

**Town of Warner – Planning Board
Minutes of Meeting
Monday, September 8, 2008 7:00 PM
Warner Town Hall, Lower Level**

Members Present: Barbara Annis, Paul Violette, David Hartman, Hank Duhamel, Ed Mical, George Pellettieri, Dan Watts
Members Excused: None
Members Absent: None
Members Late: None
Alternates Present: Harold French
Alternates Excused: Rick Davies, Robert Ricard
Alternates Absent: None
Alternates Late: None
Presiding: Barbara Annis
Recording: Jean Lightfoot

Open Meeting at 7:00 PM

Roll Call

Ms. Annis opened the meeting at 7:00 p.m. The roll call was taken.

1. MINOR SUBDIVISION

Property Owners: Ronald E. & Bethany J. Bourcier, 31 East Sutton Road, Warner, NH 03278

Agent: None

Property Location: 31 East Sutton Road

Map/lot: 17/4-6, R-2 zoning

Description: Subdivision of one lot into two lots to be 2.589 acres and 3.394 acres for single family residential

- a. Review Application – Accept/Reject/Continue
- b. Public Hearing
- c. Action Taken – Approve/Disapprove/Continue

Ms. Annis recognized Ronald Bourcier and Dennis Ryland of Brown Engineering. Mr. Bourcier said that the subdivision request is from one lot into two lots. He said that they had their surveyor there to answer questions about and explain the survey. He handed out extra copies of the plan to the Board members. Mr. Ryland said that the whole area is just under 6 acres, as referenced by the original subdivision and as measured by their current survey. He said the intent is to have two building lots with the existing house to be on the southerly portion. He said that for the other subdivision there was a test pit done in the northerly area and he said they had done two test pits and found excellent soils to take care of any effluent in the future. He said the usable area is always a concern of the town and the State. He said that they have received subdivision approval from the State DES on June 23, 2008. He explained that the useable area table is on the top of the plan, showing the northerly lot has a total area of 3.394 acres, with 0.53 acres of steep slopes over 25% and jurisdictional wetlands of a little over an acre, resulting in a net useable area of 1.77 acres. He said that the intended building area is approximately 1.1 acres. He said for the State DES this is ample room for a future residence. He said there is a large wetland that crosses diagonally through the parcel. He said that the table at the top of the plan shows that the southerly parcel has a total area of 2.589 acres, with 0.21 acres of steep slopes over 25% and jurisdictional wetlands of .38 acres, resulting in 2.0 acres which are useable. He said that was done intentionally so that it would meet the Zoning Board's requirements during their granting of the variance. He said that because of the wetland, there may have been some concern about building toward the back of the lot; however, he said it would be extremely problematic to get a driveway across to the back of the lot. He said that even going back to the original subdivision, the original idea was always to build a house in the area that would be in the northerly lot.

Mr. Duhamel asked where the proposed driveway would be. Mr. Bourcier said it has to be approved by Allan Brown, but his plan is to place it just south of a telephone pole which he indicated on the plan. Mr. French

asked what the road frontage is for the proposed lots. Mr. Ryland said the northerly lot has approximately 325 linear feet and the southerly lot 200 linear feet. Mr. Bourcier explained how it is noted on the plan.

Mr. Hartman asked how this plan complies with the Zoning Ordinance, Article VI, Section C.1 (a), which deals with buildable area. He said that that paragraph says in the first sentence that for frontage and minimum buildable area, every lot shall have a minimum frontage of 200 feet and a minimum buildable area of at least 2 acres. He said that this is less than 2 acres and he said he does not understand how the Zoning Board in their decision would give a variance on the 2 acre standard, and thus creating a substandard lot. He said that this would be a substandard lot according to our definitions. Ms. Annis said that that is not for the Planning Board to question. Mr. Hartman said that he did not understand their rationale when he read it. He said that he did not doubt that a house could be built on the lot, having seen the lot today, but it is definitely creating a substandard lot. He continued to say that if this subdivision is approved, we are approving the creation of a substandard lot. He said that without any contention from the abutters with a complaint, he wonders if when the larger lot was subdivided some years ago if it was a consideration that they should create this sizeable lot because they knew there were substantial wetlands on it. Ms. Annis said that there was a lot down on Route 103 that could not conform because they were on the Warner River. She said that the house was below road level and there are now two houses on it. She said that they had wanted to subdivide but their land went beyond the river and that is included in their lot and they were being taxed for it. She said that the lot in the front did not conform, unless you added the land from across the river. Mr. Mical said he recalled that it was looked at that with both sides there was still enough buildable area. Ms. Annis said that it was concluded that there was enough buildable area for both septic and a well, even though it did not conform because it was separated by a natural body of water. She said that this would not be making something that has not existed before or that has been looked at before. Mr. Hartman said that his point is that by doing a subdivision we are creating a substandard lot by our own definitions. He said that he thinks that the Zoning Board did not do a fair judgment in making their decision on the regulations that were forwarded to the town by the Planning Board and voted on to be put into effect. He said that these are the laws of the town. He continued by saying that he thinks that the Zoning Board did not take into account the fact that they were actually creating a substandard lot and they did not address that. Mr. Violette said that the Zoning Board did make a ruling on the ordinance and gave the variance, so we look at it that they have permission; they have worked on that piece and concluded that chapter; and, it is now to the Planning Board to look at it as a simple subdivision, because the Zoning Board has already ruled on it. He added that even if one or two or however many people think that that is an incorrect decision, that issue is not the case before the Planning Board. Mr. Hartman asked Mr. Violette if he thinks that what the Zoning Board actually created was a substandard lot. Mr. Violette replied that he did not know since he did not study the situation like they did and hear all the testimony and what the rationale was behind it.

Mr. Ryland said that if one is looking at a buildable area, one that can sustain another dwelling of a minimum of four bedrooms, the effluent disposal system far exceeds the minimum standards of the State of New Hampshire. He added that the Town of Warner has Zoning Ordinances in effect so that generally what is talked about are current zoning ordinances. He said that the current zoning specifies 2 acres minimal buildable area for each lot. He said that there are five points of criteria, of which the Board members are aware. He said that never would they compromise the safety or welfare of the abutters and that is the point of these five points.

Ms. Annis asked if there were any other questions or comments. There were none. She asked the Board members to review the application and checklist to determine if it was complete. After the review, she asked if there were any questions or omissions from the application. Mr. Violette asked what type of boundary marker would be set if the subdivision is approved and asked to confirm that it will be on the final Mylar. Mr. Ryland said the pins will be placed once it is approved. Mr. Pellettieri said that the plan does not tie to the State grid. Mr. Ryland said it was not done, but will put it on the Mylar. Mr. Hartman said that there is a shed within the 25-foot setback from the lot line in the proposed southerly lot. He said that would be a problem. In addition, he said, there is no mark, although it could be in the "proposed 4K area," where the potential building site could be. He said it shows a proposed well and two test pits and said that he didn't see where a septic system would be. Ms. Annis said there are two test pits. Mr. Violette said the "proposed 4K area" is the septic. Mr. Ryland said that the site of the proposed house would be up to whoever would purchase the lot. He said for them to put a proposed building location is unusual – he said the only time he

remembers having to do that is if there are to be common areas for future condominiums. Mr. Hartman asked if a comment should be made about it, then. He said that the septic area is excluded from a building spot and the well also limits it, then, our requirements are that you shall give us a general location of where the proposed house could be. Mr. Ryland said that they could show an area where a house would fit, so long as it could be worded as a "possible house location," as opposed to a proposed one.

Mr. Watts said that they had noted the missing granite monuments, as well, and that the legend is missing from the plan, showing what the symbols mean. Mr. Ryland said he would add the legend.

There were no further comments. Mr. Violette MOVED to accept the application. Mr. Mical seconded. Ms. Annis asked if there was any discussion. Mr. Pellettieri asked if there would be anything formal to note the omissions that had been discussed. Ms. Annis said that would come on the Mylar. There was no further discussion. Ms. Annis called for the vote. Mr. Duhamel, yes; Mr. Pellettieri, abstained saying that he shared Mr. Hartman's concern about creating a substandard lot; Mr. Violette, yes; Mr. Hartman, yes; Mr. Mical, yes; Mr. Watts, yes. The motion was PASSED.

Ms. Annis opened the public hearing and asked if there were abutters who wished to speak. There were none. She then asked if there were others who wished to speak. Chris Connors asked what the Zoning Board said about the hardship criterion. Ms. Annis read from the Notice of Decision:

"Denial of the variance would impose unnecessary hardship upon the applicant. Applicant's criteria for demonstrating hardship for an Area/Dimensional Variance are as follows:

"a. An Area/Dimensional Variance is needed to enable the applicant's proposed use of the property given special conditions of the property.

"Given the topography of the property, together with the stream running diagonally through the property, it is not possible to satisfy the 2 acres of buildable area. The area on the property that is best suited to support a house is presently unimproved.

"There is an existing house that is built on the property that has been legally built in a tougher area, in that it is located across the stream and on the slope.

"By granting the variance the most 'builder friendly' area of the property will lend itself to a single family residence.

"b. The benefit sought by the applicant cannot be achieved by some other method reasonable feasible for the applicant to pursue, other than an Area Variance.

"There is no other alternative for the applicant other than this variance. The applicant does not own other property that is adjacent to this property. The owner did attempt to purchase adjacent property (which is located in Sutton); however, the owner did not desire to sell. Therefore, the applicant has no reasonable alternatives."

Ms. Connors asked what kind of precedent will this set if the Planning Board and the Zoning Board both approve it. She asked how strong our zoning regulations are. She said this is a sensitive area of land and the whole idea behind the regulations is to protect these types of land. She asked if this is passed, how the Board is to protect this kind of land from over-development. She said that with this, it means that anybody can come in here with a parcel of land like this with sensitive areas and claim that they can subdivide. She asked what good are the regulations. Mr. Violette said he thought this was generally stated. He said that not everyone can come in and subdivide. However, he said, every zoning ordinance has the ability for special exceptions and variances and each case is looked at separately on its merits when it's brought before the boards. He continued that there is no cookie cutter; there is no black and white because there are conditions that may occur on a parcel by parcel basis which would allow for a variance which a board may grant to allow building on the property. He said that there is no line that can be clearly drawn. He added that there are a lot of other places that have been grandfathered because they were built on substandard lots. He said, given that, why don't we put in zoning laws that would make them all change? He said that this is a lot better than many other conditions that he could think of. He said that in this particular case, it has been ruled on by the Zoning Board and with that ruling, it comes to this board, and we have to act on the subdivision, knowing

that the variance has been granted. Ms. Annis added that this Board would not be setting a precedent. She said that it has been done before, where they did not fit the criteria. However, citing Bill Rodgers on Couchtown, for example, she said he had a large enough piece when he wanted to subdivide so he had to make it 3-1/2 acres because a stream ran through it. She also said that there was a subdivision which was denied because the frontage was off by 6 inches. She said that each and every application that is submitted is taken on its own merits.

Mr. Hartman said that he would like to note the difference between this subdivision request and a grandfathered lot. He said grandfathered pieces of land would fit this case perfectly and he would probably end up saying that it's too bad that you had the wetland and the small piece of ground and our zoning ordinance was enacted after that lot was yours. He said that here the Board is creating a substandard lot by our own definitions. He said it is being created in part based on the rationale that the Zoning Board put together in their decision to grant the variance and which he said he thought was very weak. He said that the people who own this lot know full well that it is a lot that has wetlands. However, he said, they also know that there is a very clear ordinance that says if the Board grants this, it is creating a substandard lot. He said that he thinks this is a precedent and would like to not reinforce a precedent with a second precedent. He said there will be nothing wrong with the lot if it is not subdivided.

Ms. Annis asked if there was anyone else from the public who wished to speak. There was no one. Ms. Annis closed the public hearing and re-opened the meeting.

Mr. Hartman asked where the Olsen letter fits in. Ms. Annis said a letter was received which requests reconsideration. She said that all the Board members received a copy of it. It is reproduced below and was addressed to the Planning Board and each individual member:

"17 July 2008

"Re: Application for minor subdivision, Map #17, Lot #-6

"Ladies and Gentlemen,

"We object to the application for a minor subdivision submitted by Ronald and Bethany Bourcier to the Warner Planning Board for reasons including, but not limited to, the following:

"1) the threat to public health posed by the potential for sheet flooding and subsequent contamination of private water supplies as a function of the lot's very steep slopes in immediate proximity to jurisdictional wetlands; and,

"2) the precedent now set by the zoning board in allowing small, disparate parts and pieces of land to be cobbled together and ruled a 'buildable lot.' In this case, it is especially troubling because the disparate parts and pieces are separated by jurisdictional wetlands and watercourses and, even cobbled together, barely add up to 1.5 acres, if the data presented are accurate.

"The June 4 decision by the Warner Zoning Board of Adjustment seems to distort the reasoning behind the elimination of a requirement for contiguous acreage in – and make a mockery of – land use and planning as it relates to the definition of a 'buildable lot.' Further, the ZBA Chair's statement that 'substantial justice was done' appears to ignore the environmental damage that could be inflicted by physically connecting the disparate parcels one to the other. We would call to the Planning Board's attention the rulemaking process currently underway in the NH DES Wetlands Bureau with regard to stream-crossing that will require far more thought and science be given to crossing wetlands than was given in this ZBA's ruling of 'substantial justice.' At a minimum, the chair's statement that environmental issues were the purview of the state could leave one to question the overall environmental sensitivity and sensibility of the ZBA.

"The potential for environmental damage notwithstanding, if Warner is prepared to allow its two-acre buildable lot requirement to be undermined anytime property-owners who find themselves suddenly

burdened by lots they acknowledged were difficult when purchased wish to have them transformed into smaller, difficult lots, the character and nature of the R-2 zoned areas of town are at risk.

Whatever the Bourciers are allowed to do with their property by the Town of Warner will have little, if any impact, on our property. Had we not been abutters, we most likely would have never learned of their request. However, as citizens of Warner, we are concerned that the precedents set by the Zoning Board of Adjustments [sic] as a function of this decision may be very difficult to ignore the next time owners or purchasers of 'difficult' lots come seeking 'justice.'

*"Sincerely,
"Alan and Susan Olsen /s/"*

Ms. Annis noted that this letter has been received and has been disbursed among the Planning Board members. Mr. Pellettieri said that it does object to the subdivision application. Ms. Annis said that it does, but at the end, they note that "whatever the Bourciers are allowed to do with their property by the Town of Warner will have little, if any impact, on our property." She said that they do have two reasons that they believe the ZBA should not have granted the variance. Mr. Pellettieri said that they do note that as citizens of Warner they are concerned about the precedents set by the Zoning Board.

Mr. Hartman asked if there is any recourse between the Planning Board and the Zoning Board to ask them to re-address their application or have time limits expired. Ms. Annis said they have already done that. She said that the Olsens appealed the decision of the Zoning Board and the Zoning Board re-addressed it and they upheld their own decision. She noted that the Bourciers were to be on the agenda for last month, but the 30 days for appeal had not expired, and the Olsens filed their appeal within that time, so the Bourciers were postponed to this month.

There was no further discussion.

Mr. Violette MOVED to approve the subdivision with the following conditions: tie the plan to the State grid; properly mark the boundaries with monuments and indicate them on the plan; add the legend; show a possible house location; move the shed away from the 25-foot setback. Mr. Watts seconded.

Mr. Bourcier asked what the building code is for a 6x8 foot shed that is on blocks. Ms. Annis said it is a building. Mr. Bourcier said he would move it. Ms. Annis said that in R-2 no building shall be located nearer than 25 feet to an abutter's property. There was no further discussion.

Ms. Annis called the roll: Mr. Duhamel, yes; Mr. Pellettieri, abstain; Mr. Violette, yes; Mr. Hartman, no; Mr. Mical, yes; Mr. Watts, yes. The motion was PASSED.

Mr. Bourcier and Mr. Ryland thanked the board and left.

2. COMMERCIAL MAJOR SUBDIVISION

Property Owners: Alan & Lee Ann Wagner, Jr., 33 Newmarket Road, Warner, NH 03278

Agent: Stefan Toth, P.E., Toth Engineering, PLLC, 5 Bernards Rd, Suite 37, Merrimack, NH 03054

Property Location: Intersection of Route 103 and I-89 southbound off-ramp

Map/lot: 14/10, C-1 zoning

Description: Subdivision of existing 13.03 ac. lot into 4 commercial lots: 2.90 acres, 3.44 acres, 2.75 acres & 2.56 acres.

a. Application Accepted 2/5/07

b. Public Hearing held on 3/5/07

c. Action Taken – Approve/Disapprove/Continue

Ms. Annis said that at the last meeting the Board was at the point where a decision was going to have to be made. It was agreed that everyone would write up their suggested conditions and submit them to the Board members so that we could have a discussion tonight. The thought was that we would not make comments then, but we would know what everyone else was thinking. She thanked the members of the Board who did

do that. She said there are a number of lists of conditions and one which is a proposal to move for a final approval tonight. The lists of proposals are attached to these minutes. (Ed Mical – Attachment 1; Barbara Annis – Attachment 2; Paul Violette – Attachment 3; Hank Duhamel – Attachment 4; Rick Davies – Attachment 5) Ms. Annis asked Mr. Mical to explain why he chose to propose a final approval for tonight. Mr. Mical said in the subdivision regulations it talks about a conditional approval becoming final after a period of time if no action is taken. Ms. Annis referred the Board members to page 7 of the Subdivision Regulations, number 10. She said it is the last paragraph which reads, "The Board's approval of a final application shall lapse if all conditions of final approval have not been met within 90 days of the date of the conditional approval." She said that is one of the reasons that Mr. Mical suggested a final approval for tonight because of the 90 day requirement. Mr. Violette asked what that means. Ms. Annis said that if conditional approval were given tonight, then within 90 days final approval would have to be given. Mr. Hartman said it lapses so that the Board would not have to do anything if they didn't want to. Mr. French asked if that means that anything that is set as a condition has to be met within 90 days. Ms. Annis said that she sent an e-mail to the Board's attorney to interpret what it means. She read the attorney's response:

"I am not familiar with the details of the Alan Wagner application (or if I just plain don't remember) but I think the appropriate fix if the Board is inclined to grant conditional approval is to solicit the applicant's assent to an extension of the final approval time line until such conditions may be satisfied as a practical matter, such as next spring. Under the provisions of Section III, C. 6. referenced on page 8, paragraph 11 of the Subdivision Regulations, with the applicant's assent there should be no issue that the Board has failed to act in a timely manner or that it has in effect denied the application, neither of which is advantageous to the applicant."

Ms. Annis said that Mr. Gartrell is suggesting that because of the time frame, winter's coming and asked Mr. Wagner if he was going to be able start anything now. Mr. Wagner said he is trying to get all the other permits right now that have to be received before any construction can begin. Ms. Annis said if conditional approval were given now, with final approval in the spring, would that give him time enough to "get his ducks in a row." Mr. Wagner's reply was unintelligible. Mr. Toth said he is confused by this and asked for clarification. Ms. Annis said that she wrote:

"The Planning Board is scheduled to vote for approval, conditional approval or denial on the Wagner subdivision on Monday, September 8. I have reason to believe that it will be a conditional approval based on the last Planning Board meeting. The reason I say conditional is that the Board will be requiring many items to be presented to us prior to any physical activity on the property. These items include but are not limited to bond, liability insurance, escrow for the engineering firm that will act as clerk-of-the-works, DES final approval, intent to cut, earth excavation permit, requiring that the Board be represented at the pre-construction meeting with DOT, etc. I have no qualms about requiring all of these conditions and when all requirements have been met to have Alan Wagner return to the Board for final approval. But, in reviewing our subdivision regulations, page 7, I have concerns about the 90 day date in Number 10, second paragraph. Due to the time of year, we do not believe that any physical activity will commence before spring of 2009. Can you please advise on how to proceed?"

She read Mr. Gartrell's response again. Mr. Watts referenced RSA 676:3 and asked if perhaps the 90 day reference came from this RSA and that it refers specifically to the plat – that it is prepared as required by the conditions within 90 days or the conditional approval lapses. He said the conditions that we have been talking about are a matter of the building of the road to the property, not the plat specifically. He said if it is related to just the plat, then he would agree with the 90 days. However, he said, if it's not just plat-related and is related to how long it's going to take to construct, then 90 days is not what we would want. Mr. Violette said that his intent is not that the whole job will be done in 90 days or it's not going to be done. He said that it has to mean that it's a matter of getting the things in place that can be put in place within 90 days. He said that it's not practical to have to put up a bond a year ahead of time. Ms. Annis agreed. Mr. Violette said that he would still have to show before he starts if it is accepted that way that he does have insurance, etc. Mr. Toth suggested using the phrase prior to construction, these terms will be met. Mr. Violette said that some of the items would be produced at the pre-construction meeting.

Mr. Watts asked if there is a difference between Conditional Approval and Approved with Conditions. Mr. Mical said that is what he put together – an approval with conditions. He said it would not be a conditional approval. He said these are the conditions that must be met and at the end of that when everything is satisfied, then it will be recorded. He said that his proposal would say “All conditions must be noted on the plat and satisfied prior to signing and recording of the plat by the Planning Board.” Ms. Annis said then it would not be a legal subdivision until all the requirements had been met. Mr. Duhamel said that Mr. Mical’s proposal is only a draft and open for discussion. Mr. Mical agreed. Mr. Toth said he has never had a time line set as is being proposed. He said it has always read “prior to construction” this shall be done, etc. Mr. Mical said in his draft proposal it says that everything should be satisfied within 3 years and then there are specific items, like insurance, where it says that “no alterations on the site shall commence until said liability insurance is secured.” He said that does not give a time line, except that everything be completed within 3 years.

Mr. Violette asked Mr. Toth if that sounds reasonable. Mr. Toth said it can take some time administratively to get your plans noted and recorded. He said that then you have to get your permits and five years down the road you start the project. Mr. Mical said there is a time limit for subdivision of three years. Mr. Toth said that the only variable that cannot be defined is how long it’s going to take to build the road. He said so long as they’ve started the road and it’s complete within that three-year period, then you’ve met the intent. Mr. Mical said that he has proposed that there will be no sale of lots until the road is 100% completed. Ms. Annis said that is not uncommon.

Ms. Annis said how this is approached depends on how we decide to go – whether it will be approved with conditions as Mr. Mical suggests, then it will go one way; however, if conditional approval is the route, then there will be a different approach; if it’s going to be denied, then it will be approached in a different way.

Mr. Hartman asked Mr. Watts if the statute requires 90 days for a conditional approval. Mr. Watts said he read it to apply to the plat itself. Mr. Toth said that that is the 90 days that could be extended, if it is conditionally approved. Mr. Hartman said he would not want to use the same words as Mr. Mical, but perhaps arrange them differently. He said he would like to go on to approve the subdivision, with conditions. He said he does not see what the difference is between conditional approval and approval with conditions. Ms. Annis said conditional approval would mean that after they’ve met every criterion, then there is a final approval. Mr. Hartman asked why if they’ve met every condition of a conditional approval, how it is that a final approval is not automatic. Ms. Annis referred to the RAW and Begin Site Plan Reviews. She said with these, they had certain things they had to do and then they had to come back to the Board before they could proceed further. She said that would be conditional approval where they have to come back and prove to the Planning Board that they have met the conditions. She said that final approval is that it is on the Mylar and we will not have the Mylar recorded until they meet all the conditions. Mr. Hartman said that one of the conditions that he would really want to see is that the town accepting the road is not part of the subdivision. Ms. Annis said that they are required to build it to town requirements, but the Planning Board cannot require the Town to accept the road. Mr. Violette said that we would not grant approval of any subdivision that involves sales of lots unless the roadway that was put in met the standards of the town and would be acceptable by the town. He said that when the subdivision is granted, before Mr. Wagner can sell any of the lots, the road will be accepted by the town or that’s the end of it. Mr. Hartman said that it could still be a private road. Ms. Annis said that it was not written in the Split Rock or High Lawn. Mr. Wagner said that even if it stayed as a private road, it will still be built to the town’s specifications, and he said he thinks he should still be able to sell those lots. Mr. Violette said he said that the town has rules and regulations for accepting roads and he said he doesn’t think that the Selectmen have the right just to deny it if it meets all the criteria. Mr. Wagner said that we’re all trying to keep this simple and he said he wanted to thank the Board for the countless hours that they have put into this. He said it would be better for everyone if it could be made simple and reasonable. Mr. Violette said that the idea is that it does not end up like Split Rock, where they built part of the road, built some houses and never finished the road. He said the next thing was that the people move in and want the road finished and the town is in the position of having to pay for the completion of that road. Mr. French said that the difference is that this road will be completed to town specs prior to the sale of these lots; it just doesn’t have to be accepted by the town. He said that Split Rock was not completed and the town was forced to complete it. Mr. Violette said he would agree to allow the sale of

lots once the road is complete to town specs, even if the Selectmen decline to accept it as a town road. Ms. Annis said that Split Rock was a letter of credit that was allowed to expire.

Mr. Toth asked to do conditional approval or denial and then discuss the conditions. He said he and Mr. Wagner have read the suggested conditions and have reservations on only a few. Ms. Annis asked Mr. Hartman if, having seen the proposed conditions, he feels more comfortable voting on the potential motion. Mr. Hartman said he thought this was a good start and would see them as something to discuss. He said that a number of the issues have been discussed and the conditions listed need to be correlated and placed in the motion. Mr. Duhamel asked for an easel to help to document what is being discussed. He also asked that whatever is agreed to tonight will be the final decision. He asked that once the decision is made tonight that there be no more additions, even next spring, if they have to come back for approval on some of the items. Ms. Annis said if it is an approval with conditions, it will not be recorded until such time as they've met all the conditions. Mr. French asked if we could start with the ones that people object to or which need modification to save time.

Mr. Mical MOVED to approve the Alan & Lee Ann Wagner, Jr. Subdivision Map 14, Lot 10 located in the C-1 Zoning District as presented with the following conditions which shall be completed within three (3) years, unless otherwise noted. **All conditions must be noted on the plat and satisfied prior to signing and recording of the plat by the Planning Board:**

1. Construction of the roadway, noted as Hudson Lane, shall be at the applicant's expense. **The roadway shall be 100% complete prior to any application being received for a building on any of the parcels.** The applicant shall file a statement in writing accepting full liability for personal injuries and/or property damage arising from negligence of the subdivider or agents of the subdivider until such offer of dedication is accepted by the Town. The statement must also indicate that the subdivider is responsible for all maintenance of the easement areas until such time as the areas are dedicated and accepted by the Town or transferred to an association of owners or the like. The owner shall furnish evidence of sufficient insurance coverage with regard to such liability in an amount and form satisfactory to the Town. This statement shall be approved as to form and substance by the Selectmen after review by Town counsel.
2. Payment of an escrow fee for an engineering firm agreed by the applicant and the Planning Board in an amount specified for construction engineering oversight. No alteration of the site shall commence until said fee is secured. Any unused portion shall be returned to the applicant with any earned interest.
3. Provide general liability insurance in the amount of \$1,000,000.00 with the Town as an additional named insurer. No alteration of the site shall commence until said liability insurance is secured.
4. Provide a performance and payment bond for the full amount of the anticipated cost of construction with the Town named as an additional obligee with no responsibility to perform, said bond to be issued by an entity which is Treasury-listed and at least a AA-rating. No alteration of the site shall commence until said bond is secured.
5. Comply fully with the State of New Hampshire's Department of Transportation Driveway Permit No. 05-463-0002, dated July 2, 2008 including, but not limited to, construction of the roadway improvements set forth in the permit.
6. Obtain and produce an EPA Stormwater Permit. No alteration of the site shall commence until said permit is secured.
7. Obtain and produce a blasting certificate in accordance with State and Federal regulations. There will be no blasting between the hours of 6:00 PM until 7:00 AM. There will also be no work on Saturdays, Sundays and State-observed holidays. The applicant is responsible for any damages incurred as a result of the blasting. Prior to any blasting being completed the Fire and Police Departments must be notified at least 48 hours beforehand.

8. Comply with Public Service of New Hampshire's letter, dated August 22, 2006, relating to probable relocation/addition of poles, guys, transmission structures etc.
9. Comply with the Town of Warner's Earth Excavation Regulation for any material leaving the property.
10. Prior to cutting of timber, comply with the State's applicable RSA regarding intent to cut timber.
11. Adequate traffic control mechanisms as determined by the Warner Police Department and/or State Police whenever construction vehicles, etc. are operating in the roadway and in conjunction with the New Hampshire DOT Driveway Permit for the site.

Mr. Violette seconded.

Ms. Annis asked if there was any discussion.

Number 5 – Driveway Permit

Mr. Duhamel referred to the phrase in number 5, "but not limited to. . ." He asked what else would there be. Mr. Mical said that referred to the State DOT Driveway permit for their improvement. Ms. Annis said that the driveway permit requires a pre-construction conference, potential reimbursement to the State of New Hampshire for services of the State Inspectors, etc. Mr. Duhamel said that it is documented in the permit. Mr. Toth asked why, if complying with the permit that has everything in it is written, the rest of the sentence would be needed. Mr. Watts agreed, saying that if everything is in the permit, then there is no use for the last part of the sentence beginning with "including, but not limited to." He said if there is something missing, then we ought to state what that something else is. Ms. Annis noted from the permit: no parking in the right-of-way; no structures in the right-of-way; no fences; no walls. She said there is a lot within the driveway permit. Mr. French suggested putting a period after the 2008 and eliminate the rest of it. Mr. Violette said that number 11 goes beyond the driveway permit. Mr. Watts said that that is a specific item. Mr. Mical said he was trying to be sure that everything was covered. He said there are improvements across the roadway. Mr. Wagner said that that is the State's responsibility and it is between the State DOT and him and the Town doesn't really have to address those matters.

Number 7 – Blasting and Crushing

Mr. Duhamel referred to the blasting condition from Mr. Violette's list saying that people have to know. He read it with his addition as follows: "All residential and commercial neighbors shall be notified of the general blasting schedule for each season and they shall be notified at least one hour in advance, for each planned occurrence of any actual detonation of blasting materials." He asked Mr. Wagner what the state requirements are for blasting, in that, is there a siren or horn used. Mr. Wagner said there is a horn that is three blasts, a period of time, then two blasts, then the blasting part, and then one more blast of the horn for the all clear. He said because you are responsible for that shot, you don't send blasters out leaving the site. He said they have to be there on site, so, normally, you don't go around and let the neighbors know an hour before because you have a tremendous amount of materials in the ground and you want to be watching that at all times. He said that he would let the Fire and Police Departments know. He said in some towns, the Fire Department will actually send someone down to witness it. Mr. Duhamel said that perhaps it could be posted at Town Hall that one hour before, three blasts will sound. Mr. Wagner said that sometimes you can't post the exact times because you don't know how long it will take to drill; you don't know what the weather will be. He said if there is a thunderstorm coming, then you would not load the shot. Mr. Duhamel said that his point is that it doesn't have to be "next Monday." He said it's more a notice that when they hear a horn what it means and that next week or next month you might start to hear it. Mr. Wagner said that pre-blast surveys will be done on the abutting properties, so at that point, it would be an excellent time to explain exactly what happens with the horns and the rest. Mr. Duhamel asked if there is a specific distance within which people need to be notified. Mr. Wagner said he doesn't know, but the key is to have common sense and safety and having the right people working for you. Mr. Violette said if Mr. Wagner is going to go around and do the pre-blast surveys with all the abutters, then the notification could take place then. Ms. Annis

asked how loud the blast is. Mr. Wagner said it would be like a muffled or dull thud. Ms. Annis said if someone is driving by, it's not going to jolt them. Mr. Wagner said yes, if someone were driving down the road with windows rolled up and listening to a radio, he would not even notice it. He said you might notice some dust after the fact. He added that with the crushing, there were concerns about noise. He said that the office at Henniker Crushed Stone is only 500 feet away, and it's more of a crunch, crunch, crunch noise – it's not some banging and thrashing noise. He said that some of this is not as noisy as you might expect. Mr. Violette said that he has been at Henniker Crushed Stone many times and the noise is minimal in the office.

Number 7 – Work on Saturdays

Mr. Duhamel said that the limitation of working on Saturday and Sunday may be a question, although he said he could see not allowing blasting on those days. He asked if it might be reconsidered to allow Mr. Wagner to work moving earth, equipment and stumps on Saturdays, anyway, if not blasting. Mr. Mical said that he had added in no work on Saturdays, Sundays and State-observed holidays. Mr. Violette asked Mr. Wagner if he works on Saturdays. Mr. Wagner replied that sometime he works a half a day on Saturday, especially if the weather forecast is bad. He said it would be helpful if he would be allowed to work on Saturdays to at least go up and maintain the equipment.

Other additions

Mr. Hartman said that the blasting notices should be offered to the Town Fire and Police Departments and a system of sirens or horn blasts developed so there would be general notification. He said he would add that the Planning Board would be notified of the date of the pre-construction conference with DOT and be present. He said he would add that the applicant must secure all site-specific permits from NH DES. He said that he thinks that "easement areas" in number one means roadways, drainage, and all the things that are being talked about in the project. Mr. Mical said yes. Mr. Hartman suggested that Mr. Davies' number two that the Warner Planning Board shall be notified a minimum of two working days prior to the date of the pre-construction conference with NH DOT and to be present. He continued to read from Mr. Davies' proposals that the Planning Board shall be notified two working days prior to meetings with other agencies. All on-site visits by government agencies shall be reported to the Board. He said he thinks that would be in process of providing the monthly updates and reports. Ms. Annis and Mr. Mical said they thought that would all be included in the engineering services. Mr. Hartman said okay. He said that Mr. Davies had suggested in his number 19, "Provide sleeves under 103 for future signal wiring in a location approved by the State." He said that the people at the exit 9 development when construction was going on did put a conduit across so that later on any future signaling could be done. He said these are the only additions to Mr. Mical's proposal that he could see.

Fencing and Subsequent Rocks Falling

Mr. Pellettieri referred to the fence and the maintenance of the fence. He said it should prevent someone from walking and dropping over the precipice of the cut. He said that the fence is in the plans but the maintenance of it and making sure it stays in place may not be clear.

Mr. Pellettieri referred to Mr. Davies' number 13, which refers to after the operation is concluded and any additional loose rocks that fall down for a period of time, and asked whose responsibility it is to take care of those. Ms. Annis asked if that is part of the maintenance section. Mr. French said he thought that would be part of number one. He said that whoever owned the roadway at that time would have to maintain it. Mr. Mical said that under number one, unless it is dedicated and accepted by the Town, it stays with the owner or the subdivider. Mr. Watts said that it could be decided when and if the Town decides to accept it and it could be made a condition then.

Bonding

Mr. Pellettieri referred to Mr. Davies' number 16 related to a completion bond. He said he knows that Mr. Davies has a lot of experience in bonding. Mr. Mical said that the liability insurance is for \$1,000,000 and the bond has not yet been specified. He said we were waiting for the full amount. Mr. Watts said that he thinks

Mr. Mical's number 4 is the same as Mr. Davies' number 16. Ms. Annis said that Mr. Davies uses AAA-rated and she said that is what she thinks was used before. Mr. Mical said okay.

Tree Buffers

Mr. Pellettieri referred to Mr. Davies' number 20 said that there has been a discussion about an access route through the State/Federal highway right-of-way and those are trees that will be there for screening the property. But, he said, they will be removed for an access roadway.

Notification of Regional Impact

Mr. Pellettieri said that there is still some question in his mind about notification of regional impact.

Date of Driveway Permit

Mr. Pellettieri said that the record should be corrected so that the date of the driveway permit is July 3, 2008, not July 2, 2008. It was commented that the date of the permit is July 2, but the date it was printed was July 3.

Tree Buffers

Mr. Duhamel asked Mr. Wagner about the trees. Mr. Wagner said it will have to be discussed at a pre-construction meeting with the State exactly where the access road can be built and they may not even approve that idea. He said that the State does not like trees to be cut on their property, so if they do approve anything, a minimum amount of trees could be cut and then, he said, he was sure they would have to be replanted. Mr. Pellettieri said that he thinks that the State has left the town in the lurch before. Ms. Annis asked if this is to be included in the pre-construction meeting. Mr. Toth said that he thinks that DOT ultimately would decide about the tree buffer. Mr. Pellettieri said that we are just trying to get together a list of potential items and then fine-tune them. He said he had no other comments.

Ms. Annis asked if there were any other comments or questions from the Board. There were none. She then asked Mr. Wagner and Mr. Toth for their comments.

Insurance Coverage

Mr. Toth asked to go point by point. He said the only concern they have with number 1 and number 3 is why does the town want or need to have their insurance requirements and post a \$1,000,000 insurance policy since they have bonds posted for the work. He said the town is not building the road; the town is only inspecting road. He said that he's only seen this done when someone is doing work for the town. He said that they think they should not have to post a \$1,000,000 insurance policy with the town. Ms. Annis said the bond is for the work. She said that there is an attractive nuisance up there. She said, for example, there is a chimney outside of the Town Hall that was being worked on and there was a scaffolding there with a sign saying hands off. She said that a child on the way to school climbed up on the scaffolding, fell off and broke their arm. She said that the town was sued because we had an attractive nuisance. Mr. Toth said it was town property. Ms. Annis said that, even so, it is the town that gave Mr. Wagner permission. Mr. Toth said he thinks this is linking the town into private property. Mr. French agreed and said that when the state or federal governments give people the right to drive on the roads, the governments are not responsible for accidents. He said that since this is private property he doesn't think that the town has any liability. Ms. Annis said that this has been required on every site plan and everything that we have. Mr. Duhamel said there are waivers, though. He read from number one saying that "The owner shall furnish evidence of sufficient insurance coverage with regard to such liability." Mr. Toth said that they are asking that that be removed from the first paragraph and from number 3. Mr. Duhamel asked if proof of liability insurance was required elsewhere. Mr. Mical said that number 1 is written verbatim from our current Subdivision Regulations concerning roads. Mr. Violette said that it says in writing and it does not say "insurance policy" in number 1. Mr. French said that he thinks it was designed for a contractor who was going to work on a town road. Mr. Mical disagreed and said it is for construction of roads and private roads. Mr. Toth said that

the phrase "in an amount satisfactory to the town" doesn't tell you what the amount is and what the form is. He said sufficient insurance coverage could be anything. He said it is very vague. Mr. Pellettieri referred to the last sentence of number 1 which reads: "This statement shall be approved as to form and substance by the Selectmen after review by Town legal counsel." He said that if Mr. Wagner presents evidence of insurance coverage and the Selectmen and the Town Counsel are in agreement then that should be satisfactory. Mr. Toth said that they need to know what that amount and form is. Mr. Pellettieri said that there are still a lot of unknowns at this point and until we get further down the road, he said that he doesn't think that they or the Planning Board realize what requirements and commitments might be. Mr. Toth said that it seems that number 1 can't be revised because of the regulations, but asked that the Board consider removing the \$1,000,000 liability insurance policy requirement in number 3. Mr. Violette said that if the amount in number 1 was agreed to be \$1,000,000, then number 3 would not be needed.

Mr. Pellettieri said he had looked into the Town of Windham's blasting ordinance. He read from it:

"Evidence of general liability and property damage insurance issued by a carrier authorized by the State of New Hampshire to do business in New Hampshire in the amounts not less than the following:
\$2,000,000 combined single limit per occurrence for a 30-day duration permit
\$4,000,000 for a 60-day duration permit
\$6,000,000 for all permits for greater than 60 days' duration.
All liability insurance companies shall have at least an AA Moody Bond Rating."

He said he doesn't know if that is out of the realm of reasonableness or not, but he said he thinks this is why we would rely on the Selectmen and the Town Counsel to have some input based on what is being proposed. Mr. Toth said again that they think that only one of the provisions is necessary.

EPA Stormwater Permit

Mr. Toth said that the Stormwater Prevention Plan has to be submitted as part of the permit. Mr. Mical said it's actually the EPA Notice of Intent that should be used. Mr. Toth said yes.

Alteration of Terrain Permit

Mr. Pellettieri asked where the alteration of terrain permit is. Mr. Toth said that comes at the pre-construction meeting and then that permit has its conditions.

Blasting Notifications

Mr. Toth asked for clarification on the blasting notifications. He said he understood that they would notify the abutters prior to beginning the blasting and notifying at the preconstruction meeting about the horn. He said sometimes there will be a sign on the road that identifies what each horn means. Ms. Annis said she thought they were also going to notify the Fire Department and the Police Department. Mr. Toth said yes. He said that to notify each neighbor one hour before each blast is problematical. Ms. Annis said that will be discussed. Mr. Pellettieri asked if they have an estimated time that the blasting operation will proceed, for example, they would be blasting during the months of October and November. Mr. Wagner said it will probably be a several year project. Mr. Toth asked if Mr. Pellettieri meant that they would be blasting, say, from April to October. Mr. Pellettieri said he was thinking of a three-year time frame, in which, say, they would begin blasting in a couple of months, then they would stop and then next year they would start again, would they provide another notification then. Mr. Duhamel said that we probably are in the fall of 2009, after the land is prepped, where Mr. Wagner could say that his plan is to do, say, 1000 yards, or whatever it is, and that is posted. He said that then in the spring of 2010, Mr. Wagner could say May, June and July, and then he would hope to do this plan. Mr. Pellettieri said he was just trying to get some way of keeping the town apprised of what is going on.

Payment of Escrow Fees

Mr. Toth asked about number two, the payment of escrow fees. He said that since Keach-Nordstrom has been selected to do the oversight, and they had an amount between \$7200 and \$9000, it should be added, and the amount agreed upon. Ms. Annis said that there are two other projects for which escrow fees have been required. She said that they had thought they would start immediately, not knowing that economy was going to fail. She said what they gave us for a price two years ago is not going to be what the price would be now. She said if they get \$90 an hour now, and, if, for some reason, Mr. Wagner cannot start before 2009 or 2010, then the \$90 an hour may be \$100 an hour. She said she is looking to how the town can be protected for the \$9000. She asked if it's possible to put in a COLA. Mr. Toth said there is already a buffer when they say \$7200 to \$9000. Ms. Annis said that they're predicting the amounts depending on how many visits they have to do in 2009; they're not saying the same number of visits in 2010 is going to cost the same. Mr. Toth said that whoever is managing that account notices that it's going to be more, and then they will have to notify Mr. Wagner that more money will be needed to cover the additional fees. Ms. Annis said that the town is guaranteeing that the fund is there. Mr. French asked if the escrow runs dry, then the town should go back to Mr. Wagner. Ms. Annis said that Mr. Wagner could say it was \$9000 in the agreement. Mr. Wagner said that then the town's option would be to issue a cease and desist order. Mr. French said he could see no point in tying up a lot of someone's money. Ms. Annis agreed. Mr. Toth said he was just trying to set the initial amount that Mr. Wagner has to post. There was further discussion on how to determine the amount. Mr. French suggested posting \$4000 and then as more bills come in, the amount is replenished so that we will always have the money in escrow.

Bond

Mr. Toth asked who is coming up with the amount for the bond. He said he brought an estimate tonight. Mr. Mical said it is in the scope of work for the engineers that they would review the estimate, too. Ms. Annis said yes. Mr. Toth handed out the estimates and discussed it. The total estimate was approximately \$2,800,000 to complete the work, and this would be if Mr. Wagner were not doing the work. Mr. Violette asked if this included the work on the State property as well. Mr. Toth said it was only the work on Mr. Wagner's property, including the roadway and the infiltration system. He said that the fencing is estimated based on using a woven wire type.

Cutting of Timber

Mr. Toth continued and read the item regarding filing the intent to cut with the State. Ms. Annis added that the town should also receive the intent to cut notice. Mr. Toth said yes.

Traffic Control

Mr. Violette referred to the paragraphs about adequate traffic control mechanisms. Mr. Toth said that the one by Mr. Violette was all right with them. The Board agreed.

Blasting Notifications

Mr. Toth asked if it is agreed that the abutters will be notified at the beginning of each season of blasting. The board members indicated agreement. It was agreed to combine number 12 with number 7. Mr. Violette said that the part about the warning horns will be included as well, notifying the meaning of each signal.

Pre-construction Meeting

Mr. Toth said that they will notify the Planning Board Office and a copy to Ms. Annis of the pre-construction meeting with DOT. Mr. Mical asked if it was part of the job of the engineering firm to take care of things like this and report back to the Board. Mr. Pellettieri said that the pre-construction meetings are probably some of the more important aspects of this, so the Planning Board should decide if we want to send a representative or have a Selectman attend or make sure that the Police and Fire Departments are there. He said it's simply a notification and it is not a burdensome request. Mr. Mical agreed. Ms. Annis said if we don't

have the engineering firm on board and the escrow set up and the pre-construction meeting comes up, then they would not be there. Mr. Mical said that prior to anything starting, these other things have to be in place, anyway. Mr. Pellettieri said that he did not think it was necessary to specify that the Board be present, but that the notification was important.

NH-DES Permits

Mr. Toth said that number 14 has already been completed. Mr. Pellettieri asked if there were other permits, like blasting permits, still to be secured. Mr. Mical said there is no blasting permit. Mr. Toth said that it says all site-specific permits from NH-DES. Mr. Violette said that that would not be needed then. The Board agreed.

Other Meetings

Mr. Pellettieri asked how our engineer will know when to attend other meetings than the pre-construction meeting. Mr. Toth said that the engineer does not have to attend meetings with the DOT since DOT is off the site. He said that they're just overseeing the on-site work, making sure the road is done right. There was some discussion about Mr. Davies' number 3. Mr. Toth said that the oversight engineer will be notified of inspections.

Sleeve under Route 103

Mr. Toth said that the only problem with this as suggested by Mr. Davies' number 19 is that they worked for a year to get a permit from DOT and to have to go back to them and ask to rip up the road for a conduit for a traffic light. He said it could not be put at the driveway, anyway, because of the traffic island that is to be extended in front of the driveway. There was some discussion about this and it was agreed to return to this issue.

Fencing

Ms. Annis asked if the fence is going to be as indicated on the plans. Mr. Toth said it is on top of the cut so someone walking along would have to step over the fence and then fall. Mr. Wagner said there will be signs up, as well, warning of the falling hazard. Ms. Annis asked if it is permanent. Mr. Toth said yes, it will be woven wire, instead of a temporary fence. He said he will revise that note on the plan. He said the location of the fence should be the same as the plan.

Tree Buffer

Mr. Toth said this has been discussed some. Mr. Pellettieri asked what the process will be for clearing the access road to begin construction. Mr. Toth said that DOT will be asked if they can come up off the ramp and up the side to get to the top of the property. Ms. Annis asked if DOT allowed them to get up there once, using that route. Mr. Wagner said yes, twice. Ms. Annis asked if it will be the same idea. Mr. Pellettieri said that they will have to create an access to be able to get heavy construction equipment up and down on the property. He said it's a lot different than what was done for the surveying and test pits.

Mr. Toth said that there may be some trees that will have to be removed, but they would have to get permission from NH-DOT. Mr. Wagner said that the vast majority of the trees are staying. Mr. Pellettieri said that we don't know that because we don't know where the access point is going to be. Mr. Toth said this will be discussed in the pre-construction meeting. Mr. Pellettieri said that he thought it should be a condition. Mr. Wagner said that he knew he would not have to take down many trees to gain access for construction. Mr. Toth said the problem they have with the wording is that it says that "trees shall be marked and be approved by Planning Board prior to cutting." He said that any cutting they have is going to be through DOT land, not Mr. Wagner's land, so DOT is going to have to okay it.

Mr. Pellettieri said that when he raised the concern about the extent of grading and cutting on steep slopes and construction of the site, Mr. Toth assured the Board that there is plenty of screening and buffer on the

State property. And, he said, now they want to use the State property for access and the Board is expected to rely on the State to protect our concerns about a buffer. Mr. Violette disagreed. He said that neither McDonald's nor Market Basket was required to have a buffer; they were not required to plant trees. Mr. Pellettieri said that we did. Mr. Violette asked what is going to be on the hill that cutting a few trees is going to make a big difference.

Ms. Annis said that it was her understanding that they are not intending to do anything except make a roadway through the State property to get to Mr. Wagner's property. Mr. Wagner said that the State would not want him to do anything except simply that. He said that if he has to take a few trees down, he is sure they will be mapped out exactly which ones and it is a pretty good chance that they will ask him to re-plant those. He said that those trees, in some respects, are almost planted too close together. He said all the boughs are touching, so that, if you cut a tree between two trees, the others will grow together and pines grow quite fast. Mr. Pellettieri said that we are talking about major construction access; not just getting one piece of equipment up there. He said that we are talking about a road that is graded; that has drainage and erosion controls. He said that they are talking about moving hundreds of thousands of cubic yards of material. Mr. Toth said that the road will have to be stabilized, but the State will not allow it to be re-graded. He said it will have to be restored. Mr. Pellettieri said that they will get access to the site, and then blasting and removal will begin from up there. Ms. Annis asked if it will be stockpiled at the top until they get down to Route 103. Mr. Toth said the State is not going to allow them to carve a driveway out.

Mr. Duhamel asked if it would be about 20 feet wide. Mr. Wagner said it would be about 18 or 20 feet wide, enough for a truck and shoulders. Ms. Annis asked if it is Mr. Wagner's intent to use the roadway, if the State gives permission, to remove all of the rock and gravel that will be coming down. Mr. Wagner said yes, some of it. He said he doesn't know what the State will say. He said to stockpile it until the entire roadway is done would create a cash flow problem for him. He said if he can't stockpile it, then he would have to cut more trees on his property that might not have to be cut if it were not stockpiled.

Mr. Pellettieri said that when he had asked at the start of this if Mr. Wagner would be blasting on Route 103, he said that he was going to get permission from the State to go up into the middle of the property, clear up there and begin blasting on the top. He said that Mr. Wagner will have to clear a big area, blast in there and either stockpiling that material or removing it. He said that that will have to come out through the temporary access road until Hudson Lane is accessible. Mr. Wagner replied that all he meant to say was that if the State didn't give him permission to use the road to haul the material out, then he would have to clear a bigger area to stockpile it. Mr. Pellettieri said that the area Mr. Wagner is clearing just to create Hudson Lane is a huge area. Mr. French said that he could not stockpile it up there because of the blasting. Mr. Duhamel said that State property is being discussed and they should be and will be the ones overseeing it. He said that a lot of questions will be answered at the pre-construction meeting.

Ms. Annis said that she thought that Mr. Pellettieri wants to protect the area as much as possible so it will be rural in character. Mr. Duhamel said if we don't have any pictures of exactly which trees are marked, how we know what we're talking about right now. Mr. Pellettieri said that is what Mr. Davies wants to do saying that the buffer shall be marked and approved by the Planning Board. Mr. Duhamel said that is overkill right now. Mr. Pellettieri said he agreed and that we don't have to exactly mark the buffer there, but he did not want to go to the other extreme of giving carte blanche to the applicant and the State to decide which trees are going to be cut in order to create the access. Ms. Annis said there will be a vote shortly and she said she wanted to finish this tonight.

Notifying the Regional Area

Mr. Violette said that's a suggestion that he does not support. Ms. Annis agreed.

Bond and Escrow

Mr. Toth said that he thinks that the three-year escrow suggested by Mr. Davies should be a decreasing value. Mr. Violette said that it would decrease as time goes on. Ms. Annis said that is not written in. She said it just says "provide a performance and payment bond for the full amount of the anticipated cost of construction."

She said there is nothing about decreasing it as construction progresses. Mr. Toth said that Keach-Nordstrom will be inspecting it and they will periodically send something saying that a portion has been completed. Mr. Toth said that it does not say keep a three-year escrow after the road is completed. He asked if the Board is going to keep that – he asked when the three years would start – after the road is completed, after it is accepted by the Town or when. Mr. Violette said he would read it to be after the road is completed. Mr. Toth said that each time there is a bond reduction, they would appear before the Board to request a bond reduction for X amount in terms of what has been completed. He said at a point, whatever amount is decided will be held back by the Board until it's proved that the work has been done satisfactorily. Mr. Mical said that item 4 could be amended to cover that. He said the Subdivision Regulations on page 29 refer to the expiration and the bond remaining in effect after completion. He said it talks about 13 months after the approval and completion of all the requirements. Mr. Violette asked Mr. Mical if he thought it was covered. Mr. Mical replied that he thought if it's going to be reduced as things are done, then a specific amount needs to be set and say we're going to keep this much and figure a percentage of the project to keep on hand for that period of time. Mr. Toth said that part of the bond is a percentage, and because of that, he said he didn't think it was necessary. Mr. Hartman said that he thinks that the three-year escrow for the maintenance of the steep slope rock slides coming down is part of the maintenance talked about in number one. He said that he does not see a need for an escrow account for that particular item.

Earth Excavation Regulations

Mr. Pellettieri referred to Mr. Davies' number 10 related to earth excavation regulations. He said that he thinks it's important that we assure that we don't end up with a de facto quarry or pit operation. He said that should the applicant not be able to continue with the project, and has been blasting and removing material, and the project stops, there needs to be a reclamation plan and some ability to perform that. He said if that is accomplished through the other performance bonds, then he accepts it, but he said he thinks it needs to be addressed. Ms. Annis said that reclamation is part of the Earth Excavation Regulations. She said that Mr. Wagner must come into the Planning Board to get a permit because he will be removing enough gravel to be a commercial operation. Mr. Toth said that the bond right now covers the entire cost of the road construction and if it stops, then the town can use the bond to complete it. He said that 30% of the bond is additional for this. Mr. Watts said that if reclamation is not finished, then it comes from the bond, whether or not the project is completed.

Votes on Conditions

Ms. Annis said the Board will vote on each item, using Mr. Mical's proposal and the additional items discussed. Mr. Mical asked if the motion is going to be amended. Mr. Violette said yes.

Ms. Annis said that the request from Mr. Toth is to remove Item Number 3, and remove the wording of number one, the next to the last sentence, "The owner shall furnish evidence of sufficient insurance coverage with regard to such liability in an amount and form satisfactory to the Town." Mr. Mical said that that verbiage came right out of the Site Plan Review for public use of land. He said he thought it should stay in as it is. Mr. Pellettieri said he agreed. Mr. Duhamel said that he liked the changes that had been discussed. Mr. Violette said that he would like to take out number three and leave one the way it is. Others agreed. Ms. Annis asked if that was agreeable to everyone. Mr. Mical said that in the past we have required general liability insurance for any project. Ms. Annis agreed. Mr. Duhamel said that it is also covered in number one. Mr. Mical said no, it isn't. Mr. Watts said he could not find anything in the regulations that refers to this. Mr. Violette said that in number one it says that the owner shall furnish evidence of sufficient insurance. Mr. Mical said that that is after it's constructed. He said it doesn't have anything to do with prior to completion. Mr. Violette said it doesn't say that. Mr. Watts said he thinks it's implied in number one that it is during construction. Mr. French said that it says that Mr. Wagner has to file in writing accepting liability for personal injuries. He said it doesn't say that he has to be insured. Mr. Mical said it does when it says that "evidence of sufficient insurance coverage with regards . . . in an amount satisfactory to the Town." Mr. French said it could be any amount. Mr. Mical said it could be the liability insurance as in number 3. Mr. Duhamel asked if it would be possible, with number 3 left in, for someone to name the Town if someone were to sue Mr. Wagner and they thought they needed more than \$1 million, because the Town is a named insurer. Mr. Toth said that the person named on the insurance coverage is liable – both Mr. Wagner and the Town. Mr. Watts

said that he thinks that number 3 should come out and leave the wording in number one since it is straight from the regs.

Ms. Annis said it would be taken as two separate votes. First, she asked if number one should be as is. The vote was taken: Mr. Duhamel, yes; Mr. Pellettieri, yes; Mr. Violette, yes; Mr. Hartman, yes; Mr. Mical, yes; Mr. Watts, yes.

There was no change to number one.

Ms. Annis next asked about number 2. She asked how much the Board wanted in the escrow for the Keach-Nordstrom fees. There was some discussion. Ms. Annis suggested wording it to read: "Payment of escrow fee for Keach-Nordstrom to be maintained at \$4000 . . ." She said that would give a buffer, but not require Mr. Wagner to be out of pocket by \$7000 to \$9000. She said that if a bill comes in for \$1500, then it will be paid, but Mr. Wagner will have to bring the balance back to \$4000. The vote was taken: Mr. Duhamel, yes; Mr. Pellettieri, yes; Mr. Violette, yes; Mr. Hartman, yes; Mr. Mical, yes; Mr. Watts, yes.

Ms. Annis asked about number 3. She said it has been recommended that this be removed. Mr. Pellettieri MOVED to amend the original motion to eliminate number 3. Mr. Violette seconded. There was no further discussion. The vote was taken: Mr. Duhamel, yes; Mr. Pellettieri, yes; Mr. Violette, yes; Mr. Hartman, yes; Mr. Mical, no; Mr. Watts, yes. The motion was PASSED to remove number three.

Ms. Annis asked about number 4. Mr. Mical MOVED to amend it to be AAA rated and set up to be State of New Hampshire approved and to make the amount \$2.8 million as on the estimate. Mr. Violette seconded. There was some discussion. The vote was taken on number 4 as amended: Mr. Duhamel, yes; Mr. Pellettieri, yes; Mr. Violette, yes; Mr. Hartman, yes; Mr. Mical, yes; Mr. Watts, yes.

Ms. Annis asked about number 5. Mr. Violette MOVED that a period be inserted after July 2, 2008 and exclude the rest of number 5. Mr. Duhamel seconded. There was no discussion. The vote was taken. Mr. Duhamel, yes; Mr. Pellettieri, no; Mr. Violette, yes; Mr. Hartman, yes; Mr. Mical, yes; Mr. Watts, yes.

Ms. Annis asked about number 6. Mr. Mical MOVED to amend number 6 by removing Stormwater Permit and inserting Notice of Intent in its place. Mr. Pellettieri seconded. There was no discussion. The vote was taken. Mr. Duhamel, yes; Mr. Pellettieri, yes; Mr. Violette, yes; Mr. Hartman, yes; Mr. Mical, yes; Mr. Watts, yes.

Ms. Annis asked about number 7. She read, "Obtain and produce a blasting certificate in accordance with State and Federal regulations. No blasting between the hours of 6:00 p.m. and 7:00 a.m. Abutters will be notified at the beginning of the season. Police and Fire Departments will be notified every time there is blasting. There will be warning horns and notification of signal types." She said it has been requested that half-days on Saturdays be allowed. Mr. Violette asked Mr. Wagner if he was thinking about blasting on Saturday. Mr. Wagner said no. Mr. Violette said they could work on Saturday. Mr. Mical said that there was an added item of no work on Saturdays, Sundays and holidays. Mr. Mical MOVED that Saturdays be removed and leave Sundays and holidays in. Mr. Duhamel seconded. The vote was taken. Mr. Duhamel, yes; Mr. Pellettieri, yes; Mr. Violette, yes; Mr. Hartman, yes; Mr. Mical, yes; Mr. Watts, yes. Mr. Toth clarified that the intent is no State-observed holidays. The members agreed.

Ms. Annis asked about the overall number 7 as amended. Mr. Violette MOVED to approve number 7 as amended. Mr. Duhamel seconded. The vote was taken. Mr. Duhamel, yes; Mr. Pellettieri, yes; Mr. Violette, yes; Mr. Hartman, yes; Mr. Mical, yes; Mr. Watts, yes.

Ms. Annis asked about number 8, related to the Public Service letter dated August 22, 2006. The members voted unanimously to accept this condition as written by Mr. Mical.

Ms. Annis asked about number 9, related to the Town of Warner's Earth Excavation Regulations. There was agreement that it would not be amended.

Ms. Annis asked about number 10, related to cutting of timber. This was agreed to unanimously as in the original motion.

Ms. Annis asked about number 11, related to traffic control measures. Mr. Mical said that Mr. Davies' proposal number 8 is the best verbiage. Mr. Mical MOVED to insert Mr. Davies' proposal number 8 as number 11. Mr. Watts seconded. The vote was taken. Mr. Duhamel, yes; Mr. Pellettieri, yes; Mr. Violette, yes; Mr. Hartman, yes; Mr. Mical, yes; Mr. Watts, yes.

Ms. Annis said that number 12 was removed and combined with number 7, related to notifying abutters.

Ms. Annis asked about number 13 which is related to notifying the Planning Board and the oversight engineering firm about the pre-construction conference with NH-DOT. Mr. Violette MOVED to insert number 13 to notify the Planning Board and the oversight engineering firm about the pre-construction conference with NH-DOT. Mr. Watts seconded. The vote was taken. Mr. Duhamel, yes; Mr. Pellettieri, yes; Mr. Violette, yes; Mr. Hartman, yes; Mr. Mical, yes; Mr. Watts, yes.

Ms. Annis said that number 14 related to notifying DES has been removed because it has been done. She said number 15 was never inserted. It was agreed not to insert it and no vote was needed.

Ms. Annis said that number 16 is the fence that is on the plan. Mr. Pellettieri said that it will be woven wire. Ms. Annis agreed and said it will be permanent, woven wire. Mr. Mical MOVED that it be inserted that the fence on the plan will be permanent and made of woven wire. Mr. Watts seconded. The vote was taken. Mr. Duhamel, yes; Mr. Pellettieri, yes; Mr. Violette, yes; Mr. Hartman, yes; Mr. Mical, yes; Mr. Watts, yes.

Ms. Annis asked about number 17 related to the tree buffer. Mr. Violette said he understands the position in Mr. Davies' suggestion, but he said that nothing has ever been put in. He said that it's only been discussed. Mr. Watts said that it could be discussed further, but he thought that the Board will be notified of the pre-construction meeting and we will be at it and that is where we will tell the State what our demands are. He said that is where the specifics will be discussed about which trees will be taken down. Mr. Pellettieri MOVED that a provision be made for some kind of protective buffer. Mr. Hartman seconded. Mr. Pellettieri said he did not want to be unreasonable about it, but he thought it should not be left to the State to decide. There was no further discussion. The vote was taken. Mr. Duhamel, no; Mr. Pellettieri, yes; Mr. Violette, no; Mr. Hartman, yes; Mr. Mical, no; Mr. Watts, no. The Motion was not passed.

Ms. Annis asked about notification of regional impact. She said it was discussed but not put in the original motion. Mr. Pellettieri read from RSA 3655 saying that the "criteria for regional impact include but are not limited to the following: relative size and number of dwelling units; proximity of developments to a municipal boundary; [the Sutton town line] impact upon transportation networks; anticipated emissions, construction, noise, etc.; proximity to regional aquifers and surface waters; and, shared facilities." Mr. Violette said that notifying abutting towns carries with it a lot of time for more deliberation about everything. There was some further discussion about regional impact. Mr. Toth said that it could involve combined meetings with the other towns and could be a very involved procedure. Mr. Pellettieri said that since we did not do that, if one of the adjoining towns wished to object to the project, at least there is something on the table and they can pursue it if they want. He said that at least there should be some coverage for the Town that we made an effort to comply with an RSA that is pretty specific. Mr. Toth said that there is a process to determining if there is regional impact and the Board has to determine that. He said he wants to understand what kind of communication there would be because he thinks that they need to react to this proposal as well. Ms. Annis said that Warner has not been notified about the large subdivisions which have been created in some of the surrounding towns and those have an impact on the traffic coming into town. She said that she does not think that this project is going to have nearly the impact on the adjoining towns as the developments in the other towns have on Warner. Mr. Wagner said that this area has been zoned Commercial for a long time. Mr. Pellettieri said he agreed, but there is a roadway on the plan, Hudson Lane, which has a potential future extension of that into the Town of Sutton. Mr. Toth said that the actual extension of the road would have regional impact, but unless it is actually extended, then it does not impact Sutton.

Mr. Hartman asked if the extent of the conditions approved run from Mr. Mical's on through number 13. Ms. Annis said yes. Mr. Hartman said that number 3 has been removed, so there actually is a total of 12

conditions. Ms. Annis said yes. Mr. Watts suggested that the fence condition, which is now number 13, be put in as number 3, thus keeping all the other numbers as they are.

Ms. Annis said that before voting on the motion in its entirety, there was a letter received from Luke Wenger of 32 Eaton Grand Road, Sutton that needs to be acknowledged. She said that he is not an abutter, but is expressing his concerns. She said that as far as she knows, he has never appeared at any of the meetings. It is reproduced as follows:

*"27 August 2008
"Town of Warner
"Planning Board
"P. O. Box 265
"Warner, NH 03278*

"Dear Sirs,

"I write to express my concerns regarding the proposed Wagner Development off Route 103 just west of exit 9 on Interstate I-89. As a homeowner whose property is about one mile from the site, I fear that the development will have an unfavorable impact on the value of my property, both in the short term while construction proceeds and in the long term.

"(1) In the short term, along with my neighbors on Eaton Grange Rd. and East Sutton Rd. in Sutton, I will be subject to the sounds of blasting and rock crushing. I understand that what is proposed is a major alteration of the existing terrain, with removal of a substantial part of the existing ridge line that runs parallel to I-89. How long will this work take? What steps will be taken to protect those of us who live in the vicinity from the sonic impact of the construction?

"(2) In the long term, I am concerned about the removal of a substantial portion of the existing acoustical barrier that protects my property from the traffic noise of I-89. Has this issue been studied?

"(3) I am also concerned about the status of the road into the development. Is there a possibility that the road will subsequently be extended north of the Wagner property, with additional development in that area?

"(4) Finally, I am concerned about the environmental impact of the development. One reason I chose to live here is the quality of the natural surroundings, which I fear will be adversely affected by the development.

"The proposed development strikes me as a regional issue, with a variety of impacts beyond the borders of Warner. I would be interested to know what the statutory requirements are for notification of an adjacent town when a development is proposed near its borders. Has the town of Sutton received official notice of the development? Should the Planning Board of Sutton be allowed to weigh the impact of the development on the town of Sutton and to participate in discussions with the Warner Planning Board before permits are granted?

"Thank you very much for your consideration.

*"Yours sincerely,
"Luke Wenger /s/
"cc: Town of Sutton Board of Selectmen"*

Ms. Annis said that she would respond to the letter, and acknowledge receipt of it.

Ms. Annis called for a vote on Mr. Mical's motion and conditions as amended. The vote was taken. Mr. Duhamel, yes; Mr. Pellettieri, yes; Mr. Violette, yes; Mr. Hartman, yes; Mr. Mical, yes; Mr. Watts, yes. The motion was PASSED.

Mr. Toth and Mr. Wagner thanked the Board and departed.

Following is a list of the conditions as approved:

Conditions:

The following conditions shall be completed within three (3) years, unless otherwise noted. **All conditions must be noted on the plat and satisfied prior to signing and recording of the plat by the Planning Board.**

1. Construction of the roadway, noted as Hudson Lane, shall be at the applicant's expense. **The roadway shall be 100% complete prior to any application being received for a building on any of the parcels.** The applicant shall file a statement in writing accepting full liability for personal injuries and/or property damage arising from negligence of the subdivider or agents of the subdivider until such offer of dedication is accepted by the Town. The statement must also indicate that the subdivider is responsible for all maintenance of the easement areas until such time as the areas are dedicated and accepted by the Town or transferred to an association of owners or the like. The owner shall furnish evidence of sufficient insurance coverage with regard to such liability in an amount and form satisfactory to the Town. This statement shall be approved as to form and substance by the Selectmen after review by Town legal counsel.
2. Payment of escrow fee for Keach-Nordstrom Associates, Inc. in the amount to be maintained at no less than \$4000 for construction engineering oversight. No alteration of the site shall commence until said fee is secured. Any unused portion shall be returned to the applicant with any earned interest.
3. The fence noted on the plans will be of permanent woven wire.
4. Provide a performance and payment bond in the amount of \$2.8 million with the Town named as an additional obligee with no responsibility to perform, said bond to be issued by an entity which is Treasury-listed, State of New Hampshire approved and at least AAA-rated. No alteration of the site shall commence until said bond is secured.
5. Comply fully with the State of New Hampshire Department of Transportation Driveway Permit No. 05-463-0002, dated July 2, 2008.
6. Obtain and produce an EPA Notice of Intent. No alteration of the site shall commence until said permit is secured.
7. Obtain and produce a blasting certificate in accordance with State and Federal regulations. There will be no blasting between the hours of 6:00 PM until 7:00 AM. The applicant is responsible for any damages incurred as a result of the blasting. There will be no work on Sundays and State-observed holidays. The Warner Fire and Police Departments will be notified at least 48 hours prior to each scheduled blasting. Abutters will be notified at the beginning of the season about blasting signals and their meaning. Notifications of blasting signals and their meaning will be posted and communicated to the abutters.
8. Comply with Public Service of New Hampshire's letter, dated August 22, 2006, relating to probable relocation/addition of poles, guys, transmission structures etc.
9. Comply with the Town of Warner's Earth Excavation Regulation for any material leaving the property.
10. Prior to cutting of timber, comply with the State's regulation regarding intent to cut timber.

11. Provide adequate traffic control mechanisms, as determined by the Warner Police Department (and State Police as applicable), which shall be deployed whenever construction vehicles, owned, hired or contracted by the owners or their agents are moving materials from the site onto and along the state or local highways. This item shall be in addition to or in coordination with any traffic safety requirements imposed by the NH DOT as detailed in their driveway permit for this site.
12. The Warner Planning Board and the oversight engineers will be notified of the date of the pre-construction conference with NHDOT and will be present for that conference.

3. MINUTES

Mr. Hartman MOVED to approve the minutes of August 4, 2008. Mr. Duhamel seconded. The motion was PASSED unanimously.

Mr. Hartman MOVED to approve the minutes of August 18, 2008. Mr. Duhamel seconded. The motion was PASSED unanimously.

4. SUBCOMMITTEE REPORTS

Ms. Annis said that the CIP meeting with the Budget Committee which was scheduled for September 22 has been postponed. She asked Mr. Duhamel when the public hearing could be held. Ms. Annis suggested October 6 and asked if Mr. Duhamel has met with his committee and if he could be ready by October 6 for the public hearing. Mr. Duhamel said yes. Ms. Annis said the public hearing will be rescheduled for October 6 and said that the Planning Board has to approve it before it can go to the Budget Committee.

Mr. Violette said that Sharon Wason will be at the Work Session on September 22 to discuss the results of the survey. He said that he would like the entire Board to see the results.

5. COMMUNICATIONS AND MISCELLANEOUS

Ms. Annis said that Mike McChesney has written a letter requesting a 6-year building extension of his project. She said they have intentions of building the other two historic reproduction buildings but the market is not there right now. Mr. Duhamel asked what it would entail to let this one go and just re-apply. Mr. Mical said it is part of a site plan review that has a time limit. Mr. Violette said that to let it go would mean he would have to re-submit and the Board would have to look at it again. Mr. Mical said he'd like to have him come in to meet with the Board to state where he is and some kind of a time frame for completion. Mr. Violette said that would be a good idea. Mr. Watts asked when it runs out. Mr. Mical said he thinks it runs out in 2009. It was agreed to ask Mr. McChesney to come in to the Board in person and discuss it and he will be asked to come to the October 6 meeting.

Ms. Annis said that Todd Wells has requested approval of a voluntary merger of the two lots, Map 16-81 and Map 16-82. She said it appears that he has a land-locked lot and owns an abutting lot that gives access to it. Mr. Hartman asked what the requirements are on this. Ms. Annis said there is no choice but to sign it. Mr. Mical said there hasn't been an application submitted. Ms. Annis said that what he's submitted is all that is required. She said that it is signed and given back to the Assessor for the tax map adjustment. Mr. Mical said that he wants to merge 81 and 82 into one lot. Mr. Mical MOVED to accept the voluntary merger. Mr. Watts seconded. The motion was PASSED unanimously.

Mr. Mical said that he had received information from the State Environmental concerning the new regulations for wood firing, a fact sheet about setbacks, etc. He said we might want to include it when we are looking at the Zoning. He said he would have Ms. Lightfoot forward a copy to the other Planning Board members. He said it was effective as of August 10, 2008.

6. PUBLIC COMMENTS

There were no members of the public remaining at the meeting so there were no public comments.

7. ADJOURN

Mr. Pellettieri MOVED to adjourn. Mr. Violette seconded. The motion was PASSED unanimously. The meeting was adjourned at 10:45 p.m.

ATTACHMENT 1
ED MICAL

Motion to approve the Alan & Lee Ann Wagner, Jr. Subdivision Map 14, Lot 10 located in the C-1 Zoning District as presented with the following conditions which shall be completed within three (3) years, unless otherwise noted. **All conditions must be noted on the plat and satisfied prior to signing and recording of the plat by the Planning Board:**

1. Construction of the roadway, noted as Hudson Lane, shall be at the applicant's expense. **The roadway shall be 100% complete prior to any application being received for a building on any of the parcels.** The applicant shall file a statement in writing accepting full liability for personal injuries and/or property damage arising from negligence of the subdivider or agents of the subdivider until such offer of dedication is accepted by the Town. The statement must also indicate that the subdivider is responsible for all maintenance of the easement areas until such time as the areas are dedicated and accepted by the Town or transferred to an association of owners or the like. The owner shall furnish evidence of sufficient insurance coverage with regard to such liability in an amount and form satisfactory to the Town. This statement shall be approved as to form and substance by the Selectmen after review by Town legal council.
2. Payment of escrow fee for _____ in the amount of \$ _____ for construction engineering oversight. No alteration of the site shall commence until said fee is secured. Any unused portion shall be returned to the applicant with any earned interest.
3. Provide general liability insurance in the amount of \$1,000,000.00 with the Town as an additional name insurer. No alteration of the site shall commence until said liability insurance is secured.
4. Provide a performance and payment bond for the full amount of the anticipated cost of construction with the Town named as an additional obligee with no responsibility to perform, said bond to be issued by an entity which is Treasury-listed and at least A-rated. No alteration of the site shall commence until said bond is secured.
5. Comply fully with the State of New Hampshire Department of Transportation Driveway Permit No. 05-463-0002, dated July 2, 2008 including, but not limited to construction of the roadway improvements set forth in the permit.
6. Obtain and produce an EPA Stormwater Permit. No alteration of the site shall commence until said permit is secured.
7. Blasting in accordance with State and Federal regulations. No blasting between the hours of 6: PM until 7:00 AM. The applicant is responsible for any damages incurred as a result of the blasting.
8. Comply with Public Service of New Hampshire's letter, dated August 22, 2006, relating to probable relocation/addition of poles, guys, transmission structures etc.
9. Comply with the Town of Warner's Earth Excavation Regulation for any material leaving the property.

ATTACHMENT 2
BARBARA ANNIS

1. Payment of escrow fee for name of engineering firm in the amount of \$ _____ for oversight of construction. To be adjusted on an annual basis by COLA.
2. Provide a performance and payment bond for the full amount of the anticipated cost of construction with the town named as additional obligee with no responsibility to perform said bond to be issued by an entity which is Treasury listed and at least A-rated.
3. Provide general liability insurance in the full amount with the Town as an additional obligee.
4. Comply fully with State of NH DOT Driveway Permit # 05-463-0002 dated July 3, 2008 including but not limited to construction of the roadway improvements.
5. The Warner Planning Board to be notified of date of pre-construction conference with NHDOT and to be present.
6. That the applicant secures all necessary site-specific permits from NH Department of Environmental Services (DES), if required, prior to construction starting.
7. Until such time as "Hudson Lane" is accepted by the Town of Warner as a Class V Road the owner of the property will establish management services, including inspection, maintenance and reporting functions in regards to storm water services on an annual basis.
8. File a Notice of Intent to Cut with the Town of Warner prior to cutting of timber (unless excused by state requirements). (Optional)
9. Apply for and receive a Town of Warner Earth Excavation Permit. (Optional)
10. Apply for a Notice of Intent to Excavate per RSA 72-B. (Optional)

ATTACHMENT 3
PAUL VIOLETTE

Progressive performance & completion bond

(A bond that is reduces in dollar value & requirement as the job is completed)

Account for Engineering/Inspection

(Wagner's to establish an account at a bank in their name, with the Town named as a co-owner, to be used as a payment vehicle for project engineering/inspection costs required throughout the project)(Any interest gained or any fees levied on this account will remain with the Wagner's).

Hours of work operations

(7:00 AM to 5:00 PM Monday's through Friday's)(No work on Saturday's, Sunday's or on major holidays). (We can define major holidays if needed).

Blasting notices

(All residential and commercial neighbors shall be notified of the general blasting schedule for each season and they shall also be notified at least one hour in advance, for each planned occurrence of any actual detonation of blasting materials).

Traffic safety

(Adequate traffic control mechanisms, as determined by the Warner Police Department, will be deployed whenever construction vehicles, owned, hired or contracted by the owner's or their agents are moving materials from the site onto and along the state or local highways).

(This item will be in addition to or in coordination with any traffic safety requirements imposed by the NH DOT as detailed in their driveway permit for this site).

No Exaction Fees

(Exaction Fees may be required by the town in the future on individual owners of the lots within the subdivision which are to be subdivided when applications are submitted for approval for Site Review).

ATTACHMENT 4
HANK DUHAMEL

I have made my comments in Blue color

DRAFT LIST OF CONDITIONS FOR
WAGNER SUBDIVISION

Progressive performance & completion bond

(A bond that is reduces in dollar value & requirement as the job is completed)

Account for Engineering/Inspection

(Wagner's to establish an account at a bank in their name, with the Town named as a co-owner, to be used as a payment vehicle for project engineering/inspection costs required throughout the project)(Any interest gained or any fees levied on this account will remain with the Wagner's).

Hours of work operations

(7:00 AM to 5:00 PM Monday's through Friday's)(No work on Saturday's, Sunday's or on major holidays). (We can define major holidays if needed).

Blasting notices

(All residential and commercial neighbors shall be notified of the general blasting schedule for each season *and they shall also be notified at least one hour in advance, for each planned occurrence of any actual detonation of blasting materials*). Who are the neighbors (list) and how far away to be considered notifying?

Traffic safety

(Adequate traffic control mechanisms, as determined by the Warner Police Department, will be deployed whenever construction vehicles, owned, hired or contracted by the owner's or their agents are moving materials from the site onto and along the state or local highways).

(This item will be in addition to or in coordination with any traffic safety requirements imposed by the NH DOT as detailed in their driveway permit for this site).

Sale of Lots

No lots will be sold until the entire roadway system, including all drainage and paving, within the subdivision is completed and accepted by the Town.

No Exaction Fees

(Exaction Fees may be required by the town in the future on individual owners of the lots within the subdivision which are to be subdivided when applications are submitted for approval for Site Review).

ATTACHMENT 5
RICK DAVIES

DRAFT- Suggestions for Conditions of Approval for Wagner Subdivision

1. Provide proof of general liability insurance (\$2,000,000 or greater if required by Town policy) in the full amount with the Town as an additional obligee.
2. Comply fully with State of NH DOT Driveway Permit # 05-463-0002 dated July 3, 2008 (my copy is dated July 2, 2008) including but not limited to construction of the roadway improvements.
3. The Warner Planning Board shall be notified a minimum of two working days prior to the date of pre-construction conference with NHDOT and to (must?) be present. The Board shall be notified two working days prior to meetings with other agencies. All on-site visits by government agencies shall be reported to the Board.
4. That the applicant secures all necessary site-specific permits from NH Department of Environmental Services (DES), if required, prior to construction starting. (note this permit can be viewed the DES web-site)
5. File a Notice of Intent to Cut with the Town of Warner prior to cutting of timber (unless excused by state requirements).
6. Abutter and neighbor consideration: Once construction commences, limit blasting duration to six months for mass rock blasting; and eight months from commencing for completion of trench ledge blasting, crushing of blasted rock, and 12 months from commencing for removal of crushed stone not being used in construction from the site. All residential and commercial neighbors shall be notified of the general blasting schedule for each season, and they shall also be notified at least one hour in advance for each planned occurrence of any actual detonation of blasting materials.
7. Hours of project construction work operations: 7:00 AM to 5:00 PM Monday through Friday. There shall be no work on Saturday's, Sunday's or on major holidays. (The Planning Board can define major holidays if needed).
8. Provide adequate traffic control mechanisms, as determined by the Warner Police Department (and State Police as applicable), shall be deployed whenever construction vehicles, owned, hired or contracted by the owner's or their agents are moving materials from the site onto and along the state or local highways. This item shall be in addition to or in coordination with any traffic safety requirements imposed by the NH DOT as detailed in their driveway permit for this site.
9. Apply for a Notice of Intent to Excavate per RSA 72-B. (Optional)
10. Earth Excavation Regulation permit shall have provisions for reclamation if the project should end short of completion, and for limiting duration (one year from start of construction) of selling of crushed stone. The intent of this project is not to become a long term site for selling materials.
11. Until such time as "Hudson Lane" may be accepted by the Town of Warner as a Class V Road the owner of the property will establish management services, including inspection, maintenance and reporting functions in regards to storm water services on an annual basis.
12. Note on plans referring to a fence as approved by the Town shall be changed to as approved by land Owner. The Town may indicate its requirements when investigating acceptance of the road. Note at the bottom of page one on Provan & Lorber's letter of February 8, 2007 questioning if Town would

want to take Ownership of a steep grade road with significant ledge cuts. (There was indication an orange construction fence would be suggested – maybe Town should look into legal issues of owning or require additional terracing and substantial fence.)

13. Provide a 3 year escrow and an agreement to scale and remove rock which loosens on the steep rock slopes.
14. There is no guarantee the Drainage Infiltration System will be accepted by the Town. Provide provisions for private Ownership by adjacent lot owners. Future addition drainage tie-in may not be accepted by the Town. A repair and maintenance escrow, indexed to federal cost of living index may be required.
15. Payment of escrow fee for name of engineering firm in the amount of \$ _____ for oversight of construction. This shall be adjusted on an annual basis by COLA. Scope of work shall include but not be limited to: weekly and as needed field observations and reports; review of material submittals; review blasting plan; review of gravel gradation; review compaction test results; attend meetings; inspect installed materials and systems; and other items as directed by Planning Board.
16. Completion Bond in the amount of the project's construction value (\$3,000,000). Dollar value shall be confirmed by independent source such as the Town's oversight Engineer. Value of any anticipated crushed stone sales shall be excluded from the initial amount. Bonding company must have an AAA rating (or as required by the Town or State DOT)
17. Exaction Fees may be required by the town in the future on individual owners of the lots within the subdivision which are to be subdivided when applications are submitted for approval for Site Review.
18. If required, future signals expenses shall be the primarily the responsibility of the four lot (five lots until street accepted by Town) owners since its location is basically independent of the Interval and North Road traffic.
19. Provide sleeves under Route 103 for future signal wiring in a location approved by the State.
20. Trees buffer shall be marked and be approved by Planning Board prior to cutting. Owner's discussion of an access route through State/Federal highway right-of-way shall not include removal of additional tree buffer or State's tree screen.
21. No lots shall be sold until the entire roadway system, including all drainage and paving, within the subdivision is completed and accepted by the Town.