

**MINUTES OF A HEARING HELD ON TUESDAY, NOVEMBER 15, 2011 REGARDING DOCUMENT #88/07, A PETITION FROM STEPHEN STAPINSKI FOR D&D REALTY TRUST REQUESTING A SPECIAL PERMIT – WATERSHED PROTECTION DISTRICT FOR ROADWAY IMPROVEMENTS: 402-203-None.**

**SUBJECT:** Document #88/07 – A petition from Stephen Stapinski for D&D Realty Trust requesting special permit – Watershed Protection District for roadway improvements Brandy Brow Road: 402-203-None.

Present: Council President Michael J. Hart, Vice President Robert Scatamacchia, Councillor William H. Ryan, Councillor Michael Young, Councillor David E. Hall, Councillor Colin LePage, Councillor Mary Ellen Daly O'Brien, Councillor Sven A. Amirian and Councillor William J. Macek.

City Clerk Toomey: Document 88 of 2007, A petition has been received from Stephen Stapinski for D&D Realty Trust requesting a special permit, watershed protection district for roadway improvements Brandy Brow Road. There is a related recommendation to approve with conditions from William Pillsbury, Economic Development and Planning Director.

President Hart: Are we ready to open this hearing?

Attorney Borenstein: We are ready Mr. President.

President Hart: I am going to open the hearing.

Don Borenstein, my offices are at 12 Chestnut Street in Andover. I represent the applicant for these three special permit applications under the City's Watershed Protection ordinance. I know you are all familiar with this overall project. It's the improvement of an existing public way, Brandy Brow Road. It involves the ultimate construction of eight new homes on Brandy Brow Road. I'd like to touch on some of the important points as I see them. First off, we are taking this existing area off Brandy Brow Road and constructing eight new homes. At the developer's expense there are nearly 4,000 feet of new or dramatically improved roadway and utilities that are being constructed. Again, at the developer's expense. With those activities there come jobs, there comes tax base to the City, building permit fees to the City. Lots of good things come from this project, on the positive side. We are also addressing the negative. I think well known to the Councillors this has been an area, historically, that has been subject to some nuisance and occasional difficulty to the City. One of the reasons we have a unique situation, we have a public way that's gated off. With eight new homes out there and the development of this area into a quality neighborhood we are addressing that negative while also bringing several positive things plus financial and otherwise to the table as part of this application. Those things said, would leave this project really as a no-brainer. It's an overused word but it's almost a no-brainer. There are lots of positives to this but of course it falls within the City's watershed protection district. So it has to clear an important hurdle at the beginning which is that it doesn't negatively impact the City's public water supply. It has to comply and not be a detriment to public health and safety, an important issue, that creates this process under the watershed protection district. We have now been over four years, since June of 2007, is when these applications were originally filed. We are now through five rounds of review with the peer reviewer that was hired at the applicant's expense to work with City Council, represent the City Council on those issues. We come before you tonight with a positive recommendation for approval with conditions from Economic Development and Planning and with a well improved project from what was filed in 2007 and also an extremely well investigated project. We come to the conclusion that this project that comes with all these benefits to the City, will not come with a harm to the public water supply which is of course, the

key issue to be determined by Council tonight as to whether to issue these watershed protection district special permits. I would note of course that recommendation of approval does request conditions. There are conditions noted in a number of memos that are attached with the recommendation and the Horsley Witten report, detailed information, detailed recommendations. To put that in context, from this step, once the special permits are addressed and they are issued by the City Council, we still have two other authorities to satisfy in town as well as regular building inspector process. We have Board of Health requirements here. These lots would be septic and well. All require review and approval by the Board of Health something of course we expect and is addressed in the memos that you have. Also, Conservation Commission approval requires order of conditions for this work, requires further review and approval from Conservation Commission. And then of course building permits through the regular building inspector's process. The only reservation I have at all with the recommendation, the conditions that are recommended to the Council, is that the detailed conditions in the Horsley Witten, their final review letter if you've read through, there are some dense sort of technical engineering material in that Horsley Witten review letter. All we'd ask this Council to do is make sure we don't write the Board of Health or the Conservation Commission or the Building Inspector out of the equation. We've made commitments to all of them that we would be before them following this process. They would review this project in their usual way with their technical expertise. If they find something that they want to do a little different, a little more, they should have their regular authority. All we'd ask the Council is that if you do approve this and you do adopt the conditions that are recommended by Economic Development and Planning, that we note that they are subject to the satisfaction of the Building Inspector, the Board of Health and the Conservation Commission which I expect you would do anyhow. So they have the ability to review these individual lots with final building details in place and to know exactly what needs to be done to make those conditions apply to the specific building.

With me tonight to give you an overview, a reminder of what this project is and to tell you a little bit about how it's been improved through a lengthy but good process, expensive but good process, is Dave Jordan from MHF Design. I just ask him to come up, just touch on the plans a little bit and tell you what's happened since this was filed way back in June of 07.

For the record, my name is David Jordan. I'm an engineer and land surveyor with MHF Design Consultants in Salem, New Hampshire. As Attorney Borenstein said, what I'd like to do is briefly summarize some of the significant changes that have been undertaken for this project since it was originally filed back in 2007. At either end of the room are some boards that I'm going to refer to here. We have a total of three special permit requests before the City Council. Over the last four years we have made numerous changes to the plans all positive changes in response to review comments from outside engineering. Review letters from Horsley Witten; comments from various departments within the City itself. All these changes have resulted in the improvement to the environmental protection that will be provided by the development of these lots here in response to them being within the Watershed Protection District. In terms of the roadway, we are going to be bringing up to City standards almost 4,000 feet of Brandy Brow Road. In terms of changes that have been made to the plan since it was originally filed back in 2007, there was a section of that road, adjacent, right across from what it was referred to as Erin Way or the three lot form A subdivision. That is on the boards on either end of the room, the top two plans, that's what's called the Erin Way subdivision, has been referred to as Erin Way. That portion of Brandy Brow Road we have changed that to include curbing and closed drainage because there is a tributary to East Meadow Brook directly across from those three lots and the original design had an open drainage system there. In looking at the treatment and containment of the storm water runoff coming from the road, it was decided it would be more appropriate to handle it using a closed drainage system in that one area. That change has been made. Throughout all of Brandy Brow Road we have added sediment four bays and infiltration basins are our drainage discharge points. That's to allow ground water recharge and to again, improve the quality of the water coming off of Brandy Brow Road before it is discharged toward the tributary and toward East Meadow River itself. In terms of what we are now calling the three form A lots,

formerly Erin Road, significant change was the elimination of Erin Road. On the top of the easel, your top boards, the plan on the left is the original 2007 plan which showed about a 300 foot long dead end street off of which the three lots would then be developed. Associated with the construction of that road were two detention basins, a closed drainage system, sidewalks, etc. That has been eliminated and much simplified in terms of development of those lots by coming in with just three individual driveways, three lots, reduced grading, significant reduction in the amount of earthwork, depth of cut associated with that development of those three lots. We have changed the method with which we are going to be handling the sewerage disposal on the lots. We are using an alternative innovative system that results in smaller leech field footprints while still providing the same level of ground water protection as required by Title V. The driveways to those three lots, we have added infiltration trenches along the sides of those to directly infiltrate the driveway runoff into the ground and likewise, all of the roof runoff from these three lots, from these three houses, will be discharged through dry wells, providing ground water recharge.

For the five form A lots, which is the bottom board on the easels, if you were to look at today's plan versus the 2007 plan, at first glance it wouldn't look like much has changed. Couple of things I would like to point out. For these five lots we are proposing to use pervious driveways by either porous asphalt or permeable pavers to again directly infiltrate the storm water runoff from these driveways. Rather than allowing it to runoff into Brandy Brow Road itself. The area that is shaded in kind of a yellowish green to the rear of those lots, each of those are two acre lot, but more than half of each lot is going to be allowed to revegetate and naturalize, it is that area between the houses and East Meadow River which lies just to the north or straight up the plan as you are looking at it. (Inaudible) naturalize and return to a state that will allow for wildlife habitat. It will be protected within a conservation easement so it will be not available to future development of that lot. Provide much higher degree of protection of these lots within the watershed protection district. Similar to the other three lots, we are going with a smaller leech field footprints and approved wastewater treatment with the innovative technology systems that we are going to be employing here. Also, we have moved the leech fields further from East Meadow River. Set them back further to provide greater separation. Those are just some of the more substantive changes to the plans as Attorney Borenstein said. There were a lot of technical changes to the plans. Drainage calculations have been made over the last four years. The plans that you see on these boards before you this evening are those that have received positive recommendations from the various departments. Without going into this any further, I would like to turn it over to Attorney Borenstein. If there are any questions, I'll be here to answer them. Thank you.

Attorney Borenstein: I would like to thank David and his office as well. You may recall that the applicant decided to replace his design team wholesale approximately a year ago. David's team has done a remarkable job I think bringing the improvements to this project and completing the investigation in cooperation with the peer reviewer. I think with that there's details in the plans. There's details in the study that's been done here but I think the Council has heard the overview of this project. What we think is positive for the community and how we think we met that threshold issue of protecting public safety and the public drinking water supply. With that we would be happy to take questions.

President Hart: I am going to see if anyone else wishes to speak in favor. Anyone else wish to speak in favor? There was no one. Is there anyone here who wish to speak in opposition?

Mr. President my name is John Curtin I live at 100 Willow Avenue. You gentlemen know and one lady, I was a City Councillor here for ten years. I have followed the purchase and sale of the land in this area since 1996 and how Mr. Early acquired it. I'd like the freedom to go into, very shortly, I know this could be a long hearing, but I'd like to go into how Mr. Early got the land.

President Hart: I don't know how that is relevant but I really don't

Mr. Curtin: It's relevant in that, I'll explain it and I don't know if you are going to let me go here. The City of Haverhill had the first option on this whole development area. It was an offer from the town of

West Newbury to give it to the City of Haverhill. That was presented by Betsy Conte, a former Councillor, to Mayor Rurak at the time. To take this land for nothing to protect our water resources and the aquifer for Kenoza and Millvale Reservoir. Mayor Rurak refused to take the land for nothing from the town of West Newbury. Another thing as I get into this and I'm going to be short on this side of this, but I want everybody up here, there are some new Councillors that don't know what happened.

President Hart: This is the same Council that's been here for a while.

Mr. Curtin: I went to the town of West Newbury and I talked with the town clerk. And I said for the heck of me I can't figure out why Mayor Rurak refused to take this land for nothing. The town clerk mentioned that there was an older gentleman in town that died and left it to the town. They wanted to clear it from the books so they wouldn't have to do the reporting that they have been doing every year.

President Hart: What's the conclusion on this? The relevance.

Mr. Curtin: Okay, this is just to let them know how this land was gotten by Mr. Early. He stepped aside by Mayor Rurak.

President Hart: The bottom line is I am going to start with the fact that Mr. Early owns the land. He's been working with this land. The history of how he got the land, I don't see the relevance to it, unless there was something that was improper that was done. I am just saying, if you can just.

Mr. Curtin: Relative to that, I have information that I received. I really looked into this for the last, let's see, 1996-2006, I've been on this for about fourteen years from the get go to the start. I found out one time along the line in here, that Mr. Richard Early Jr. was fined \$1,000 for dumping big dig fill.

President Hart: Again Mr. Curtin, this is a special permit.

Mr. Curtin: You are talking about the water quality and what's to be done.

President Hart: In the past, a couple of weeks ago, we had a long discussion on the investigations that were done there based on some assertions that perhaps there were some hazardous waste buried there or barrels buried there or stumps buried there. There was a long hard and expensive over the course of several years' investigation done which revealed that there's no problem with the land. I guess I don't want to go back and start that all over again.

Mr. Curtin: Okay, I'll go from that point on. I don't think the investigations that were done early on in this when the accusation against Mr. Early Jr. about big dig fill was done properly, concise, that really surveyed the area for this big dig fill. What happened was Mayor Rurak assigned his, one of his Health Department officers to take over the investigation. He side stepped the Conservation Commission on the investigation and he appointed Steven Doherty, who was a member of the Health Department to investigate. The total encompassment of what occurred there was that he tested five piles of dirt that were on the surface. There was no sub-digging in there to see where the fill was.

President Hart: Mr. Curtin that's really ancient history. Again, there's no relevance to what's being discussed by you. If you bring yourself into today, go forward from the fact that these investigations of the land were done and this is where we are right now.

Mr. Curtin: I have a chart back here that I want to show you how this area is encircled by water. The way and the position of this development, is eight septic systems and then I don't know what a closed drain drainage is for the roads. Does that mean that it's going to go somewhere? Is it going to be deposited in

the ground on that land? Or is it going to be put into Meadow Brook? That's one question I would like to ask the gentleman at the conclusion. I'll just keep rolling along. I have some charts here. These are area photos done by the DEP. I was involved in this since 1996 as a Councillor. I don't know how I could present this.

President Hart: Well can you just explain where you are going with it.

Mr. Curtin: This is a photo in 1995 when the property was just purchased somewhere in this time by Mr. Early. This shows the cover of what this area is. This is the left side. This is the portion now excavated here where the homes are to be. This is Brandy Brow Road coming in here going down this way. This is the area where the homes are suppose to be. You can really see in 1995, this is a hydrologic connection through this whole area. What a hydrologic connection is, it shows where surface and underground waters are determined to be. In this one which is real dark, you can see. This area here is this area right in here. This water is directly in back. This aquafor that comes out of Plaistow and Newton New Hampshire, in this direction which would be a northerly direction is all massed behind this propit where they want to build. That aquafor goes all the way from Plaistow to Newton New Hampshire right down into this area. As you can see, you can't see this portion of it, or of this portion of it here, this all backs up this way, up to Newton and Plaistow. Hydraulic hydrologically this is permeable ground in the sense that it is sand and gravel. Water travels through sand and gravel.

President Hart: All right now, all I can tell you is that I am not an expert on this and I don't think any of the other City Councillors are. What we have been having going on here for the last several years, we've had our experts, our Planning Department, our Conservation Department which is very competent in terms of protecting the City's wetlands and water sources and resources and so on, are very much aware of what's going on with this particular project. We are having a hearing tonight on this special permit after they have done a huge amount of work on this. We have recommendations from numerous City departments requesting numerous conditions be put on any possible permit that's granted to protect all of the things that you are talking about. So, all of the experts have weighed in. They've weighed in time and again. They have provided us with detailed information on their expert findings and they are saying to us, if we were to find favorable on these special permits that we should attach these numerous conditions to it that will protect all of the things that I think you are concerned with. That's where we are at tonight and that's where I want to stay with is where we are at tonight.

Mr. Curtin: What I want to show is the danger of developing on this land. As I stated this is totally surrounded. (inaudible). Here is all wetlands. The wetlands continue in the back (inaudible). Where is it dumping? In the lots?

President Hart: It's basically being explained in the systems that they are setting up which are highly technical and we have our experts. We have our hired consultants that are overlooking this in addition to our City departments, overlooking this project to make sure that all these concerns are met. These are the experts that are looking at this. The same land you are talking about and coming forward saying, if you do it, this is what you need to do and this is what you need to protect it. I think it's all being covered as best it can be covered.

Mr. Curtin: The only thing I can say as me, as a person, that has been concerned with the protection of drinking water and my father was too personally, with what's been alleged to be there, I know none of it has been found. The testing has been not adequate to test for the big dig fill and it's thousands of stumps that were buried on that land. They could in some time, in some place, dirty our water and create a problem for our Millvale Reservoir and our Kenoza Lake. That's all I am saying. This is a commonsense approach. I am not an expert flipping stuff at you so fast probably half of you don't understand it either. I am not stepping on your intelligence. It's very technical. None of you have degrees in this. This type of

expertise. I am just saying that a commonsense approach should be a good look at this. Don't be in a rush to grant these permits tonight without more conclusive information and maybe some a little detective work on someone else's part. I got shut off at every door with the City people who were testing and everything else. They didn't do where I told them to go. One time. Mr. Pillsbury last week, two weeks ago, said Councillor Curtin was directing the whole thing. If you remember that was his statement. I wasn't allowed on the property. I grabbed Mr. Godin and went, can you come here, up that end. That's where probably the big dig fill and the thousands and thousands of stumps buried there illegally. You can't dump in the City of Haverhill. There's a town ordinance. There has been violations. It was shown with the thousand dollar fine that Mr. Early did with big dig fill. No complete test was done of that area. This could all jump on us in the next five ten years and kill Kenoza and Millvale Reservoir for our water source. You're endangering, if you really don't really get into investigate this back stuff that I have been saying, to find out, yah, was there big dig fill. Have you received anything at that?

President Hart: No.

Mr. Curtin: There's a report. I had a copy of it. There was definitely big dig fill put in there. There's thousands of stumps in there. That was my information. I'm a retired trooper. I got from a confidential informant that I went to tell Mr. Pillsbury and he got mad as heck at me because I wouldn't tell him. Because this was given to me confidentially. That all these trees, and I will end with this, (inaudible), this is endangering Haverhill's drinking water. 60,000 people.

President Hart: Thank you sir. Is there anyone else who wishes to speak in opposition? Mr. Townsend. Mr. Townsend raised his hand before. You can speak right after him.

Randy Townsend, I live at 79 Jaffarian Road. I am coming up on 32 years living in the City of Haverhill and everyday I enjoy drinking the City of Haverhill's water. I am diabolically opposed to anyone who decides that they want to develop any property in the City of Haverhill that requires an encroachment on our drinking water standards. It's pretty obvious to me after 32 years without any problems that we have standing guidelines that are working right now. It would seem extremely foolish to me to allow any encroachment that may put that water supply in jeopardy. I ask you, I don't know who owns the land, I don't care who owns the land, I don't care what they are doing with the development. This is the second time this year that I have come before this Council to speak against messing up our water supply by encroaching on the standards that are currently in place that for 32 years of my knowledge it worked perfectly. If it be 500 feet and you lower it to 499 and it fails, it never should have done that one foot. And if you take it from 500 to 400 the next person who comes up here will be asking if they can do 350 and if you allow that it will get down to can I just hook my sewer pipe into the water supply. It works right now, please don't mess it up. Thank you.

President Hart: Thank you. Anyone else?

Richard Matterson, 114 Brandy Brow. I have a little different outlook on this. I am not opposed to the building. It's a very historic area down there. I just want to make sure that everybody understands what we have. We used to have a dam there right by the bridge and had a large lake the size of Millvale or Crystal Lake. There was three recreational areas there. The YMCA had a camp at one part of the lake and on the other side of the lake they had Polish picnic grounds and then at the dam we had a mill. I think the mill employed about ten people. It was very large. 1922 there was a washout of the dam, a portion of it, probably as large as this desk here and naturally that ended all the other activities. But the City purchased over 250 acres of land there after that period of time to protect that whole area. The only thing I want to bring out most people don't know this. They don't understand it. They don't know anything about the history. It's been a while ago. I just want to make sure that everybody understands what we have there. If the City ever wanted to increase their reservoir system, I just want to make sure you don't allow any

building in that area that would be (inaudible). I would like to see a couple of stipulations that anything that setbacks should be from where the water would be if the City ever wanted to replace that. Who knows, if they don't do that, it's a large area, it may be a good well field for drinking water. Or they may have a thing where they want to produce electricity by water or build a dam there. I don't know. But I just want to make sure that everybody else knows this and can deal with it. I'd like to see is a stipulation that any setbacks, not particularly this gentleman, but anything down there would be set back from where the water would be if the dam were replaced. That's about the only thing I would like to see.

President Hart: Anyone else wishes to speak in opposition? There was no one. Would you care to make a rebuttal?

Attorney Borenstein: First just touch on the comments made by Mr. Matterson and Mr. Townsend. As far as encroaching on City standards and setbacks and that sort of thing we are not asking for waivers. We are complying with the City's watershed ordinance. We are not asking for waivers, changes. We are complying with the ordinance that has been set up by the City to protect your watershed. We have gone thru that process to ensure that it is protected. We are not encroaching, we are not violating setbacks. We are complying with the ordinance. We have gone thru the investigation. We have gone thru the process the City has established to make sure those things are not harmed by the development of private land. Mr. Curtin's comments, I do want to remind you again, I know you were all here. Most of you were here for Mr. Pillsbury's and his team's presentation on the significant investigation that they did and to those accusations that for a long time in this project we heard about thousands of stumps and large volumes of toxic fill and drums and all these things. Then Mr. Pillsbury and his team talked about doing more than 50 holes out on the site with full co-operation of the property owner. Those holes being 12 to 19 feet deep. Being directed in all different locations on the site happening over the course of two days bringing in the second of larger machines so they could dig bigger and deeper holes. At the end of the day they compiled a thick report with testing analysis with what was dug out of those holes; with photos and lab results. I know the Council has on file and the Planning Department has on file a thick report on that. The result of that was nothing. That these things were not found. If there is massive amounts of impact there you would think that there would be evidence of it when the exhaustive study was done. That couldn't have been required but it was strongly suggested of the applicant and the applicant complied and as a matter of fact brought his own machines in to make sure that happened and directed them at the City's direction. I think that issue was well investigated by the City. I think is put to bed. I'd be happy to take any questions on the project.

President Hart: I am going to close the hearing first. At this time I am going to close the hearing and turn to my Councillors. Does somebody wish to make a motion on this?

Councillor Ryan: I will make a motion. Councillor Daly O'Brien: Second.

Councillor Ryan: I just wanted to make a couple of points. I am not going to speak long. I think it's important to discuss some of the issues when people raise concerns about water because there are many people in the community that are watching thru our cable TV. (tape change) The gentleman who spoke about we may have another dam. I think that is wishful thinking. If we ever built a dam we would probably flood everybody in Plaistow and Newton New Hampshire. That would never ever be allowed to happen because there are hundreds if not thousands of homes that have been built all thru Southern New Hampshire and that area. You just can't dam up because once you've stopped the water and you'd make a lake, it does back up and eventually it's going to go in everyone's cellar and that area. So I don't think that's ever going to happen. Probably was a great idea when it was there. If you could have a lake there I think we would do everything we could to keep it. In relation to the stumps, we did have a thorough review. People who were concerned were down at the site. They were asked to point out where do you want us to dig a hole? Where do you want us to check? I think it was as open an investigation as I've ever

seen to make sure that everybody's concerns were met. I didn't see any hiding. This thing as gone on for years, never mind months to get to where we are tonight. We also have to remember, I am not sure exactly, but it's probably about four miles from Millvale and Kenoza Lake. Not four close to it. It's a long ways off. I don't want people to think that we are talking about something that is across the street as we had an issue recently across from Kenoza Lake. This is four miles away and the septic systems that are going to be put in are state of the art. They are going to be meeting all of the Title V requirements which were incredibly strict, versus many older homes in that area have septic systems that are built in the old system. Some go back 50 years. It could be possibly a barrel out there. Unless you sell your house and turn your house over, you never have to do the Title V examination which is a very costly, up to \$30,000 to \$40,000 in some cases to build a septic system to meet Title V. These houses are going to meet Title V. They are going to have the strictest standards. One other issue that was raised and that is the enclosed drain. I listened to the Engineer. I understood this will be rainwater that will be running, this is not going to sewerage or anything like that, this is rainwater on the street that will go into an enclosed catch basin. And then eventually permeate into the earth. That's finally what happens to it. If it rains, it's coming down, this is not sewerage. It's not anything contaminated. It's just rainwater that's going to be coming down with every rainstorm. I do think this has been looked at thoroughly examined by the City. Forced the developer to hire the Horsley Witten group to do extensive environmental review which will be available to Conservation and the Planning Board when they make their review. We've done everything we can possibly do to make sure this project is okay. I think it is good for the City. I think it's going to be good for that neighborhood. It's going to be nice homes which are going to improve the value of everyone that lives in that area in their homes. That's always shown to be the case. I looked up on Broadway when the new homes went in that area everybody's home in the area rose in value. Wherever you have new investment things tend to work on a positive basis. So I do think the time has come to vote for this. I think the project is a good one for the City. I think that it's going to be good for the neighborhood and I think we should look at it very positively. I intend to support it.

Councillor Daly O'Brien: I am sure that some of the comments that have been made tonight you would think that we haven't looked over this material. In fact because this has gone on for the length of time that it has, I think I have read and re-read this material more than almost anything else I've had come in front of me. Bill Pillsbury has done a great job providing us with updates as things have changed and there have been several changes over time. There are several pieces of this that have been taken apart and put back together as we saw tonight how they've changed the project. There are several things included in the permit what we call conditions that are attached to this now that are coming from our Water Department, our Wastewater Department, the Fire Department, Conservation, the City Engineer, the Health Department. All of these people, on top of this peer review that was done as a final and extensive overview, have made this project one of the most solid we have seen. The way they have changed this from the original thing that we saw a few years ago is incredible. I think they have really listened to the concerns of the City and the City's departments. With that I say I am supporting this because this is the way developers should do a project. Work with the City. Work with the people. This is an area of the City that is only going to be enhanced by this project. It is not forty houses. It is not sixty houses. It is not even twenty houses and it's done so well. With that I am ready to support this project tonight.

Councillor Hall: Attorney Borenstein could I just ask you a couple of questions. I am completely in the dark when Mr. Matterson got up and spoke about this area where the dam was. Where is that located in relation to the proposed sub-division? Attorney Borenstein replied "I have no idea." Councillor Hall, "so it's not in the immediate area?" Attorney Borenstein "I don't know where the lake might have been in the past."

Councillor Hall: To your knowledge, from what you've seen in the plans, I don't have a clue to where this area would be in regards to where your client wants to do the building.

Attorney Borenstein: I do know we are complying with the various setback requirements and not encroaching in the areas as spelled out in the watershed protection ordinance.

Councillor Hall: I have been sitting here since day one when your client started. I think they have been thru the hoops and over the fences and down the road and every other place trying to comply with the City's recommendations. My question is, and I am kind of concerned about is the bridge. I notice there have been some recommendations made by the City Engineer that your client make complete repairs to the bridge with the amount of maybe \$114,000. Is that something that you are familiar with?

Attorney Borenstein: I am familiar with the Engineering Department's memo, yes. I believe the Engineering department memo states that before the bridge would be open to traffic, it would need improvement; otherwise the bridge should be closed to traffic.

Councillor Hall: I think the recommendation of the City Engineer is that the expense be born by the developer, is there something you agree to or not?

Attorney Borenstein: No, we don't agree to bear the expense of the bridge. It comes down to simple economics of this project. We've got eight homes that are being built. We are already included installing nearly 4,000 feet of roadway, installing utilities and this Council originally voted, and I think consistent with the engineering memo. Of course if that bridge isn't safe we are not going send traffic over it. It's apparent. But the solution isn't necessary to put sort of an unbearable expense on this project. It would mean, like the other homes that are developed towards the north end of Brandy Brow, that that gate would be removed, but the gates on either side, or impediments on either side of the bridge would need to remain if the bridge was unsafe. We are not asking the Council to somehow endorse putting traffic on the bridge that wasn't safe.

Councillor Hall: I think the Council voted a couple of years ago to open Brandy Brow Road all the way thru to New Hampshire. But, the way the situation is now, there's two gates. There's the easterly and the westerly gates. You are familiar with those two gates? Attorney – yes. Councillor Hall, and then the bridge is in between them. Attorney – one gate is right after it. Councillor Hall, I just want to be clear on this, I am going to support the project but I was under the impression that the City Engineer made a recommendation that this was to be completely fixed before the gates could be opened and the expense would be born by your client but that's not true.

Attorney Borenstein: As I understand the memo, and I have been in conversation with Economic and Planning Department, is that the gate at that end, the bridge would not be used for crossing if it was unsafe, of course that would be the case. Of course we are not asking the City to open the bridge that couldn't bare traffic safely. The ability that is in the existing votes and I think it's consistent with Engineering Department memo, is that that end of Brandy Brow Road might be left closed for the current time period until there was some solution to the bridge. But the other end would be open for access. I just think the expense of that bridge and certainly speaking with my client, we've looked at those memos and that's not a brand new issue that has just popped up, it's something we have been considering. The expense of that just overwhelms this project. We can't support it.

Councillor Hall: I was kind of surprised when I read the figures of \$114,000, I am saying to myself, they put seven years of going thru the courts and going thru the boards and everything else, and now all of a sudden it this pops out at me the City Engineer recommends that before those gates could be open the bridge has to be re-built. His recommendation is at the expense of the developer. You're saying no agreement has been made to that.

Attorney Borenstein: There's no agreement to that, that's true. We are doing several things to improve the areas. I've noted the road improvements. Also, we didn't get into it specifically, but we are setting aside five acres under conservation restrictions; revegetating landscaping areas that are currently not; and bringing some real improvement. We can do a lot of things with this project. We certainly believe we are doing the maximum we can. To bare that large additional expense of that bridge would bury this project. We could but it can't be done in this project. But the rest of the project does bring a lot of benefit and we could still maintain the safety and the improvements to the City with the way we propose here.

Councillor Hall: Let me just read you a paragraph from the City Engineer: "As the City has not identified a funding source for the design and construction of the necessary bridge rehab or replacement, either the developer would have to commit to this work or access across the bridge would need to remain restricted." If this isn't done by your client then the gates aren't going to be open. All I want to say is that the developer's fully aware of this.

Attorney Borenstein: Just so we are clear, the gate at the bridge. The bridge would be restricted. The bridge wouldn't be open to traffic. The rest of Brandy Brow Road that is being improved would be, but the bridge itself under the Engineer's recommendation, his condition is either improve the bridge or don't use the bridge. This project is still viable.

Councillor Hall: So your client is satisfied to the leave the bridge as it is, unless the City wants to fix it? Attorney – that's the financial (inaudible). Councillor Hall – No, I just want to get it clear on this end.

Councillor Macek: Just a few comments. I have seen this project really morph into something that is totally different than what it began as. I had many concerns and I too have many concerns about our drinking water. One of the things that is maybe a little bit of a bitter pill to swallow, if some of the accusations of what maybe has been put in the area is true. Tree stumps, asphalt, whatever is there is there. It's not creating any damage to our water because it's been there for decades from the dates they say supposedly the material was brought in. It's not's in any significant amount that is doing any damage. This project is really not going to involve itself in any area, cause all the borings, fifty borings were done where the project is going to go. So if there's anything out there, it may have dissipated to the point that it's not any longer an issue. We don't have an issue. The engineering reports, all of our City departments, Conservation have really been diligent in checking, re-checking and going thru everything. These houses are being constructed with the utmost concern and with the utmost conditions are being put upon these houses to make sure they are not going to create any additional problems, maybe they will even help solve some problems because of drainage and other things that are going to be dealt with. I think after four years of effort the City has done its due diligence to make sure the developer is doing something that will not harm the water, something that will probably enhance the area and the City. As long as the conditions as recommended are included and the developer follows it I believe this is a good package at this point. What it has become over the years with all the back and forth efforts from both the City side and the developer's side. It's all growth frontage lots now. It wasn't going to be that. There's a lot of changes here. It's almost a different plan. I feel comfortable supporting this. I just want to ask one question. I am not sure who will take it. It mentions lift stations or pumps. Are there any type of ground water, let me find it. I am glad that Mr. Pillsbury is including the Horsley Witten Group peer review letter as conditions. Because there are many things in there that are just state of the art recommendations as to how it should be done and to make sure that it is done that way. Right down to the type of lawn seed that is used and type of fertilizer. It's five pages. I am not going to start outlining it. Very good work by the peer review company and everybody that has been involved here. The question that I wanted to ask is on page 2 I believe. A sliding rail and lifting change should be provided for the effluent, dousing pumps. The applicant states that the simplex pump package. Is this something that is going to be on the private property, these lift, can you explain that? What exactly is she talking about?

Dave Jordan: On one of the lots we have a pump for the septic system. If you look at the boards on the easels, the lower plan, the lot that is all the way on your left, that one septic system because of topography needs to have a pump to get the effluent from the septic tank into the leech field. That is something that will be reviewed by the Board of Health as part of our application to them and their approval process.

Councillor Macek: But that's totally a private matter and will not become a City expense. Mr. Jordan – correct. Councillor Macek - that's what I wanted to be sure of. Mr. Jordan – Completely private. Councillor Macek - The other thing that I just wanted to make comment on regarding that is that there is no water or sewerage it's all private so it remains private. There are no City connections or expenses that will be brought to bare by the community even over a period of time. Is that correct? Mr. Jordan – that is correct. Councillor Macek – Other than that you guys have really chiseled out a nice plan. I do think it's important that whoever has to review this as we go forward that they make sure they are familiar with all of the quality work that is here in the packages and everybody plays by the rules. That's what we need to see happen.

President Hart: Councillor Macek at this time would you like to bring forth the motion to amend the main motion for approval with regards attaching the proposed conditions.

Councillor Macek: I would like move to attach all of the proposed conditions that have come to us tonight, I think there are three separate packets and they come from our Economic Development and Planning Director, William Pillsbury recommend that the permit be approved with all of the special permits with the proposed conditions including the list as outlined in the two letters dated November 14, 2011 and one letter dated November 15, 2011 and make sure all conditions and peer review letter is also a condition of this special permit.

Councillor Amirian: Second

President Hart: Motion by Councillor Macek second by Councillor Amirian.

Councillor Ryan: I think the intent and I did speak earlier about this, the peer review letter. Part of the condition was that we would have a consultant take a good look at this. They have thrown everything in here you could possibly come up with. They were paid, how much were they paid to do this? Attorney – A lot. Councillor Ryan - They were paid a very substantial amount of money by the developer. I think this is a guide for Conservation and the Planning Board. I don't think we should mandate everything in here. I think we are getting back to making this project unfeasible.

President Hart: The only thing I can say Councillor Ryan is Mr. Pillsbury's recommendation to us he mentions specific letters that he'd like to see attached proposed conditions and he also says “along with the final recommendations of the peer review Horsley Witten Group in their final review letter dated November 3, 2011 be made conditions of the special permit and that the Watershed Protection permit so be condition granted”. He's asked for us to include it.

Councillor Ryan: I didn't think he did.

President Hart: Councillor Macek

Councillor Macek: I was just referencing exactly what you just read that is actually what is there. I just wanted to make sure it was included in the motion.

Attorney Borenstein: If I could be heard briefly. The answer to that question is approximately \$40,000 for peer review. The condition, just so we are clear, there's very detailed conditions like Councillor Macek

pointed out including the type of grass seed and fertilizers. I just want to make sure that the conditions that are laid out in the Horsley Witten letter, particularly the November 3<sup>rd</sup> letter that those are to the satisfaction of the relevant town authorities. Building Inspector would be on the conditions under #1; Board of Health would be under wastewater management under condition 2, and then Conservation Commission would be the relevant authority under numbers 3 and 4 in the Horsley Witten letter. Because there is fine detail in there and if we get to the Conservation Commission and they say well we'd like you to use this mix of grass seed not that mix of grass seed we will be violating your condition and of course we would and the Council is going to send those fine technical details to other authorities in the City.

President Hart: I interpret Councillor Macek's motion for amendment to be verbatim to Mr. Pillsbury's letter to us in terms what he said we should attach as conditions.

Attorney Borenstein: I will note that at least one of those memos from the Board of Health says that the Board of Health should have the authority to require what's recommended by the peer reviewer as needed as they see the final plans on the individual lots.

President Hart: Is there any further discussion on the amendment?

Councillor Daly O'Brien: In listening to what he says, I understand what he is saying, maybe we should consider doing all of the recommendations except the Horsley Witten Group giving that more play so that what he's saying about the Horsley Witten Group, if we approve that I don't want them to be stuck when they go to the Board of Health. Or can the Board of Health take something that we've recommended and over turn it. I think all the other stuff is right and I am not saying that the Horsley Witten review letter is wrong. I am not saying that but I don't want them to get to the Board of Health or the Conservation Commission and not be able to move because we put that in. Do you see what I am saying Mr. President?

President Hart: Yes, I am trying to fit in. I don't want to disregard Mr. Pillsbury's recommendation to us.

Councillor Daly O'Brien: Unfortunately he's not here tonight for us to ask him if he would agree that we could make that a little bit more fluid, just that piece to give the other boards the final oversight on that piece.

Councillor Macek: He specifically says that he wants that letter in so I just want that letter in as you said Mr. President. I was trying to mirror image what he was stating in his letter in my motion. I do understand what Attorney Borenstein is saying I think maybe if there is conflict do we need to put language in, if there's conflict between the department and the peer review letter, that it will be a decision that can be handled by the board or department head.

Attorney Borenstein: That's exactly what we are asking for. In fact there's an example at the Board of Health letter, they refer that to the Horsley Witten letter and they say we are satisfied and will require the system that Horsley Witten is recommending if we think it is needed on a lot by lot basis. It's a couple of words, I think, to that motion, which is subject to the satisfaction of the relevant City board.

President Hart: We've got the motion. We've got the amendment and he amended the amendment right now. If you want to make a motion to amend the amendment go ahead. Basically what you just said.

Councillor Macek: I would amend or add to the amendment that in the event of conflict with a Board with the determination of the peer review letter against the department head's recommendations, that the department head or the Board would be the decision making authority.

Councillor Ryan: I'll second that.

President Hart: Madame Clerk do you have that language? Clerk – yes. President – Any further discussion. No discussion. Call the roll on the amendment to the amendment.

Clerk Toomey: Councillor Scatamacchia-yes, Councillor Ryan-yes, Councillor Young-yes, Councillor Hall-yes, Councillor LePage-yes, Councillor Daly O’Brien – yes, Councillor Amirian-yes, Councillor Macek-yes, President Hart-yes. 9 yeas, 0 Nays

President Hart: Passes. Call the roll on the amendment.

Clerk Toomey: Councillor Scatamacchia-yes, Councillor Ryan-yes, Councillor Young-yes, Councillor Hall-yes, Councillor LePage-yes, Councillor Daly O’Brien – yes, Councillor Amirian-yes, Councillor Macek-yes, President Hart-yes. 9 yeas, 0 Nays

President Hart: Passes. Call the roll on the main motion as amended.

Clerk Toomey: Councillor Scatamacchia-yes, Councillor Ryan-yes, Councillor Young-yes, Councillor Hall-yes, Councillor LePage-yes, Councillor Daly O’Brien – yes, Councillor Amirian-yes, Councillor Macek-yes, President Hart-yes. 9 yeas, 0 Nays

President Hart: Passed as amended. That’s the first one.

Respectfully submitted,

Barbara S. Arthur  
Administrative Assistant to the City Council

November 29, 2011

**PETITION FROM STEPHEN STAPINSKI FOR D&D REALTY TRUST REQUESTING  
A SPECIAL PERMIT – WATERSHED PROTECTION DISTRICT FOR ROADWAY  
IMPROVEMENTS: 402-203-None.**

REASON FOR VOTE

In granting the Special Permit, those members voting in favor found that the application fulfills all of the general conditions contained in Chapter 255-19, Watershed Protection Overlay District, of the Haverhill Zoning Ordinance.

President Hart: I voted in favor because the applicant satisfied all statutory requirements for a special permit.

Councillor Scatamacchia: I voted in favor because of the benefit to the City and the applicant complied with all the requirements.

Councillor Ryan: I voted in favor because this project is good for the City.

Councillor Young: I voted in favor because the applicant complied with all requirements as stated in Chapter 255-19, Watershed Protection Overlay District.

Councillor Hall: I voted in favor because the applicant complied with all requirements of the City departments.

Councillor LePage: I voted yes on this special permit because I believe it will not adversely affect the quality or quantity of an existing or potential water supply.

Councillor Daly O'Brien: I voted yes for this permit because they met the requirements of the City departments and it will enhance a section of the community.

Councillor Amirian: Based on the recommendation of Economic Development and Planning Director, Bill Pillsbury and our other department heads, I agreed that the proposed development will not pose a threat to our drinking water supply and it was in the best interest of the City.

Councillor Macek: I voted in favor of the permits as I believe that any and all concerns that may have existed were addressed through the attached conditions.