

HAMILTON PLANNING BOARD - PUBLIC MEETING MINUTES

Date: September 13, 2022
Location: Memorial Room for Planning Board Members and the Planning Director;
all other Participants via Meeting held remotely via Zoom
Members Present: Rick Mitchell, Richard Boroff, Marnie Crouch (Chair), Emil Dahlquist (Clerk), Jonathan Poore, William Wheaton, Pat Norton (Associate), Corey Beaulieu (Associate).
Members Absent: Beth Herr
Others Present: Patrick Reffett, Director of Planning and Inspections,

A full recording of the Hamilton Planning Board Meeting is available at

<https://www.youtube.com/watch?v=EO4xHIRkUzI>.

Call to Order: Marnie Crouch called the meeting to order at 7:16 pm. and took roll call attendance.

Roll Call: William Wheaton – present, Corey Beaulieu – present, Patrick Norton – present, Marnie Crouch – present, Jonathan Poore – present, Emil Dahlquist – present, Richard Boroff - present, and Rick Mitchell – present.

Senior Housing Special Permit Public Hearings – Continued - Senior Housing Special Permit Public Hearings - Continued - The application of Chebacco Hill Capital Partners LLC in accordance with the following described applications for the development of the property located at 133 Essex Street, Hamilton, MA, and shown on the Town Assessor’s Map as Parcel ID No. 65-000-0001: (1) Senior Housing Special Permit pursuant to §8.2 of the Town of Hamilton Zoning Bylaw, to develop the Property as a fifty (50) unit, age-restricted condominium development; and (2) Stormwater Management Permit pursuant to Chapter XXIX of the Town of Hamilton Bylaws, dated April 2, 2016.

Ms. Crouch called the meeting to order at 7:16 pm. She observed that the Board members entitled to vote on the Special Permit application and the Stormwater Management Permit application were Rick Mitchell, Richard Boroff, Jonathan Poore, Emil Dahlquist, Bill Wheaton, Pat Norton and Marnie Crouch. In addition, she stated that the Board would be following the Framework that was attached to a Memorandum distributed to Board members prior to the meeting, which Format was subsequently amended and distributed to Board members. She further observed that the Board would be discussing “Unknowns,” namely items or issues about which Board members lacked knowledge or sufficient information that could affect their Findings. She then indicated that the Board would consider the five purposes set forth in Section 8.2.1 of the Senior Housing Bylaw. She stated that with respect those two agenda items, the Board would not be debating each other’s comments for agreement, but that the discussion was to inform the Findings that each Board member is required to make under Section 8.2.31.1 through 8.2.31.7 of the Senior Housing Bylaw, the weighting requirement concerning adverse effects and beneficial impacts using the criteria set forth in Section 10.5.2 of the Bylaw governing Special Permits, and the requirement of M.G.L. Ch. 40, Sec. 9 pursuant to which each Board member must find that the applicant’s proposed use is in harmony comports with the general purpose and intent of the Senior Housing Bylaw.

Jonathan Poore commenced the process and identified a number of Unknowns beginning with hydrogeology. He stated that, because there was only a desk top analysis, it was Unknown how runoff over the ledge and under BMPs and housing units would affect the environment. He also questioned the environmental impact of pollutants, such as deicers and herbicides, not captured by BMPs post-construction. He noted “Unknown Unknowns” from the absence of a hydrogeological study. He also noted long term effects of changes to the site, and the absence of well monitoring more than one-year after completion of construction.

He noted that peer reviewers and consultants stated there was low risk but did not guarantee the absence of impacts to upland vernal pools, so he questioned the amount of acceptable risk. Similarly, he questioned the amount of risk from snow and rock falls from the ledge at the entrance to the development site.

Mr. Poore stated that tree stress and die back at disturbed edges frequently occurs but would not be evident for three to six years or more. He asked what the level of risk of that happening is. He also asked about the effect of tree tie back on visibility from other locations and on wetlands.

With respect to construction, Mr. Poore expressed his view that the duration of the project is an Unknown, as is the relationship of Phase I and II regarding construction staging, as well as rock management, pollution controls, and noise. He noted conflicting information about those issues as well as the status of erosion control during phasing.

Mr. Poore also noted issues with snow removal as there is little room on the site for depositing snow, resulting in the need for trucks to remove snow and expense associated with that endeavor, as well as the maintenance of stormwater structural BMPs. He questioned the prioritization and incentives for maintenance of these features by the homeowners' association.

Mr. Poore considered the number of truck trips during the project and the effects of the amount of noise from all sources during all phases and the environmental effects from long-term parking on Chebacco Road to be Unknowns. He questioned the likelihood of snow or ice from the site impacting Chebacco Road and who would be responsible for rectifying that situation.

Mr. Poore considered costs to the Town from monitoring and enforcing stormwater management strategies and damage to roads from truck traffic as Unknowns, as well as the identity of the entity that would pay for those costs. He stated that it was Unknown whether there would be assurance that all phases of the project would be completed, and, without such assurance, he noted that the Town could be left with a disturbed and environmentally problematic site.

Finally, Mr. Poore noted that an Unknown would be the precedent created in the future a project created similar neighborhood environmental concern and controversy. He also asked how many people would move out of the neighborhood if the project were to go forward, and the reactions of other towns to the truck traffic.

Emil Dahlquist indicated that he concurred with Mr. Poore list of Unknowns and elaborated on the lack of clarity regarding phasing. He indicated that what happens at the end of Phase I and the beginning of Phase 2 is indeterminate, as is the location of the rock crusher during Phase II, as well as what happens to stormwater runoff between phases because the structural systems to control runoff would not be in place. Mr. Dahlquist also noted the lack of a hydrogeological study, indicating that there was no good reason not to have done one.

Pat Norton noted that his Unknowns about construction issues were identified by Mr. Poore and others.

Ms. Crouch noted the duration was an Unknown but that she would speak to the issue when she made her Findings. She also noted the absence of information about the amount of truck traffic, other than the number of truck trips to Bently Warren's Ipswich location, as well as issues regarding the safety of pedestrians and bicyclists on Chebacco Road, Route 22, and elsewhere as the haul route proposed was only for Bently Warren 19-wheelers. She noted the absence of information about flora and fauna. She also noted the lack of information about the ultimate sales prices and the condominium association fees.

Neither Richard Boroff nor Rick Mitchell identified any Unknowns.

Town counsel addressed the Board and clarified that there is case law that if there is evidence to address a concern that could be mitigated by a condition it would be error to ignore that testimony. Ms. Crouch noted that Town counsel was referring to the decision in MacGibbon v. Board of Appeals of Duxbury [369 Mass. 512 (1976)] and stated her view that the decision was wholly distinguishable from the circumstances presented by the applicant's request for a Special Permit under the Senior Housing Bylaw because it did not involve a building permit and, in any event, there was convincing testimony as to mitigation addressing the excavation and filling of marshland. She also mentioned the strong dissent in the case and observed that, owing to the age of the decision, a reviewing court would most likely weigh environmental issues differently.

Ms. Crouch turned to the first purposes set forth in Section 8.2.1, namely "[t]o permit the development of moderately priced, affordable, and market rate housing for elderly persons, by allowing for a greater variety of building types at a higher density than would normally be allowed." She began by noting that the first purpose was informed by Section 8.2.16.3 and implicated Section 8.2.31.1. She reviewed the size of the units stating that the project included six single family units and 44 duplexes with no units under 1,300 square feet. Ms. Crouch also referred to the Town's Housing Production Plan reading excerpts from that document. She concluded by observing that if the project were to be permitted, the Town would have utilized 83% of its allowed senior housing units and all those units either have or would have sales prices that would not be affordable by Town residents with median incomes according to the 2021 parameters used by the Department of Housing and Urban Development. She concluded that the application did not satisfy Section 8.2.1

Mr. Boroff indicated that he did not have an opinion.

Mr. Dahlquist stated that the first purpose was not satisfied because the development was a monoculture and did not contain a mixture of units. In his view, it lacked variety as well as amenities and was not close to what is set forth in the purpose which is to serve elderly people of different means.

Mr. Wheaton also said the purpose was not satisfied because it did not meet the needs of Hamilton seniors.

Mr. Poore indicated that he agreed with previous comments and had nothing more to add.

Mr. Norton stated that he was satisfied that the purpose was met because he believed it was market rate and the project contained a variety of units in relation to the Town as a whole.

Mr. Mitchell indicated that he agreed with Mr. Norton, referencing his involvement in crafting the Senior Housing Bylaw. He said it was not intended to provide senior housing for a specific economic group and that all the purposes were "aspirational." He stated it was not economically feasible to build affordable housing at the density provided and that a payment of \$2,174,000 would be directed to the Affordable Housing Trust for development of affordable housing.

With respect to the second purpose "[t]o allow greater flexibility in land use planning in order to improve site layouts, protect natural features and environmental values and utilize land in harmony with neighboring properties," Mr. Poore indicated that this purpose is tied into many other sections of the Zoning Bylaw, noting it is about site planning and ramifications stemming from the proposed site plan. He cited Section 8.1.12, the Special Permit Design Process, which is set forth in the Open Space and Farmland Preservation Development Bylaw (OSFPD), and environmentally sensitive site design. He stated that his concerns stemmed from the applicant's failing to adhere to environmentally sensitive site design. He concluded the purpose was not satisfied.

Pat Norton indicated that he looked at the site planning and found that the 16 acres that are to be used for the development was not utilized in a way that protected natural features and was not in harmony with neighboring properties.

Mr. Wheaton indicated that project employed cluster zoning, a plus, but did not preserve natural features as it was changing the character of the area. He stated his view that satisfaction of the purpose was mixed.

Mr. Dahlquist indicated that he found the purpose was not satisfied because the project was imposed on the site. He noted the intent of the bylaws is to disturb less in order to protect natural features and environmental values, indicating that there really could be no debate that natural features and environmental values were not protected. He noted, by way of comparison, that the square footage of the buildings when added together equaled the size of a big box store and the units were imposed on the site as there was no attempt to integrate units into the site.

Mr. Boroff had no opinion as to whether the purpose was satisfied.

Mr. Mitchell expressed his view the purpose was satisfied. He stated that because of the high level of density the project would never be in harmony with neighboring properties because the density of the project is not consistent with single family housing. While recognizing the significant disruption of the topography, he indicated that preservation of the remaining portion of the site outweighed the negative impacts.

Ms. Crouch agreed with most of her colleagues, determining that the purpose of Section 8.2.1.2 was not satisfied. She observed that increased density and protection of natural features are not mutually exclusive. She stated that the unprotected natural features on the 16 acres parcel were ignored in order to impose a development pattern used at the Village of Canter Brook Farm and the Village at Magnolia Shores. She noted that while the applicant was preserving 42 acres comprised in part of wetlands and buffer areas that circumstance was not a license to destroy the topography of the 16-acre portion of the site.

With respect to the third purpose of Section 8.2.1.3 “[t]o encourage the implementation of ‘Smart Growth’ techniques to reduce land consumption and sprawl, provide for open space preservation, expand housing options, and encourage use of existing structures,” Mr. Wheaton indicated he viewed this purpose as being partially satisfied, noting that it was a “mixed bag.” He noted some Smart Growth techniques were present but others were not.

Pat Norton agreed with Mr. Wheaton.

Mr. Mitchell stated that this purpose was aspirational but that the intent of the section was satisfied.

Mr. Boroff had no opinion.

Mr. Dahlquist discussed Smart Growth principles and concluded that those principles and techniques were only partially satisfied in terms of compact design. He recognized that unique features were going to be destroyed and extending building on undeveloped land for an auto-centric community does not satisfy Smart Growth, and it would be a misnomer to describe the project as one embodying Smart Growth.

Mr. Poore agreed with Mr. Dahlquist and had nothing further to add.

Ms. Crouch concurred with Mr. Dahlquist. She referenced Smart Growth principles set forth on the Commonwealth of Massachusetts’s website, noting those such as “advance equity,” “expand housing opportunities,” and “provide transportation choice” were not satisfied. She recognized the applicant was preserving open space, but questioned its accessibility by residents from their units. She also noted that the Dial-A-Ride Service of the Cape Ann Transportation Authority was only available to those over 60 or those with disabilities. She concluded that there may be positive aspects associated with the project, but that the Smart Growth label was not one that could be applied.

With respect to the fourth purpose regarding positive fiscal benefits set forth in Section 8.2.1.4. Ms. Crouch noted the \$350,000 in fees, the \$750,000 estimate of annual real estate tax revenues to the Town, and the payment to the Affordable Housing Trust of \$2,174,000. She observed that in her view those fiscal benefits are what have driven this project forward and influenced some to view this purpose as outweighing all others. She put the fiscal benefits in the context of long-term costs, some of which would be Unknown. She noted costs associated with a police detail, issues with respect to road maintenance owing to truck traffic, and, were the project to be approved, costs associated with consultants to oversee the Rock Handling and Management Plan and the Controlled Blast Plan.

Mr. Mitchell agreed with Ms. Crouch noting the revenues and the likelihood of tax increases and tax overrides due to the Town's limited revenue sources and increased expenses.

Mr. Norton agreed that Section 8.2.1.4 was satisfied.

Mr. Poore agreed as well as, but referenced Section 10.5.2 which requiring weighing fiscal benefits along with other criteria.

Mr. Wheaton agreed that Section 8.2.1.4 was satisfied.

Mr. Dahlquist added that short term fiscal benefits existed, but the jury was out as to long term costs.

Mr. Boroff, looking at the financial picture, highlighted the payment to the Affordable Housing Trust. Ms. Crouch noted that the payment would be in installments and that even were the payment to be made that there were no permitted affordable housing projects in Hamilton at this time.

With respect to the last purpose "[t]o protect Hamilton's New England character by permitting development of residential housing in clusters and villages, in a manner which is in harmony with Hamilton's historic development patterns and is less demanding on its natural resources," Mr. Dahlquist noted that rural New England character is not served because the design is more urban than rural. He added that the project will not fit in and it is not a village. He added clustering is different than what is proposed by this project which is a dense subdivision. He noted that the project is demanding on natural resources, particularly the geological features. When viewed as a design issue, he observed that the project did not need to be presented as an either-or situation, particularly because there were ways to design the project in keeping with the rural New England character while preserving the landscape.

Mr. Boroff had no comment.

Mr. Mitchell stated the purpose was satisfied because it was other than single family homes. He emphasized the difference between single family houses on one-acre lots and the proposed project. He noted the majority of the units would not be visible and would be the best for compatibility.

Ms. Crouch referencing Section 8.1.12, stated that the site would not have to be topographically obliterated to have an appropriate development that would be consistent with rural New England characters. She noted a cluster development typically has common land for the benefit of the common enjoyment of residents, but here the common open space is at the back of the units and inaccessible from most units. She observed that, if an imaginative approach had been utilized, there could have more consistency with a village feel with less impact on mature forests and other unprotected conservation resources.

Mr. Norton indicated he did not believe the development was in harmony with the surrounding areas.

Mr. Poore agreed with Mr. Dahlquist and Ms. Crouch and said it was very achievable to design a cluster development that would be harmony with Chebacco Road and would be less demanding on natural resources. He noted that Mr. Wheaton had recognized that moving the entrance road would have eliminated 231 linear feet of disruption on Chebacco Road.

Mr. Wheaton said he did not believe New England character could be achieved. There was nothing rural or New England about the project. He added it did not look like or function like a New England village.

The Board's observations about purposes having been concluded, Mr. Poore moved to approve the Special Permit Application of Chebacco Hill Capital Partners LLC. Mr. Mitchell provided a second to the motion. Ms. Crouch called for discussion of the motion to commence with each Board member making statements about the Findings required by Section 8.2.31.1-8.2.31.7, Section 10.5.2, and M.G.L. Ch. 40A, Sec. 9.

Mr. Poore began by referencing Section 8.1.12, the Special Permit Design Process, as being identified and linked in the prefatory language of Section 8.2.31. Mr. Poore noted that that process is mirrored in stormwater management provisions and are threaded throughout the bylaws. He specifically referenced Volumes I and II of the Massachusetts Stormwater Management Handbook and the Massachusetts Erosion and Sediment control Guidelines. He described the process which could be understood in non-engineering terms and which ranks environmentally sensitive site design as the primary consideration. He noted Section 8.2.25 which also contains a Finding and Section 8.1.12 apply.

Mr. Mitchell and Mr. Wheaton interjected with comments. Mr. Wheaton suggested that the applicant had to comply with a process without saying anything about the outcome. He referenced Section 8.1.16 of the OSFPD bylaw which actually has guidelines. He was unclear as to whether all that is required is the process, rather than both the process and the actual design standards need not be adopted.

Mr. Mitchell said that was accurate.

Ms. Crouch interjected, noting that at the end of Section 8.1.12 there is a requirement that "[t]o the maximum extent feasible, conservation areas shall include areas identified by the Planning Board during the pre-application conference" and indicated that it would be a meaningless exercise to identify conservation areas without taking them into account in the design process. Moreover, Mr. Poore emphasized that Section 8.2.31.7 requires a Finding that the intent of Section 8.1.12 is satisfied.

Mr. Mitchell indicated that in his view, if the process is satisfied, that is all that is required. Mr. Poore said the design process is a thread throughout the bylaws. Ms. Crouch cited Planning Board Rules and Regulations and read provisions pertaining to Senior Housing (i.e., Section 5.a.ii and iii).

Mr. Wheaton continued to interpret the requirement as only requiring adherence to the process. Ms. Crouch indicated that the Rules and Regulations govern the design process, but Mr. Wheaton indicated that Section 8.1.16's design standard are inapplicable to the Senior Housing Bylaw. Ms. Crouch indicated that the Rules and Regulations flush out requirements. Mr. Mitchell asked whether the Rules and Regulations trumped the bylaw. Ms. Crouch indicated that they would not trump the bylaw but would explicate the bylaw. Mr. Dahlquist mentioned the interrelationship with stormwater management techniques.

Mr. Poore said regardless of where you start, the intent of the Special Permit Design Process is what is critical. The Board agreed that Section 8.1.16 did not apply to the Special Permit Design Process.

Mr. Poore referenced 8.2.20 and noted that qualitative parts of that section, other than the first sentence of that bylaw section, are important and mirror Section 8.1.12. The whole process starts with 8.1.12 and it's the first step in the Findings and the last Finding in Section 8.31.7, bookending the Findings, and it is in Vol. I and Vol.

II and in the Erosion and Sediment Control Guidelines. Mr. Poore indicated he was reading the bylaws as a whole and in harmony with one another. He stated that environmentally sensitive site design in stormwater management policies and the bylaws.

Mr. Poore indicated that the applicant made critical choices at the outset, adding the first step in the design process has little to do with engineering but everything to do with site design - - the foundation of everything else to come.

He noted that the applicant identified regulated conservation areas, but did not identify unprotected natural landscape features, giving the Board only existing conditions contour plans or gradient plans. According to Mr. Poore, only Mr. Dahlquist identified the steep slopes. He noted that the Planning Board Rules and Regulations define the steep slopes as 15% and erosion control guideline define them as 18%. He said the definition is not subjective. He added that wildlife habitats and corridors also were not identified. He also observed that cultural features were not identified because Chebacco Road is designated as a scenic road. With respect to recreational features, Mr. Poore indicated that the trails were an afterthought. Mr. Mitchell interjected that the trails are not legal. Nevertheless, Mr. Poore indicated the applicant did not comply with Section 8.1.12.1.

With respect to the proposed development area in Section 8.1.12.2, Mr. Poore indicated that there was verbiage about acknowledging unprotected natural features and other features, but within the development area, the applicant did not identify any unprotected natural features or other features set forth in Section 8.1.12.1. He added all steep slopes will be disturbed and 760 linear feet of the vegetated buffer zone, which is not to be disturbed pursuant to Section 8.2.15 and Section 8.2.22, will be disturbed as well with 230 linear feet of disturbance at the entrance off Chebacco Road. Mr. Poore indicated that the applicant did not comply with Section 8.1.12.2.

Mr. Poore addressed Section 8.1.12.3 and 8.1.12.4, noting the lack of connection to open space and the lack of access to the trails from the proposed units. He stated the open space in the development area is predominantly lawns with steep slopes and there is an absence of any meaningful communal space. He stated that the applicant did not comply with the intent of Section 8.1.12.3. Because of the open space component and trail system as designed, Mr. Poore observed the trails are not very accessible.

With respect to roadways on steep slopes, he said the plans showed 430 linear feet of roadways and sidewalks with a 10% grade which is the limit for secondary roads. He said that, while legal, it is not good practice for a senior housing project and for aging in place to permit this grade. He added that the trails are hard against rip rap and the access road to the septic system. He concluded that the project was compromised because the design ignored steep slopes and that the intent of Section 8.1.12.4 was not met. Mr. Poore indicated that in summary the applicant did not follow the Special Permit Design Process.

With respect to Section 8.2.31.1, which requires a Finding as the project's compatibility with adjacent land uses and the character of the neighborhood, Mr. Poore referenced Section 8.2.15 and noted the 230 linear feet of disruption on Chebacco Road and the 2:1 embankments with units stacked one on top of the other, adding that units 1 and 2 are visible from the right side of the rain garden on Chebacco Road and have 16-18 vertical feet of rip rap behind them with unit 2 towering over unit 1 - - all of which is out of character with the neighborhood. He also noted that there are lawns with 2:1 slopes in contravention of 8.2.13.2, which emphasizes minimizing disturbance. He stated that the project was not comparable to the Village of Magnolia Shores and using its typology violated environmentally sensitive design. Mr. Poore concluded that Finding 8.2.31.1 was not satisfied and that the problems stemmed from design choices, not engineering, with the result being that the project as proposed is incompatible with adjacent land uses and the neighborhood.

With respect to Section 8.2.13.2 regarding mitigating impacts to abutting land and natural features, Mr. Poore noted the potential for light pollution because the cut off angles for roadway lighting is not suitable for hill tops. He noted the steep slopes and concerns about the special sensitivity of the GPOD, as well as the maximum site disturbance and the 2:1 slopes for lawns, particularly because 3:1 slopes at most are recommended for lawns.

Mr. Poore also discussed Section 8.2.20 which provides that soil erosion should be minimized by integrating the development into the existing terrain and by reasonably retaining natural grades and soil cover, which was not done, and the extensive and lengthy construction disruption resulting from non-engineering design issues. He concluded that there was lack of compliance with Section 8.2.31.2.

Turning to the Finding required by Section 8.2.31.3 regarding safe and convenient access to the site from existing roads with particular reference to pedestrian and vehicular safety, Mr. Poore again referenced the 10% slope for portions of the sidewalks and roadway, which is not good practice for senior housing, as well as the 2:1 slopes between front and back yards which can pose a fall risk even for able bodied individuals, let alone those intending to age in place. Mr. Poore also focused on the 20–24-foot sheer ledge at the entry which could be an attractive nuisance and fall hazard, as well as the absence of any guarantee that there will be no falling rock or ice from that ledge face over time. He also noted that the rip rap could be an unattractive nuisance. Mr. Poore noted that because of the steep slopes there would be a need to use deicers which would potentially threaten water resources. He concluded the Finding required by Section 8.2.31.3 could not be met.

With respect to Section 8.2.31.4 regarding public services and utilities, Mr. Poore found, based upon the evidence submitted by the applicant, that there was compliance.

Mr. Poore then addressed Section 8.2.31.5 with respect to visual and noise buffering and minimizing impact on abutting properties. He indicated that he could not make the required Finding, noting that his comments with respect to Sections 8.2.31.1 and 8.2.31.2 applied to this Finding. He observed the 730 linear feet of disturbance of the 20-foot buffer replaced with 2:1 planted embankments. He noted maximized disturbance as designed along with issues as to visual and noise buffering. He added that the artist renderings did not present credible evidence showing accurate grading, topography, vegetation or site characteristics.

Turning to Section 8.2.31.6, regarding providing for the perpetual preservation and maintenance of open space, trails, and recreation areas, Mr. Poore stated that because the development is imposed on the site, hard against buffers and existing steep slopes with 1650 linear feet of rip rap visible and sometimes abutting the trails, the trails are compromised as an amenity. Mr. Poore noted that there was approximately 180 linear feet of disturbance to buffer areas along the trail system. He said the trails and open space did not function as an amenity and was devalued. He concluded that the application did not fully comply with 8.2.31.6.

Mr. Poore then addressed Section 8.2.31.7, concluding that the applicant failed to comply with the intent of Section 8.1.12 and failed to follow the process as well. He stated there were many other development options and that because the applicant imposed a particular form on the development area the problems he outlined arose. He emphasized that the bylaws did not say that you could undertake the process, delineate protected resources areas, and then do whatever you want with the site; rather he indicated that, in his view, the bylaws directed the applicant to respond to the topography and to areas that can be preserved to the greatest extent possible. He said there was no attempt to include these forms in the design proposal. He determined that 8.2.31.17 was not satisfied. He added that when the bylaws are read as a whole the requirement to design in a manner that respects protected and unprotected natural features is specific and not aspirational. He also added that no conditions imposed on the permit could rectify the systemic design failures.

With respect to Section 10.5.2, Mr. Poore determined that, although the property remained a developable site, the adverse impacts outweigh its beneficial impacts to the Town or the neighborhood in view of the particular

characteristics of the site and the proposal in relation to the site. Therefore, Mr. Poore stated that the application did not satisfy all of the applicable criteria.

Mr. Poore then concluded, pursuant to M.G.L. Ch. 40A, Sec. 9, that the use proposed by the applicant is not in harmony with the general purposes and intent of the Senior Housing Bylaw.

He voted “no” on the Motion to approve the Special Permit application of Chebacco Hill Capital Partners, LLC

Mr. Boroff interjected, arguing that because of the “no” vote, there would be a lawsuit that would cost the Town time and money. Ms. Crouch interrupted Mr. Boroff and stated that “the threat of litigation does not appear in the Senior Housing Bylaw.” She added it was not one of the considerations for the Planning Board to address in voting, as its obligation is to follow the bylaws. Mr. Boroff then indicated that the applicant was not present to respond. Ms. Crouch then stated the applicant was not entitled to respond as the public hearing is closed and requested Mr. Boroff to desist.

Town Counsel Robin Stein recommended delaying a vote on the Motion to Approve the Special Permit until after each Board member voted on Section 8.2.31, Section 10.5.2 and M.G.L. Ch. 40A, Sec. 9.

Mr. Wheaton proceeded to address the Findings set forth in Section 8.2.31. He indicated that the project is not at all compatible with adjacent land uses and the character of the neighborhood because the project is enormously over-engineered and will change the character and topography of the land. He said it is not so much that the houses are incompatible with the neighborhood, but that blowing up a hill, leveling it and cutting all the trees shows no sympathy with the neighborhood. He noted the project imposes itself on the neighborhood. He recognized that there is a phrase in Section 8.2.13 about minimizing disturbance and that this project does just the opposite - - it maximizes disturbance. He said the project would alter the terrain in ways no one could imagine and does not use low impact development techniques. It uses maximize disruptions including trucking away over 4,000 loads of stone - noting an incredible amount of area that is being destroyed. He stated that the whole neighborhood would be changed not for the better but for the worst so he could not make the Finding under Section 8.2.31.1.

With respect to Section 8.2.3.2 regarding the mitigation of impacts on abutting land, Mr. Wheaton noted that, during blasting and construction, there would be huge impacts and the project did not mitigate noise. He noted the state standard, which prohibits increase in noise by more than 10 decibels, observing that between the rock crushing, the trucks, and the blasting, the noise level will increase for a year or two by five times the decibel increase limit or more. He said that there was nothing in the project that mitigates that, particularly because it is so extreme in terms of engineering. Accordingly, Mr. Weaton determined that he was unable to make the Finding required by Section 8.2.31.2.

With respect to Section 8.2.31.3, regarding safe and convenient access, Mr. Wheaton noted the increase in the number of houses that have access off Chebacco Road from 17 to 67 (a 350% increase). He disagreed with the peer reviewer’s conclusion that traffic impacts would be minimal, a conclusion he found to be “patently insane,” owing to his experience working with the California Division of Highways and his knowledge of how traffic models work and the ITE standards. He stated that the travel rate for seniors was unrealistic because each unit has a two-car garage and would be residents would likely have a level of affluence so he concluded the project’s residents might travel more than residents now living on Chebacco Road. Based upon his experience, Mr. Wheaton indicated that could make not the Finding required by Section 8.2.31.3.

Turning to Section 8.2.31.4 pertaining to adequate capacity for public services, Mr. Wheaton concluded the applicant produced information to enable him to make this Finding.

With respect to Section 8.2.31.5 regarding visual and noise buffering and maintenance of open space and trails, Mr. Wheaton noted the removal of a whole forest of mature trees that currently provide a buffer between that development area and 133 Essex Street and that area and Chebacco Road, observing that what the applicant is doing in its place is creating 4-8 feet of crushed stone with a layer of soil on top that will be dug out for young trees to replace what currently exists. He stated that he was not convinced that in five to ten years, there would be anything like what currently exists. Mr. Wheaton concluded he could not make this Finding required by Section 8.2.31.5 because the project does not provide visual buffering from Chebacco Road and Essex Street.

Mr. Wheaton indicated that, with respect to Section 8.2.31.6, the applicant provided for open space and trails. So, he stated that he had two negative and three positives.

With respect to Section 8.2.31.7, he concluded it was debatable whether the applicant applied the process as completely as it should have. He noted that the applicant was not abiding by any of the design standards but that because of the way our bylaw is written, he concluded that the Board cannot enforce Section 8.1.12. Referencing Section 8.1.16 of the OSFPD bylaw, which is inapplicable, he indicated that he would give the applicant is not doing, but he gave the applicant a pass.

Turning to Section 10.5.2, Mr. Wheaton referenced the criteria beginning with social, economic and community needs. He referenced the Housing Production Plan and the Master Plan, stating the project did not meet a community need for senior housing, particularly as most people buying units would be from out of town. He stated that he had expressed his views as to traffic flow and safety, stating he found the studies to be inadequate, as well as his views about the adequacy of utilities and other public services. With respect to neighborhood character, he observed that by changing the whole character of the land, the whole character of the neighborhood and the environment would be adversely affected. Mr. Wheaton noted there would be positive fiscal benefits. Thus, he stated that he found three negatives, two question marks, and one positive. Accordingly, he concluding that the adverse effects outweighed the beneficial impacts to the Town and neighborhood.

Mr. Wheaton then indicated that he was inclined to vote against the motion to approve the Special Permit. With respect to M.G.L. Ch. 40A, Sec. 9, Mr. Wheaton said that the project it is over-engineered and imposed upon the site, so that its use is not in harmony with the purpose and intent of the bylaw.

Mr. Mitchell addressed Section 8.2.31.1, indicating that to be truly compatible there would be nothing going on the site as all other uses are single family homes. He stated that concentrating 50 units on 14 acres out of approximately 60 acres while permanently protecting over 40 acres of open space and farmland, with the majority of homes not visible from Chebacco Road, when coupled with the provision for legal trails, is as compatible as a development under the Senior Housing Bylaw could be. Thus, he found that project was compatible with adjacent land uses and the character of the neighborhood.

With respect to Section 8.2.31.2 concerning mitigation of impacts to abutting land and natural resources, Mr. Mitchell noted that there would be a significant impact on the land and the neighborhood. He used the prior criteria for Patton Ridge and Canter Brook and stated that it meets existing federal, state, and local mitigation requirements for air, water, dust, vibration, and stormwater runoff as confirmed by our peer reviewers. [Mr. Mitchell did not specifically mention noise] He noted the removal of ledge and truck traffic would be an issue but that would be an impact of the development that he could live. Accordingly, he found that Section 8.2.31.2 was satisfied.

Turning to Section 8.2.31.3 regarding safe and convenient access, Mr. Mitchell relied upon the peer reviewers, the DPW and the Hamilton Fire Chief to find that the proposed project provided safe and convenient access and otherwise satisfied Section 8.2.31.3.

Mr. Mitchell also found that the project provided adequate capacity for public services, including water and septic, and thus satisfied Section 8.2.31.4.

With respect to Section 8.2.31.5 regarding mitigation of visual and noise impacts to abutting land and natural resources, Mr. Mitchell said there would be significant impacts from blasting and trucking but that, when completed, the project will provide ample buffering particularly as, in his view, there are only two units visible from Chebacco Road.

Mr. Mitchell also found Section 8.2.31.6 regarding the preservation of open space was satisfied as the project presented an outstanding example of development owing to the preservation of 42 acres of open space, the retention of a farm operation, and legal access to trails. Accordingly, he made the Finding required by Section 8.2.31.6.

With respect to Section 8.2.31.7, demonstrating compliance with the intent of Section 8.1.12, Mr. Mitchell stated the applicant satisfied Section 8.1.12, noting his Finding was supported by the Conservation Commissions Order of Conditions. He also found compliance with all the other subsections of 8.2.12.

Mr. Mitchell then addressed the criteria set forth in Section 10.5.2. He stated the state and the Town were facing serious housing shortages and that Town desperately needs new tax revenues. He added that the payment to the Affordable Housing Trust could be used for affordable housing so he believed the “community needs” criteria was satisfied. He also concluded that traffic flow and safety and public services were adequate based upon the opinions of peer reviewers. He also noted that neighborhood character would be changed just the way the neighborhood character was changed by Patton Ridge and Canterbrook. He observed that traffic flow would not impact the neighborhood when the project was completed. He noted the impacts to natural resources, but relied on the peer reviewers to conclude there would be no impacts on the hydrology and hydrogeology from the project. Accordingly, Mr. Mitchell indicated that the adverse impacts did not outweigh the benefits. Finally, Mr. Mitchell emphasized the positive fiscal impacts, citing tax revenues, permitting fees, and the payment to the Affordable Housing Trust, and noted that the project would be the single largest contribution to fees and revenues at a time when the Town is facing tax overrides. He said the fiscal benefits were the key to long-term financial stability of the Town.

With respect to M.G.L Ch. 40A, Sec. 9, Mr. Mitchell concluded that the proposed use is in harmony with the general purpose and intent of the bylaw.

Mr. Dahlquist addressed the Findings required by Section 8.2.31. He noted at the outset that there is no mention of calculations, BMPs, and peer reviews in Section 8.2.31 and that, while those aspects of a project are important, the law requires Board members to make the Findings required in Section 8.2.31, using their experience and judgment guided by the bylaws. He added that technical expertise is only one-half the big picture.

With respect to the first Finding regarding compatibility with adjacent land uses and with the character of the neighborhood, Mr. Dahlquist stated that he could not make the Finding. He stated that if the Board were to approve the project, it would have to approve the decisions made by the applicant because they go together. He said the development is not in character with the neighborhood forms, adding that it would be impossible to do so. He expressed the view that, given the choices made, the applicant made it impossible to create a project that was compatible with adjacent land uses and the character of the neighborhood. Mr. Dahlquist, referring to rural character, noted ways to measure its retention such as swales instead of curbs, and random plantings, instead of uniformly spaced trees. He referenced nighttime light which would be adverse because of glare coming off the hill coupled with lighting from buildings, all adding up to a lighted hilltop in a dark neighborhood. Mr. Dahlquist addressed the alleged inability of a new form of development, such as cluster housing, to fit the

character of the neighborhood, noting that it is not the point. He said that keeping as much undisturbed land as possible is the circumstance that would enable a new development to blend in, as well as maintaining trees on ridge tops. He noted Chebacco Road is a scenic road and that buildings and roadway for the project would be visible to the crest of the hill along with the lighting fixtures. He noted the sheer ledge at the entrance would be visible and a protective device, if needed, for rockfall would make it even more unsightly.

With respect to mitigation of impacts as set forth in Section 8.2.31.2, Mr. Dahlquist cited Section 1.3.d.ii.2 of the Planning Board Rules and Regulations requiring an analysis of existing and expected post-development environmental conditions, observing that a baseline from a hydrogeological study would have been advisable.

Mr. Dahlquist concluded that the project would place an enormous burden on the neighborhood over many years of construction, and it would place a burden on the Town because the Town might be called upon to do well-monitoring and other oversight tasks. He emphasized the high maintenance of project. Mr. Dahlquist observed that the 14 acres would be destroyed just to bring it into a buildable form, leading to the need to remove approximately 177,000 cubic yards of rock, approximately half of which is to be removed from the site. The abutters would have to deal with all types of pollution, dawn to dusk, owing to a 7:00 am to 7:00 pm work day. He noted that he touched on light pollution and dust, including dust from cutting PVCs from insulation and siding.

Mr. Dahlquist noted stormwater coming from the nine acres of impervious surfaces, not captured by rain gardens, BMPs and other features, is such that it would permeate the crushed stone, hit the ledge and move in any direction and potentially into wetlands. In his view, high maintenance and low resiliency system. Accordingly, Mr. Dahlquist did not make the Finding required by Section 8.2.31.2

Turning to Section 8.2.31.3, Mr. Dahlquist determined the required Finding regarding safe and convenient access to the site and pedestrian and vehicular safety could not be made. He stated that building 50-60 feet above the entrance is inescapably problematic and the reason steep slopes are to be avoided whenever possible. Noting the 1:10 roadways and sidewalks and the 2:1 slopes on lawns and perimeter slopes, all of these conditions are antithetical to aging in place, Mr. Dahlquist recognized that the applicant was not obliged to comply with ADA standards.

Mr. Dahlquist determined the Finding required by Section 8.2.31.4 regarding adequate capacity for public services could be made, although he cited the June 2022 Dewberry Report which raised the specter of the Town having to rely less on the endangered Ipswich River Basin and the need to look to other drinking water resources, potentially using the ponds near the project site.

With respect to Section 8.2.31.5 regarding visual and noise buffering, Mr. Dahlquist indicated that he could not make the requisite Finding. He noted that noise was a given for the five-to eight-year project duration, and it was unlikely the 85 decibels from an 18-wheel truck could be buffered. Mr. Dahlquist specifically observed that there was a lack of clarity about the location of the rock crusher. He noted the location of rock crusher and the statement that berms would be built in unspecified places did not adequately account for the 2:1 slopes. He noted that visual buffering is tied most closely to lighting and particularly the lighting on the 50 units.

Mr. Dahlquist then discussed Section 8.2.31.6 regarding opens space and trails. He determined that the Finding could not be made. He stated that the trails will be changed and would be compromised. The trails drop down 2:1 slopes and have a view of rip rap.

Mr. Dahlquist also could not make the Finding set forth in Section 8.2.31.7 that the project complied with the intent of Section 8.1.12. He stated he concurred with the statements made by Mr. Poore. He also stated that site sensitive design is the message to developers.

With respect to Section 10.5.2, Mr. Dahlquist determined the adverse impacts would outweigh any benefits in view of the particular characteristics of the site and the proposal in relationship to the site for the reasons he previously stated in his Findings.

Pursuant to M.G.L. Ch. 40A, Sec. 9, Mr. Dahlquist found that the proposed use is not in harmony with the general intent of the Senior Housing Bylaw and those bylaws included therein by reference.

Following, Mr. Dahlquist's remarks, Ms. Crouch noted that the Board had two options: the first was to continue the matter to September 20, 2022 at which time the Board would also have to determine the Stormwater Management Permit application or "plow through." The Board elected to continue the matter until September 20, 2022.

Mr. Wheaton moved to continued deliberations on the pending motion to September 20, 2022 at 6:00 pm. with Board members convening in the Memorial Room and all other participants attending via Zoom. Mr. Mitchell seconded the Motion. All Board member entitled to vote on the Special Permit application voted in favor of continuing the matter until the above date.

The HWCam recording ceased.

A motion was made and seconded to adjourn the meeting. The motion carried unanimously.

Documents considered: Amended Framework for Final Deliberations and Vote.

Respectfully submitted as approved at the 10-11-2022 meeting of the Planning Board.

Marnie Crouch