

In The Matter Of:

BROOKLINE ZONING BOARD OF APPEALS HEARING

APPEALS HEARING - Vol. 13

January 28, 2015

MERRILL CORPORATION

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Brookline Zoning Board of Appeals Hearing

Case Number 20130094

40B Application by Chestnut Hill Realty

The Residences of South Brookline

January 28, 2015 at 7:00 p.m.

Office of Town Counsel

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Appearances

Board Members:

Jesse Geller, Chairman

Jonathan Book

Chris Hussey

Allison Steinfeld, Planning Director

Maria Morelli, Planning Consultant, Planning Department

Samuel Nagler, Esquire, Krokidas & Bluestein

Edith M. Netter, Esquire,

Edith M. Netter & Associates, P.C.

Dan Bennett, Building Commissioner

Joseph Geller, Stantec Consulting

Marc Levin, Chestnut Hill Realty

Steven Schwartz, Esquire, Goulston & Storrs

1 PROCEEDINGS

2 7:09 p.m.

3 MR. JESSE GELLER: Good evening, everyone. My
4 name is Jesse Geller. To my left is Jonathan Book, to
5 his left is Chris Hussey.

6 As people will recall, on January 12th we
7 closed the hearing. Tonight is our first meeting. The
8 board will continue a discussion of the decision.

9 The board members will recall on the 12th
10 staff provided certain comments to cherry-picked
11 sections of the decision, and we also had some
12 discussion on those particular sections.

13 On the January 5th hearing, the board had
14 gotten through Section 13 of the decision up to the
15 subcategory "Open Space and Landscaping." We have been
16 provided a draft dated January 25, 2010. Everybody
17 have it? Mr. Hussey, do you have yours? Mr. Book?

18 My understanding is that this revised draft
19 reflects --

20 MR. NAGLER: The 28th, Jesse.

21 MR. JESSE GELLER: What did I say?

22 MR. NAGLER: The 25th.

23 MR. JESSE GELLER: Oh, I'm sorry. The 28th.

24 This reflects board comments and staff comments through

1 where we've gotten to this evening. The proposal is
2 that we're not going to start at the beginning, but we
3 will pick up at the point at which we left off, which,
4 again, is Section 14, continue through in order, and as
5 we get to those sections that were cherry picked and
6 discussed on the 12th, I'll call those out. If anybody
7 has further comments, they can certainly raise them,
8 but we'll then move on to the next --

9 MS. NETTER: I would encourage you to actually
10 wait with those comments until when we go through the
11 whole decision. I think it's really important to get
12 through the whole decision and see it as a whole and
13 then go back.

14 MR. HUSSEY: That makes sense.

15 MR. JESSE GELLER: Excellent. Let me make one
16 other note about the 1/28 version. It also has, in red
17 line format -- those red lines that you see in it are
18 staff comments subsequent to the January 12th date.
19 Okay? So you will not see -- this is not a red-lined
20 version of changes made based on our comments from
21 1/5. Okay? Understood?

22 MR. HUSSEY: I think so. Now, let me get this
23 straight, though. Are we going to be working from
24 this -- the draft going forward tonight, or are we

1 going to be working from the earlier editions which
2 we've read and we've had a chance to look at?

3 MR. JESSE GELLER: Thank you, Mr. Hussey.
4 That's an excellent question.

5 My suggestion would be that we work with the
6 1/28 draft, acknowledging that we are going to have to
7 look at the version we marked up and move it into 1/28.

8 MS. NETTER: And just so you know, this is
9 kind of hot off the press. Otherwise we would have
10 shared it with you earlier.

11 MR. HUSSEY: I understand.

12 MS. NETTER: This may be clear as mud, so ...

13 MR. JESSE GELLER: Exactly.

14 MS. NETTER: We try.

15 MR. BOOK: So the discussions that we had as
16 we were going along on the 1 through 14 and the
17 other -- those are not in here?

18 MS. NETTER: They are in there. They're just
19 not highlighted.

20 MR. BOOK: They're not highlighted.

21 MR. JESSE GELLER: Only red lining post 1/12.

22 MS. NETTER: We were trying to be not
23 confusing, but perhaps we were more confusing.

24 MR. BOOK: Understood. But you incorporated,

1 just did not red line, what we had --

2 MS. NETTER: Correct.

3 MR. BOOK: Great. All right.

4 MR. BOOK: And we're not going to revisit
5 things. There will be an opportunity to review the
6 changes, but we want to get through the entire document
7 in one run first, and then we'll go back.

8 MR. BOOK: Understood. Thank you.

9 MR. JESSE GELLER: Okay. So Section 14.

10 MR. HUSSEY: Before we start, I'd like to ask,
11 do you have an intended deadline tonight, a time
12 deadline?

13 MR. JESSE GELLER: Time deadline?

14 MR. HUSSEY: The reason I'm bringing that up
15 is that I've got a number of things that I want to
16 bring up and maybe discuss tonight, maybe not, but at
17 least bring up. And I don't know whether you want to
18 do those before you start this or save 15 minutes at
19 the end. Now, some of the items that we go through may
20 answer some of my questions, but there are others that
21 will not.

22 MR. JESSE GELLER: Things that you are
23 raising, do they pertain to -- are they global issues?
24 Are they administrative questions? Are they specific

1 to sections that we've reviewed or talked about, or are
2 they specific to sections that we have not talked
3 about, or all of the above?

4 MR. HUSSEY: Sort of all of the above, except
5 they're not going to be administrative questions.

6 MR. JESSE GELLER: Okay. So what I would ask
7 is the following: Questions you have that relate to
8 sections we have not covered, okay, or have not been
9 covered, ask them as we proceed.

10 MR. HUSSEY: Exactly.

11 MR. JESSE GELLER: Questions that you have or
12 comments that you have to sections that have been
13 covered, let's hold off on those and -- but save them
14 for when we revisit the sections. Okay?

15 MR. HUSSEY: I understand.

16 MS. NETTER: But what if there's something
17 that doesn't fit in those categories?

18 MR. JESSE GELLER: Is there something --

19 MR. HUSSEY: There are a few things that don't
20 fit into those categories, but I think we can discuss
21 those at the end of tonight's meeting because they're
22 somewhat global. I'll give you an example if you
23 want.

24 What I haven't seen yet in any of this is any

1 sort of opinion as to what our decision is and why and
2 how we've arrived at it. We have all these conditions,
3 and we have the findings, but it seems to me it's
4 leaving out sort of how we arrived at where we are, the
5 reasons for the decision. I'm not really familiar with
6 judicial proceedings, but it seems to me that the few
7 things that I have followed that are judgmental issues,
8 there are opinions issued by the judges involved. But
9 I don't see any of that so far in the draft. Did I
10 miss something?

11 MS. NETTER: If there -- first of all, this
12 is -- you can always add. But the sections of the
13 draft are -- those are the categories that we think it
14 should fall under. And to the extent that you have
15 certain reasoning you want to share, I'd recommend you
16 put that under findings. Does that make sense to you?

17 MR. HUSSEY: That makes sense. But it is, I
18 think, a separate sort of discussion. It would be a
19 separate finding, sort of separate discussion, so
20 that's the sort of thing I'm talking about. It seems
21 to me that could go at the end or it could go now,
22 whatever you prefer.

23 MR. JESSE GELLER: No. But I think he raises
24 a good question. You know, the nub of what he's

1 raising is something that we have deliberately,
2 obviously, held off on, which is the final decision
3 because we want to discuss sort of the structure of
4 this. He's really getting at that. So we've actually
5 deliberately pushed -- we haven't had a discussion
6 about it, but we deliberately pushed that -- we sort
7 of --

8 What you're familiar with is in 40A hearings
9 we get through the entire process, we take the
10 testimony, we hear from the Building Department, we
11 hear from Planning, and then we deliberate and we
12 outline our bases for why we've arrived at our
13 decision. That's the component he's talking about.

14 And because this is a more complex process --
15 and as you see, we had 66 conditions. We're down to --

16 MS. NETTER: They've grown.

17 MR. JESSE GELLER: They've grown?

18 MS. NETTER: Or maybe they haven't, because
19 I've got some conditions --

20 MR. JESSE GELLER: Last time we were down to
21 65. Whatever we are, the document itself is, oddly
22 enough, reviewed at this juncture before you've even
23 had that discussion. And depending -- you know, in
24 some sense, if your decision goes one way, you tear it

1 up, throw it out, and you've got to write something
2 else.

3 On the other hand, if you go a different way,
4 then you supplement in the findings section if you're
5 unhappy with some of the things or the absence of
6 reasons. Okay?

7 So I understand exactly what you're talking
8 about. I think -- it's not necessarily going to be a
9 conversation we'll have tonight, but it's a
10 conversation we certainly will have.

11 MR. HUSSEY: Good. Okay. That's the main
12 thing.

13 MR. JESSE GELLER: Okay. Section 14. So in
14 Section 14 -- you know what, I actually had two
15 comments: One was, we're referring to additional
16 structures, buildings, or paved surfaces when, really,
17 aren't we talking about there will be no additional
18 material improvements, including and without limitation
19 these things that you've referenced? The plan is the
20 plan is the plan.

21 MS. NETTER: Probably if they put a bike rack
22 there it would be okay.

23 MR. JESSE GELLER: Probably. But I wouldn't
24 view that as material improvements. But you're making

1 me sort of define them today, is what you're doing, by
2 listing the three categories.

3 MR. BOOK: We're making them come back to us
4 rather than --

5 MR. JESSE GELLER: We're the only ones --

6 MS. NETTER: Everything, yeah.

7 MR. JESSE GELLER: And I'm not suggesting --
8 I'm not trying to suggest that a bike rack is
9 material. I don't want to see them for a bike rack.

10 MS. NETTER: No. Actually -- yeah, right.

11 MR. JESSE GELLER: But I don't know that
12 structures, buildings, paved surfaces, or the units --

13 MR. BOOK: Do we expect them to come back to
14 us rather than to Planning or some other designee --
15 for the sake of argument say -- assume it's Planning --
16 if they get their access to VFW and they want to put in
17 10 more parking spaces?

18 MS. NETTER: Well, that's Condition Number --

19 MR. JESSE GELLER: That's a bad example
20 because that's something that's specifically
21 addressed.

22 But let's say they decide, in their infinite
23 wisdom, that they want to extend the retaining wall 20
24 feet.

1 MS. NETTER: They need to come back to you so
2 you can make a determination as to whether that's a
3 substantial change or not. But that's a structure. I
4 mean, I don't know how it's defined in your bylaw, but
5 I would suspect --

6 MR. JESSE GELLER: Are you using the -- I just
7 want to make sure we're covering everything. Other
8 than something that is truly an immaterial -- I want to
9 drive them back to us, and we'll make the decision
10 whether we think it's material.

11 MS. NETTER: I can look at your definition of
12 structures under the bylaw.

13 MR. JESSE GELLER: I didn't know whether you
14 were using the technical definition.

15 MS. NETTER: Well, I can. I mean,
16 "structures" is a pretty general --

17 MR. BOOK: I think a wall is a structure.

18 MR. NAGLER: There's a general requirement,
19 you know, to build it in accordance with the approved
20 plan, so you have that, you know, on top of -- it's
21 meant to be more like -- you know, it kind of tracks
22 with restriction. It's meant to be in addition to --

23 MR. JESSE GELLER: It's belt and suspenders,
24 is what it is.

1 MR. NAGLER: Somewhat, yeah.

2 MR. JESSE GELLER: Okay. So it's not intended
3 to be words of limitation?

4 MR. NAGLER: No.

5 MR. JESSE GELLER: And it wouldn't be
6 interpreted to be a limitation?

7 MR. NAGLER: No. I don't think anyone could
8 reasonably interpret 14 to say -- this is really an
9 exception to Condition Number 1, which is they have to
10 build it.

11 MR. JESSE GELLER: Okay.

12 MR. NAGLER: Whereas 15, I think, is an
13 additional requirement.

14 MR. JESSE GELLER: Okay.
15 Anybody else have anything?

16 MR. HUSSEY: On 13?

17 MR. JESSE GELLER: 14.

18 MR. HUSSEY: Working from the latest draft?

19 MS. NETTER: Yes.

20 MR. JESSE GELLER: They should be fairly
21 similar.

22 MR. HUSSEY: No. No questions.

23 MR. JESSE GELLER: Mr. Book.

24 MR. BOOK: So, again, the finding that it's

1 insubstantial has to be made by this board?

2 MS. NETTER: Yes.

3 MR. NAGLER: Even though it runs in favor of
4 the selectmen, in this case there's before the -- with
5 restrictions that are going to use the insubstantial
6 change standard that's in the regulations for when
7 they're actually departing or when they're in violation
8 of the restriction, if something were to be considered
9 by the board to be an insubstantial change, then they
10 have that leeway.

11 MS. NETTER: They always have to go back to
12 you. You do it.

13 MR. BOOK: Okay.

14 MS. NETTER: I just noticed I'm citing the
15 same section with different numbers, so I'm going to
16 correct that.

17 MR. JESSE GELLER: Yeah. Five or six.

18 Okay. Section 15.

19 MS. NETTER: It's six. So I'm changing -- 14
20 will be 560611. That's my mistake.

21 No. It's 5605. Sorry.

22 MR. JESSE GELLER: Thoughts? Comments?

23 MS. NETTER: Are you on 15?

24 MR. JESSE GELLER: Yeah.

1 MR. HUSSEY: So I guess about in the middle
2 I've got a question. "The greatest extent possible
3 that the restriction may runs in perpetuity."

4 MS. NETTER: "May run." That's a track change
5 there.

6 MR. BOOK: So the addition of the last
7 sentence in 15, how was that different from the
8 sentence immediately prior to it?

9 MR. JESSE GELLER: "Independent enforcement."

10 MS. NETTER: It's just reflecting the process
11 that has to be gone through. If there are to be minor
12 changes, they've got to come back to you.

13 MR. BOOK: Well, we're going into some --
14 there's some description in the penultimate sentence.
15 It says, "Do not affect size, dimensions,
16 locations ... " blah, blah, blah. Isn't it --
17 shouldn't we just say it doesn't -- you know, changes
18 that are deemed to be insubstantial by the board?
19 Isn't that the --

20 MR. NAGLER: I agree. I think we should
21 delete that second-to-last sentence.

22 MS. NETTER: The second-to-last sentence?

23 MR. HUSSEY: Yeah. The last sentence covers
24 it all.

1 MR. NAGLER: Yeah. Because I think the last
2 sentence kind of says it all.

3 MS. NETTER: Okay. Good.

4 MR. JESSE GELLER: Anything else?

5 MR. HUSSEY: No. All set.

6 MR. JESSE GELLER: Okay. Section 16.

7 MR. HUSSEY: Is this intended to cover
8 lighting shining on abutting buildings and what have
9 you?

10 MS. NETTER: There's another section.

11 MR. HUSSEY: That covers that?

12 MS. NETTER: Yes.

13 MR. HUSSEY: Okay. This is just screening.

14 MS. NETTER: Maria, there's another section;
15 right?

16 MS. MORELLI: Yes.

17 MS. NETTER: I should know that, but --

18 MR. HUSSEY: I believe there is.

19 MS. MORELLI: If you look at Condition 18,
20 that pertains to lighting.

21 MR. JESSE GELLER: What was the minimum depth
22 that was required near the midrise for the planting?

23 MR. BOOK: Three feet.

24 MR. JESSE GELLER: It was three feet?

1 MR. BOOK: Yeah.

2 MR. JESSE GELLER: And the documentation
3 indicates that three-foot depth is feasible at the
4 midrise?

5 MS. NETTER: Maria?

6 MR. JESSE GELLER: That's in the -- I believe
7 we saw it in the plan.

8 MS. MORELLI: The three feet is what the town
9 arborist advises.

10 MR. JESSE GELLER: Right.

11 MS. NETTER: But the question was: Is that
12 three feet feasible around --

13 MR. JESSE GELLER: No. I'm asking -- I
14 thought those plans showed a three-foot depth. Is that
15 correct? Am I misremembering?

16 MS. NETTER: No. The statement is the plans
17 aren't indicating the depth.

18 MR. JESSE GELLER: So I'm misremembering.
19 Okay.

20 MR. HUSSEY: Okay. I'd like to know why we're
21 putting in "where feasible."

22 MS. NETTER: Because our understanding is it's
23 not feasible in all instances. But on the other hand,
24 you do get a chance -- or the town does get a chance to

1 review the plantings plan, the maintenance -- the
2 maintenance plan. And that, I think, is the ultimate
3 goal here, that the plants will survive over time.

4 MR. HUSSEY: Right. But -- and we're
5 specifying three feet. Who determines feasibility --
6 or infeasibility, basically? Why not -- I don't
7 understand why you've got "where feasible." I would
8 drop that and let them work that out in the field if
9 they have to. I'd require it at three feet.

10 MS. NETTER: Well, the question would be -- if
11 they can't do three feet every place, they have to come
12 back to you.

13 MR. HUSSEY: Well, they just need to raise the
14 grade around the planting a little bit.

15 MS. MORELLI: What would happen if three feet
16 is not feasible, if the applicant's contractor
17 determines that three feet is not feasible --

18 MS. NETTER: But Mr. Hussey is -- I know you
19 can hear -- saying maybe they could just --

20 MS. MORELLI: Well, there would be other
21 alternatives. That's not necessarily the prescribed
22 solution, but there would be other methods and means
23 that could -- the objective is to ensure that the
24 plantings survive. So if a three-foot soil depth is

1 impossible, there might be other methods or means that
2 would be acceptable to the town.

3 MR. HUSSEY: Well, I'd prefer to reword it
4 that way, then. At three feet of soil depth or
5 other -- what were your words again -- other means and
6 methods.

7 MS. MORELLI: Other planting methods.

8 MS. NETTER: To ensure what?

9 MR. HUSSEY: To ensure viability of the
10 plants.

11 MR. JESSE GELLER: iii, where it says "three
12 feet," I want to say "not less than three feet."

13 And in your reference to maintaining, the word
14 "maintaining" would include replacement?

15 MS. NETTER: And replacing -- and replacing as
16 necessary.

17 MR. HUSSEY: I'm sorry.

18 MS. NETTER: So ii --

19 MR. HUSSEY: Yes.

20 MS. NETTER: -- Mr. Geller is suggesting,
21 "there is an adequate plan for maintaining and
22 replacing as necessary the plantings on the site." Is
23 that good?

24 MR. HUSSEY: Well, I'm just trying to think it

1 through. The presumption being that some of the plants
2 will not survive, and so you're writing in that they
3 will be replaced.

4 MR. JESSE GELLER: Right. Because maintenance
5 is not replacing.

6 MR. HUSSEY: No, it's not. All right. That's
7 fine.

8 MR. NAGLER: But we can still add the language
9 that you suggested.

10 MR. HUSSEY: Right.

11 MR. NAGLER: I think something like, "if it is
12 determined not to be feasible, the applicant must
13 provide an alternative means of assuring the survival
14 of the plants to the satisfaction of the planning
15 director."

16 MR. JESSE GELLER: Mr. Book, anything on that?

17 MR. BOOK: No. Nothing.

18 MR. JESSE GELLER: Okay. Next section, 17.

19 MR. BOOK: Just a general -- I have a general
20 suggestion. Should, perhaps, 16 and 17 be combined?
21 There's a little -- I understand that the -- there's a
22 little bit of overlap, unless we're saying that they're
23 going to submit final landscaping plans solely for the
24 purposes of showing what's being preserved.

1 MR. HUSSEY: I think they're separate,
2 Jonathan. I'd leave them the way they are. The first
3 one applies to plantings and screening; the second
4 applies to trees and rock outcroppings.

5 MR. BOOK: Okay.

6 MR. HUSSEY: I think they're separate.

7 MR. JESSE GELLER: Okay. Anything else?

8 MR. HUSSEY: No.

9 MR. JESSE GELLER: Okay. 18.

10 MR. BOOK: Are we -- I'm sorry. Are we
11 leaving in this -- we had this discussion before --
12 this concept of -- we're leaving in "and approval"?

13 MS. NETTER: Well, we could change it to --

14 MR. BOOK: I mean, I think we should handle
15 this in a similar fashion throughout --

16 MS. NETTER: I can just take out "approval."
17 "Review to determine whether they conform to ..."

18 MR. BOOK: Yes.

19 MR. JESSE GELLER: Section 18. After the
20 phrase "or nearby property," refer to outside the
21 project.

22 MS. NETTER: Or property outside the project.

23 MR. HUSSEY: This is, I think, where my
24 comment is applicable.

1 MR. JESSE GELLER: Okay.

2 MR. HUSSEY: The plan shows some headlight
3 screening at the edge of parking lots by bushes and
4 various things. In other places, it shows, you know, a
5 four-foot-high opaque fence. And in some cases there
6 is neither.

7 Without going back and reworking every plan
8 and detail, I think a sentence that says, "shall be
9 shielded in accordance with the town's zoning bylaw."
10 I'm not sure what the bylaw says about that, but "shall
11 be shielded by" --

12 MS. MORELLI: Could I just point out to
13 Mr. Hussey, just remember, along this entire property
14 line between the Russett and Beverly Road abutters and
15 the project, there is a seven-foot-high opaque fence.

16 MR. HUSSEY: Yes, I know. But there are
17 parking lots that are high enough that they reach over
18 that.

19 MS. MORELLI: Right.

20 MR. HUSSEY: And -- let's see.

21 MS. MORELLI: Do you need the bylaw?

22 MR. HUSSEY: No. That's okay.

23 MS. NETTER: What's the cite to the lighting?

24 MS. MORELLI: I'm sorry?

1 MS. NETTER: The citation to the lighting
2 section in the bylaw? It was six point something.

3 MS. MORELLI: There are two bylaws. There's
4 6.046B and there's 7.041.

5 MS. NETTER: We're trying to be consistent
6 with the bylaw.

7 MS. MORELLI: I'll just give you page numbers.
8 Okay. So on page 6-12, and that would be
9 under 67.04.6B, and the second bylaw that's applicable
10 is on page 7-6, section 7.04.1.

11 MR. JESSE GELLER: Let me ask an interim
12 question. In section 18, no higher than 15 feet?

13 MS. NETTER: Uh-huh. And there's an attached
14 exhibit as well.

15 MR. JESSE GELLER: And when you say, "no
16 higher than 15 feet," 15 feet from grade?

17 (Inaudible discussion. Clarification
18 requested by the court reporter.)

19 MR. JESSE GELLER: The question I asked is --
20 15 feet measured from grade.

21 MS. NETTER: And it says here, "15 feet
22 mounting height." And so it looks like it's from
23 grade -- Maria, is that correct -- to the bottom of the
24 fixture.

1 MS. MORELLI: Yes. There's an exhibit at the
2 back.

3 MS. NETTER: We're looking at that. Does that
4 line down there indicate grade?

5 MS. MORELLI: No. It's from the actual base
6 of the light pole itself.

7 MS. NETTER: Oh.

8 MR. JESSE GELLER: Okay.

9 MR. HUSSEY: All right. In particular, my
10 question on site plan L902, instead of a grade change,
11 it's the open parking space that's related to the
12 apartment building. And I think it doesn't show the
13 fence. There is the six-foot-high fence along the
14 property line, but whether that's going to cover the
15 headlights from the parking, which is at a slightly
16 higher grade -- let's read it again.

17 MS. NETTER: Did you say L902?

18 MR. HUSSEY: Yeah, L902. You see the plan,
19 and there's a Section D -- which is just off the
20 parking lot, actually -- that appears to indicate that
21 the parking lot in that grade in general is higher than
22 the lot line, but --

23 MR. JESSE GELLER: Isn't the language broad
24 enough?

1 MR. HUSSEY: Yeah, I think it probably is. It
2 falls under compliance.

3 MS. NETTER: So is 18 okay?

4 MR. HUSSEY: Yup.

5 MR. JESSE GELLER. Okay. Anything else?

6 MR. HUSSEY: No.

7 MR. JESSE GELLER: Okay. Section 19. We're
8 starting "Traffic and Vehicular and Pedestrian
9 Circulation."

10 19 sub C, do you not mean the minimum width?

11 MS. NETTER: Yes. Minimum is fine, but --
12 yes.

13 That's correct, Maria; right?

14 MS. MORELLI: Yes.

15 MS. NETTER: But it actually shows 23.

16 MR. BOOK: Let me ask you a question on 19. A
17 through F, this is not currently shown on the site
18 plans that the applicant has submitted?

19 MS. MORELLI: Yes. So these are shown on the
20 site plans. It's important because this is such a
21 complex project. The building commissioner, staff
22 really just needs a checklist to ensure this doesn't
23 change because they're so important. So it's just a
24 matter of clarifying. A through E are shown on the

1 plans, and F pertains to any construction materials
2 that the applicant will be using on the site itself.

3 MS. NETTER: So that's not on the plans?

4 MS. MORELLI: So that's not on the plans.

5 MS. NETTER: So it's belts and suspenders.

6 MR. BOOK: Consistent with the comment we've
7 discussed a few times now, it says here, "The site
8 plans, which shall be subject to the review and
9 approval of the director of transportation and
10 engineering, shall depict or indicate the following."
11 And isn't it a matter of, again, that the -- that it's
12 subject to his review to determine consistency?

13 MS. NETTER: Yes. That's fine.

14 MR. NAGLER: You do, also, have overarching
15 language later in the conditions that all reviews have
16 to be consistent with the regs, and there's a specific
17 reg on the limitation of the review rights, kind of, of
18 the local boards.

19 MS. NETTER: That's fine.

20 MR. NAGLER: But I think it's fine to take it
21 out.

22 MR. JESSE GELLER: Mr. Hussey, do you have
23 comments?

24 MR. HUSSEY: No.

1 MS. MORELLI: Could I just point out that D is
2 not shown on the plans. Those are stop signs. So
3 those are not -- I just want to be clear.

4 MR. BOOK: And those -- in that instance,
5 those things that aren't shown, they should be subject
6 to review and approval.

7 MS. MORELLI: Correct.

8 MS. NETTER: Hold it. I just took out the
9 approval. So do you want some approval process for the
10 site?

11 MS. MORELLI: Yes. Anything --

12 MS. NETTER: For the stop signs?

13 MS. MORELLI: Yes. Anything that's not been
14 submitted to staff before, they would have to review
15 and approve.

16 MS. NETTER: So D is not on the plans. And I
17 don't -- we want approval for F? I think we just want
18 to know -- at least the way I read this -- where --
19 there's four inches of blacktop; right?

20 MR. HUSSEY: No. We need more than that. I
21 mean, the subbase --

22 MS. NETTER: No, no. I mean do you want --
23 I'm sorry I cut you off. But there's all the language
24 in here for F; right?

1 MR. HUSSEY: Yes.

2 MS. NETTER: I think we just have to
3 determine -- at least as I read this, we're just
4 determining that this is there. So I don't think we're
5 trying to approve the type of blacktop or the type of
6 gravel, are we?

7 MR. NAGLER: I'm sorry. I think we have a
8 definitional problem, because it says, "The site plans
9 are subject to review and approval" ... "shall depict
10 or indicate the following." The site plan is a defined
11 term to just mean the specific enumerated plans.

12 MS. NETTER: I think the intention here is
13 that the plans -- oh, so go on. Maybe I'm missing
14 something.

15 MR. NAGLER: In other words, site plans are
16 defined at the very beginning to include specific plans
17 that already exist.

18 MS. NETTER: Right.

19 MR. NAGLER: So how -- if these are not shown
20 on the, quote/unquote, site plans --

21 MS. NETTER: They're going to be coming in the
22 final site plans to determine whether they're
23 consistent with the site plans, so -- that they
24 originally submitted.

1 So I think we're getting into a level that we
2 really -- I'm not sure is advancing a whole lot, but
3 let me just contextually -- A through C, already on the
4 plans, and the town wants them, I know, because
5 enforcement is really hard, and so it's very good to
6 have a list. So that's A through C. And you certainly
7 don't need approval. You just have to decide if
8 they're there; right?

9 MS. MORELLI: Correct.

10 MS. NETTER: All right. Let me just get
11 through this because otherwise we're nit-picking.

12 C -- E is on the plans; correct? Same thing
13 as A through --

14 MR. JESSE GELLER: Is E completely on the
15 plans?

16 MS. MORELLI: Yes, it is.

17 MR. JESSE GELLER: I know long ago there was
18 some discussion about interconnecting and whether they
19 made sense.

20 MS. MORELLI: Yes. The applicant has shown
21 the sidewalks on the plan that were of concern.

22 MR. JESSE GELLER: Okay. Thank you.

23 MS. NETTER: Okay. So A through C and E,
24 already shown, except we have language in iv, "where

1 the director of transportation determines
2 appropriate."

3 MS. MORELLI: The question?

4 MS. NETTER: Well, we're saying we don't need
5 approval. I'm not pushing for approval, but I'm also
6 seeing language in e, iv that says, "where the director
7 determines appropriate."

8 MS. MORELLI: Yeah. That's because the -- the
9 applicant has indeed designed sidewalks where they need
10 to be. It's nothing new. It's on the plans. That
11 phrase could be taken out.

12 MS. NETTER: Okay. So that's just
13 determining.

14 Now, with respect to stop signs, do we want
15 some approval over the shape or the location?

16 MS. MORELLI: No. They're very specific about
17 the type of stop signs. We just want to make sure that
18 they are going -- they are spec'd to be located where
19 they're intended to be.

20 MS. NETTER: So it's the location and the
21 type?

22 MS. MORELLI: Yes. There's a particular type
23 of stop sign that's being spec'd here.

24 MS. NETTER: And it's already spec'd?

1 MS. MORELLI: No. It's not on the plans.
2 It's in the conditions. We don't have it on the
3 plans.

4 MR. HUSSEY: It's the R1-1.

5 MS. NETTER: So we need to make sure it's R1-1
6 and it's in the right place?

7 MS. MORELLI: Correct.

8 MS. NETTER: And then, Mr. Hussey, f, do you
9 want some approval, or is what you see what you get?
10 In other words, they do this, they're okay?

11 MR. HUSSEY: I think, although I wouldn't --
12 let me back up. Just as long as this is okay with
13 Mr. Ditto in the Engineering Department --

14 MS. NETTER: It is.

15 MR. HUSSEY: Then I would leave it in the way
16 it is.

17 MS. NETTER: So the only thing that really
18 needs approval here is D; is that right?

19 MS. MORELLI: Okay. So there has to be a site
20 detail in the plans. There's one in the porous plans
21 that's shown, but there is this ideal for impervious.
22 Construction -- the layers of the construction
23 materials --

24 MS. NETTER: Right. But if they provide a

1 plan that shows all of this, then it's okay; right?

2 MS. MORELLI: If they provide a plan, then the
3 Director of Transportation and Engineering does need to
4 approve it to make sure that the plans reflect the
5 conditions.

6 MS. NETTER: Right. That's what I'm saying.
7 But that's just a determination. It's not like a
8 discretionary --

9 MS. MORELLI: No, it's not discretionary.

10 MS. NETTER: Okay. I got it. I'll work on
11 it.

12 MR. JESSE GELLER: Okay. Anything else on
13 Section 19?

14 MR. BOOK: No.

15 MR. JESSE GELLER: Mr. Hussey, you okay?

16 MR. HUSSEY: Okay.

17 MR. JESSE GELLER: All right. Section 20.

18 The phrase on the sixth line, "to mitigate the
19 adverse impacts of the project," right, it's
20 conclusory. And here's where I'm going with it: I'm
21 concerned that that language could be read incorrectly
22 to suggest that only upon approving adverse effects can
23 we therefore --

24 MS. NETTER: Okay. So "shall be redesigning

1 to" -- I don't want to say ensure pedestrian safety,
2 but "to further pedestrian safety" or something like
3 that. I mean, theoretically, what you can charge fees
4 for is to mitigate the impact of the project. I don't
5 necessarily agree with you, but I don't have a problem
6 taking it out. It doesn't say -- I mean --

7 MR. JESSE GELLER: Does anybody else have that
8 concern?

9 MS. NETTER: I don't want to say "ensure
10 pedestrian safety," because that's a standard that --

11 MR. JESSE GELLER: Right.

12 MS. NETTER: Right. You can't do that. "To
13 further pedestrian safety" or something. But really
14 that's what planning is about, to mitigate impacts.

15 MR. JESSE GELLER: Well, I understand that.

16 MS. NETTER: I don't think it says they have
17 to demonstrate that.

18 MR. HUSSEY: No. I think it's okay. I've got
19 another issue with it, but I think this issue is okay.

20 MR. JESSE GELLER: Mr. Book?

21 MR. BOOK: I wasn't troubled by it. I
22 understand your concern or your comment, but to the
23 extent that the purpose of the funds is for
24 mitigation -- as proposed mitigation -- as something

1 that isn't conclusory, but at least it infers what its
2 intent is, which is mitigation.

3 MR. NAGLER: The word "adverse," if we deleted
4 the word adverse. One person's adverse could be
5 another person's --

6 MR. JESSE GELLER: Right.

7 MR. BOOK: Should we describe in the next line
8 the parenthetical -- I understood that it was all going
9 to construction and all those other things are town --
10 they're dealt with internally in the town.

11 MR. HUSSEY: That's exactly right. Peter
12 Ditto was quite clear about that. These funds are only
13 to be applied to construction costs; while the
14 engineering, contract documents, contract
15 administration services were to be provided by the town
16 and will be absorbed by his department.

17 MS. NETTER: Okay. Can we get back to
18 adverse? I'm going to push against -- because I don't
19 think it's correct what you're saying. You want to
20 mitigate the adverse impacts. You don't want to
21 mitigate the good.

22 MR. HUSSEY: Right.

23 MS. NETTER: That's really what you're doing.

24 MR. JESSE GELLER: Yeah.

1 MS. NETTER: It's up to you, but I don't agree
2 with you.

3 MR. BOOK: I guess, as proposed mitigation for
4 the adverse impacts.

5 MS. NETTER: You want it to say --

6 MR. BOOK: I thought Jesse's comment is
7 that -- simply saying that to mitigate is conclusory,
8 that it, in fact, is going to do that. And the idea is
9 that's what it's being proffered for. So let's just
10 remove the conclusion that it will mitigate. It is
11 being required as proposed mitigation for the adverse
12 impacts of the project.

13 MS. NETTER: Can I just say, "The proposed
14 mitigation for the impacts of the project on pedestrian
15 safety"? Take out on the word "adverse?" Do you like
16 that better, or just leave it as we've worded it?

17 MR. BOOK: I'm indifferent. Whatever you
18 prefer. I'm indifferent.

19 MS. MORELLI: Ms. Netter, I'll just point out
20 that the -- I think it was the January 12th hearing,
21 conditions 20 through 24 I believe were discussed.

22 MS. NETTER: Oh. We're doing the same thing
23 again.

24 MS. MORELLI: So at the onset you said we

1 would return -- revisit earlier discussed conditions.

2 MS. NETTER: Thank you. Yeah. Let's not redo
3 everything. Thank you.

4 So we were up to 41, then. No. I'm sorry.
5 We're up to 25. 25 through 41 we're doing.

6 MR. JESSE GELLER: Fire safety. And everybody
7 understands this is because the interim sections have
8 been reviewed before.

9 MR. BOOK: When we say in 25, "the conditions
10 of the decision," do we mean this singular condition
11 or --

12 MS. NETTER: All the conditions in the
13 decision.

14 MR. HUSSEY: Conditions is plural.

15 MS. NETTER: Generally, what we say is
16 "conditions in the decision." You don't want me to --
17 do you want me to go through and outline the
18 conditions?

19 MR. BOOK: No. I'm trying to understand the
20 rationale that all 70 conditions, when we're done, are
21 subject to the review and approval of the Brookline
22 Fire Department, the need for that. It just seems
23 tremendously broad.

24 MS. NETTER: Well, the alternative is only to

1 go through all the conditions and outline them.

2 MR. BOOK: I'm sorry. I didn't understand
3 that.

4 MS. NETTER: We could limit it by going
5 through the various conditions if that's what you're
6 looking for.

7 MR. BOOK: Well, I mean, I presume -- and
8 correct me -- that there are certain conditions that
9 would be of concern to the fire chief --

10 MS. NETTER: Right.

11 MR. BOOK: -- and others that would --

12 MS. NETTER: But generally what we've been
13 writing for each condition is consistent with the
14 conditions of the decision and we've been taking out --
15 I mean, and that's not been contested. And I think the
16 fire chief is not going to --

17 MR. BOOK: So we would remove -- I viewed this
18 as being sort of heightened --

19 MS. NETTER: It's not intended.

20 MR. BOOK: It wasn't intended.

21 MR. HUSSEY: So why don't we say "the relevant
22 conditions"?

23 MR. BOOK: Well, I think what I'm hearing Edie
24 say is that she's going to make this consistent with

1 our other -- what we've talked about before, that's
2 it's -- it will be subject to review consistent with --

3 MR. HUSSEY: So we're taking "approval" out?

4 MR. NAGLER: Yeah. I think the way it's
5 different is that this says, "The conditions of the
6 decision shall be subject to review and approval."
7 Usually it says, "shall be subject to review and
8 approval to ensure consistency with the conditions in
9 the decision," so it's kind of backwards a little
10 bit -- shall be subject to review and approval or just
11 review by the fire department to ensure consistency
12 with the conditions in the decision.

13 MS. NETTER: Is that okay with you? It's just
14 poorly worded.

15 MR. BOOK: Yes.

16 MS. MORELLI: May I point out that there's i
17 and ii which are not reflected on the plans, but there
18 might be further changes to satisfy i and ii.

19 MS. NETTER: Okay. So "shall be
20 consistent" -- so it's two parts is what you're saying.
21 So "shall be consistent with the site plans as modified
22 below." Maybe I can take out, though, "and the
23 conditions of this decision" and relocate that. And
24 "shall be subject to review by the Brookline Fire

1 Department to determine conformance with the
2 conditions." Does that work?

3 MS. MORELLI: I think so.

4 MS. NETTER: Yeah. Because I think it says --
5 yeah. Should I read it back?

6 MR. BOOK: Please.

7 MS. NETTER: "The site circulation and
8 emergency access roadway system and signage shall be
9 consistent with the site plans as modified by i and ii
10 below and shall be subject to review by the Brookline
11 Fire Department to determine consistency with the
12 conditions of this decision." I think that's much
13 better.

14 MS. MORELLI: I just -- because i and ii are
15 not on the plans, there's nothing on the preliminary
16 plans for the fire chief to compare something against.
17 So they're going to be revising the plans to ensure
18 that emergency vehicles can access and egress the fire
19 lane at the midrise. Right now it might be a little
20 tight, so the applicant might actually have to work on
21 that. They've said they would work on that. But that
22 all has to be reviewed and approved. So anything
23 that's not in the preliminary plans does need to be
24 review and approved.

1 MS. NETTER: So not just reviewed but rather
2 approved because there's changes?

3 MS. MORELLI: Correct.

4 MR. NAGLER: But I think the first sentence is
5 okay. Now we're getting to the second part.

6 (Multiple parties speaking.)

7 MS. NETTER: So I think we need "approval" in
8 there, is what you're saying.

9 MS. STEINFELD: For i and ii.

10 MS. MORELLI: Just for i and ii we need
11 "review and approval." The rest of it is just "review
12 for consistency."

13 MS. NETTER: I'll work on it.

14 MR. JESSE GELLER: We also have to take out
15 the word "that" in the next sentence.

16 MS. NETTER: I actually reread that but -- so
17 that emergency vehicles can enter and egress -- oh,
18 yes, yes.

19 MR. JESSE GELLER: Anything else on that?

20 (No audible response.)

21 MR. JESSE GELLER: 26.

22 Was it emergency egress only, or was it access
23 and egress?

24 MS. NETTER: I believe it was both, but --

1 MS. MORELLI: It's both.

2 MR. JESSE GELLER: It is? Oh, I thought it
3 was just egress.

4 MR. HUSSEY: No.

5 MR. JESSE GELLER: Okay.

6 MR. BOOK: Do we want to say in 26 "provide
7 and maintain," or is that implicit?

8 MS. NETTER: I don't have a problem with
9 saying "and maintain."

10 MR. BOOK: You say that in the next
11 condition.

12 MS. NETTER: Yeah. I'd better go through
13 every place because I probably have "provide" all the
14 way through this decision, so "provide and maintain" --

15 MR. JESSE GELLER: Yeah. As long as you're
16 consistent.

17 MS. NETTER: I will double check it, Mr. Book,
18 but I'm thinking to leave out the word "maintain,"
19 otherwise I'm going to have to triple check every time
20 I use the word "provide."

21 If you want me to do some general definition
22 at the end saying whenever I say "provide" it's also
23 "provide and maintain."

24 MR. JESSE GELLER: You could cover all bases,

1 provide, maintain, and replace as necessary, and that
2 will pick up the prior section. So the addition, there
3 will be a global definition of "provide," which will be
4 "provide, maintain, and replace as necessary."

5 MR. HUSSEY: Actually, doesn't 27 belong with
6 26 which covers this issue?

7 MR. BOOK: Oh, so now you want to start
8 combining conditions.

9 MR. HUSSEY: I mean, that's where the
10 "maintain" is, already there, and it ...

11 MR. JESSE GELLER: You're offending Mr. Book's
12 sense of fair play.

13 MR. BOOK: Just wanted to put a little bit of
14 humor in this.

15 MS. NETTER: Are we up to 28?

16 MR. BOOK: We are -- I am. I have no comments
17 on 28.

18 MR. JESSE GELLER: I might. I'm a slow
19 reader.

20 I don't have anything.

21 MR. HUSSEY: I'm all set.

22 MR. JESSE GELLER: Okay. 29.

23 MR. BOOK: So 29, applicant shall certify to
24 who? Would it be to the fire chief?

1 MS. NETTER: To the fire chief?

2 MR. BOOK: Building Department?

3 MS. MORELLI: It could be the fire chief and
4 the Building Department.

5 MS. NETTER: Let's just do one. One
6 certification is enough.

7 MR. HUSSEY: But let me ask a question. I
8 mean, these items are all in the drawings and in the
9 specifications.

10 MS. MORELLI: No. That's not correct. So
11 these three things are over and beyond the building
12 code. They can't be physically represented on the
13 plans.

14 MR. HUSSEY: No. I don't understand. I mean,
15 in order for them to be built, they're going to have to
16 be shown on the construction drawings and specified in
17 the specifications.

18 MS. MORELLI: And they're not shown in the
19 preliminary plans.

20 MR. HUSSEY: Oh, they're not shown on these
21 plans?

22 MS. MORELLI: Right.

23 MR. HUSSEY: I understand that. Okay. Then I
24 guess -- so how's he going to certify? Is he going to

1 write a letter and certify? Or what's the --

2 MS. MORELLI: I would just ask the building
3 commissioner.

4 MR. BENNETT: Some sort of letter or something
5 in writing -- preliminary. It will be reviewed by the
6 building and fire department.

7 MR. HUSSEY: Right. So this is between the
8 time when they get this decision cleared up and they
9 submit the construction drawings, you want a letter of
10 certification?

11 MR. BENNETT: Yes.

12 MR. HUSSEY: Okay.

13 MR. JESSE GELLER: And is the certification --
14 is that the sole conclusion? You said you're going to
15 be looking at the plans at the same time.

16 MR. BENNETT: No. Then at a later date -- at
17 some point in time they'll be coming in with the final
18 construction plans that will show -- I think there's
19 three things here. The sprinkler system and standpipe
20 are shown on the fire protection plans. The third
21 connection is something strictly with the fire
22 department.

23 MS. NETTER: I missed something either from
24 Mr. Hussey or Mr. Bennett. At what time do you want

1 the certification? At what stage?

2 MR. BENNETT: It would be prior to a building
3 permit application.

4 MS. NETTER: Is it part of the application?

5 MR. BENNETT: Eventually, yes. But they might
6 want to start the work -- commencement of
7 construction -- do some clearing.

8 MS. NETTER: So before commencement of
9 construction?

10 MR. BENNETT: No. I wouldn't need it then.
11 But what I'm saying is the reason we're looking for the
12 certification is they're not going to install sprinkler
13 systems right away. They can apply for a building
14 permit that indicates that there's some sort of a
15 system there at a later date. You've got shop drawings
16 from the fire protection engineer that provides all
17 that information as reviewed by both departments, fire
18 and building.

19 MS. NETTER: I'm sorry. I'm still missing
20 it. Do you want me to say "prior" --

21 MR. BENNETT: If you say "prior to building
22 permit application," that'll work.

23 MS. NETTER: "Before building permit
24 application"?

1 MR. BENNETT: Sure.

2 MS. NETTER: Okay.

3 MR. HUSSEY: Dan, one question. Is this --
4 the apartment building is going to be under the
5 controlled construction clause of the building code?

6 MR. BENNETT: Yes.

7 MR. HUSSEY: Will all the infill buildings be
8 under that as well because it's one project, or ...

9 MR. BENNETT: No. There will be separate
10 permit applications for each building.

11 MR. HUSSEY: And those might not require
12 controlled --

13 MR. BENNETT: No. I think, based on -- I
14 think they're all controlled construction.

15 MR. HUSSEY: Okay. Good. All right. Are we
16 not going to need certification on a lot of other stuff
17 in here that isn't shown on the drawings yet in
18 detail? Once we start this --

19 MR. BENNETT: The reason we're looking for --
20 these are above and beyond what the building code would
21 require. They're agreeing to go beyond what the code
22 requires.

23 MR. HUSSEY: Okay. Fine. Thank you.

24 MR. JESSE GELLER: In what used to be (d),

1 "Direct fire department alarm notification for
2 Buildings 1 through 12," isn't it all the buildings?

3 MS. NETTER: That is all the buildings.

4 MR. JESSE GELLER: Why not just say, "all the
5 buildings"?

6 MS. NETTER: That's fine with me. You want
7 all buildings? I'll make the change in (b) and in (d).

8 MR. JESSE GELLER: Okay. Anything else on
9 that?

10 (No audible response.)

11 MR. JESSE GELLER: Okay. Stormwater,
12 Section 30.

13 MS. NETTER: I'm just going to take out
14 "approval," the first sentence in 30, because it's just
15 "reviewed to ensure that the plans are consistent."
16 Don't need "approval." Is that okay?

17 MS. MORELLI: You have to repeat that.

18 MS. NETTER: I'm sorry. On 30, "The applicant
19 shall submit final stormwater management plans for
20 review by the director to ensure that ..." I don't
21 think we need "approval." This is just consistency,
22 that there's a breakdown, that there's no standing
23 water.

24 MS. MORELLI: Well, that's -- I mean, that

1 there's no standing water on low lying areas of the
2 site. I believe their stormwater plan would avoid
3 that, but ...

4 MS. NETTER: I'm just saying all we want to do
5 is make sure these things are true. We don't need a
6 whole approval process here; right?

7 MS. MORELLI: I just need to make sure that
8 there's something beyond checking for consistency.

9 MS. NETTER: Right.

10 MS. MORELLI: And that's not true because we
11 don't get -- under (a), they have not submitted specs
12 for the grass, concrete paving. They have to amend
13 their O&M plans and stormwater report to provide their
14 specs. They have not yet selected the brand of
15 concrete.

16 MS. NETTER: But what's the approval that we
17 want? We don't want to approve the brand of concrete
18 they use, do we?

19 MS. MORELLI: Yeah. We want to ensure that
20 they've actually amended their stormwater --

21 MS. NETTER: But you don't need an approval.
22 You just need a determination whether they've done it.

23 MS. MORELLI: Okay. Unless -- I'd have to say
24 yes, unless there's something that I missed, and

1 Peter's not here.

2 MS. NETTER: Okay. Well, this is not going to
3 be written in stone yet.

4 MS. MORELLI: Okay.

5 MS. NETTER: Any comments on 30, assuming it
6 is okay with the director with respect to the deletion
7 of the word "approval."

8 MR. BOOK: I have no comments.

9 MS. NETTER: Okay. 31? 32?

10 MR. BOOK: I have no comments.

11 MS. NETTER: 33?

12 MR. BOOK: I assume everyone else is agreeing
13 with --

14 MS. NETTER: Everybody's got to speak their
15 mind. I don't think we have to call each time. Is
16 that okay, Mr. Chairman?

17 MR. JESSE GELLER: Yes.

18 MS. NETTER: Are we up to water?

19 MR. JESSE GELLER: Yes.

20 MS. NETTER: So we're up to number 34?

21 MR. BOOK: I have a question about 34. How
22 does the certification -- it's not clear to me how
23 certification will demonstrate the adequacy of water
24 flow and pressure.

1 MR. HUSSEY: I don't think it does,
2 necessarily. I mean, the engineer for the fire system
3 and the sprinkler is going to have to sign and stamp
4 his drawings. And those drawings, by implication,
5 require that the water pressure be available for those
6 particular components.

7 MS. NETTER: Are you saying this word -- I
8 think this is Mr. Ditto's?

9 MR. HUSSEY: The certification?

10 MS. MORELLI: The fire chief.

11 MS. NETTER: Oh, the chief. Sorry.

12 Are you saying this is acceptable language, or
13 you think it's not?

14 MR. HUSSEY: I think it's somewhat redundant.

15 MS. NETTER: Pardon?

16 MR. HUSSEY: I think the engineering stamp is
17 basically certifying, but if you want this before the
18 building permit application, then it's appropriate.

19 MS. NETTER: So put "prior to application."
20 It's not part of the application, but "prior to
21 application for building."

22 MR. HUSSEY: It's the same thing. It's
23 somewhat similar -- or not quite. Previous
24 certification, as Mr. Bennett was talking about, was

1 because these items are above and beyond what the
2 building code requires. But the codes and good
3 practice for engineering in this case does require that
4 these water pressures be adequate to support the
5 sprinkler service. So I'm just not quite --

6 MS. NETTER: You don't know if it's
7 necessary?

8 MR. HUSSEY: Yeah. I guess I don't know that
9 it's necessary. Was this made specifically by the fire
10 chief, this certification request?

11 MS. MORELLI: I think it was just a matter of
12 just a checklist. Again, this does have to meet code.

13 MR. HUSSEY: I don't want to take it out if
14 it's specifically requested for some reason I'm not
15 aware of, but it seems to me redundant.

16 MS. NETTER: But we don't lose anything by
17 including it and nobody's contesting --

18 MR. HUSSEY: No.

19 MR. BOOK: So, again, who's making the
20 certification?

21 MR. HUSSEY: The applicant.

22 MR. BOOK: I think this is different from the
23 fire protection system. The fire protection system was
24 certification that they're going to include it. The

1 applicant is in a position to say what they are or are
2 not going to include in their project. This one is --
3 there's a conclusion here that there's adequate water
4 flow and pressure and my guess is -- I don't know --
5 but that's probably -- a certification like that should
6 be coming from somebody who is qualified to --

7 MR. HUSSEY: That should be the engineers.

8 MR. BOOK: Okay.

9 MR. HUSSEY: And they will be making the
10 drawings and stamping those drawings, which is their
11 certification that everything is correct.

12 MR. JESSE GELLER: Sometimes you see redundant
13 certifications.

14 MS. NETTER: But maybe it should be the
15 applicant's engineer, is that what you're looking for?

16 MR. JESSE GELLER: Yes.

17 MS. NETTER: Are we up to 35?

18 MR. HUSSEY: Yes.

19 MR. JESSE GELLER: "Standards and practices
20 applicable to the town with respect to town property"?

21 MS. NETTER: Yeah. I think the town -- that
22 was acceptable to the town.

23 Correct, Maria?

24 MS. MORELLI: Yes.

1 MR. HUSSEY: I think the question here is:
2 When does that need to be submitted, certificate of
3 occupancy or building --

4 MS. NETTER: That's a good question, isn't
5 it?

6 MS. MORELLI: It's after each application.

7 MR. HUSSEY: Application?

8 MS. MORELLI: Well, reports are submitted
9 after each application.

10 MS. NETTER: No, but the plan, when do we want
11 the plan?

12 MR. HUSSEY: The mosquito control plan.

13 MS. MORELLI: Honestly, I don't know the
14 standard practice.

15 MS. NETTER: Well, right now I'm going to
16 write "prior to blank," and if we would ask this chief
17 when he or she wants it, that would be great. Does
18 that work, Maria?

19 MS. MORELLI: Yes.

20 MS. NETTER: That's a good catch, Mr. Hussey.
21 Thank you.

22 MR. HUSSEY: You're welcome.

23 MS. NETTER: Are we up to 36?

24 MR. HUSSEY: Yup.

1 MR. BOOK: 36, there should be some time
2 period if they receive it in terms of turning it
3 around. That can't do it instantaneously.

4 MS. NETTER: Within fourteen days of receipt
5 or within seven days? I don't care. What do you want
6 me to put in?

7 MR. BOOK: I think the applicant had suggested
8 ten, so --

9 MS. NETTER: Okay. Within ten days.

10 MR. BOOK: -- we can accept that.

11 MS. NETTER: Are we up to 37?

12 MR. HUSSEY: Yes.

13 MS. NETTER: By the way, just so you know,
14 unless somebody hits me over the head with this, I'm
15 not intending to renumber everything. I've never
16 written a decision like this where I have intentionally
17 deleted, but there's so much cross-referencing in here
18 that, with your acquiescence, I'm going to leave it
19 like that.

20 MR. BOOK: That's fine with me.

21 MR. JESSE GELLER: 37, "Operation maintenance
22 or repair or replace."

23 MS. NETTER: Or repair or replace.

24 MR. JESSE GELLER: That should really be,

1 "Operation maintenance, repair, or replace."

2 MR. BOOK: I'm good with 38.

3 MS. NETTER: Does that mean you finished 37?

4 MR. BOOK: I did finish 37.

5 MS. NETTER: So are we on 39?

6 MR. BOOK: I'm on 39, yes.

7 MS. NETTER: Are we up to 40?

8 MR. HUSSEY: Back up.

9 Maria?

10 MS. MORELLI: Yes?

11 MR. HUSSEY: Is this correct, "The approval of

12 the director of transportation and engineering"?

13 There's the DPW and then there's the engineering. Is

14 there transportation?

15 MS. MORELLI: Peter Ditto is the head of

16 transportation and engineering, and under him is DPW.

17 MR. HUSSEY: Oh, okay.

18 MR. BOOK: So on 39 we have some stormwater.

19 What is -- I guess I want to understand what is

20 lacking.

21 MS. NETTER: I think this is actually the

22 design of the facility.

23 Is that right, Maria? It's another --

24 MS. MORELLI: Well, without Peter being

1 here -- there could be, I imagine -- the applicant
2 could make changes. I mean, there are only submitted
3 preliminary plans, so if they make changes, we wouldn't
4 want them to be inconsistent with the preliminary
5 plans, so --

6 MS. NETTER: I just want to understand
7 something. We have all their facility designs
8 already?

9 MS. MORELLI: I really can't speak --

10 MS. NETTER: Okay. Can we get back to you on
11 this?

12 MR. BOOK: Okay.

13 MS. NETTER: Good?

14 MS. MORELLI: Yes.

15 MR. HUSSEY: We've seen the preliminary
16 schematic design, the development design, but the final
17 construction designs have not been included, not
18 totally.

19 MR. BOOK: No. Right. But we are delegating
20 to the town officials who are the appropriate -- or
21 better suited to do this, to review those final
22 construction drawings for consistency with what has
23 been submitted to this board.

24 MR. HUSSEY: And also compliant to the town

1 and state laws and regulations.

2 MR. BOOK: Right. And so I just -- I was
3 questioning 39 because it is rather broad where it
4 talks about review and approval and so --

5 MS. NETTER: My guess is there's town bylaws
6 on this anyway. Maybe just chat with Peter. I
7 actually don't think it's broad, but let's go back to
8 Peter and find out. It might be just a statement of
9 what the bylaws provide, so let's double check it.

10 Can we move on to 40?

11 MR. JESSE GELLER: I don't have any comment.

12 MR. HUSSEY: Hang on a second on 40. I think
13 I've got something on 40. Generally, I'm just sort of
14 curious as to why you struck "weekly" and put in
15 "monthly" on the --

16 MS. NETTER: It was acceptable to the town,
17 but --

18 MS. MORELLI: Correct. It was acceptable to
19 Peter Ditto who is the director of transportation and
20 engineering.

21 MS. NETTER: My guess is it was in the
22 applicant's recommendation or request and he reviewed
23 it, but --

24 MS. MORELLI: The applicant proposed

1 quarterly.

2 MS. NETTER: Oh, okay. And for us, the town,
3 monthly was okay?

4 MS. MORELLI: Yes.

5 MR. HUSSEY: Okay. Fine.

6 MS. NETTER: Although we had said -- we've
7 already discussed 41. 41 we had deferred most of it
8 because I said let's wait until we go through the whole
9 decision.

10 MS. MORELLI: Correct.

11 MS. NETTER: But I actually think most of
12 these conditions, with the exception of 65, we've
13 already -- and 69 we haven't done. So we can either
14 look at this or wait until we've done the whole
15 decision.

16 MR. JESSE GELLER: You mean Section 41?

17 MS. NETTER: Correct. Thank you for helping
18 me be more precise. Would you like to discuss 41 now
19 or wait until we've completed everything?

20 MR. BOOK: 41 was the checklist?

21 MS. NETTER: Correct.

22 MR. HUSSEY: Was there any reason why it was
23 placed here rather than at the end of the conditions?

24 MS. NETTER: Don't ask me to renumber.

1 There's too much risk.

2 MR. HUSSEY: No, I won't ask that.

3 MS. NETTER: Because there's kind of a logical
4 order, Mr. Hussey: prebuilding permit review,
5 construction, and then --

6 MR. HUSSEY: I see. Yup, okay.

7 MS. NETTER: -- and then there's general, so
8 there is a method.

9 MR. HUSSEY: Okay. That's fine. So let's
10 leave it in.

11 MS. NETTER: Yeah. I think it's simply a
12 reflection of things said elsewhere. I'm trying to
13 think. The (d), "the preconstruction meeting," that's
14 not said elsewhere.

15 MR. HUSSEY: How about (e)?

16 MS. NETTER: The second part of -- yeah,
17 (e) --

18 MR. HUSSEY: I'm not sure that this comes
19 under -- I know there was this business about funding
20 and what have you, but I'm not sure the construction
21 comes under the jurisdiction of the Mass Historical
22 Commission.

23 MS. NETTER: I'm sorry. I'm not quite sure
24 how -- I'm not sure what you're saying.

1 MR. HUSSEY: Well, under "prebuilding permit
2 review," under (e), "The applicant should demonstrate
3 to the satisfaction of the building commissioner that:
4 (e), all required local, state, and federal approval,
5 including from the Massachusetts Historical Commission
6 ..."

7 MR. NAGLER: Well, Mass Historic -- if they go
8 for bond financing, any bond financing requires that
9 Mass Historic --

10 MS. NETTER: No. The question is: At what
11 juncture, he's asking.

12 Is that correct?

13 MR. HUSSEY: It's not --

14 MS. NETTER: Why don't we look into that?

15 MR. HUSSEY: Okay. Under certain very
16 definite conditions, the requirement -- the approval of
17 the Mass Historical Commission is required before you
18 proceed, before you get a building permit, if the
19 building department is aware of it.

20 But if there's a deed restriction on the
21 property, for instance, then they have the right of
22 design approval.

23 MS. NETTER: Oh, I see. What type of
24 approval, is what you're saying.

1 MR. HUSSEY: Yes.

2 MS. NETTER: Okay. Let's work on that.

3 MR. NAGLER: But I think -- first of all, it
4 says, "all required approvals."

5 MS. NETTER: Oh.

6 MR. NAGLER: If it's required, they have to
7 get it. It kind of goes without saying, if you will.
8 And the regs specifically provide for that condition.

9 MR. HUSSEY: Tell me more about the bonding
10 issue, though. Does this -- the project gets bonded
11 before they start construction?

12 MS. NETTER: I think he's talking about
13 financing.

14 MR. NAGLER: Not a construction bond. It's a
15 different type of bond altogether.

16 MR. HUSSEY: So it's financing?

17 MR. NAGLER: Bond financing, financing through
18 the issuance of taxes and bonds, which is what Mass
19 Development is proposing to do here for their
20 financing. Yeah, sorry. Two entirely different types
21 of bonding.

22 MR. HUSSEY: I think I'd like to have it
23 qualified a little bit.

24 MS. NETTER: What would you like to have

1 qualified?

2 MR. HUSSEY: The Massachusetts Historical
3 Commission approval.

4 MS. NETTER: You know what, can we take out
5 the highlighted verbiage?

6 MR. NAGLER: Yeah, we could take it out. If
7 it's required, it's required; if it's not required,
8 it's not required.

9 MS. NETTER: Yeah. It'll just say, "All
10 required local, state, and federal approval for the
11 permits have been obtained."

12 MR. HUSSEY: I think that would be --

13 MS. NETTER: Done.

14 MR. NAGLER: There were a lot of comments from
15 neighbors specifically on Mass Historical.

16 MS. NETTER: But we have another condition.

17 MR. HUSSEY: Yeah. No, I understand that.

18 MS. NETTER: We're good with 41?

19 MR. HUSSEY: Except the preliminary rubbish
20 plan. Is this the rubbish plan during construction
21 or --

22 MS. NETTER: There's two different rubbish
23 plans. How about we wait until we get to 69, if that's
24 all right.

1 MR. HUSSEY: Okay.

2 MS. NETTER: So 42, are we good with 42?

3 MR. JESSE GELLER: I'm one behind you.

4 MS. NETTER: You're at 41?

5 MR. JESSE GELLER: Uh-huh.

6 MS. NETTER: Oh, sorry.

7 MR. JESSE GELLER: And the reason you don't
8 cite blasting here is because you covered it otherwise?

9 MS. NETTER: Yes.

10 MR. HUSSEY: So are we on 42 now?

11 MR. BOOK: Just in 41, back to (f), why are
12 we -- "evidence of recording" -- you want evidence of
13 recording of the restriction on further development but
14 not on the easement? It's a consistency matter.

15 MS. NETTER: True.

16 MR. NAGLER: Good point.

17 MS. NETTER: I think I've got -- I have to
18 change (f) because (f) -- we're no longer looking --
19 yeah. I'm going to alter iii, (f) iii, and we can get
20 into that discussion when we go back to the earlier
21 housing conditions.

22 Are we on 42?

23 MR. JESSE GELLER: 42? Yes? No? Nothing?

24 MR. HUSSEY: I'm thinking. Let me think for a

1 minute here.

2 Okay on 42.

3 MR. JESSE GELLER: Mr. Book?

4 MR. BOOK: I'm okay on 42.

5 MR. JESSE GELLER: 43 we've covered?

6 MS. NETTER: Yes. 43 and 44 we covered. So
7 we're up to 45.

8 MR. HUSSEY: Wait a minute. You're going
9 right to 45?

10 MS. NETTER: We've discussed 43 and 44
11 previously.

12 MR. BOOK: I have a -- just a generic question
13 on 45. Does the building department -- is two years a
14 reasonable period of time to construct the project?

15 MS. NETTER: Where this came from was the
16 applicant or one of their consultants said -- whether
17 they said it would definitely be done in two years or
18 they anticipated their construction period would be two
19 years, I haven't gone back and reread the transcript,
20 but that number was thrown out.

21 And so what we did is said no more than two
22 years subject to causes beyond the applicant's
23 reasonable control because our understanding is that's
24 what the applicant believes. I mean, I think their

1 preference would be not to have a time limit at all,
2 but that was held out as something anticipated, so
3 there is some wiggle room in there. But it's your call
4 if you want it there or not. And there is the
5 opportunity to come back for an extension through the
6 amendment process if it's not workable.

7 MR. BOOK: I sort of -- I understand it on a
8 building-by-building basis. For example, the midrise,
9 they should be able to build that in two years. I just
10 don't know if it was the expectation that they were
11 going to be essentially constructing all twelve
12 buildings at the same time or if they would --

13 MR. JESSE GELLER: It's not a phased project.

14 MS. NETTER: They said it's not a phased
15 project. It's completely up to you.

16 MR. HUSSEY: I think it's a little tight,
17 quite frankly. I noticed the applicant raised a
18 question of is the two years jeopardizing
19 financeability. Do you have any remarks on that?

20 MR. NAGLER: I think, you know, there's three
21 qualifiers in here. It doesn't say, you shall build
22 this in two years or you're in violation.

23 Qualifier Number 1 is you make feasible
24 efforts.

1 Qualifier Number 2 is that it's subject to
2 causes beyond the applicant's reasonable control.

3 Qualifier Number 3 is even if Qualifier Number
4 1 and Qualifier Number 2 don't help you, just come back
5 to the board and ask for an extension. So personally,
6 I don't think that would render the project
7 unfinanceable.

8 You look troubled.

9 MR. BOOK: I understand that they said it's
10 not a phased project. I'm just -- I guess I was
11 finding it hard to believe that they'd be building all
12 12 buildings at the same time.

13 MS. NETTER: They didn't say simultaneously,
14 but they did say we're not coming in -- because
15 originally we had written in the construction
16 management plan phases and we talked about different
17 COs and we were told, no, it's one project.

18 MR. BOOK: Do you have trouble with this?

19 MR. JESSE GELLER: No. That is what they
20 said.

21 MR. HUSSEY: I concur.

22 MR. JESSE GELLER: Because I specifically
23 asked a question about whether there are multiple COs,
24 which there are, on a building-by-building basis.

1 MR. BOOK: Right.

2 MR. JESSE GELLER: And the question about
3 phasing, because I did have that concern.

4 MR. BOOK: All right. And you think 12 -- and
5 this is out of my -- I realize I'm treading on an area
6 that's out of my area.

7 MR. HUSSEY: I think two years is a little
8 tight, but it can be done. It's not that this is a
9 complicated project. It is not complicated. It's just
10 that there's a lot of work spread over a lot of area.
11 It requires one contractor but not workforce, you know,
12 to start on all these buildings.

13 MR. JESSE GELLER: Is your concern you just
14 don't want them to needlessly have to come back here
15 for an extension?

16 MR. BOOK: It's two things. One is, I'm
17 trying to minimize the instances where they do have to
18 come back. And so if I've seen something that is
19 almost bordering on a likelihood that they're going to
20 have to have to come back, I want to try to cut that
21 off or prevent that.

22 The other piece of it is that I'm just trying
23 to -- while I understand it was used before with
24 respect to, I think, when the applicant was talking

1 about blasting, sort of pulling the Band-Aid off,
2 getting it done as quickly as possible to -- that way
3 it's not prolonged.

4 But I'm -- part of me is wondering what is the
5 impact on the neighborhood of 12 buildings essentially
6 going up simultaneously. And maybe it's -- it's going
7 to be an awful lot of construction trucks and material
8 trucks and I just wonder if it would be better that
9 it -- I don't know -- be --

10 MR. JESSE GELLER: Are you raising the
11 question of whether there ought to be a condition in
12 here in which we say, "and you have to build it in
13 phases"? Is that where you're leading with this?

14 MR. BOOK: No. No. It's a good question.
15 That's not my thought. I guess I'm questioning whether
16 or not they really --

17 MR. JESSE GELLER: With all due respect, it's
18 not our job to second-guess, you know, how they propose
19 to build this. They told us that they don't plan on
20 phasing. And whether or not they can accomplish this
21 within two years, I have no basis on which to say
22 whether they can or cannot.

23 MR. BOOK: When you say "phasing," do you view
24 it as if they started at --

1 MR. JESSE GELLER: They decide to build out E1
2 first.

3 MR. BOOK: Starting with 1 and moving to 2,
4 moving to 3, do you consider that phasing? So, for
5 example --

6 MR. JESSE GELLER: The language here is that
7 they have to build out the entire project, E1, E2.
8 Right? It's all the various lots that comprise this
9 project. They have to build out all of it within two
10 years as distinct from they've got to build the midrise
11 within the two years and then they'll come in and apply
12 for the townhomes.

13 MR. BOOK: Let's start -- starting with
14 Building 1, they start at Building 1 and they start
15 moving down the line, you know, 1 through 11 -- I guess
16 I viewed it as starting at 1 and then moving on down
17 the line and maybe -- not that they're going to start 1
18 through 11 all at the same time so that everything can
19 be done.

20 MR. JESSE GELLER: I rely on them to tell me
21 their preferred methodology of constructing this thing,
22 whether it's in pieces or as a whole. And I'm not
23 going to look behind me. The question -- it's a fair
24 question whether the allotment of time -- given what

1 they've proposed to do, which is a single project --
2 whether that allotment of time is adequate. I have --
3 you know, I have no idea whether it's sufficient to
4 accomplish what they need to accomplish, building 12
5 buildings, paving area. I don't know. But I assume
6 they've thought that through.

7 MR. BOOK: And, again, the 24 months came from
8 where? The two years came from --

9 MS. NETTER: The applicant. But whether it
10 was specifically Mr. Levin or one of Mr. Levin's
11 consultants, I don't recall.

12 MS. MORELLI: I believe Mr. Levin didn't
13 commit to two years, but provided it as an example.

14 MS. NETTER: Oh, it wasn't a commitment?

15 MS. MORELLI: I don't recall it being a
16 commitment. It was an example of when it could be
17 done.

18 MS. NETTER: All right.

19 MR. JESSE GELLER: So maybe this is a question
20 for Mr. Bennett.

21 MS. NETTER: Well, let me just say something.
22 I had understood that this was something that was put
23 forward by the applicant. That was my understanding.
24 It would be very unusual for -- it would not be

1 typical. And so generally when I draft, if I hear
2 something the applicant represents, I'm very quick to
3 memorialize it. Right? But you're saying it wasn't
4 something that was represented.

5 MS. MORELLI: I don't recall that. We could
6 look at the transcripts. I would just have to -- I
7 don't know offhand what hearing that was, if you wanted
8 to go back, but my recollection is that it was not a
9 commitment. It was an example of -- it was a ballpark
10 figure, but not a commitment.

11 MS. NETTER: It was a ballpark figure. So
12 what's put forward is generally what was anticipated,
13 not, like, absolutely. Yeah, okay. So now I think
14 that's correct.

15 MR. BOOK: Can I -- I'd like to hear ...

16 MR. JESSE GELLER: Is it a question? What do
17 you want to ask?

18 MR. BOOK: I want to ask, is it reasonable --

19 MS. NETTER: Mr. Bennett?

20 MR. BOOK: Mr. Bennett. I want to ask of
21 Mr. Bennett, in his experience would it be reasonable
22 to build out a project of this magnitude in 24 months?
23 It just strikes me as a really short period of time,
24 but what do I know? So I'd like to ask him, do you

1 have some knowledge about this?

2 MR. JESSE GELLER: Well, remember the tension
3 that you're speaking to. The tension you're speaking
4 to is between feasibility and not wanting the applicant
5 to -- not wanting to set them on a course where they
6 have to come back to us needlessly.

7 MR. BOOK: Correct.

8 MR. JESSE GELLER: Versus not wanting a
9 lengthy period of construction, which is certainly not
10 in the interest of the neighborhood. Okay? That's
11 your tension.

12 MR. BOOK: Well, no. But I think there's a --
13 the second part, I don't know if that's necessarily
14 true. I think that doing a massive scale project in
15 a -- too short of a time could have a negative impact
16 on the neighborhood. I think it's bringing --

17 MR. JESSE GELLER: Do you want to ask your
18 question?

19 MR. BOOK: I do.

20 Mr. Bennett?

21 MR. BENNETT: My recollection was that there
22 was a reference to a two-year period of time. How
23 serious that statement was, I don't specifically
24 recall. But two years to build this out would probably

1 be a tight time frame based on the amount of blasting.

2 I would put most of it on the time of blasting.

3 In addition, they can build portions of the
4 site simultaneously. I'm not sure if they're going to
5 get the same contractor to build the midrise that they
6 are going to use to build the smaller eight-unit
7 buildings. They could bring two people in. One would
8 be doing the midrise, the other would start in the
9 smaller units and build them out simultaneously. They
10 could start in the western lot, in the VFW lot, and
11 work their way into the middle. There's many different
12 approaches that you could have here.

13 But could it be done? Yes. Is it tight?
14 Yes. But they do have -- one of, I think, the issues
15 was we did not want this dragged out, and if there
16 was -- they were hitting that two-year period, then
17 come back to the board and explain what was going on.

18 In addition, under the construction management
19 plan, there is a provision in there that they provide
20 us with a phasing of the construction. How do they
21 intend to build this out? And when we get to that
22 point, if it becomes an issue that they don't look like
23 they can make the 24-month period, then even prior to
24 constructing they might be able to come back to the

1 board and figure that out when they get a contractor on
2 board. I'm not sure who they've spoken with, how
3 they're bidding it out, and a host of other issues.

4 MR. BOOK: So would you think that in a
5 project of this size that it's almost a certainty that
6 they're going to need to come back to the board for --
7 I'm just trying to -- I want to -- as Chairman Geller
8 indicated, there's a balancing and I just want to make
9 sure that we're -- and it doesn't sound like that they
10 necessarily committed to 24 months. Maybe it was
11 mentioned; maybe it was suggested. I think that's
12 different than making it a condition. And so I guess I
13 would ask you, what would you --

14 MR. BENNETT: I would say there's probably
15 more than a 50 percent chance they'd come back and ask
16 for an extension.

17 MR. BOOK: Do you have a sense of what would
18 be a more reasonable period of time?

19 MS. NETTER: Let's -- I think we've got to go
20 back to ourselves and --

21 MR. BOOK: Okay.

22 MS. NETTER: -- stop the conversation.

23 MR. BOOK: I'm not allowed to ask those --

24 MS. NETTER: I think you can ask clarifying

1 questions, but we're starting --

2 MR. BOOK: All right. Fair enough.

3 MR. HUSSEY: Let me say I concur with
4 everything that Mr. Bennett said. I think I mentioned
5 earlier that I thought it was a tight schedule and it's
6 a complicated project. As Mr. Bennett points out,
7 there may be different contractors involved. There's
8 segmented sites, the midrise buildings, each of those
9 could be built within a year easily.

10 The apartment building is going to take longer
11 and there are complexities in the apartment building
12 with the amount of blasting that may need to be done.
13 There's complexity in the site work, the drainage in
14 particular, throughout the project. I would concur
15 with him there's a 50/50 chance they're going to come
16 back and ask for an extension.

17 I agree that the urgency of getting the work
18 done then limits the problems for the neighbors and
19 what have you, but if they're going to have to sort of
20 ramp times -- things up and things happen faster and
21 more trucks being there at the same time, that's not to
22 the advantage of the neighbors either, I don't think.
23 People are moving faster and they're working overtime
24 and ...

1 MS. NETTER: Why don't we put some language in
2 there, something to the effect, "shall make all
3 feasible efforts to ensure that construction is" --
4 basically, something to the effect, "shall try to
5 complete construction within two years but in no
6 event" -- including -- "no event more than three
7 years," and leave the wiggle-room language, "subject to
8 causes beyond the applicant's reasonable control." So
9 they try to do two years, but not longer than three.
10 Does that give you more of a comfort level?

11 MR. BOOK: So if they state -- well --

12 MS. NETTER: Basically, we'll move it to three
13 years if you don't want them coming back.

14 Do you agree that this is a good thing for the
15 neighborhood, to try to encourage construction to occur
16 as quickly as feasible? That's the first question.

17 MR. BOOK: Yes. Well, with the
18 qualifications, Mr. Hussey also, I think, indicated
19 that we don't want to accelerate to the point that it's
20 actually detrimental, so trying to do too much, have
21 them do too much.

22 MR. JESSE GELLER: They're already subject to
23 restrictions on the times of construction. That is
24 already spelled out.

1 The issue is, in my mind, whether you want to
2 try and keep them on a tight time frame to get over the
3 nuisance and impact of the construction period as
4 quickly as possible on the theory that that's the
5 biggest thorn.

6 MR. BOOK: Tight, yes; not unreasonable,
7 though.

8 MR. JESSE GELLER: Okay. Can you define what
9 "unreasonable" is? I can't.

10 MS. NETTER: Do you want to delete the
11 provision?

12 MR. BOOK: No.

13 MR. JESSE GELLER: No, I don't want to.

14 MR. NAGLER: One thing we could add is sort of
15 an agreement in advance that any reasonable extension
16 is deemed an insubstantial change.

17 MS. NETTER: No. We're not going to, ahead of
18 time, say what is clearly defined --

19 MR. BOOK: We'll just make it longer. How
20 about that?

21 MR. JESSE GELLER: That's fine.

22 MR. BOOK: Let's make it longer. Now I think
23 we're sort of throwing darts.

24 MR. JESSE GELLER: That's all we're doing.

1 That's absolutely all we're doing.

2 MR. BOOK: We're throwing darts. We're just
3 going to make it longer.

4 MS. NETTER: So we're going to change the two
5 years to thirty months and leave everything as is?

6 MR. JESSE GELLER: Mr. Hussey?

7 MR. HUSSEY: Thirty months?

8 MR. BOOK: Two and a half years. Do you think
9 it should be three?

10 MR. HUSSEY: No. Let's do thirty months.
11 They can come back.

12 MR. JESSE GELLER: Yeah. I'm not as bothered
13 by the notion that they would have to show up here and
14 say, here's what we did. We've used all feasible
15 means. We need an extension.

16 MR. BOOK: Well, you know, all feasible means,
17 you could --

18 MR. JESSE GELLER: I don't like the word
19 "feasible." I don't even know what that means.

20 MR. BOOK: You could double your construction
21 costs and get it done in a year.

22 MS. NETTER: "All reasonable efforts"?

23 MR. HUSSEY: Yes.

24 MS. NETTER: Okay.

1 MR. NAGLER: What about "commercially
2 reasonable efforts"?

3 MS. NETTER: Do you want "commercially
4 reasonable"? "Reasonable"? What's your pleasure?

5 MR. BOOK: Make it "commercially reasonable."

6 MR. HUSSEY: So what does that leave out?

7 MR. NAGLER: We're ditching "feasible."

8 MS. NETTER: Okay. Let's move on.

9 MR. HUSSEY: 46? That's where we're heading?

10 MS. NETTER: Yes.

11 Ms. Morelli, I was noticing in 46 the
12 applicant's going to provide plans, but we probably
13 should say to whom.

14 MS. MORELLI: Yes. This would be Peter Ditto,
15 director of transportation and engineering.

16 MS. NETTER: Any comment on 46? I think
17 that's Mr. Hussey, probably.

18 MR. JESSE GELLER: So the deletion in (a) is
19 because they've identified in the plans --

20 MS. NETTER: Yes.

21 MR. JESSE GELLER: Is there a single
22 construction entrance or -- there must be multiple
23 entrances.

24 MR. HUSSEY: Yeah. That's what I was thinking

1 about, 46(e).

2 MS. NETTER: Ms. Morelli?

3 MS. MORELLI: "Specific locations"? Make it
4 plural?

5 MR. JESSE GELLER: Yeah.

6 MS. NETTER: No. But the question is: Is
7 there more than one? You still have to put a plural in
8 front of it after "entrances"; right?

9 MS. MORELLI: Yes.

10 MS. NETTER: So take out the "the" --
11 stabilized construction.

12 MS. MORELLI: Yes.

13 MR. JESSE GELLER: Anything else on that?

14 (No audible response.)

15 MS. NETTER: Are we up to 47? If we are, I'm
16 just taking out the word "shall" in front of "emanate,"
17 so it's "all equipment that emanate sounds." I'm going
18 to take out that first phrase, so just "applicant shall
19 keep in optimum working order through regular
20 maintenance any and all equipment that emanate
21 sounds."

22 MR. BOOK: The numbering changed, so we lost a
23 paragraph.

24 MS. NETTER: Say it again, please.

1 MR. BOOK: There used to be a paragraph 47
2 that was deleted in its entirety, and you changed the
3 number.

4 MS. NETTER: Okay. I didn't know that. I'm
5 surprised it's not showing up here. Oh, you know what,
6 that will show up the next time around.

7 Are you concerned that you're missing
8 something you want to have included?

9 MR. BOOK: No. It's just -- so the numbering
10 going forward is now off by one because there was a
11 paragraph --

12 MR. JESSE GELLER: There was a paragraph about
13 erosion.

14 MS. NETTER: Off by one in terms of what
15 you're looking at?

16 MR. JESSE GELLER: Yes. The original.

17 MS. NETTER: Yeah. Okay I'm not at that.

18 MR. BOOK: Whereas you intentionally deleted
19 and maintained the numbering, this is an instance where
20 you didn't.

21 MS. NETTER: What I am working off of is this
22 numbering because the cross-referencing starts -- I
23 started to fill in based on these numbers here.

24 MR. BOOK: Okay.

1 MR. HUSSEY: I'm a little confused, though.
2 The earlier edition had quite a different number 47.

3 MS. NETTER: That's what we were just talking
4 about. We deleted it.

5 MR. BOOK: That came out in its entirety.

6 MR. JESSE GELLER: Apparently, Mr. Book is the
7 only one who knows what's going on.

8 MS. MORELLI: It was deleted because the
9 town's general bylaw 8.26 on stormwater covers it, so
10 we don't need a condition.

11 MR. HUSSEY: I see. I'd written down here
12 that these would be closed down in case of -- in the
13 affected areas only. There was an implication in the
14 original one that the entire project could be closed
15 down due to this runoff.

16 MS. MORELLI: 8.26 covers enforcement.

17 MR. HUSSEY: In the town bylaw?

18 MS. MORELLI: Yes. The general bylaw.

19 MS. NETTER: So after we complete the whole
20 decision, you will get a compare docs from what you had
21 December 15th.

22 MR. BOOK: Okay. Great. You'll do a
23 cumulative red line?

24 MS. NETTER: Correct.

1 MR. BOOK: Great. 48?

2 MR. HUSSEY: Hasn't that already been
3 covered?

4 MS. NETTER: I'm sorry?

5 MR. HUSSEY: 48, wasn't that already covered
6 in a previous monthly report?

7 MS. NETTER: Yeah. I think the other
8 monthly -- was that insects? Or what was the other
9 monthly plan?

10 MR. HUSSEY: It has to do with water, sewer,
11 and stormwater systems.

12 MS. NETTER: Okay. Not insects.

13 MR. HUSSEY: So this is different?

14 MS. NETTER: Yes.

15 MR. HUSSEY: Okay. Is there something in here
16 about reports to the building inspector?

17 MS. NETTER: I'm sorry. Which is the "here"
18 you're referring to?

19 MR. HUSSEY: "During construction the
20 applicant shall provide the director of transportation
21 and engineering with a monthly report outlining the
22 status of the project." I'm sort of curious if the
23 building inspector --

24 MS. NETTER: We can include building

1 inspector. Generally, we were just including one
2 official. Oh, here we've got two on 51. Yeah, we can
3 say building inspector. The thought is there would be
4 one person in town and they would circulate it, but
5 it's all fine.

6 MR. HUSSEY: Mr. Bennett, doesn't the building
7 code require periodic reports to you?

8 MR. BENNETT: Yes. That's for the
9 construction of the buildings.

10 MR. HUSSEY: Right.

11 MR. BENNETT: I think this is associated with
12 some of the infrastructure related to site work, but
13 either one --

14 MS. NETTER: Actually, it just says during
15 construction there's a monthly report.

16 MR. JESSE GELLER: That's actually the issue.
17 The issue is that --

18 MS. NETTER: What is it on.

19 MR. JESSE GELLER: Right.

20 MS. NETTER: It's just the state of the
21 project. It's everything.

22 MR. JESSE GELLER: Well, if it's globally the
23 project, then I think it would be the building
24 inspector. If it's specific to things that touch upon

1 the engineering --

2 MS. NETTER: Yeah. Let me go back to the
3 other one because I think 40 is water, sewer, and
4 stormwater systems, and there's director of
5 transportation and engineering.

6 So do you want to check with Mr. Ditto, or do
7 you have some thoughts on this, Ms. Morelli, 40 versus
8 48?

9 MS. MORELLI: I would have to talk to Peter.

10 MS. NETTER: Okay. And maybe also
11 Mr. Bennett.

12 MR. HUSSEY: I would add the building
13 commissioner in this as well.

14 MS. NETTER: Yes. We'll check also with town
15 officials.

16 We're on 49?

17 MR. HUSSEY: That looks fine. It's just that
18 we're spread out all over the place.

19 MS. NETTER: We're jumping around, yes.

20 MR. HUSSEY: But that's okay. So probably one
21 sign. We don't want to say where it is but leave it up
22 to the developer. Yeah, okay.

23 MR. JESSE GELLER: 50?

24 MR. BOOK: I have no comment.

1 MR. JESSE GELLER: Mr. Hussey?

2 MR. HUSSEY: On 50 or 51?

3 MS. NETTER: 50.

4 MR. HUSSEY: 50, all set.

5 MR. JESSE GELLER: 51?

6 MR. BOOK: I do not have a comment.

7 MS. NETTER: I just have a question. Should
8 we look at the attachment right now, or should we wait
9 until later, or should I just assume you've already
10 looked? This is the blasting.

11 MR. HUSSEY: Basically, the consultant's memo;
12 right?

13 MS. NETTER: Correct. With some small
14 revisions.

15 MR. HUSSEY: I'm sure it's fine.

16 MS. NETTER: It's numbered 24, but it's got
17 waivers before it.

18 MS. MORELLI: Attachment 1 is the waivers.
19 The appendix is the blasting.

20 MS. NETTER: The consultant's report, I've
21 reviewed this, town staff has reviewed it, including
22 the fire chief.

23 MR. HUSSEY: So onto 52?

24 MS. NETTER: Yes.

1 MR. BOOK: I think 51 is fine as is.

2 MS. NETTER: Are we good with 52?

3 MR. HUSSEY: Yeah.

4 MS. NETTER: How about 53?

5 MR. HUSSEY: Yup. Well, no. I'm sorry. 53.

6 MR. JESSE GELLER: I think we have to
7 specify -- the notion is that there are multiple COs,
8 and therefore when you say, "prior to the issuance of
9 the CO" -- for a specific structure.

10 MS. NETTER: Let me talk to Mr. Bennett
11 because he absolutely -- this was originally --
12 Mr. Bennett, can we look at number 53? See, I think
13 the applicant also -- I think he wanted something
14 different here, so let's see.

15 MR. BENNETT: What's the question?

16 MS. NETTER: Why don't you say what the
17 language is that you want to put in here.

18 MR. JESSE GELLER: So my -- again, this goes
19 to the issue of there being multiple COs for multiple
20 buildings. So when you refer to prior -- or when this
21 refers to "prior to the issuance of a CO for" -- not
22 the project, but a specific structure. That's what
23 you're really referring to; correct?

24 MR. BENNETT: Yes.

1 MR. JESSE GELLER: There's not going to be a
2 project-wide CO?

3 MR. BENNETT: No. It will be -- in this
4 instance, most likely they'll be building by building.
5 And depending upon how they occupy the structures,
6 whether it's the four-unit, an eight-unit, or the
7 midrise, we would sometimes issue temporaries for each
8 unit and then there's a CO for the whole building.

9 MS. NETTER: Oh, okay. So prior to the
10 issuance -- instead of "of the CO," do we want to say
11 "of each CO" or -- you want an as-built per unit or per
12 building?

13 MR. BENNETT: No. We need an as-built for the
14 location of the building on the site so then we can
15 compare that it was built in accordance with the plans.

16 MS. NETTER: So you want -- prior to the
17 issuance of each CO for each building, you want the
18 as-built plan for that building?

19 MR. BENNETT: We want to know the location of
20 that building. So what will happen is as they
21 construct -- I'm not going to get the building numbers
22 right -- they construct building -- we give permits to
23 Buildings 1 through 5 and they construct Building
24 Number 1 and start requesting occupancies in Building

1 Number 1, we'll need the as-built for Building
2 Number 1. Then they can go down the line and do
3 Building Number 2, Building Number 3.

4 If they ask for all of them at the same time,
5 we'd get an as-built of each one and then they'd keep
6 submitting an as-built plan to get rid of the first
7 ones and the as-builts would show up progressively as
8 the project is constructed.

9 MS. NETTER: Can I -- do you want to take a
10 crack? I mean, I thought I understood what he was
11 saying, but then I --

12 MR. BENNETT: It's actually going to be two
13 different types of certificates, as-builts.

14 MS. NETTER: That's what I'm trying to
15 understand.

16 MR. BENNETT: So I'm going to want to know
17 where the location of the buildings are so that I can
18 then compare that to the approved plans.

19 MS. NETTER: So the first step is, for each CO
20 you're going to want to see -- for each CO -- for each
21 building you're going to want to see an as-built for
22 the location --

23 MR. BENNETT: Yes.

24 MS. NETTER: -- of the buildings?

1 MR. BENNETT: Correct. As it gets constructed
2 and more of the utilities and the sewer and the
3 water -- that's the DPW. They're going to want
4 as-builts as well. Those would come at different
5 times.

6 In addition, we're going to want to look at
7 parking layout in the driveways and make sure those
8 comply and conform. So it is going to be a little
9 tricky how we word this, but I'm looking for different
10 as-builts than what the Department of Public Works is
11 looking for.

12 MS. NETTER: Is this in writing anyplace?

13 MR. BENNETT: Well, mine is a standard thing,
14 yes. On my building permit there's an as-built for the
15 foundation.

16 MS. NETTER: And does Mr. Ditto have something
17 in writing?

18 MR. BENNETT: I believe he does. I'm not 100
19 percent --

20 MS. NETTER: So I think we have to do a little
21 bit more work on this, do you think?

22 MS. MORELLI: Okay.

23 MR. HUSSEY: I think it's implicit in the
24 process already in place. I think the general

1 statement you've got here is fine.

2 MS. NETTER: Oh, it is?

3 MR. HUSSEY: I think so. I mean, I'd take out
4 "each phase." Let's say, "for each building." "Prior
5 to issuance of a certificate of occupancy for each
6 building," and then leave the rest as it is. Do you
7 think, Mr. Bennett, or --

8 MR. BENNETT: The only struggle there might be
9 is for the applicant to get a final as-built for the
10 DPW, which is going to locate all the water shut-offs,
11 all manholes, all of that in one of these sentences
12 here. That might be difficult as the project is
13 ongoing.

14 Definitely at the end of the project we need
15 one final as-built that's going to be identified on the
16 whole plan that would show all the utilities, all the
17 parking, edge of pavement, building locations. So I
18 think that the challenge is going to be how we get
19 these documents as the project is in process, so from
20 start to finish. No doubt, at the end there will be a
21 final PDF format, digital and submitted.

22 MS. NETTER: Within how many days of final
23 issuance of CO, the final as-built --

24 MR. BENNETT: Well, I get my as-builts before

1 I issue the CO.

2 MR. HUSSEY: So that part of it is written
3 properly.

4 MR. BENNETT: That's the foundation. Peter --
5 I'd have to sit and talk with Peter to find out --

6 MS. NETTER: Okay. So we need to do a little
7 bit more work because really there's kind of two --

8 MR. BENNETT: There's two processes going
9 forward. We do get a sign-off from the Engineering
10 Department before we issue a CO. I would just have to
11 find out from Peter what they're looking at. I don't
12 know their checklist or what it is they're looking at.
13 There's a spot on the form that --

14 MS. NETTER: So I guess the question is,
15 really, what is not already in place? In other words,
16 if Mr. Ditto has his checklist that the applicant has
17 to comply with regardless, what do we have to
18 supplement in the decision that's not already part of
19 the standard operating procedure of the town, is really
20 the question.

21 MR. BENNETT: We can have a conversation and
22 then come back with some better language.

23 MS. NETTER: Great. That's terrific.

24 I know, Mr. Hussey, you like 55, or whether

1 that was Mr. Book, I forget which.

2 MR. HUSSEY: That wasn't me.

3 MS. NETTER: Okay.

4 MR. HUSSEY: Okay. So 54 is okay. No.

5 That's okay.

6 MS. NETTER: What's okay?

7 MR. HUSSEY: Deleting 55.

8 MR. JESSE GELLER: That was Mr. Book's issue.

9 MR. BOOK: To delete it?

10 MS. NETTER: It's only deleted because it's
11 said elsewhere.

12 MR. JESSE GELLER: 56?

13 MR. HUSSEY: No comment.

14 MR. BOOK: Do you need a building permit to --

15 MR. JESSE GELLER: Grub? A grubbing permit?

16 To quote Mr. Bennett, you need a permit for anything in
17 the Town of Brookline.

18 So I take it no comments on 56?

19 MR. HUSSEY: No.

20 MR. JESSE GELLER: Okay. 57?

21 MR. HUSSEY: No.

22 MR. JESSE GELLER: 58?

23 MR. HUSSEY: That's deleted.

24 MR. JESSE GELLER: 59? 60? 61? 62?

1 MR. HUSSEY: Let me read this a little
2 tighter.

3 MS. NETTER: What are you reading tighter?

4 MR. HUSSEY: 62. How is future litigation
5 affected?

6 MS. NETTER: There's an exception for
7 litigation. It's not a --

8 MR. HUSSEY: Okay. So it's covered, in other
9 words, in the law someplace?

10 MS. NETTER: Yes.

11 MR. NAGLER: The regulation says, "The time
12 period shall be told for the time required to pursue or
13 wait the determination of an appeal," et cetera, et
14 cetera.

15 MR. BOOK: So the decision wouldn't be final
16 if it was appealed?

17 MR. NAGLER: Right.

18 MR. BOOK: 63 needs to be indented.

19 MS. NETTER: Yes. And there needs to be a
20 space after 64.

21 MR. JESSE GELLER: 64? 65?

22 I thought it was 27.8, but --

23 MS. NETTER: It was. I rounded it off and I
24 added all the numbers adjusted for inflation.

1 MR. HUSSEY: I'm on 67. Does that cover the
2 cost of fire watch and police details necessary for the
3 blasting?

4 MS. NETTER: I think that's the intention of
5 this, yes. Do you want me to reference --

6 MR. HUSSEY: No. It's global, isn't it?

7 MS. NETTER: Let me ask Ms. Morelli.

8 Is this the blasting or is this the --

9 MS. MORELLI: So you need police details for
10 more than just the blasting, so it includes blasting
11 and any other details we need.

12 MS. NETTER: Okay. But it's town standard
13 practices?

14 MS. STEINFELD: Yup.

15 MR. HUSSEY: I just want to make sure the
16 blasting is included here. So does the town require
17 fire watch on all blasting projects?

18 MS. MORELLI: Yes, it does.

19 MR. HUSSEY: Okay. All set. Thanks.

20 All right. We're down to rubbish.

21 MR. BOOK: Are we on 70?

22 MR. JESSE GELLER: Mr. Hussey, do you have any
23 comments on 69, rubbish?

24 MR. HUSSEY: No, I certainly don't.

1 MR. BOOK: I don't have any comments on
2 rubbish.

3 MR. JESSE GELLER: Then, yes, we are on 70.

4 MR. BOOK: Do we need 70?

5 MR. NAGLER: You can blame me for that one.

6 MR. BOOK: Okay.

7 MR. NAGLER: Probably not. But it's -- I
8 guess it's a statement of the law. Without a PEL,
9 there's not a comprehensive permit. It's just a
10 jurisdictional requirement of the comprehensive
11 permit.

12 It was when I had -- initially I had discussed
13 a proposed condition that the attorney for some of the
14 abutters had requested that said absolutely that there
15 could be no construction while the appeal was pending.
16 And I felt like that's encroaching too much on the
17 subsidizing agency's powers, even though there's this
18 little catch-22 where the judge apparently on the
19 appeal in the ongoing litigation didn't find an avenue
20 in that litigation to review the PEL. So the question
21 is where, how, under what procedures it's all
22 reviewed.

23 But I had to look at the regulations
24 themselves, which seem to defer to the subsidizing

1 agency, so this was somewhat of a middle ground, I
2 guess, as opposed to just being totally silent.

3 MR. JESSE GELLER: So there are two pieces to
4 this, it seems to me. The first is, there's no
5 independent authority of this board. It hinges on the
6 PEL and the PEL standing up; right?

7 MR. NAGLER: Yes.

8 MR. JESSE GELLER: Regardless -- whatever we
9 do.

10 The second component is cleaning up the site
11 if they decide to move forward. And there's nothing --
12 do we have existing ordinances that would otherwise
13 cover that?

14 MS. NETTER: No. That's the new language.

15 MR. NAGLER: Right.

16 MR. JESSE GELLER: So that specific -- there's
17 no redundancy with that piece.

18 MR. BOOK: So the building commissioner is
19 obligated -- is required to give the building permit
20 while an appeal is pending?

21 MS. NETTER: There's nothing to preclude it.

22 MR. NAGLER: Right. Because this is not an
23 appeal of the comprehensive permit. This is an appeal
24 of the --

1 MR. BOOK: This is an appeal of the PEL.

2 MR. NAGLER: Right. So right now the current
3 status of the PEL is upheld by the law.

4 MR. JESSE GELLER: I have to say, I much
5 prefer the rephrasing of this, if you would. I didn't
6 like how it was stated before. This is better worded,
7 in my opinion. If you feel compelled to put this into
8 the decision, it seems to me this is far better.

9 MS. NETTER: It's more reasonable.

10 MR. NAGLER: And then I would imagine if the
11 PEL were struck down, the logical remedy would be to
12 restore anyway, but this makes --

13 MR. JESSE GELLER: I would think so, but ...

14 MR. BOOK: Okay.

15 MR. JESSE GELLER: Worded in this fashion, I
16 don't object.

17 MR. BOOK: Yeah. No. I didn't object to it.
18 I just was questioning whether we needed it.

19 MR. NAGLER: In the larger scheme of things,
20 probably not in the sense that the applicant has
21 advised that they didn't commit to it. But they
22 advised the board that they don't intend to commit to
23 the structure anyway. So if they don't, it's moot.
24 But just in case they did, in case the appeal were

1 upheld, there's some kind of a process.

2 MR. BOOK: All right.

3 MR. JESSE GELLER: In terms of -- I want to
4 return to something I said when we first started this.
5 And I think I owe Edie a dollar because you said we
6 were actually going to get through this.

7 MS. NETTER: Oh, I knew you were. You don't
8 have to pay up. I knew it. Because you went through
9 much of the hard --

10 MR. JESSE GELLER: So the question becomes,
11 outside of the 70 conditions that we have here and the
12 findings, is there anything else?

13 MS. NETTER: And also the waivers.

14 MR. JESSE GELLER: But so you sort of touched
15 on it because you said, should I ask the questions now
16 or wait until later. I think to the extent that any of
17 those are sort of outside this box, now is the time.

18 MR. HUSSEY: Well, the other thing that I had
19 a question about is, you've got a lot of requests from
20 neighbors about putting things in the conditions and
21 what have you. These are summarized in the documents
22 that the planning staff has given us, but I don't think
23 we've addressed that document specifically as to which
24 items should be in and which should be ignored. Are we

1 going to do that at some point?

2 MS. NETTER: It's completely up to you.

3 MR. HUSSEY: I think we should.

4 MR. JESSE GELLER: I agree with you.

5 MR. HUSSEY: Not tonight, but --

6 MR. JESSE GELLER: I agree with you. So we're
7 next up on the 2nd?

8 No, no. I'm not stopping. I'm simply
9 commenting on Mr. Hussey's --

10 MS. NETTER: Next Monday.

11 MR. JESSE GELLER: So let's take time on the
12 2nd, next Monday, to do that. Okay?

13 MR. HUSSEY: Yup. Sounds good.

14 I'm sort of curious as to this PEL letter. I
15 don't think we've ever -- I've never seen that. Is
16 that an issue --

17 MS. NETTER: Oh, we certainly have. It's part
18 of the application.

19 MR. BOOK: It's the first thing we got a
20 year -- way back.

21 MS. NETTER: I'm sure we can provide it to
22 you.

23 MR. HUSSEY: No. That's all right.

24 We talked about the neighborhood, town boards,

1 already done.

2 I was wondering about adding in the findings,
3 something regarding the density studies that we did as
4 information that's been generated. I think they can be
5 worked into the opinion.

6 MS. NETTER: You have to help me out because I
7 don't know what you do in a special permit context and
8 I've never heard of that opinion clause.

9 MR. JESSE GELLER: So forgetting that specific
10 reference, in a decision that is written on a 40A
11 matter, the decision would include some of the
12 reasoning for the decision.

13 MS. NETTER: But that would be findings. That
14 reasoning normally -- I don't know what you call it,
15 but those are findings.

16 MR. JESSE GELLER: Right. And in this case, I
17 think Mr. Hussey is speaking to those kinds of findings
18 that you would include.

19 MS. NETTER: Yes. And we have some findings,
20 but you would like to add others?

21 MR. NAGLER: The difference is, for a special
22 permit variance by statute, it says you must find the
23 following five things: Number 1, like, for a variance
24 there's a hardship. Here's why --

1 MR. JESSE GELLER: Right. But it's also, for
2 instance, in the special permit context where a mere
3 recitation of the five standards is insufficient.

4 MR. NAGLER: Correct. Here there's only
5 really one standard, consistency with local needs.
6 It's not -- it doesn't say you must find A, B, C, D,
7 and E the way they do in a special permit. That's why
8 all of this really goes to that.

9 MR. JESSE GELLER: No. But Mr. Hussey raises
10 a good point because, you know, there has been a year
11 of vested interest in this -- I'm not referring to us
12 obviously -- and there's a certain logic that, you
13 know, we've internally sort of thought through and sort
14 of reflected in many of our comments, but it's not
15 reflected in the decision. The decision ultimately, as
16 drafted, has become sort of this technical document.
17 So the question is whether there should be -- and I
18 hate to use the word -- but the explanation.

19 MS. NETTER: Well, let me reframe it a little
20 bit because you're not in a special permit context.
21 And as Attorney Nagler said, you are dealing within the
22 framework of consistency with local needs. In other
23 words, balancing the need for affordable housing with
24 the local -- the legitimate local concerns.

1 And so to the extent -- and I had anticipated
2 you would work some more on the findings to reflect
3 your own thinking, but you want to go a little bit away
4 from how you write your special permits and more in
5 terms of "we find that," or -- so we've got to frame
6 this to make sure it fits within the law is all I'm
7 suggesting to you. But it gets to, I think, where you
8 want to go, which is what is your thinking about the
9 project; right?

10 MR. HUSSEY: I think it probably doesn't get
11 quite as far as I want to go, but it gets, to some
12 extent, the local needs. I went through a lot of the
13 information that we've got where the local needs are
14 stated, but what is not stated is the list of local
15 needs that would be considered.

16 MS. NETTER: May I ask what your -- give some
17 ideas.

18 MR. HUSSEY: Well, one of them is the density
19 studies showing that the density of parts of this
20 project are somewhat more than the density of the
21 immediate neighborhood. That's one thing that seems to
22 be ...

23 The number of neighbors that have spoken and
24 the number of times they've spoken, the sense of

1 territoriality that they have, the protection of their
2 territory in a sense. I mean, there are some very soft
3 issues that go into all of this that, I guess, just are
4 never touched on as a rule.

5 I mean, for instance, one of the comments that
6 one of the neighbors made, they're trying to certify
7 the neighborhood, which goes back to the density
8 issues, which I think is a valid observation. This
9 is -- the big building in particular, the apartment
10 building, is an urban solution. It's not a suburban
11 solution; it's an urban solution.

12 So it's getting into all of those issues and
13 talking about them and explaining how they fold into
14 our decision. I mean, that's what I'm talking about.
15 It's really an open-ended discussion. And it may
16 inform people going forward. It may inform the courts
17 going forward. I don't -- we may not want to inform
18 the courts going forward.

19 MS. NETTER: Well, the decision itself is not
20 typically part -- well, I don't even want to go there.
21 Let's --

22 MR. JESSE GELLER: Yeah. I actually thought
23 your comment was on more -- forgive me for using the
24 phrase "more concrete" -- of pieces of information, you

1 know, whether it was pertaining to traffic or whether
2 it was pertaining to drainage and the reliance on
3 testimony provided at the hearings. In other words,
4 that's the basis for the reasoning.

5 You're really speaking to things that I think
6 are broader, more amorphous. Okay? I think that's
7 extremely difficult to express in a decision, and I
8 don't think you're ever going to adequately be able to
9 do that.

10 So if your comment is, well, within the
11 findings you want to acknowledge that we've had peer
12 review on transportation, and while we recognize the
13 potential for increased traffic, ultimately our
14 determination was X. Okay? So that, I understand.

15 I'd be concerned about trying to sort of
16 adequately address those broader topics because I don't
17 think we would do it well, and I don't know that we
18 would be able to do it at all.

19 MR. HUSSEY: Well, am I wrong in stating that
20 in certain decisions that are rendered by judges both
21 at the local and state and national levels that there
22 are opinions voiced as part of those decisions that
23 touch on these soft issues, or not?

24 MR. JESSE GELLER: There may well be, but

1 we're not judges. We're just ZBA members on a 40B
2 case.

3 MR. HUSSEY: And all that requires is to say
4 we approve or we don't approve. You know, we approve
5 this condition. That's all we need to say, I mean, is
6 what you're saying.

7 MS. NETTER: Yeah. But what's really
8 critical -- I mean, certainly you might want to look
9 through the findings and say, you know, for traffic
10 this is what we find. It may be completely based on
11 what the consultant said, or you may weigh the evidence
12 and say something else. That's up to you.

13 But what's most critical in terms of really
14 having an impact is asking yourself, if you can approve
15 this project, do you have all the conditions that are
16 necessary? I mean, we have -- I'll tell you, Maria's
17 done a lot of this, and other staff, but I've also done
18 a fair amount, as has Sam and Kathy, but, you know,
19 reread all the studies -- I didn't reread the
20 transcript. Maria has -- reread all my notes. But to
21 the extent you may have other conditions that we
22 haven't touched on, that's really --

23 MR. JESSE GELLER: Right. And do those
24 conditions address the concerns you're raising?

1 MR. HUSSEY: All right. Let me reflect on
2 it.

3 MR. JESSE GELLER: I like where you're going
4 with it. I think it has to be more limited and finite.

5 MR. HUSSEY: Refined. All right. I'm going
6 to reflect on this initial discussion.

7 MR. JESSE GELLER: Okay. So -- but we can
8 raise it again on Monday. I'd like to sort of have a
9 sense of what we want to do with that.

10 The other thing I know that you were going to
11 raise was the topic of -- you wanted to talk about
12 waivers?

13 MS. NETTER: I would like to have covered
14 everything so we can come back to you on Monday if
15 possible -- you know, as soon as we can -- with a
16 document that shows you where we started and where we
17 are and we can look at it as a whole.

18 MR. HUSSEY: I don't think I have any
19 questions on waivers.

20 MR. JESSE GELLER: And this is -- I don't have
21 the one that -- the most recent iteration that I had
22 marked up, but this reflects the most recent version in
23 which we had made changes.

24 MS. MORELLI: The most recent version of the

1 waivers is dated January 9, 2015, and you have that
2 included in your January 28th draft.

3 MS. NETTER: But his question was: Does this
4 reflect all the questions asked and changes requested?

5 MS. MORELLI: Absolutely.

6 MR. HUSSEY: So this is the January 9th list,
7 basically, which is part of this document.

8 MS. MORELLI: Yes.

9 MS. NETTER: Everything is included here that
10 we would propose would be ...

11 MR. JESSE GELLER: There was a question --
12 Mark's not here, but Mark raised that question about
13 condensers located within the setbacks.

14 MS. NETTER: That's in the revised conditions;
15 right?

16 MS. MORELLI: Yes, it is.

17 MR. HUSSEY: That's here in the conditions?

18 MS. NETTER: Yes.

19 MR. JESSE GELLER: No. That was waivers.
20 They were asking for a waiver for locating condensers
21 within the setbacks.

22 MS. NETTER: But there's a clarified
23 condition. It's a condition.

24 MS. MORELLI: There is a condition -- I'll

1 have to find it for you -- that there are no --

2 MS. NETTER: And I can't remember if we needed
3 a revised waiver for that, Ms. Morelli.

4 MR. HUSSEY: We don't need a waiver, do we?

5 MS. NETTER: It's Condition 13.

6 MR. BOOK: I think Mr. Bennett had said that
7 you're allowed to -- you can put condensers in the
8 setback.

9 MR. HUSSEY: Yeah. It's an accessory piece of
10 equipment, so it can be.

11 MR. JESSE GELLER: So it can be. Okay.

12 MS. MORELLI: Air conditioning condensers may
13 be installed and maintained within six feet of any
14 building, and that's per regulation.

15 MR. BENNETT: So in one of those conditions, I
16 had recommended that we not allow anything within that
17 20-foot setback. The applicant then proposed to put
18 condensers within six feet of the building.

19 I was asked the question, in a normal
20 application of this, where could a condenser unit go?
21 It's considered an accessory structure, and it can be
22 within six feet of a lot line.

23 So what this condition does is it allows a
24 condenser unit in the rear of the building within six

1 feet, thereby reducing that setback to Beverly and
2 Russett Road in some instances to 14 feet.

3 MR. HUSSEY: That shouldn't be a problem,
4 because you've got a solid fence.

5 MR. JESSE GELLER: Yeah. I remember that.
6 But it was a question that Mr. Zuroff had asked, and I
7 just wanted to make sure ...

8 MS. NETTER: I think we're good.

9 MR. JESSE GELLER: Is there anything else?

10 MS. NETTER: So are we good on waivers? Is
11 that what you're saying?

12 MR. BOOK: I think so.

13 MS. NETTER: Anything to highlight with
14 waivers to the board's attention, or ...

15 MS. MORELLI: No. The applicant, in the
16 January 12th hearing, highlighted additional waivers
17 that they needed in their presentation to you.

18 MR. JESSE GELLER: Right. Okay.

19 MR. NAGLER: I'm sorry. So that means there
20 will be a revised --

21 MS. MORELLI: No. The January 9th waivers,
22 they explained what conditions they made to that.

23 MS. NETTER: I recommend that you read at your
24 leisure -- when you reread the decision, you'll see a

1 condition, either 11 or 10. When you read the housing
2 conditions, you want to read the attachment terms to be
3 included. I'm jumping ahead.

4 MR. BOOK: Right.

5 MR. JESSE GELLER: Oh, you're referring to
6 in -- okay.

7 MS. NETTER: You think I understood what you
8 said?

9 MR. JESSE GELLER: No, I don't. But I didn't
10 understand what you said, so it's fair.

11 MR. HUSSEY: So next Monday we're going to be
12 talking about the neighborhood-expressed interest in
13 conditions, and we're going to be discussing some of my
14 issues.

15 MR. BOOK: Chris, you mentioned -- and maybe I
16 misunderstood. I have a number of emails and memos
17 from neighbors with proposed conditions. Did you say
18 that the Planning Board had summarized them?

19 MS. NETTER: Yes. There's a chart.

20 MR. HUSSEY: She's got quite a good chart.

21 MR. JESSE GELLER: Maria, would you
22 recirculate that? I actually don't remember seeing
23 that either.

24 MS. NETTER: Oh. You were referring to it.

1 MR. JESSE GELLER: No. I referred to it after
2 he spoke to it.

3 MS. STEINFELD: We'll resend it.

4 MR. HUSSEY: It's quite good, by the way.

5 MR. BOOK: Edie, you're going to make
6 revisions to the decision for next Monday? Is that --
7 okay.

8 MS. NETTER: Yes. And we will give you
9 something that shows the changes -- as best we can --
10 the changes from December 5th, the original version,
11 through today.

12 MR. BOOK: Okay. May I ask -- Maria, would it
13 be possible to circulate a clean version of the
14 decision as it currently stands so -- it would just be
15 easier to do a readthrough over the weekend.

16 MS. NETTER: When you say, a clean version as
17 it currently stands, you mean not through today?

18 MR. BOOK: Well, no.

19 MS. NETTER: Let me just say --

20 MR. BOOK: Unless you're going to be able to
21 incorporate what we've discussed by --

22 MS. NETTER: Not before the weekend.

23 MR. BOOK: Okay.

24 MS. NETTER: The problem is that some of the

1 things they'd already reviewed, then there are also
2 more changes that they haven't had a chance to see. So
3 if we show you a clean version of what already is, you
4 may be looking and saying, oh, I haven't seen that
5 before. Do you know what I'm saying?

6 MR. BOOK: Well, I guess what I'm saying,
7 wouldn't this be the version that we -- this is really
8 the most current thing that we have, is this. And if I
9 could see it without red lining --

10 MS. NETTER: Got it. And without today's
11 changes.

12 MR. BOOK: Yes.

13 MS. NETTER: Okay.

14 MS. MORELLI: So it's the January 28th draft,
15 clean?

16 MR. BOOK: The January 28th draft, clean.
17 That's today; right?

18 MS. NETTER: Yes.

19 MR. HUSSEY: You've done a good job, I think,
20 because this can get chaotic.

21 MS. NETTER: I've never seen something as --

22 MR. JESSE GELLER: -- workable as this?

23 MS. NETTER: Right. And ultimately I think
24 will be very workable.

1 MR. HUSSEY: It either means we're doing a
2 tremendous job, or we're doing a lousy job.

3 MR. JESSE GELLER: We'll leave it to others to
4 determine.

5 MR. HUSSEY: Exactly.

6 MR. JESSE GELLER: Okay. Anything else for
7 tonight?

8 MS. NETTER: I'm thrilled that we've gotten to
9 where we had hoped.

10 MR. BOOK: So we have two more?

11 MR. JESSE GELLER: We have the 2nd and we have
12 the 4th.

13 MS. NETTER: Yeah. So if we can really --
14 what I would like to accomplish on Monday is your
15 discussion and looking at everything, so the changes
16 that we made to the earlier sections that you reviewed,
17 the new changes that you haven't seen, and tonight, and
18 talk about if there are any new conditions as well as
19 your discussions.

20 MR. JESSE GELLER: Well, let me correct you.
21 I think there are two discrete items that Mr. Hussey
22 has raised for discussion. I think they're both
23 important.

24 MS. NETTER: Right. So what I would -- I

1 don't know if it's possible, but what I would -- I
2 mean, maybe everything can be done by 10:00, but I
3 would like to request of you that we do all of that.
4 So even if it means -- this is the question -- that we
5 have to stay an hour longer, maybe we do that.

6 MR. JESSE GELLER: An hour longer than what?

7 MS. NETTER: Than 10:00.

8 MR. HUSSEY: Next Monday. We ought to be able
9 to wrap it up by 10:00. I think the more complicated
10 issue is -- the next meeting is Wednesday?

11 MR. JESSE GELLER: The one after Monday is
12 Wednesday.

13 MR. HUSSEY: But after Monday, then I think
14 we'd be free -- or you'd be free to do a final -- list
15 of final considerations -- conditions rather.

16 MS. NETTER: Yes. That's the idea.

17 MR. HUSSEY: And we need to get that some days
18 before we meet.

19 MS. NETTER: Can't. We won't be able to do
20 it, because your meeting is on Wednesday.

21 MR. BOOK: Two days later.

22 MR. HUSSEY: No. I understand that. I'm
23 saying that that's not enough time to make it work.

24 MS. NETTER: The goal is Monday and Wednesday

1 and that would be it.

2 MR. HUSSEY: No. I understand that. But can
3 we really get that information all together and --

4 MS. NETTER: We have no choice.

5 MR. HUSSEY: We have no choice. When does
6 this whole thing run out?

7 MR. JESSE GELLER: The 23rd.

8 MR. HUSSEY: The 23rd. That's what I
9 thought.

10 MR. JESSE GELLER: But you lose two of us
11 on --

12 When are you leaving? The 16th?

13 MR. BOOK: The 13th.

14 MS. NETTER: And you lose me, which is
15 absolutely fine, but just to let you know, I'm here
16 through Wednesday.

17 MR. JESSE GELLER: So you and Sam will have a
18 very lonely time.

19 MS. NETTER: Let's see where we go, but I do
20 think we're very close.

21 MR. HUSSEY: All right.

22 MS. NETTER: And to the extent you have
23 particular -- whether you want to call it findings or
24 opinions -- really tightened, you know, that will move

1 things along.

2 MR. HUSSEY: Then I should have them written
3 up for next Monday.

4 MS. NETTER: If that's possible.

5 MS. STEINFELD: And if you want to send them
6 to the planning department, we'll be happy to
7 distribute them prior to Monday night.

8 MR. HUSSEY: Yup.

9 MS. NETTER: It's taken me a year to learn not
10 to volunteer you guys.

11 MR. JESSE GELLER: Anything else?

12 MS. NETTER: No. I think this is terrific.

13 MR. JESSE GELLER: So our next meeting is
14 February 2nd at 7:00 p.m. Thank you, everyone.

15 (Proceedings suspended at 10:01 p.m.)

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1 I, Kristen C. Krakofsky, Court Reporter and
2 Notary Public in and for the Commonwealth of
3 Massachusetts, certify:

4 That the foregoing proceedings were taken
5 before me at the time and place therein set forth and
6 that the foregoing is a true and correct transcript of
7 my shorthand notes so taken.

8 I further certify that I am not a relative or
9 employee of any of the parties, nor am I financially
10 interested in the action.

11 I declare under penalty of perjury that the
12 foregoing is true and correct.

13 Dated this 9th day of February, 2015.

14 _____

15 Kristen Krakofsky, Notary Public

16 My commission expires November 3, 2017.

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