

**AMESBURY PLANNING BOARD
CITY HALL AUDITORIUM, 62 FRIEND STREET
TUESDAY, 10-14-14 AT 8:15 A.M.**

MEETING CALLED TO ORDER AT 8:26 A.M.

**Present: Robert Laplante, Lars Johannessen, Karen Solstad, David Frick (Acting Chair).
Absent: Scott Mandeville, Ted Semesnyei, Howard Dalton.
Also Present: Nipun Jain, City Planner; Paul Bibaud, Recording Secretary.**

Cumberland Farms 241-243 Main Street

Nipun Jain: To summarize, there was an approved site plan that shows the limit of work that was allowed by the board in the general vicinity of the property line that is shared by the cemetery on this Cumberland site. During the public hearing, there were assurances provided by the applicants to the PLB's concern that the buffer along that property line would be preserved and that there would be no work needed to go onto the cemetery. During the pre-construction meeting, we had talked about what would have to come down and where the line was. It was our understanding that there were some trees that could come down, which were right on the property line, because they were doing some drainage work. But it became apparent a week ago that pretty much all of the trees came down. The PLB decision requires that if it was going to be a significant modification or deviation from the approved limit of work or the work shown on the plan, that the board would be informed about it, and if the board approves it, then the work would move forward. In order to document what were the deviations, we had the site contractor prepare a survey plan to show what was the extent of work that had taken place or has taken place, and the encroachment into the cemetery. There is also photographic evidence which corroborates the findings of the survey that there was work that went beyond the property line into the cemetery. The site contractor, in response to our concerns, indicated that they had gone to the DPW to get permission to remove those trees, and in talking to those officials, Denis' point of view was that since the trees were damaged during the excavation, it became a public safety issue, and that is why he did not have a choice but to make sure that there weren't any public safety issues, that he allowed the trees to come down. The real issue is that the work went beyond the property line, it was not per the approved plan, and if there were changes that were going to be made to the limit of work with construction activities, it should have been brought to the attention of the PLB before those changes took place. That was the primary concern that the board members expressed, for which they wanted to determine A. what the violations of their approval were, and the extent of violations, and what is the next step?

David Frick: I do recall in the discussions about what was going to happen to the trees that were behind the wall there. My understanding was that the wall was not going to be moved and that there was going to be no need to touch any of the trees back there. Correct?

Nipun Jain: Well there were some plans that show that the retaining wall would be retained. Then the final plans show that a new wall would be put in. Those plans were never coordinated. I think the discussion did take place and that is what lead to the question from the PLB that if the wall is being replaced and the drainage work is being done, there is no way that you would not end up either very close to the property line or there was a discussion about the possible need for temporary construction easements. The primary applicant for the development side, along with Cumberland Farms, indicated that we will not have to go on cemetery property.

David Frick: So this drawing we have in front of us was done by the site manager?

Nipun Jain: Yes. So the contractor wanted to document, I think they wanted to make sure that the city was aware of what we have done. They definitely responded expeditiously to our concern of determining what had been done on the site, as it relates to the removal of trees and damage done to the trees. We have here today the construction firm team for Cumberland Farms, as well as representatives from our consultants, Horsley-Witten, the site inspectors.

Dominic Taverna, Senior Construction Engineer and project manager for Cumberland Farms. I have with me today Matt from Bowler Engineering, our landscape architect, Tim Doyle from Torrey Construction who is managing the project for Torrey, and Kris and Emily from Horsley-Witten. I guess the whole thing started with putting in our retaining wall. We came across some trees and roots of trees that were damaged. The building inspector came down, saying we'll have to remove some of those trees because of damage on the roots, so then we went on the property and removed the stumps. I got a letter from Denis, stating that we could do that. That was his instruction, in the name of public safety, to go in and remove the trees. My understanding is that there were probably, the trees that weren't designated to come down, were probably 4-5 maple trees and then some locust trees. We have photographs of the trees that were existing. That is where we are at. We certainly didn't want to encroach on the cemetery property. If we ever need to get on neighboring property to put our retaining wall in, we will ask for an easement. In this case, that didn't happen. I don't think anyone knew we were going to be on that side of the property line.

Robert Laplante: Couple questions as you speak: you just mentioned the fact that you did things after the fact. You took the wall down, then you found trees and roots had been damaged, trees other than trees that were supposed to come down you took them down, you also didn't know that that property next to the wall wasn't part of the Cumberland Farms property. You didn't get permission. If it had been a property owner, but you didn't know, you would've asked for an easement. We have these detailed engineering plans that we look at. If you could go back and walk through that again, exactly what did you do, when did you do it, and what did you know when you started.

Dominic Taverna: I was not present at the meetings on the entitlement process that you went through here. But what I can tell you is that our superintendent was down at the site, walked the area with Rob Desmarais, DPW director, so we put a fence up on the property line, or beyond it, so we could protect the public from coming onto the property.

Robert Laplante: Is it common practice to put a fence on somebody else's property? Without permission?

Dominic Taverna: At times you do. We try to do this to expedite a project. Sometimes you can go talk to a neighbor and try to work it out.

David Frick: Robert, lets try to do this in an orderly fashion and have questions later. I'd like to start with what the property look like beforehand. You said you had photos?

(someone spoke from the seats in the auditorium but was inaudible). I guess there was some Norway maples and locust trees.

Matt Merva, Bowler Engineering, landscape architect: We were proposing oaks and evergreens along that property line, on our property.

David Frick: So let's go back to the beginning. Robert had questions about what the process was. I heard it a little differently. It was our understanding that none of that was going to be needed to be touched, and I don't know when it changed for the retaining wall was going to

come down that was there and a new one was going to get put in. It was somewhere in the change of plans towards the end of the process, was it?

Nipun Jain: The only change was that there was some questions about the existing retaining wall with the existing store at that time. I think there was always an intention to replace that wall. It was how much of it would be replaced. So the final plans show the removal and also indicate what kind of wall it would be, material-wise. I don't think all the plans correctly reflected that. In some of the sheets, it still shows that the concrete wall would remain. That is part of the confusion, but I think for all intents and purposes, if you look at the peer review, look at the discussion, you knew that there was a wall going to be built. That is what led to the discussion by the PLB as to, "ok, this is a significant wall, but there is no detail of the wall, and how much you would have to excavate." The response at that time was "well, we are not doing the structural design; it is going to be designed by others." But in all of that care will be taken to ensure that no part of the construction required for the wall has to go beyond the property line, because I think they all understand, they've been doing this for so long, that if you go on private property, you need an easement to do that, for liability purposes. Permission is one thing, but there has to be an easement. So it was stated in the meeting that if we do, we will go get an easement and ensure that we do work as is allowed by law. 2. the discussion also included "what do we do with the existing trees?" Some are scrub, but the majority of the trees can be preserved. The applicant was very clear, yes, they had no intentions of taking down the trees, even with the new wall, and that they would be preserved. And in addition to that, because some of the trees were coming down and in the approved plans, you see that there are 4-5 oaks that were proposed right next to the drainage swale. That was satisfactory to the board, as far as a buffer. In order to not only meet the requirements of the site plan performance standards for landscape buffer, but also as to how it provides visual privacy from the cemetery side. That is really the background from which we were operating.

David Frick: OK. When was the fence installed?

Dominic Taverna: The temporary fence, after we walked it with the DPW director and the building inspector, they gave us full permission to install the fence. That is what our superintendent tells us.

David Frick: Was that before you started digging away at the wall, pulling dirt out, etc.?

Dominic Taverna: When we set the site up, our first thing is public safety, keeping everybody safe, including our workers, including people from the town.

Lars Johannessen: Re: the fence then, was the fence straight when you started and got moved as time went on to protect the public?

Tim Doyle, Torrey: The fence went around the trees that were still in place. The survey that came out after surveying the property line, then they identified the trees and put some tape around the trees that were to be preserved. The fence went around, it was never straight. It went around those trees. Wally walked it with Rob Desmarais and he said the cemetery commissioner ... I don't know who that is, I'd have to ask Wally.

David Frick: OK, then you start the process, and you are digging for the wall, and at some point, the tree roots get exposed?

Tim Doyle: The first process was, they cut all the trees down. They cut the trees from the property line into the property, and then that's when they left about 15 or so trees that were to be left, were taped and left to be preserved. I'd guess the number of trees taken down on our side was ... a lot. The process is, they cut the trees, they get them off the site, they chip them up. Then they come in and grub the stumps out. When stumps come out, unfortunately, the roots

make their way wherever it may be, and they try to take them out as best they can, but I'm thinking that is probably when some of the disturbance happened.

David Frick: But we were under the impression that none of the trees were coming down, correct?

Nipun Jain: On our property, correct.

Lars Johannessen: Have you removed the stumps on town property?

Tim Doyle: The stumps were removed. They were removed last Thursday or Friday.

Lars Johannessen: How much more incursion happened on the cemetery property occurred at that point?

Tim Doyle: Wherever the trees were. Kris, you were there. Was it a couple more feet? It was within that... it hasn't gone past the fence line. I'm sure it is in a couple feet from there. Is that accurate?

Kris Houle, civil engineer, Horsley – Witten Group: The majority of the stumps that were left onsite at my inspection after this whole ordeal came up, were on town property in two large clumps of stumps, one that began just at the property line and extended about 5 feet onto the town property, then a second patch of stumps that had already been removed by the time I was present on site. That was much closer to the adjacent property owner, I forget their name or direction, but the Cumberland Farms side vs. the cemetery side. The temporary fence was run probably 5 to 10 feet along its length into the cemetery property.

Lars Johannessen: My major concern is, there are graves there. The fence is on the graves, I believe. You may not see the stones, because this is the oldest part of the cemetery. Without poking into the ground to see where the stones are, it's not possible to tell.

Kris Houle: I'd add that I observed that this morning. At least the graves that I could see, the closest graves that I could see were flush with the ground. Again, those were closer to the other abutter property on Main Street, to the south, away from Rt. 110. I believe the temporary fence was about 4-5 feet from those nearest graves. Then there were a few graves that were above grade, closer to Rt. 110 that were 8 feet or so from the temporary fence, I'd estimate. If there were any graves already covered over with grass, then I didn't see them.

Lars Johannessen: At one point I went out and measured between the fence and the grave stone and it was either 24 or 22 inches.

Karen Solstad: One quick step back to get to the planning process last spring. We had quite a few discussions about the retaining wall, the existence of the old stone wall, and the old retaining wall. We got many assurances that that old retaining wall was going to stay. So the ground along there was not to be disturbed. We did have concerns about the limit of work, that this was an historic cemetery, the Sandy Hill Meeting House was there, and how close it is. Years ago, I saw old pieces of broken gravestones in amongst the trees. It was never clear. I doubt in the 1600s they put clear delineation that "beyond this line, there will be no more graves." But we were assured many times that the retaining wall was between 5 and 10 feet back from the property line, and that there would be absolutely no reason to make any incursions into the cemetery, and that CF would take all due diligence and promise that there would be no incursions into the historic cemetery. So I'm peeved about this. After all the assurances, and we did have a final plan for the block wall that was being engineered by someone else, that every assurance ... it's just a block wall, we're not going anywhere near the property line. The landscaping plan was like "well, we're going to keep the existing trees, so we'll only need that much landscaping along the back. The fact that somebody with a backhoe went willy nilly going into the wall, feet away from old gravestones, really bothers me. I feel the issues discussed with the PLB weren't heard

or they weren't conveyed properly, or that somebody just got let loose with a backhoe. It is concerning that you are digging into a cemetery. The other incursions into the cemetery are totally unacceptable.

Matt, Bowler Engineering: In response to the wall question: I believe that the wall has been completely excavated on our property, and that the excavation is what exposed the roots to the trees. I don't believe we were extending the excavation into the cemetery property until the DPW asked that those exposed root trees be removed.

Karen Solstad: What I have done, by your engineer, it shows excavation into the cemetery all along the property line.

Matt from Bowler: I believe that is disturbed area. I don't deny that that is disturbed, but I believe the disturbance is because of the tree removal, from going in and taking out the trees and stumps.

Lars Johannessen: The stumps were still there when the dirt was disturbed. There was plenty of incursion digging with the stumps in place, before removal of the stumps.

Karen Solstad: I'm looking at the plan from Cumby's engineer, it shows the limit of disturbance well into the cemetery along just about the whole property line.

Matt from Bowler: I understand your concern. I can only tell you that our superintendent was aware of the cemetery. He walked it and was interested in all the headstones, etc. I know you said the contractor was going in willy nilly just pulling... I disagree with that. We were pulling stumps out. We understand that it's a cemetery, and when pulling out stumps. As the roots came, he was watching that. That is what disturbed the area. We're aware and apologize for that, but we weren't just going in trying to dig. I just want to clarify that the ground was disturbed when we went in and pulled out stumps. When they were removing the soil for the wall, and that was all on our side. We never went onto cemetery property. It all has to do with the stump removal where there was some infringement into the property. I just want to explain that.

Robert Laplante: How close is the wall to the property line?

Matt: Seven feet on one end then it goes to twelve feet on the other end, from the base of the wall to the property line.

Robert Laplante: How wide is the wall?

Matt: Let's say 2 feet wide.

Robert Laplante: Theoretically, could the wall have been removed without intruding on the adjacent property?

Matt: The existing wall that was in was removed. Now I'm not sure what was behind that, but they didn't dig into the property to take it down. It was a concrete wall, and typically, concrete walls have a footing that will go some extra feet towards the other property line.

Nipun Jain: The wall itself, the way it was constructed, probably did not start the incursion. I think the new wall, with the drainage behind it and the way it all needed to be designed, required the digging to be closer and closer to the property line. So just the action of taking down the concrete wall wasn't what really triggered the movement towards the property line.

Robert Laplante: In my experience, if you are doing construction on property, you could only do it on the property that you were working on. If you had any kind of requirement to go on, near, or affect another's property, you had to do whatever you had to do. So I would have done it all in accordance with the requirements, within your property lines, etc.

Dominic Taverna: I believe that was done. We had property lines staked out. We walked it. The property line was staked.

David Frick: Is the new wall closer or further from the property line than the previous wall?

Dominic Taverna: I believe it is further away. The one that was removed wasn't the entire length that this new one is going. I believe it was just behinds the back of the existing CF, closer to Route 110, if that helps picture this.

David Frick: So you go to build a wall that is 7 to 10 feet from the property line, and somehow in doing that, you expose the roots... why don't you show us all on your plans.

(a huddle of all players ensued, largely inaudible with no portion recordable or explainable by this writer, who was excluded from the hushed conversations. This went on for over two minutes).

David Frick: All I'm trying to say is if the new wall is 7 to 12 feet from the property line,, and the trees here look like they are roughly 5 feet or so from the property line, and then the wall is 7 to 12 feet from that, we're talking 12 to 17 feet from these trees, and yet the digging got so close that the roots were exposed and dangerous? It just seems to me you had to be over the line. So when you did your excavation around there to build this wall there, how close did you get to your property line?

Tim Doyle: The wall is about 7 feet off, so we came to within 5 feet or so. There was already a pretty good incline back there.

David Frick: If, in doing this process, it was done in some way, and you can see where these trees are, and you're staying 5 feet from the line, You'd think you've got about 8 feet there, at least, and yet somehow your getting into the roots significantly enough that it was damaging the trees and causing a danger. I'm not sure how it all occurred, but...

Tim Doyle: When that retaining wall was in, I'm guessing that (I didn't witness it myself) typically you have a footing on the retaining wall, and that much would come out, and it must've been wider than was anticipated. That is probably why they were closer than they hoped. Obviously, down here, we didn't have a footing or anything to rip out. There was just a small area here by the trees where that retaining wall was.

Lars Johannessen: From what I understand and what I have seen of the construction site, the property has been excavated to the property line in order to put the Shay block wall in. So basically, everything but the stone wall remains, the little piece of stone wall right on the border. I guess the drawings from Shay Company said this is what you have to do, because you have to have so much fill behind it or something? So that stone takes up maybe 5 feet? When you went the full length of the property line to the property line, whereas you have that 10 or 12 feet from the front of the block, so you have the 10, you've got 2 feet, and you've got another 5 feet beyond that, so...

(unknown response inaudible to the microphone).

Lars Johannessen: That was not a 45 degree angle when you dug that out, no. It was more like a 70 degree angle, if not 90 degree angle. I live close by and see it all the time.

Tim Doyle: Honestly, if it was a 45 degree angle, they definitely would've been into the property.

Nipun Jain: The base of your new wall is actually six feet. That is what it requires. Then you need about 18 inches for the crushed stone and the drainage pipe. So if you are looking at it where you are supposed to be between 6 or 7 feet, you cannot be without getting into the cemetery, in order to get your base in. That is what the drawing shows. So you didn't have a choice, based on the structural drawing that was provided for the construction of the retaining wall to be in the cemetery at the closest point of the new wall to the property line. There was just no way to meet the engineering standard. It is the Shay block cross sectional detail that will show you that. So I think that was pretty clear at that time, or should have been clear to the site

contractor that “I have to be 7 feet just for the construction purposes for the base of the wall and the drainage. And I know, for excavation purposes, you’d have to go beyond that. Because you can’t maintain a 90 degree cut. You’d have to be at least, 45 is desired, but given the situation, you were trying to keep it as less as possible. But there is no denying the fact that it is an engineering requirement that triggered the incursion into the site. It isn’t that it could not have been prevented. It should have been known to all parties involved that once the design is finalized, the PLB didn’t have the design at the time of making decisions. So you would not have known, and that was the question: how can we make sure that this doesn’t extend? Once the design was finalized, I think the decision allowed the applicant to say “ok, now I have an engineering design, it requires a wall base and other engineering requirements to be into the site by one foot, two feet, whatever, and they should have come to the board and made them aware of the fact that this was going to happen, and this is what we need to do to accomplish the engineering requirements of that wall, which could be removing trees, replacing trees, new landscaping plan...that is the part that was missed.

Robert Laplante: This is the part I can’t understand. Cumberland Farms hires all these people to provide all of these plans to meet the local requirements and all of the requirements, they hire people, construction, professional, etc. You understand that the plan says we have to take a wall down and it is going to need a base, need drainage, can we fit that all in within the site? If the answer is no, you just don’t go do it. You say, “hey guys, this is...” and then they have to come back to the town. They obviously didn’t happen.

David Frick: Or be re-engineered so it is not crammed in so close and intruding on the cemetery. There’s two ways to do it, right? Either you figure out how to do it...

Robert Laplante: It’s difficult to explain to people that requirements weren’t met. You go out in the field, you discover new conditions, you adjust to those conditions and you just don’t start tearing something down, or you call someone and tell them you have to go over here. I do understand now what the process was. My question is: how do we fix it?

David Frick: We’ve heard from the people doing the development work. Let’s hear from our engineers, or if anyone has any questions for them from the board?

Nipun Jain: I would just ask Ellie if you had anything to add, that would be fine, but I don’t expect an explanation of what happened, how it happened. I know you’ve had some discussions with the construction team, so if you want to quickly summarize what they have offered as a solution to resolving this, then definitely go ahead.

Kris Houle: I just want to add one point to the previous discussion. I think if the survey drawings had indicated actual tree locations, maybe something for the future, the tree locations would have gone a long way to identify what trees may or may not have been impacted by the proposed construction. I believe there were two large clumps of trees. So once the trees were removed from the Cumberland Farms property, because they were so close to the trees that were just over the property line, it would be almost impossible to not impact trees that were over the property line. There depicted on the plans as a tree line patch or area. That doesn’t give a whole clear picture as to what location of the trees would be, either existing or proposed condition.

David Frick: Kris, do you agree with Nipun’s assessment that with the wall and the size of the base and the drainage behind it, etc. that by the time you put that all in, and the proximity it is to the property line, that there is no question that you’re going to be starting to disturb property outside of your property line?

Kris Houle: Certainly. Had that cross section been available during the approval process, I think that it would have been evident. At least how it is out there today, the wall footprint is at least 4

feet from the base to the back of the wall, from face of wall to back of wall, and then another 4 feet for the stone and the drainage system behind it. The only way you'd be able to do something like that would be with sheet piles, something that could have been identified during the design process. They could've put sheet piles just inside of the property line and potentially build the wall that way. But yes, excavation at a 90 degree angle is nearly impossible.

Dominic Taverna: If we did use sheet piles, perhaps we still would've impacted the roots of the tree system.

Kris Houle: I concur with that statement, definitely.

Lars Johannessen: We are very fortunate in Amesbury that the glacier came here and impacted the ground severely. So that ground doesn't move, even if you cut it at a 90 degree angle. I've seen it happen many times. A guy digging in sand, dug his whole basement out with 90 degree angles in the sand, and it did not move. Many other places, where the ground is a lot looser, but here, no. It is very hard there.

Kris Houle: That may be true, but it is also, from a construction standpoint, a safety concern for this particular site. It is a very large slope.

David Frick: The only point that I'm drawing from Nipun's thing is that when the plans were done, and before construction started, somebody should have been out to look at that and say that "there was no way we aren't going to be right up against the property line. We need to talk about this and figure it out before we begin." Is that what your thought is and do you concur with that?

Nipun Jain: This is something of a lesson for us, in the sense that the bylaw requires that when you have mature trees of a certain size, that they be actually marked and shown on an existing plan. In this case, because we were assured that you would not have to go and take those trees down, the board was sympathetic to not having the applicant go out and require every single tree to be surveyed. In the spirit of working with the applicant, the board at times allows certain flexibility. Clearly it didn't work in this case. The other requirement is that if you are doing a wall that close to the property line, then you should be providing that information during the permitting process. Again, because of the assurances, the board was willing to be flexible. I think it is a two way street where if the board showed some leniency during the permitting process, I think the applicant, now I'm not talking about the contractor, I'm talking more about the applicant. The development team should have been aware of the fact that the board was or had been flexible, so we should provide all that information. The project was approved way back in April.

David Frick: But even if there were no trees there, if you are going to get this close to somebody else's property line, what is the protocol for when you decide you need to talk to that property owner?

Nipun Jain: As soon as you know that you are going to be on somebody else's property. In this case, I think there are two other reasons why, just from a legal perspective, it is critical. 1. this is an ancient cemetery site with federal laws that kick in. If the other property owner, if somebody claims damages, we're in the line to address those legal claims. 2. Safety. There is right now nothing that I see obligating the developer to indemnify us if somebody gets hurt. So that is our obligation as a city. As a public entity, we have more to lose because any general public can be on that cemetery...not that they should be there with the fence, but when things go wrong, they go really wrong.

David Frick: I know as a private property owner, they could take whatever actions they feel are appropriate. I don't even know what the proper protocol is, at this point, where we've had the intrusion and issues, so I guess that is part of the discussion going forward.

Kris Houle: If I could just add one thing here. I have reviewed the landscaping drawings that were submitted at least in the application plan by Bowler, but it is my understanding that they have some other suggestions, so I open the floor up to them.

Karen Solstad: I've learned a lot through this process, and some of it is don't take for granted what you think something on the plans might show. What this raises for me is, I have a lot of questions about the height of the retaining wall and the magic that will occur with a swale going from the top of the retaining wall back down, away from the wall? Then some magic that happens where, somehow, that level becomes this level at the cemetery, because there is a height difference. And shame on us for not asking for more topographic information along the back of the property and cemetery, about how these height differences are going to be dealt with. Any action we take now, be very detailed about the height of the wall, the exact height of the swale, details about the swale being here, it'll be at this height, this is the surveyed height within the cemetery, and how is that going to be landscaped, both on your side and on our side. What is the grading on our side? I'm seeing swale and cemetery, and I don't understand the magic that happens between the two. I think a lot of that magic is supposed to happen is on town property. I don't think the town should be responsible for making that magic happen.

Matt from Bowler: Would you like me to go over the grading?

(the entire group of all players congregate in front of the board, without microphones, and review the plans discussing at length each detail...all inaudible. This goes on for roughly 5 minutes).

Nipun Jain: That will then determine what sort of landscaping plan will work. Once we know how the grades are and what steepness they are, should we do one sort of plan or another? Should there be a fence at that point? A lot of this is clearly something that wasn't anticipated, so the board didn't ask for it at that time, but now that we have this situation and everyone seems to want to fix it, so we have to outline the steps to get to that point. The project was approved by the PLB. That is where the disconnect is happening. The project was approved by the PLB, there were certain assumptions made. It was reviewed by the city officials during the permitting process. Now that changes are being made, the permitting agency has to approve the changes. I think we would never approve a plan at this agency without taking the comments from the cemetery director or the DPW director, or the so-called property owner. But the ultimate decision rests with the PLB. I think you may need to get a temporary construction easement in order to go on cemetery property to do any work. Any final grading or landscaping, at this point in the year, might have to happen in later spring, just like all your other landscaping. I don't see how you can put it in before your store opens. Then it will have to survive and grow, etc. My point is that the PLB is trying to establish what is it that we need to do to fix the problem. What is it we need to do to come to a resolution that is acceptable to the property owners, and how soon can we get to it? What is the process going to be to approve that? It isn't possible to do today. But they might identify the steps so we continue to come to a solution and not be in violation to any terms of the approval. That is the game plan, unless the board has some other issues needing to be resolved.

Lars Johannessen: The DPW director and the cemetery commissioner were not consulted on this at all because we were not supposed to be on their property at all.

Nipun Jain: I think during the permitting process, when that issue was brought up, it was because there was no intention to go on that property. They had no comments. To say that they

were aware of the issue, it would be not fair to us or the PLB. But in speaking at this point with the DPW director, he has indicated that he wasn't aware of this level of incursion. He knew there was some incursion that would be needed, but this is much more... he is not monitoring the site on a daily basis, so he is aware, would like to see it remedied, but he is waiting for the PLB to also act.

Ellie Baker, Horsley-Witten Group: One question on what the mitigation plan might be. They do have a landscape plan for the landscape buffer along their own property. Does the board want to see additional plantings on the cemetery property proposed that can then be discussed, or do they want ... what would you like to see there?

Lars Johannessen: I think we should see what the building looks like when it is in, to decide what more screening we need to do.

Karen Solstad: I guess my concern is how to bridge from the top of the wall to their property line and the cemetery. That's a big concern of mine. It might be that additional landscaping is warranted there. The problem is that there are stones right off the property line. I'm concerned about the relationship between the cemetery and the property line. It might be landscaping, it might be a small section of old fieldstone wall that is more in keeping with what is there. I don't know so I'll reserve judgment on that. I think we need to see some different plans /ideas that are creative and with a lot of thought put into them. I want to see how those elevations and the swale will work. My other concern is that as we are coming up on winter, I want to see a plan that will stabilize that whole area back there for the winter.

David Frick: I agree with what's been said about the landscaping. A couple other issues: since you are into town property now, it seems to me that we do need to have a construction easement, which takes away liability from the town and allows you to be using that in the meantime. So we should get that in place. Also, I'm wondering, we have this great big wall here. It won't be visible behind the structure but will be quite visible here. How high is that wall above the ground level? (8 to 10 feet). Could that blank wall be landscaped with ivy or something? (they will look at that for landscaping).

Matt from Bowler: I just wanted to express the need for a revised grading plan. I see a potential conflict right now as is on the plan. There is a 56 contour that runs through the stone drainage swale. The top of the wall is at 54. So in order to construct that swale, you have to be at a pitch like this, and a sloped swale would not function as shown on the drawing.

Nipun Jain: Not even on the cross section for the retaining wall would that function, because the way it is shown on the cross section is, the wall is higher. Then there is a typical swale.

Matt from Bowler: Any revised landscape plan should be accompanied in my opinion with a revised grading plan for this particular location behind the retaining wall.

Nipun Jain: I'd like to suggest a series of steps to accomplish the goals that the board wishes to see: 1. We have a PLB meeting on Oct. 27. We should ask the applicant to provide a revised grading plan, proposed landscaping buffer plan along this property line so the board can start discussion and review of that asap, look at the legal documents that need to be established for work on city owned property, any financial security should be established by the end of this week or asap. We still require the PLB to endorse those documents and surities, even if it is to be done as a follow up. We do have some drawings that were provided for the retaining wall. I think they are stamped by a civil engineer, given that the wall is over 10 feet, it should be stamped by a structural engineer. Given that it will support a lot of the soil behind that is part of the cemetery, we need to make sure the wall is designed and signed by a structural engineer. If you have the information to support it, Tim... all I need is drawings and evidence that the wall design has

been reviewed and is acceptable. Those are the things I would suggest, given further investigation and information that is provided by bore engineering or others re: grading, existing situation, and the board may require more information as the need arises to resolve this matter.

Karen Solstad: There is an existing stone wall on the southern bound of the property with the residential property. The plans all say “existing stone wall to remain.” Can we have an agreement or revision to the plans that incorporate into this that that stone wall, if it has been damaged, moved, with all the construction happening right up to it, that that stone wall be repaired.

Kris Houle: I observed that stone wall and it is outside the temporary construction fence. I don’t believe it has been disturbed, nor has the historic old stone wall at the northwest corner of the property.

Nipun Jain: As for things we need to do: 1. we should probably have an erosion control bond established in that section, 2. because we should have some additional financial surety until all of the desired mitigation plans and until all legal documents are in place.

Motion was made by Karen Solstad that we accept the recommendations of Nipun Jain. Motion was seconded by Robert Laplante. Vote was unanimous.

Motion to continue to Oct. 27 was made by Karen Solstad and seconded by Robert Laplante. AIF.

TIF COMMITTEE APPOINTMENT : Robert Laplante nominated by Karen Solstad, seconded by Lars Johannessen, and voted in. AIF.

Endorse Subdivision Plans 56 – 58 South Hampton Road

Motion to approve the endorsing subdivision plans as long as the last signature of the PLB would be withheld until all of the items pursuant to the decision are addressed and meets approval of city planner, by Lars Johannessen. Seconded by Karen Solstad. AIF.

Endorse Subdivision Plans 19 Evans Place / Amanda Lane

Motion to approve the endorsement of the plans provided they get a final signoff on the planning board’s consultant and the planning staff was made by Lars Johannessen and seconded by Robert Laplante. All in favor.

Motion to close the meeting made by Lars Johannessen, and seconded by Robert Laplante. AIF.

Meeting was adjourned at 9:53 A.M.