intensive basis. Is that a fair
1395 statement?
1396
1397 **Chmn. Tucker:** I would think it is.
1398
1399 **Mr. Brodsky:** Would you allow a footbridge across the ravine?
1400
1401 **Mbr. Kasper:** We shouldn't even be considering that.
1402
1403 **Mr. Molnar:** That's not proposed.
1404
1405 **Mbr. Kasper:** It's not proposed, but we don't allow any building in that streambed. We're just
1406 trying to determine the high conservation value, and if there is an area buildable that meets our
1407 standards in that area, are we going to allow it. Doesn't matter how it gets there, how do they get
1408 to that property.
1409
1410 **Mr. Brodsky:** You have to be somewhat, I think that's the point of the bridge, You have to be
1411 sensitive, if there is buildable area on the plateau portion on the far side of the ravine. Now to
1412 get there by vehicles by a bridge. Now other structures, such as a picnic shelter could be
1413 accessed by simply a walking path. That would be, as my example, a light impact on the land
1414 and upon the stream. Some form of building activity and use activity that
1415
1416 **Mbr. Estes:** I don't think we need to define that, I think what Scott said was a less intense,
1417 whatever the wording was.
1418
1419 **Mr. Leja:** With all due respect, your own code, your subdivision code section 131-2D(2)[b]
1420 says where a watercourse separates the buildable area of a lot from the access street, provision
1421 shall be made for the installation of a culvert or other structure, of a design approved by the
1422 Highway Superintendent or Town Engineer. Shall provide.
1423
1424 **Mr. Brodsky:** That's in an instance where a lot exists, and is cut by a stream. We are, in the
1425 subdivision process, ending the situation that would demand that. So the Board is wrestling
1426 with should we even create the lot that creates the problem.
1427
1428 **Mr. Leja:** The lot is there.
1429
1430 **Mbr. Estes:** No, it's not there.
1431

1432 **Mr. Leja:** The subdivided lot is not there, this is along the lines of if you create an isolated lot,
1433 you must make a means of access to it.
1434
1435 **Mbr. Estes:** That's correct. That's what we're grappling with, we don't want to.
1436
1437 **Mr. Leja:** But we still have to access that whether there is a lot there or not, we are still entitled
1438 to access it.
1439
1440 **Mr. Molnar:** I have a part of my yard I can't get to.
1441
1442 **Mr. Leja:** Can't or just don't want to find a way to get to it.
1443
1444 **Mr. Molnar:** Well, a little bit of both.
1445
1446 **Mr. Leja:** I'm saying your code already pre-supposes situations where there will be lots cut off
1447 by waterways, and in such cases, there are provisions that you anticipate that a developer, or
1448 applicant, or land owner will want to access that lot. If that is the case then
1449
1450 **Mr. Brodsky:** When lots have no alternative.
1451
1452 **Chmn. Tucker:** You can build on the other side of the stream and walk down.
1453
1454 **Mr. Brodsky:** In this instance, the area could be incorporated into the common space of a larger
1455 piece of the entire parcel, and not be identified as a separate lot. It is just part of the land area
1456 along the shoreline. It's just part of the shoreline area, nothing separate, useful, or distinguishing
1457 about it. By paper or legality, is telling the north side is different than the south side. They are
1458 physically different but not legally different.
1459
1460 **Mbr. Kasper:** Because we have a motion on the thing, we're just to determine if something can
1461 be built on there. We're not saying we're approving a lot, we're not building a bridge. We are
1462 just trying to determine if we are going to allow - -
1463
1464 **Mr. Brodsky:** some building.
1465
1466 **Mbr. Kasper:** And that's what it is.
1467
1468 **Mbr. Estes:** on any high - -
1469
1470 **Mbr. Kasper** on high conservation.
1471
1472 **Mr. Molnar:** As I hear the Board, it would permit less dense, light footprint, building upon the
1473 high conservation value portion of the property, but no intensive development.
1474
1475 **Mbr. Southern:** Intensive development meaning what? Is that an 800SF house, you can't build
1476 a 3000SF house. Where do you draw the line.
1477
1478 **Mr. Molnar:** I think it's up to the Board to determine.
1479

1480 **Mbr. Kasper:** That's part of the subdivision, we're trying to do the conservation value.

1481
1482 **Mbr. Estes:** But any, when you look at something like crossing a ravine or a structure like that,
1483 it's not going to matter how big that lot is because you're going to have to get the construction
1484 vehicle there, you're going to have an impact on the high conservation value just by the nature of
1485 just building anything on there. And that might be true for any high conservation land that you
1486 build on. Again, you are going to have an impact on the land and by the infrastructure, you need
1487 to get to the building zone, to the building lot.

1488
1489 **Mbr. Southern:** If you are talking about the bridge, you are also talking about the driveway.

1490
1491 **Mr. Molnar:** And it's the Board's charge, the Planning Board shall indicate to the applicant
1492 which of the lands identified as being of conservation value are most important to preserve. That
1493 is 148-9G(1)(b). And onto (d). The final determination as to which land has the most
1494 conservation value and should be protected from development by conservation easement shall be
1495 made by the Planning Board, which shall make written findings etcetera. My understanding of
1496 the code is that there is an assignment of value together with controls upon approval for intensity
1497 of development. I think what we are trying to achieve here are the factors of intensity of
1498 development permitted on a high conservation value land under consideration and what is
1499 permitted and what is not permitted in terms of development.

1500
1501 **Mr. Leja:** I can only submit that when the Board states that they are determining these things on
1502 a case-by-case basis, it will be used against you in the future. It will be. You can distinguish it
1503 all you want - -

1504
1505 **Mr.; Molnar:** Whether that's by applicants or parties in opposition, people will have a position
1506 to consider against the Board.

1507
1508 **Mr. Leja:** All I'm asking is the Board - -

1509
1510 **Mr. Molnar:** Regardless of those considerations, the Board has to look at this piece of property.
1511 My recommendation is that the Board look at this application, the property, it's characteristics
1512 which are unique and renders its determination.

1513
1514 **Mr. Leja:** But as a Planning Board, you look at the big picture, planning for the Town. You
1515 have to have foresight.

1516
1517 **Mr. Molnar:** Under the code - -

1518
1519 **Mr. Leja:** Right, whatever you decide here has an impact. It is not like a ZBA situation where
1520 it is by law, not precedential. The Planning Board is not the same thing, so I am just laying that
1521 out there that whatever you decide now be prepared to back it up, now and in the future.

1522
1523 **Mr. Molnar:** Which is why we're trying the case right here.

1524
1525 **Mbr. Estes:** And I think that is a very good point. We are planning for the future and we are
1526 planning to preserve this lake and protect it. The best way to do that is to protect high
1527 conservation land and then maybe we do go back and say no building in the high conservation

1528 lands and that does plan for the future of protecting the lake if the high conservation land is in
1529 the watershed. I think that is a good point, it's not just this application it is the future, the future
1530 we are trying to protect. And if we look back at what's been done on the lake in the past, if this
1531 decision was made some time ago what other features would still be intact on our lake. There
1532 would be many ravines that haven't been damaged.

1533
1534 **Mbr. Kasper:** And there would be half the amount of houses - -

1535
1536 **Mbr. Estes:** And half the amount of houses, and half the amount of pollution in the lake, so
1537 maybe this is the time we draw that line and say we need to protect the future. We need to plan
1538 for the future.

1539
1540 **Mbr. Winkelman:** It's definitely mentioned in the comprehensive plan, all of the
1541 comprehensive plans before just how important this lake is to the water quality. I think a
1542 compromised natural area and open space in the watershed are definitely called for.

1543
1544 **Mbr. Estes:** We redefine it for high conservation land in the watershed whether we add specific
1545 features of the land, whether it have a tributary on it, whether it have some other unique feature
1546 on it that we specify, the cliffs on the other sides of the lake. I don't know I'm just—I think
1547 that's a good point that maybe we need to stop now and plan for the future and not allow any
1548 building in the high conservation, period.

1549
1550 **Mbr. Kasper:** I think we are getting to the zoning now. We're trying to determine the zoning
1551 for the whole Town right now on this piece of property.

1552
1553 **Mr. Molnar:** My recommendation is that is certainly a worthy position to take. My
1554 recommendation for the Board is to view this application in terms of what's been presented and
1555 what the code is right now. It may be evolving, but the Board is comfortable with the code and it
1556 is charged to find and approve plans based upon code compliant applications as well as those
1557 within the limitations of the current comprehensive plan and within the limitations of the
1558 conservation analysis, and all of the tools you have before you right now.

1559
1560 **Mbr. Estes:** But if the question, or Joe's question or concern, we say no building in this high
1561 conservation land, then what does that do for the future?

1562
1563 **Mr. Molnar:** My follow up to that is why for this particular piece of property? We have been
1564 eliciting responses because it has its own attributes, the ravine, it has contiguous uninterrupted
1565 forest,. All of the items previously have been set forth in the record and taken down digitally.
1566 Karen and I will work together to summarize all of that in connection with the written findings.
1567 This is an important piece of work for the Board and we will do it justice by making sure it is
1568 comprehensive.

1569
1570 **Mbr. Southern:** How is this going to affect other landowners around the lake or are attempting
1571 to sell properties that have a ravine, has a creek, or a forest? You are not going to be able to sell
1572 the land if it is not developable.

1573
1574 **Mr. Molnar:** That too is a worthy consideration. My recommendation is to remain focused on
1575 this application.

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Mbr. Southern: I still want to see the larger picture.

Mbr. Kasper: This property, right now, he could apply for a building permit right down on that piece of property right now. The way the code is it would kick it back to us for a site plan review, but there is nothing that will prevent him from building on that piece of property right now.

Mr. Molnar: It would be a type II action and not subject to SEQR.

Mbr. Kasper: I'm just afraid that we are setting something that is going to affect the whole Town and later It could be good but it could also be bad. Some of that stuff is really beyond us and is the comprehensive plan and all that, not us.

Mbr. Southern: So we could declare high conservation - -

Mbr. Kasper: Very high conservation - -

Mbr. Southern: It's been declared that, so it is not a declaration we need to make but it is how much development within that. Can we leave it under current standards or do we have to say - -

Mr. Brodsky: Maybe you can say this area needs to be preserved and subject to more submissions by the applicant.

Mr. Molnar: The code provides the outcome of the conservation analysis and the Planning Board's determination shall be incorporated into the approved sketch plan showing land to be permanently preserved by a conservation easement, as well as recommended conservation uses, ownership, and management guidelines for such land. The sketch plan shall also show preferred locations for intensive development as well as acceptable locations for less dense development. I think you have all three criteria-land to be permanently preserved, you have land locations for intensive development, and acceptable locations for less dense. So, high, medium and low. But I think the Board is also of the position, please correct me if I am wrong as I will be summarizing this, that despite the high conservation value being proposed for that segment of parcel B, where lot one lies, there would be a restriction on, it would be permanently preserved from development unless it was less intensive development. What is that less intensive development, that is our struggle.

Mbr. Estes: And further – what one of the phases in that 148 where they talk about and Scott said it as well, building that does not impair the conservation value of the land. Somehow, we get back to that as well.

Mbr. Southern: It is outside of the one hundred foot buffer even though it is within a wooded area. Is there an intent to put a conservation easement on the remainder of the land that isn't used?

Mr. Leja: On the conservation easement, on the open space land on the property, yes.

Mbr. Southern: And that would include the ravine and the remainder of the lot.

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Mr. Leja: Yes.

Mr. Brodsky: I don't know what is fully defined to determine intensity that you find comfortable other than saying less intense and maybe say things like no vehicles, development that requires no vehicle access or no significant construction activity or construction equipment to that degree. You may not be able to specify at this point what that break point between intense and less intense. We just dealt with a storage shed and you said no electricity to the storage shed. Maybe you say a structure or activity space that has no power, no water, and no vehicle access, something to that. That may be the best terminology we might be able to have at our disposal. I'm just offering that as a suggestion that might help you.

Mbr. Estes: Yeah, I guess that particular example except for the physical building that is there, that's taking care of us of accessing it and taking care of—causing damage accessing it, but it doesn't take care of the fact that we still are damaging the land itself.

Mbr. Kasper: What we should do is label it high conservation and all the reasons it is high conservation just so we can get through this part. Not even talk about building, but list everything that makes that particular piece high conservation.

Mbr. Estes: We've done that, but the next step Scott's looking for is have to tell what density of building is allowed, that's the next step.

Mr. Molnar: Whether it would be permanently preserved, or permitted intensive development or permitted for less dense development, and what is - -

Mbr. Kasper: Very less dense - -

Mr. Molnar: How much if it is preserved?

Mbr. Winkelman: Maximize the impermeable surface - -

Mr. Molnar: Are we suggesting

Mbr. Kasper: We can only develop 10%, it is in our code. I know everybody wants to stop it at this point, but I don't think at this point we should be trying to stop the whole subdivision because of this one chunk of high conservation thing. That's determining the subdivision process, we're just trying to determine the conservation value.

Mr. Molnar: I think that's a good point because the maps out the sketch plan and the sketch plan ultimately it's approval reconciles with the conservation findings. Land to be permanently preserved or land to be less densely developed or land to be intensely developed.

Mbr. Southern: So where's our motion Scott?

Mbr. Winkelman: I think we have to hold off - -

Mbr. Kasper: The motion is there - -

1672
1673 **Mbr. Southern:** Are we clear on what - -
1674
1675 **Mr. Molnar:** I think I am, I understand how I think we can draft that up.
1676
1677 **Mbr. Estes:** Do we now need to do that same exercise for medium conservation or low
1678 conservation or is that - -
1679
1680 **Mr. Molnar:** In a way, I would recommend it because the Board is proposing to determine the
1681 conservation value of those two items as well. It is charged with the responsibility to recommend
1682 conservation uses, ownership and management guidelines.
1683
1684 **WHEREFORE,** a motion was made by Chairman Tucker and seconded by Member
1685 Kasper to adjourn for a ten-minute break before re-convening. The Board having been
1686 polled resulted in the unanimous affirmation of said motion. The Board returned at 9:45
1687 pm.
1688
1689
1690 **Chmn. Tucker:** Attention, everyone we are going back to the meeting. Everyone quiet down.
1691 Let's get started again please.
1692
1693 **Mr. Molnar:** For those areas that are deemed to be, medium conservation values and what if
1694 any conservation controls would be required.
1695
1696 **Mbr. Southern:** Don't we have to go with the provisions under code.
1697
1698 **Mr. Molnar:** Yes.
1699
1700 **Mbr. Southern:** So that would be two-acre lots.
1701
1702 **Mr. Molnar:** The density calculations in an open space subdivision are intended to allow
1703 flexibility while preserving natural attributes of the land, so you still have the flexibility. For the
1704 purposes of - -
1705
1706 **Mbr. Southern:** To determine the number of houses by the density factor, it's two acres per
1707 dwelling.
1708
1709 **Mbr. Estes:** But we still have the flexibility to change that.
1710
1711 **Mbr. Southern:** But to determine that based on buildable land.
1712
1713 **Mr. Brodsky,** They've gone through the mathematical calculations of density for the entire
1714 subdivision, which includes the entire land area including the ravine. That comes up with a
1715 mathematical calculation, which they have diligently pursued. What we are wrestling with is
1716 how well it fits on this land.
1717
1718 **Mbr. Southern:** Where to put the houses.
1719

1720 **Mr. Brodsky:** That's part of this conservation analysis debate. We do not need to recalculate
1721 density by low, medium or high areas is my point. You're going to say the density is X for the
1722 entire site, that is the baseline density that is allowable. It does not mean it's good, it means what
1723 is allowable. You're going to be establishing the number of units based upon the types of areas.
1724 You just said, for example, that high conservation should have no intensive development; that
1725 means development is allowable in the low and possibly medium areas. You don't need to
1726 recalculate. The lot area that is allowed in this open space subdivision is one acre, the yield for
1727 two-acre density, but it is a one-acre lot.

1728
1729 **Chmn. Tucker:** So basically on a medium we are considering it at this time, we are looking at
1730 where placed can be put. We are looking where the sites are, the vegetation in the area and how
1731 it's constructed in those areas.

1732
1733 **Mbr. Estes:** Or in another phrasing of it if I understood Scott's question, we are looking to
1734 somehow almost define how we differentiate from low to medium. What is it about the medium
1735 that is going to change how we would - - the flexibility we would give for the number of houses.

1736
1737 **Mbr. Southern:** More development - -

1738
1739 **Mbr. Estes:** What features, what land features, what criteria you look at.

1740
1741 **Chmn. Tucker:** You don't have any streams going through it for one thing.

1742
1743 **Mbr. Estes:** Could you? You could have a steam going through medium density area.

1744
1745 **Chmn. Tucker:** This project here is what we are looking at. We are comparing this project and
1746 how it - -

1747
1748 **Mbr. Estes:** Just this project. Okay.

1749
1750 **Mbr. Kasper:** And on the east side is the steep slopes but I don't know how we - -

1751
1752 **Mbr. Estes:** On the west side, we have the wetlands then.

1753
1754 **Mbr. Kasper:** That is correct.

1755
1756 **Mr. Molnar:** Correct me if I am wrong, the wetlands and the buffer around them have been
1757 determined high value. They are wetlands and they cannot be disturbed in the buffer without a
1758 variance.

1759
1760 **Mbr. Estes:** Then we put a medium the outside of that area. Right? The wetlands themselves
1761 are high and the buffer around them.

1762
1763 **Mbr. Southern:** When the developer submitted as many units under the code - -

1764
1765 **Mbr. Kasper:** Low value is just conventional - -

1766

1767 **Mr. Brodsky:** You're judgement of how they fit on the site, which is the basis of subdivision
1768 review. You know the upper limit of the number of lots and you wrestle with how they will fit
1769 on the land.
1770
1771 **Chmn. Tucker:** We are trying to keep them out of sight as much as possible as when they are
1772 siting in that medium.
1773
1774 **Mbr. Southern:** What's the density going to be in that medium? You said it was going to be
1775 low density in the high. What's going to be in the medium?
1776
1777 **Mbr. Kasper:** Medium density, there you go.
1778
1779 **Mr. Molnar:** Would the medium density be subject to a conservation easement? Has that been
1780 proposed by the applicant?
1781
1782 **Mr. Leja:** I'm not sure what you mean.
1783
1784 **Mbr. Estes:** What was the question?
1785
1786 **Mr. Molnar:** By conservation easement. I think there are different shades of conservation
1787 easements. For instance, will any of the - -
1788
1789 **Mbr. Southern:** The open space will have to be put into a conservation easement.
1790
1791 **Mr. Molnar:** And that is in the medium conservation.
1792
1793 **Mbr. Southern:** That's in the whole subdivision site wide.
1794
1795 **Mr. Leja:** Site wide the open space goes into a conservation easement, we proposed site wide.
1796
1797 **Mr. Molnar:** So it would be subject to a conservation easement.
1798
1799 **Mbr. Southern:** Yes.
1800
1801 **Mr. Leja:** The open space -.-
1802
1803 **Mr. Molnar:** Yes.
1804
1805 **Mr. Molnar:** Which lies in the medium - -
1806
1807 **Chmn. Tucker:** High, low and medium.
1808
1809 **Mr. Leja:** High, low and medium areas. Open space goes under conservation easement in those
1810 areas.
1811
1812 **Mr. Molnar:** Low as well. Any conservation use, ownership or management guidelines
1813 contemplated by the Board for those areas, and if so, why.
1814

1815 **Mbr. Southern:** Avoid steep slopes.

1816

1817 **Mr. Brodsky:** You have two distinct areas, two distinct medium areas, one on the east side and
1818 one on the west side. One is an open field on the east side is characterized by steep slopes, and
1819 the one on the west side that is characterized by the wooded area. I suggest that you have two
1820 strategies; the steep slope area is something you wish to avoid as much as possible, or as much as
1821 practical, disturbance of that slope. For the visual impact, putting the potential hones low down
1822 that hillside as much as possible. On the west side, you previously accepted per Mr. Leja's
1823 description, housing lots within the wooded area as a trade-off for the rural siting principles that
1824 you wish to preserve. I would suggest in the wooded area though, there would be contemplated
1825 restriction of the existing wooded area and retaining that wooded area around the perimeter for
1826 each lot.

1827

1828 **Mr. Molnar:** Pardon my interruption. Is the digital recorder rolling.

1829

1830 **Secretary:** Yes.

1831

1832 **Mr. Molnar:** Simply in terms of drafting the document, that language, if acceptable to the
1833 Board is indicative of your thoughts.

1834

1835 **Chmn. Tucker** I agreed with what Howard has stated just now.

1836

1837 **Mbr. Kasper:** Shouldn't the open space be determined by the density, I mean the conservation
1838 value? The medium conservation area should have more open space, the low value less open
1839 space.

1840

1841 **Mr. Brodsky:** Implicitly, I would agree with you that medium value would have less lots on it.
1842 I don't want to talk about density as it would be for the entire lot. Fewer Lots - -

1843

1844 **Mbr. Kasper:** More of the open space. The amount of open space should be determined on the
1845 conservation value.

1846

1847 **Mr. Brodsky:** You ultimately are trying to get to the point where this is the open space, the
1848 physical open space, and this is where the lots will be. The problem or challenge with the
1849 medium density category that I see is it might need to tolerate some building lots in some
1850 reasonable degree that will be subject to your judgement. We are trying to put a limit or
1851 boundary of some sort on what this is without specifying a number.

1852

1853 **Chmn. Tucker:** I think the thing was is we did the rural siting principles and that's why it got
1854 into the medium area here where the low along the road here we're trying to hide that, that's why
1855 we didn't put them down there.

1856

1857 **Mr. Brodsky:** And at the time you also had a high interest in preserving that open field for at
1858 least the appearance of agriculture. Maybe there was a though that it could be viable at the time
1859 for agricultural in the future.

1860

1861 **Chmn. Tucker:** Yes.

1862

1863 **Mr. Brodsky:** So for the wooded area, yes, you are going to tolerate, you might tolerate
1864 building lots there, but because of its wooded nature, its' unique wooded area on a hilltop, you
1865 say you want to preserve as much of the wood character as possible, And on the east side you
1866 want to protect the slope as much as possible and will tolerate within reason, several housing lots
1867 on that east side as long as they respect the slope.

1868
1869 **Mbr. Winkelman:** And the vista.

1870
1871 **Mr. Brodsky:** Two qualities unique to both; different qualities to each unique with the same
1872 category of conservation value.

1873
1874 **Chmn. Tucker:** Do you need anything more?

1875
1876 **Mr. Molnar:** I think I got that.

1877
1878 **Chmn. Tucker:** Does anyone else have any thoughts?

1879
1880 **Mbr. Southern:** In the low conservation value?

1881
1882 **Chmn. Tucker:** It kind of mentioned some of that.

1883
1884 **Mr. Molnar:** It did. Subject to a conservation easement in the open space, permissible more
1885 intensive development.

1886
1887 **Mbr. Winkelman:** I like to idea of keeping them somewhat flexible. It all depends on the
1888 configuration of the lots. I think it's basically you want to protect the largest amount of
1889 conservation value in the entire property, you know. Do we do it by saving one big very valuable
1890 piece, or a whole lot of medium value stuff but that's the beauty of the open space thing that it is
1891 somewhat flexible. I think that's what Joe was getting at, you want to keep, there are trade-offs.

1892
1893 **Mbr. Southern:** Yes, you have to be able to make changes.

1894
1895 **Mbr. Winkelman:** It is the equation of these conservation values that, you know - -

1896
1897 **Mbr. Estes:** I think the nature of the land and depending on the layout you have, you know.
1898 You have this piece of land or any other you see low conservation next to the high or medium.
1899 Whatever that mix is you might want to be putting it more on the medium because the low would
1900 affect the high, the configuration is going to make a difference on what's going to happen. You
1901 get into the medium, to get to the medium conservation you have to go through the high then you
1902 put it on the low, to get to the low you have to go through the high and then put it in the medium.
1903 You could be switching everything around.

1904
1905 **Mr. Brodsky:** I think maybe precedent setting here, if anything, is the level of analysis and
1906 thought you are going through. Not the conclusions you are saying you are not allow X or you
1907 are not going to allow Y over there. You are trying to tailor your responses based upon this
1908 piece of land and its unique qualities of its different parts.

1909
1910 **Mbr. Kasper:** And why we are determining the conservation values.

1911
1912 **Mr. Brodsky:** Right. You may come to a different conclusion on the next site and the next
1913 conservation analysis, but if you go through this same level of analysis, I think that is what is
1914 critical.
1915
1916 **Mbr. Southern:** Got enough Scott?
1917
1918 **Mr. Molnar:** I think I do, thank you.
1919
1920 **Mbr. Kasper:** You'll be up all night thinking about this.
1921
1922 **Mbr. Southern:** Where do we go next?
1923
1924 **Chmn. Tucker:** This was a motion - -
1925
1926 **Mr. Molnar:** The final determination as to which land has the most conservation value and
1927 should be protected from development by conservation easement shall be made by the Planning
1928 Board, which shall make written findings supporting its decision (the "conservation findings").
1929
1930 **Chmn. Tucker:** We started with a motion, then there was a second and - -
1931
1932 **Mbr. Southern:** Then there was a tabled - -
1933
1934 **Mbr. Kasper:** Table - -
1935
1936 **Chmn. Tucker:** Table - -
1937
1938 **Mr. Molnar:** I recommend that we continue tabled format until the next meeting so that I can
1939 produce written findings acceptable to the Board. I will work with Karen to review the
1940 transcripts of the proceedings and summarize, state verbatim in many instances, and summarize
1941 the entire discussion this evening.
1942
1943 **Mbr. Southern:** I move that we tabling the motion
1944
1945 **Chmn. Tucker:** It's part of the motion - -
1946
1947 **Mbr. Kasper:** That was part of the motion.
1948
1949 **Chmn. Tucker:** That was part of the motion.
1950
1951 **Mbr. Southern:** What motion, I didn't hear a motion.
1952
1953 **Chmn. Tucker:** Well, Scott,
1954
1955 **Mr. Molnar:** I do believe that according to the rules of order,
1956
1957 **Mbr. Southern:** He made a motion - -
1958

1959 **Mbr. Estes:** And I seconded - -
1960
1961 **Mbr. Kasper** Now he can change his motion.
1962
1963 **Mbr. Southern:** To table the motion.
1964
1965 **Mr. Molnar:** Yes
1966
1967 **Mbr. Southern:** To whatever it was.
1968
1969 **Chmn. Tucker:** Okay.
1970
1971 **Mbr. Winkelman:** Then I second that motion to table it till the next meeting.
1972
1973 **Chmn. Tucker:** Okay, any more discussion? All those in favor say I.
1974
1975 All members said Aye.
1976
1977 **Chmn. Tucker:** All those opposed. Motion carries. Any other order of business we need to
1978 address.
1979
1980 **Mr. Molnar:** The next meeting is a special meeting that we follow applicable requirement and
1981 published notice, etcetera. It is not a regularly scheduled Board meeting.
1982
1983 **Chmn. Tucker:** And that we can take comments ten days before and after that they will not be
1984 considered.
1985
1986 **Mbr. Estes:** Ten days before would be three days from now, then.
1987
1988 **Chmn. Tucker:** Yes.
1989
1990 **Mbr. Winkelman:** We've got some to go through already.
1991
1992 **Mbr. Estes:** Yes.
1993
1994 **Chmn. Tucker** Are we ready to adjourn?
1995
1996 **Mbr. Estes:** Hold on.

1997
1998 **WHEREFORE,** a motion was made by Member Kasper and seconded by Member
1999 Southern to adjourn the meeting. The Board having been polled resulted in the
2000 unanimous affirmation of said motion.
2001
2002
2003
2004

Respectfully Submitted,

2005
2006
2007

Karen Barkdull, Clerk