**UNAPPROVED MINUTES**

**Town of Auburn**

**Planning Board**

**PUBLIC HEARING**

**May 4, 2016**

**Present:** Paula Marzloff, Michael Rolfe & Steve Grillo, Members. Jeff Porter, Alternate. Dale Phillips, Selectmen’s Representative. Minutes recorded by Denise Royce.

**Absent:** Ron Poltak, Chairman. Alan Côté, Alternate.

Mrs. Marzloff called the meeting to order at 7:00 p.m. and informed everyone present tonight that she would be chairing the meeting in Mr. Poltak’s absence. Mrs. Marzloff stated that she would be elevating Mr. Porter to full voting status for tonight’s meeting to fill Mr. Côté’s absence and proceeded to introduce the Board members and Alternate members. Mrs. Marzloff asked everyone that if they were to ask questions to state their name before asking a question so that Ms. Royce could put it in the minutes.

**MINUTES**

**Mr. Grillo moved to approve the minutes of April 20, 2016 as written, Mr. Rolfe seconded the motion. A vote was taken; all were in favor, the motion passed.**

**ANNOUNCEMENTS/CORRESPONDENCE**

* None were reviewed at this time.

**GENERAL BUSINESS**

**Informal – Corey Joy**

**40 McQueston Drive, Tax map 2, Lot 5-4**

**Discuss Wetland and Potential Conditional Use Permit**

Mr. Joy began by saying that she was before the Conservation Commission last night and passed out copies of the proposed plan for the Board to review. Mr. Joy stated that he had spoken with Mrs. Rouleau-Côté and she suggested that he go before the Planning Board for an informal to discuss what he was proposing to do at his property located at 40 McQueston Drive. Mr. Joy continued by saying that the lot has changed and that in 2004 the lot is showing that the Level One wetland was on the property. When he bought the lot he believed it was the same and after speaking with Mrs. Rouleau-Côté that she advised him to get a wetland scientist to see what level the wetland was and so they did hire a wetland scientist to go out and inspect the property. He came up with that in 2004 when they developed the subdivision that they may have overlooked a lot of it and that he is now showing that the Level One wetland is not on his property. Mr. Joy fully understands that he has to be 125 feet from a Level One wetland and does not have a problem with that. Mr. Joy informed the Board that in 2006, the property owner did receive a variance to reduce the setback down to 75 feet. Mr. Joy does not believe that he will need a variance for the building envelope for the septic or the house but believes that he will need a Conditional Use Permit for the driveway.

Mr. Joy explained what had occurred at last night’s Conservation Commission meeting that the Board came up with the suggestion of changing the driveway location so that he was out of the 75 foot wetland buffer. A brief discussion ensued with regard to the wetland buffer. Mr. Porter commented that there was a waiver reduction to the wetland that was granted by the ZBA back in 2006 and the discussion the Board had last night was in changing the driveway location so that it was out of the 75 foot setback so that he wouldn’t have to go back to the Board. Mr. Joy indicated that he was new at this and that the driveway was already installed and did speak to his engineer this morning about possibly moving the driveway to sort of hug the 75 foot buffer line and liked the idea because that meant that the driveway would be smaller and cheaper. Mr. Joy believed that was all that he had to present. Mrs. Marzloff indicated that this was an informal meeting with the Board and that it was not a duly noticed public hearing. Mrs. Marzloff informed Mr. Joy to get together with Ms. Royce and get an application into her to be on the next available Public Hearing.

Mr. Grillo explained that there were a few things that he was confused about and asked if there was currently a site plan in place and believed this would be a new application so there would have to be a new request to have this 75 foot setback from a Level One wetland. Mrs. Marzloff informed Mr. Grillo that it was already in place. Mr. Grillo believed it was a new application. Mr. Porter pointed out that the lot already has a waiver done on it. Mrs. Marzloff further pointed out that the whole subdivision had it. Mr. Grillo was informed that the subdivision was already recorded and that this lot was a building lot of record. The Board members explained to Mr. Grillo that it was depicted as being on his lot originally and in actuality it is not on his lot so he can maintain his 125 foot from the Level One wetland but only needs to get a Conditional Use Permit for his driveway. Mr. Grillo agreed with that completely and stated that a driveway going through the 125 or the 75 that the Board is usually compelled to grant but his concern is around this plan which is known to the Board as having a Level One wetland and that a wetland scientist has stated that this was incorrect. Mr. Porter stated that Mr. Joy is not disputing that it’s a Level One but was disputing the location. Mr. Grillo indicated that he did not have a problem with this.

At this time, Mrs. Marzloff informed Mr. Joy to speak with Ms. Royce to be on the June Public Hearing schedule. Mr. Joy asked if he needed to have it stamped for the public hearing. Mrs. Marzloff indicated that it would only need to be stamped if it were to be recorded. Mr. Joy thanked the Board for their time and exited the meeting.

**PUBLIC HEARING**

**Auburn Tavern**

**John Gianitsopoulos & Alan Villeneuve**

**Owner: Patty and Sheila, LLC**

**346 Hooksett Road, Tax Map 31, Lot 11**

**Minor Site Plan Approval**

***(Construct a new deck and renovate the ramp***

***And entrance. Relocate the driveway entrance***

***To align with Dollard Road and relocate the sign***

***At entrance)***

Mr. Scamman presented on behalf of the Auburn Tavern and Patty and Sheila, LLC. Mr. Scamman began by saying that they were before the Board approximately six (6) weeks ago for a preliminary hearing to add a deck to the front of the building at which time the Board gave them some feedback with regard to traffic patterns and parking and to look at some other things when they were redoing the plan. What they are proposing is to add a deck to the front of the building in the same location with the handicap ramp wrapping around that deck. They have been before the Zoning Board of Adjustment last week and received a variance to build within the setback as shown on the plan. Mr. Scamman talked about parking and aligning the driveway with Dollard Road and that his client met with DOT and that DOT was in favor of that and by doing this would give more green space closer to the neighbor. Mr. Scamman indicated that by doing this allowed them to obtain 11 more parking spaces and showed the location on the plan. Mr. Scamman also pointed out that they added double stacking parking for employees in the rear of the lot and explained that employees are there for their shift and would not be coming and going so they have double stacked five (5) on top of five (5).

Mr. Scamman moved on to discuss the septic and passed out copies of the approval from the State of New Hampshire to each Board member to review. Mr. Scamman went through the approval for the Board members and pointed out that DES has amended their septic approval for 180 seats and broke them into the following:

52 full restaurant seats (13 tables with 4 chairs each)

68 bar and lounge seats (bar area)

60 function room seats (function room at the front entrance (porch) and deck seats)

Mr. Scamman explained that it was a net zero increase to the septic by getting rid of the two (2) bedroom apartment upstairs so that would not be on record with the state anymore.

Mr. Scamman talked about the question the Board members had at the preliminary hearing about music on the deck and explained that there was a note on the plan regarding music (Note #11) and that it was as follows:

Thursday through Saturday 6:00pm to 11:00pm

Sunday for brunch from 10:00am to 4:00pm

At this time, Mr. Scamman opened it up for questions from the Board members. Mr. Grillo thought that the Board did not want music outside on the deck and was surprised to see this on the plan and believed that the Chairman specifically stated that he did not want to see music out on the deck. Mr. Scamman believed that the Chairman wanted to know exactly what would be there to limit what it could be. Mrs. Marzloff asked if there were any further questions on that. Mr. Grillo said no. Mrs. Marzloff stated that she was under the impression that they were looking to know what the issue would be and then it would be very easy to spot a violation when it occurred.

Mrs. Marzloff asked if there were any other questions from Board members. Mr. Porter pointed out that the old pizza place in town always had music on the outside and did not think that there was any noticeable change between venues and believed that this has gone a long way to defining what the proper use could be and thinks that they have done a great job of defining what the position will be from the town’s perspective and what could be construed as out of character and what the other deck was in town was permitted. Mrs. Phillips also pointed out that the deck would be facing the highway and that there was a two story building in between the deck and the residential homes. Mr. Scamman said yes that the building would be in between and that you hear the highway more than you would hear anything else.

Mr. Rolfe asked Mr. Scamman if DOT gave them permission to make a change to the driveway entrance. Mr. Scamman stated that they are working with DOT currently on that. Mr. Rolfe stated that he would like to see that approval and that if Mr. Villeneuve gets something in writing that he would like to see it.

Mrs. Marzloff asked if there was a question last time about lighting. Mr. Scamman pointed out that all the lighting has been done and that they were not planning on changing any of the lighting because it is already lit and this area is already well lit.

Mrs. Marzloff asked if the traffic pattern would be changing because as of today it has still not changed. Mr. Scamman said that it will be changed and explained the new traffic patter being clockwise as opposed to counter clockwise. Mr. Scamman also pointed out that there would be two ways to go out which would be either going left or right.

Mrs. Marzloff asked if there were any questions from abutters. None were noted. Mrs. Marzloff asked what the sense of the Board members and if they were ready to vote on this with the provision that they get something from DOT with regard to the road and driveway entrance.

Mr. Grillo asked if they would need a waiver for the impervious. Mrs. Marzloff informed Mr. Grillo that they are reducing impervious but if they were increasing impervious then they would need a waiver.

**Mrs. Phillips made a motion to approve the minor site plan for Auburn Tavern, 346 Hooksett Road, Tax Map 31, Lot 11, Mr. Grillo seconded the motion. A vote was taken; all were in favor, the motion passed.**

David and Isabel Stiasny

148 Windsor Drive, Tax Map 2, Lot 3-39

Amend Subdivision

*(To construct a 14ft by 14ft shed to be within*

*The cluster buffer)*

Ms. Royce passed out copies of the proposed plan to the Board members to review. At this time, Mr. Stiasny began by explaining what he was proposing to do was place a 14 foot by 14 foot shed in the cluster buffer. It was noted that the cluster buffer had already been reduced from 250 feet down to 200 feet. Mr. Stiasny pointed out the location he was proposing to build his shed which would be at the edge of the tree line in the back of his yard which would meet all setbacks but would be in the cluster buffer. Mr. Stiasny indicated that he would be approximately 77 feet from the open space and 187 from the abutting neighbor. Mr. Porter asked if the buffer zone was a no clear zone. Mr. Stiasny did not know and stated that his lawn is approximately 172 feet off his house and that he has sprinkler heads that basically goes along the whole property line. Mr. Grillo pointed out that we had the same thing with a request to put a pool in the buffer and you can’t put anything within the buffer. Mrs. Marzloff stated that was why Ms. Royce was getting the regulations on what could be in the cluster buffer and did not believe that it was a no clear but believed that there could not be any structures.

At this time, Ms. Royce presented Mrs. Marzloff with the subdivision regulations Section 9.18(2)(B) – Cluster Development Specific Design Requirements. Mrs. Marzloff read the section which states “landscaped buffer suitably located to provide an adequate division or transition between abutting land uses. Wells, leach fields and passive recreation will be allowed in the landscaped buffer” so it does not state that structures are allowed. Mrs. Marzloff stated that his sprinklers were safe but not structures. Mr. Stiasny stated that basically he cannot build a shed on his property. Mrs. Marzloff pointed out that it states no structures and that those were the rules and that there has already been a reduction from 250 feet down to 200 feet and that this is basically something that the realtor does not tell the buyer.

Mrs. Marzloff asked if there were any further questions from the Board. None were noted. Mrs. Marzloff asked if there were any questions from abutters. Mr. Desfosses of Londonderry Turnpike and stated that they have been through this before and that the 250 foot buffer was stated at the time of the original subdivision and was part of the approval process and the people of Wethersfield came before the Board and got it reduced and believed it was fine the way it is and did not believe it should be reduced any further. Mr. Porter pointed out that they were not looking to reduce the buffer further but that Mr. Stiasny was looking to put a shed in the buffer area.

Mrs. Marzloff asked what was the sense of the Board and if they wanted to vote. Mr. Grillo asked if it was a motion to reduce the buffer to allow a structure or a motion to grant a waiver to allow a structure. Mrs. Marzloff said if the Board wanted to make the motion in the affirmative.

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**Mr. Grillo made a motion to grant approval to amend the subdivision to allow a 14 foot by 14 foot structure in a cluster buffer for Tax Map 2, Lot 3-39, 148 Windsor Drive, Mr. Porter seconded the motion. A vote was taken; all were opposed, the motion DID NOT pass.**

Mrs. Marzloff informed Mr. Stiasny that the answer from the Board was No.

**OTHER**

**Strategic Consulting Company, LLC**

**Anderson Way, Tax Map 5, Lot 19-3, 19-4 & 19-6**

**Zoned Residential One**

**Discuss Request for Reconsideration of**

**Planning Board Decision on April 20, 2016**

**To Re-classify the wetlands adjacent to**

**Lots 19-3, 19-4 & 19-6 from a Level One to a Level 2**

Mrs. Marzloff began by saying that they are in receipt of a request to reconsider their previous vote on the wetland setback and will ask the applicant or his representative to present this and then they can discuss the Board’s options. Mrs. Marzloff indicated that they do have advice of counsel verbally. Mrs. Phillips stated that she was not present for the decision but was anxious to see.

Mr. Mitchell presented on behalf of the applicant, Strategic Consulting, Rob Starace who was present tonight along with Attorney Panciocco who issued the letter to the Board. Mr. Mitchell went on to say that what they are asking from the Board tonight was not for the Board to do a reconsideration but was asking for permission to reconsider which they would like in the meeting on May 18th. They were just looking at procedure and they were not looking to see if the Board thought it was a good idea or not. The process that they went through a few weeks ago was not relief of the ordinance, it was not a waiver, it was not a reduction but was actually to follow the ordinance for what it was and that is why they would like to have a rehearing because of what the ordinance says and that’s the Zoning Ordinance. Procedurally, the options to the applicant or abutters depending on the outcome of any vote by the Planning Board within 30 days can file to Superior Court. Another option is to ask the Board within that same 30 day time period to reconsider the vote on whether it was in an affirmative or in the negative and they are in that process now because they are within the 30 days and are asking the Board tonight to hold a rehearing on May 18th to reconsider the vote. There are a couple of reasons why they are asking for that and there have been some court cases that talks about a legitimate request to have it before the Board and that also the Office of Energy and Planning in their planning guide do recommend in their reconsideration chapter that the same process that they are asking for to be looked into. Within the 30 day period a request for rehearing can be asked for. Mr. Mitchell indicated that, one particular reason that they want to do that was that at the last hearing that there were several members and that they were confused as to who was voting and who wasn’t voting and it turned out that there were only three (3) members voting and that they would like to have a five member board which is a full board vote on this on May 18th. Mr. Mitchell went on to say that tonight was not to see whether the Board was in favor or not on anything that was presented but were just asking for the ability to come back and notify the abutters and have a hearing on May 18th to reconsider.

Mrs. Marzloff asked if there were any questions from any Board members. Mr. Grillo asked if there would be any more information presented or are they just looking for a redo on the vote. Mr. Mitchell stated that because some members were not here and not knowing who will be present at the next meeting would be another presentation. Mr. Grillo asked if there would be no new information presented but just a vote based on different members present. Mr. Mitchell said they are looking for a full board being present. Mr. Grillo could not guarantee that there would be a full board on May 18th. Mr. Mitchell understood that. Mr. Grillo further stated that they also had a quorum at the last vote and was confused with the procedural part other than can they revote on this because of the results of the prior vote unless there is new information that was going to be presented to the Board. Mr. Mitchell believed that this was a little bit different than what a zoning board might do as they have a process for rehearing and they can make a request and hold a hearing on whether they want to do it and then hold another hearing for the rehearing if they decide to based on new information. The procedure that they are asking before the Planning Board here is not based on new information but is based on reasonableness with due process. What they are asking for based on procedure is to have a full board and even though there were three (3) members that voted, they were a little bit confused as to who was voting and who wasn’t. They would still do a representation and a lot of the Board members that sit for the board have been through the presentation over the past year so this was procedural and they just want to do this option to have a reconsideration for revote in a month. Mr. Mitchell reiterated that they only have 30 days and was unsure if it could be done within that timeframe before the option is to go to the court. Trying to do things that are simple and it may not have been requested by this board by anyone but believes that believes this to be a simple and logical approach for due process where they all have the ability to look at it.

Mrs. Marzloff wanted to raise an issue in Attorney Panciocco’s letter but first wanted to ask the Board members if there were any further questions. Mr. Porter asked Mr. Mitchell if it was their intent if this gets voted down again that they will be pursuing the court as an option. Mr. Mitchell said yes that is still an option.

Mrs. Marzloff asked Attorney Panciocco if she had anything she wanted to add. Attorney Panciocco wanted to add to what Mr. Mitchell had explained to the board and began by saying that the procedure is analogous to some extent to what is available at the Zoning Board level. In essential its fairly new to New Hampshire, it’s something that is encouraged by the courts because the courts don’t want to see any of this stuff because they would rather see it all resolved locally but the purpose is to allow factual and legal errors should they be found to be corrected at the local level which is really a good idea rather than be taken elsewhere. It’s also to make sure that the way to the evidence supports the decision that is made. When she reviewed the records, she had the reports and she also had the Board’s minutes and when you look at it, you have to weigh it out because you had three (3) experts plus one Board member with scientific expertise and the Board’s vote went the opposite way which seems out of balance. Maybe there is something that is missing and that both positions can submit what they want to submit but at least we’ll insure that the decision that is made is the Board’s decision and it’s based upon the weight of the evidence. The other thing that was troubling is that it was right in the minutes that the Conservation Commission agreed it was a Level Two wetland but that we seem to have gotten an err on the side of caution as carrying the day to support the decision by the Board which is not enough to sustain the decision and maybe there was something that she missed. The other thing that she wanted to mention is that they just learned within the last couple of days that within the town’s file from the past that confirms that this is a Level Two wetland and why it is being held as a Level One they do not understand because that determination was made long before her client brought his plan to the Board for approval. Attorney Panciocco continued by saying that although this is procedural, it’s to make sure that in the weight of the evidence that the right decision is made because they would like to resolve this locally and that is why they ran like heck to get this into the Board as soon as possible so that they could hopefully get back to the Board before the 30 days is up and maybe make this right for what they see right now is very wrong.

Mrs. Marzloff wanted to point out one thing in Attorney Panciocco’s letter dated April 29th to this Board found on page 2 in paragraph 4, you start by saying “While reconsideration by a Planning Board is not expressly authorized by statute.” Attorney Panciocco stated that was correct. Mrs. Marzloff asked if she was asking them to take liberties and affect this reconsideration without the statutory authority. Attorney Panciocco stated that she was not and believed that Mr. Mitchell has touched upon that and added that, the Board by its own vote upon the request of an applicant or other Board member can reconsider its own vote within the 30 day time period before the decision becomes final. The statute has been interpreted twice by the courts, one in Superior Court and one in Federal Court and it’s wholly within your authority to take this matter up again before the decision is actually final. Once it is final, that 30 day period, you cannot reconsider it of which is right in the cases that she put in the letter for the Board to review and pointed out that she was very glad to see that the Board sought legal advice. Mrs. Marzloff asked if she said superior court or state supreme court. Attorney Panciocco said state supreme court. Mrs. Marzloff believed she said superior court. Attorney Panciocco stated that it was superior and then supreme court and pointed out that the federal district court up in Concord also has also looked at this and embraced it because they don’t want land use cases in the courts. Mrs. Marzloff wanted to point one thing out as Mr. Mitchell raised the issue about voting members and stated that they were caught short and that the Board’s Selectmen’s Representative was injured and physically could not attend the meeting and that they had not appointed an ex officio member so they could not use a regular alternate to fill her absence. Mrs. Marzloff informed the Board that the Board would probably get a follow up letter and that it was up to the Board to decide and stated that counsel has advised the Board that they have three (3) options, they could deny this outright tonight, they could approve it outright tonight but would probably discourage that or they could take it up for reconsideration and schedule it for the next meeting. Mr. Grillo asked if it was reconsideration of considering the reconsideration. Mrs. Marzloff said that the third option would be that they would reconsider it at the next meeting which was reconsidering the actual vote. Mr. Grillo said to approve is to say they take a new vote here and say they are going to approve. Mrs. Marzloff informed the Board members that they were not approving anything tonight and they could do that but it was not a good option. Mrs. Phillips would prefer to be up to speed with all the facts before she votes. Mrs. Marzloff pointed out that option #3 is that the Board accepts their offer that they need to reconsider this and they put it on the agenda for the next meeting because it does need to be a duly noticed public hearing and as Mr. Mitchell stated there would be a presentation and hopefully they will have a full board.

Mrs. Marzloff asked if there were any further questions. Mr. Porter asked what the motion for reconsideration was based on because it does not appear and they have not heard that the reconsideration is based on any new evidence. Mrs. Marzloff said correct and that Mr. Mitchell stated that there was no new evidence but that the issue was the members that were here seemed to be inadequate to reach a decision. Mr. Mitchell commented that the owner has some new information but that he did not have that new information.

Mrs. Marzloff asked if there were any other questions from the Board. Mrs. Phillips commented on something that Attorney Panciocco had said that there was some information that it was a Level Two before Mr. Starace purchased the property. Mrs. Marzloff indicated that this was the first time that she has heard this. Mrs. Phillips further added that she would prefer to here that portion and the recent developments as well. Mr. Grillo commented that he is not in favor of allowing a revote based on no new information other than the fact that they are before the Board to say that, we want you to revote and if you don’t that their next step is to go to court and he was not interested in approving a revote for that situation as he did not want to be pushed into continuously having to rehear the same thing as this has been brought to the Board several times and they had a vote and they had a quorum at the time. Mr. Grillo went on to say that if there is no new evidence but just on the potential that there is a different collection of individuals up here to revote, he was not interested in moving that vote. He needs to hear that there is new information that will be proposed to the Board.

Mrs. Marzloff explained that she will take comments from the public but to bear in mind that this is regarding whether or not the Board will reconsider this case. Comment from an interested party was made that the Board made a correct vote and that the Board knew what they were doing. Another comment was made that Mr. Starace had two (2) years to get this right and now he’s pushing it because he’s having a hard time selling his houses on top of wetlands and that the water runs right down to his property and someone could dump oil out there so the vote was made and they should leave it alone.

Attorney Panciocco mentioned the fact of the voting of the board and the Selectmen being out injured and that there has been no criticism in that other than what I pointed out to Ms. Royce in an e-mail that there needs to be an alternate appointed by this Board and not by the Board of Selectmen or the ex officio to back him up when he can’t be here. Mrs. Marzloff and Mrs. Phillips both informed Attorney Panciocco that it has been done. Attorney Panciocco stated that she understands things happen and that usually an applicant is notified before the vote that the Board only has a three (3) person Board or a four (4) person Board before the vote happens and from what she has heard from both her client and Mr. Mitchell that they did not have a clue on who was voting that night. Mrs. Marzloff believed it was very clear on who was voting and it was in the minutes and they had a quorum. The only unresolved issue was that the ex officio and that has been resolved and it won’t happen again. Attorney Panciocco further added that the Chairman did not vote. Mrs. Marzloff stated that he does not have to vote but would have voted to break a tie. A brief discussion with regard to why Mr. Poltak did not vote unless there was a tie. Attorney Panciocco asked why Mr. Mitchell and her client were not informed or why wasn’t this explained to them. Mrs. Marzloff commented that it has never happened before. Attorney Panciocco also asked where the Rules of Procedure were for this Board because it’s a statutorily requirement and that it was a statutory obligation for this board to have Rules of Procedure and this board does not have any. At this time, Mr. Mitchell passed out copies of a section of the Office of Energy and Planning Rules of Procedures which talks about the Reconsideration. Mr. Mitchell further pointed out that this was not a request as an ultimatum at all but that option is still there but it doesn’t mean that they’ve made any decision at all to do that. They are just asking the Board to reconsider their decision because they believe that the ordinance the way it is written and if there is a dispute in the location of the wetland and the type of wetland that the Board can have the applicant pay for a third party of which was done who was the town engineer and they reviewed it. It wasn’t a question as to whether or not the Board members as non-scientific, non-wetlands people could vote to do it but whether the second opinion that is in favor a Level Two but whether the Board could accept that opinion and that’s what they did, they had another party go out there and they said it was a Level Two. Mr. Mitchell stated that they followed the ordinance. We do not believe the decision of the Board members was correct.

Mrs. Marzloff asked Mr. Mitchell if he recalled Mr. Poltak saying that he had just spent three (3) days in a Conservation Wetland Workshop and that he was more confused when he came out than when he went in and that he certainly has the expertise to understand what he is being told. She understands Mr. Mitchell’s argument on the number of people that have reviewed this but did not understand that their advice is absolute as there can be room for dispute and that was the difference of opinion that she had with him.

Mrs. Marzloff asked Attorney Panciocco if she wanted to relay this new information that the Board is going to be given or some indication of what it’s going to be. Attorney Panciocco said yes, there is a report in the town file that found this to be a Level Two wetland. Mrs. Marzloff asked if it was when they mapped the wetlands town wide. Attorney Panciocco said no. Mr. Starace stated that he had spoken with Mrs. Rouleau-Côté who is a wetland scientist and that when Mr. Anderson went to log the property back in 2010 that a report had to be filed and she also stated that she did not see this as a Level One.

Attorney Panciocco pointed out that this was not about the merits but was about can we open the hearing again to make sure that the records complete and to be sure everyone understands and this request is not to ask this Board tonight to reverse the decision made. They are not in here to say that if they do not get their way we’re going to court but they are saying that we don’t feel that what is in the record supports the decision but let’s go back and look at it. If the decision is correct and is upheld when the Board votes again then no harm, no foul. It cannot hurt to have a public hearing reopened to revisit this and take a look at the new evidence and perhaps reassess and if the end game is the end game then it is what it is. Mr. Burnham commented that this has already been voted on twice before and this is potentially the third time. Mr. Burnham further commented that the first time that this was voted on that the builder agreed that it was a Level One wetland and that over the course of time has asked for a revote. Mr. Starace commented on Mr. Burnham’s comment that he has never agreed that it was a Level One but what he agreed to was to proceed with it being labeled a Level One but never agreed that it was a Level One because in order to move forward with the subdivision process and the Board asked Stantec to go out and evaluate it but there was three or four feet of snow on the ground and it could not be done for months and he did not want to be at a standstill. Mr. Starace went on to explain that last May the stream stopped running and did not start up until the middle of December and that’s when he asked Stantec to go out and actually look at it because there is no snow on the ground. Mr. Starace also pointed out that he is not having an issue with selling the houses because all the houses that are up now are sold.

Mrs. Marzloff asked what the sense of the Board was and if they were prepared to make a motion and vote on this now which is to vote on whether or not the Board will entertain a reconsideration. Mr. Porter’s comment was that this was coming down to a battle of the wills and that we have supported our Board with the quorum system knowing that we did not vote to negate the plan with a two person board. Mr. Porter further pointed out that they did not dispute that the soil was a Level Two but the functional value of that area coming from a Level One onto a Level Two and then back to a Level One is a stream and that stream is important and that’s what everybody heard and that’s what everybody voted on. His personal feeling is that the Board will be hearing this from a court level anyways because he did not believe that this would be resolved and even if it’s resolved in the negative that they have already stated that they would be looking for a court decision. Both Mr. Mitchell and Attorney Panciocco answered by saying that, that statement was not true. Mr. Mitchell stated that it was an option and is always an option. A brief discussion ensued with regard to calling the wetland above a Level One where no one knows what level it was. Mr. Starace also pointed out that Mr. Rolfe stated that he was new to this and if you have a Level One above and a Level One below then he had a hard time believing that in the middle was a Level Two. Mr. Rolfe also indicated that he also stated that he has been to the Conservation Commission meetings as well for the last three (3) years. Mr. Porter stated that they also know it’s a stream and that whether it’s intermittent or not that it was still a stream. Mr. Rolfe noted that if Mr. Starace got his way that he would not be back before the Board right now. Mr. Grillo asked the applicant if they would be amendable to request for the rehearing if it doesn’t include the terminology for the full Board to be present because his concern with proposing this was that they rarely have the full sitting board which was not a requirement and so he is fine with proposing the motion to open it up to have the rehearing but was not comfortable stating that it has to be the full five (5) member board. Mr. Grillo indicated that he would be proposing it based on the knowledge that there is additional information that they would like to propose and it’s within the 30 day window. Mr. Porter agreed. Mr. Mitchell pointed out that they were not asking for a guarantee of a five (5) member board but the odds were better with a five (5) member board and that was one of the reasons that they would like to have the Board reconsider so that five (5) people would be voting whether they are members or alternates. Mr. Mitchell explained that if they agree to a rehearing with whoever comes to the next meeting and they will come and do their presentation and the Board members do a revote and it would be even if the Board has five (5) voting members or not. The Board believed it was a reconsideration and not a rehearing and everyone agreed. Mrs. Marzloff further pointed out that abutters would be notified for the reconsideration of the Planning Board’s prior vote.

Mr. Willett wanted to know why Mr. Starace wanted to change it from a Level One to a Level Two. Mrs. Marzloff stated that it would be up to them to explain and Mr. Porter added that it has been explained numerous times. It was noted that the houses weren’t moving.

Mr. Defosses asked about the Level One and Level Two. Mrs. Marzloff briefly explained to Mr. Desfosses the reason behind this request was that in order to facilitate completing his approval process that Mr. Starace agreed to use the term Level One and use the more restrictive setback so he could get this approval finalized and now they have come back before the Board because they do not believe that this is a Level One and that this portion is a Level Two and that they want the buffer reduced to 75 feet. Mr. Mitchell added that they are not asking for a reduction in the buffer but a determination that it’s a Level Two. Mrs. Marzloff pointed out that that would be the end result.

At this time, Mrs. Marzloff asked Mr. Grillo if he wanted to make the motion.

**Mr. Grillo made a motion to reconsider the Planning Board decision made on April 20, 2016 on the request to reclassify the wetlands adjacent to Lots 19-3, 19-4 and 19-6 from a Level One to a Level Two at the next Planning Board Hearing for Tax Map 5, Lot 19, Mr. Porter seconded the motion. A vote was taken; all were in favor, and the motion passed.**

Mrs. Marzloff informed Mr. Starace, Mr. Mitchell and Attorney Panciocco that the Board would see them on May 18th.

Mr. Grillo wanted to clarify that Mr. Porter was elevated to fill Mr. Poltak’s position because Mr. Côté was an alternate member of the Board.

**ADJOURN**

**Mr. Grilo moved to adjourn the Hearing. Mr. Porter seconded the motion. All were in favor, the motion passed unanimously and the meeting stood adjourned at 8:25 p.m.**

***The next Planning Board meeting will be held on Wednesday, May 18, 2016 at 7:00pm at the Town Hall, 47 Chester Road unless otherwise noted.***