

**SOUTH HADLEY PLANNING BOARD VIRTUAL MEETING
MEETING MINUTES OF MARCH 22, 2021
As Approved**

Present: Brad Hutchison, Chair; Diane Mulvaney, Vice-Chair; Joanna Brown, Clerk; Melissa O'Brien, Member; Nate Therien, Member; Michael Adelman, Associate Member; Richard Harris, Director of Planning and Conservation; Anne Capra, Conservation Administrator/Planner; and Colleen Canning, Senior Clerk Planning and Conservation Department

Chair Hutchison called the meeting to order at 6:33 PM and reviewed the virtual meeting protocols.

Agenda Item # 1--- Open Comment Period

John Howard, 15 The Knolls, submitted an email (attached) which indicated interest to address the Board during the open comment period. He advocated for mandates which would require all new structures to be constructed with solar ready roofs.

Agenda Item #2 --- Minutes

Three sets of minutes were sent to the Board for their review which included the March 4, 2021 special meeting minutes and the March 8, 2021 regular meeting and public hearing minutes. Comments were received on the March 4 minutes and were incorporated into a revised draft which was sent to the Board. Additional comments were received prior to the meeting which needed to be incorporated into a new revised draft. Therefore, approval was tabled until the next meeting.

There were not comments or edits associated with the March 8, 2021 regular meeting minutes.

Motion: Clerk Brown moved to approve the March 8, 2021 regular meeting minutes. Vice-Chair Mulvaney seconded the motion. Five (5) out of five (5) members voted in favor of the motion through roll call.

Clerk Brown noted two errors within the March 8, 2021 public hearing minutes.

Motion: Clerk Brown moved to approve the March 8, 2021 public hearing minutes as revised. Member O'Brien seconded the motion. Four (4) out of four (4) voting members voted in favor of the motion through roll call.

Agenda Item #3 --- Correspondence

The list of correspondence was included in the agenda background materials. Additional correspondence was sent to the Board prior to the meeting. Most of the correspondence related to the scheduled public hearing continuance.

Agenda Item #4 --- Release of 2006 Covenant Agreement regarding Mountbrook Subdivision off Mountainview Street and Westbrook Road

Richard Harris explained that the previous year the Board acted to lift the Covenant Agreement tied to phase 2 of development of the Mounatinbrook subdivision to allow individual building lots to be conveyed. However, an additional covenant agreement was recorded at the beginning of development for all phases. Therefore, two covenants were effectively placed over phase two. Last year, the Board voted to lift one of the covenants but the other covenant was still in place.

Motion: Vice-Chair Mulvaney moved to release the remaining lots covered by the Covenant Agreement for Mountainbrook recorded June 5, 2006 (book 8741 page 69) and authorize the Director of Planning and Conservation to sign on the Board's behalf. Clerk Brown seconded the motion. Five (5) out of five (5) members voted in favor of the motion through roll call.

Agenda Item #5 --- Scheduled Public Hearing: Application for Definitive Plan and Stormwater Management Permit approval for proposed subdivision. Property Location: west side of Hadley Street (aka State Route 47) and along Sullivan Lane (Assessor's Map Number #54 as Parcels #15 & #20 and on Assessor's Map Number #56 as Parcels #20, #26, #42, #43, #43A, #104, #109, #112, and #121)

Chair Hutchison called the public hearing continuance to order at 6:47 PM (See public hearing minutes)

The regular meeting reconvened at the close of the hearing at 8:24 PM.

Agenda Item #6 --- Decision: Application for Definitive Plan and Stormwater Management Permit approval for proposed subdivision. Property Location: west side of Hadley Street (aka State Route 47) and along Sullivan Lane (Assessor's Map Number #54 as Parcels #15 & #20 and on Assessor's Map Number #56 as Parcels #20, #26, #42, #43, #43A, #104, #109, #112, and #121)

As the Board required no further deliberation, the Chair asked for a motion.

Motion: Vice-Chair Mulvaney moved to deny the application for Definitive Plan and Stormwater Management Plan for the proposed 'North Pole Estates Subdivision' located along the west side of Hadley Street and Sullivan Lane (Map 54 Parcels 15 & 20 and Map 56 Parcels 20, 26, 42, 43, 43A, 104, 109, 112, and 121) *and to* authorize the Director of Planning and Conservation to sign the decision on the Board's behalf. Member O'Brien seconded the motion. Four (4) out of four (4) voting members voted in favor of the motion through roll call.

Agenda Item #7 --- Planning & Conservation Department Report on Planning Projects and Development

Richard Harris detailed the following items:

- Skinner Woods- The Board could anticipate review of the Form H Plan at an upcoming meeting.

- Rocky's Hardware- The applicant was working on submitting an application for site plan review for a new detached hardware store. The Board could anticipate the applications to be submitted within the next few weeks
- Senior Center- The project consultant had indicated interest in installing an illuminated sign. They had been given the requirements and application materials. The Board could anticipate review of the request at an upcoming meeting. Vice-Chair Mulvaney noted that she would recuse herself from deliberations when the item was considered as she is the Chair of the Senior Center Building Committee.
- McKinley Ave- A developer expressed interest in developing a duplex. A Special Permit would be required to develop the site. The interested party was given the application requirements.
- Bylaw and Zoning Map Amendments- Public hearings were scheduled for April 5, 2021 to consider updates to the Stormwater Management Bylaw and to consider zoning map amendment requests at 280 and 286 Granby Road
- Master Plan Update- The Board had engaged in a number of special meetings to review the draft Master Plan. Additional future special meetings were scheduled.
- Planning Board Meeting Schedule- As local elections would be held next month, it was advised that the Board wait to finalize their schedule until after elections
- Grant Activity- Staff compiled a list of grants awarded to the Town which were written and applied for by Planning and Conservation department staff. Over 8 Million dollars had been awarded to the Town through the department's efforts in the last few decades. A dramatic increase in awards was noticed after the merging of the Planning and Conservation Departments.

Agenda Item #8 --- Other New Business

Member Therien indicated his interest in discussing solar and green energy initiatives as was relayed to the Board during the open comment period. Board members indicated their interest as well. Considerations for solar energy were complicated by the requirements set forth through the municipal electric company. Richard Harris recommended that a representative from SHELDT attend a Planning Board meeting to discuss the feasibility of expanding solar energy opportunities. Member O'Brien asked if South Hadley was a designated 'green community'. Richard Harris replied that the Town did not have the designation and it would be difficult to achieve as the required energy reduction was not feasible at this time.

Member Therien inquired if Westover Air Base had provided high resolution maps which identified the precise location of the accident prevention zone. Richard Harris responded that they had not. The data compiled was not at survey level so precise information would be hard to attain.

Vice-Chair Mulvaney thanked Member O'Brien for her years of service to the Planning Board as she was not seeking re-election

Agenda Item #9 --- Adjourn

As there was no additional new business to discuss, Chair Hutchison asked for a motion to adjourn the meeting.

Motion: Clerk Brown move to adjourn the meeting. Member O'Brien second the motion. Five (5) out of five (5) members voted in favor of the motion through roll call.

The meeting adjourned at 9:01 PM.

Respectfully Submitted,
A Approved
Colleen Canning, Senior Clerk, Planning and Conservation Department

Appendix

Document	Document Location
Meeting Q&A	Attached
John Howard email	Attached
Grant Matrix	Planning Files

March 22, 2021 Planning Board Regular Meeting and Public Hearing 'Question and Answer' Transcript

#	Question	Asker Name	Asker Email	Answer(s)
1	Robert Pleasure is present using Patricia Greenfield's Computer.	Patricia Greenfield	pgreenfield@umass.edu	Thanks. I just changed your name
2	Hi, Colleen, Did you receive my request to speak at the meeting? Kathy Davis	Kathy	kdavis@educ.umass.edu	Yes
3	tk	Kathy	kdavis@educ.umass.edu	okay
4	Mr. Levesque stated that the subdivision plan is one that provides transition from mining to residential. 1) does that mean that the current mining will stop? 2) if the claim is true, can the residences be moved to the current grandfathered pit? That seems connected to Mr. Levesque's claim.	Robert Schwartz	rschwart@mtholyoke.edu	Brought into the meeting
5	Mr. Siddall seems to express surprise that the Board of Health is concerned about risk, and asks why the question of risk is only raised now. Yet the letter the Board of Health addressed to the Planning Board November 2, 2020 explicitly reported its dismay that the Applicant had not addressed the Board of Health's concern about risk.	Nate Therien	natetherien@gmail.com	Comments read
6	Applicant has asked which activity poses the most risk to the water supply, more mining or a subdivision. This is not the choice faced by either Board.	Nate Therien	natetherien@gmail.com	Comments read
7	My husband would like to raise a question	Lori Souder (she/her)	lorijeansouder@gmail.com	Thank you

A comment for Planning Board Open Comment Period

John Howard <jhoward@mtholyoke.edu>

Thu, Mar 18, 2021 at 3:59 PM

To: SHPlanBoard@southhadleyma.gov

Cc: Jennifer DeForge <jdeforge2323@gmail.com>, Srinivasan Raghavan <vraghava@mtholyoke.edu>, Karl Hidden <karl@geekmail.us>, Matthew Roth <matryanroth@gmail.com>, John Howard <jhoward@mtholyoke.edu>

Hello,

I would like to ask that the planning board mandate all new structures have solar ready roofs. Solar Ready roof is one which is facing more or less South with no obstructions like a dormer, jogs in the roof or chimneys. The north side of the roof is still open for architectural touches. California has already done this and the state of Massachusetts is in the process of considering it. It is so easy to do a solar roof during the construction of a house and so impossible to do it later. The sooner we start this the better.

Thanks,

John

CC to the Sustainability and Energy Commission

John Howard

[15 The Knolls Rd.](#)

[South Hadley, MA 01075](#)

413-536-5973.

www.mtholyoke.edu/~jhoward/solarenergy.html

**SOUTH HADLEY PLANNING BOARD VIRTUAL PUBLIC HEARING
CONTINUANCE:**

Application for Definitive Plan and Stormwater Management Permit approval for proposed 'North Pole Estates' subdivision located at west side of Hadley Street (aka State Route 47) and along Sullivan Lane (Assessor's Map Number #54 as Parcels #15 & #20 and on Assessor's Map Number #56 as Parcels #20, #26, #42, #43, #43A, #104, #109, #112, and #121).

**MINUTES OF MARCH 22, 2021
As Approved**

Present: Brad Hutchison, Chair; Diane Mulvaney, Vice-Chair; Joanna Brown, Clerk; Melissa O'Brien; Member; Nate Therien, Member (not a voting member for this Public Hearing); Richard Harris, Director of Planning and Conservation; Anne Capra, Conservation Administrator/Planner; and Colleen Canning, Senior Clerk Planning and Conservation Department

Chair Hutchison called the public hearing continuance to order at 6:47 PM and reviewed the protocols for the virtual hearing.

The Town's representative legal counsel, Attorney Brian Winner, was present at the virtual meeting.

The applicant, Jason Ouellette, was present at the virtual hearing along with his representatives, Rob Levesque of R. Levesque Associates and Attorney Michael Siddall.

As the public hearing was intended to close during the meeting, Chair Hutchison gave the applicant and department staff an opportunity to offer closing comments.

Richard Harris reviewed items that had been received since the previous hearing date. The Board of Health submitted an updated denial letter which followed a meeting where the supplemental hydrological analyses were presented. An inter-departmental meeting was held, as was customary for all subdivision applications, to discuss the proposed development. Representatives of the applicant were present at the meeting. Attorney Brian Winner and Richard Harris drafted a decision for the Board's consideration which was included in the meeting's agenda background materials.

Rob Levesque overviewed the permitting history of the site. Some years ago, the property owner submitted a Special Permit application to expand the existing mining operation. After further consideration, the property owner chose to withdraw the special permit application and pursue subdivision development as it was allowed by right. A preliminary subdivision plan was approved by the Board and was followed by the submission of the definitive plan. Hypothetical concerns for the aquifer were heard. However, the measurable standards for subdivision approval were met.

Attorney Michael Siddall addressed the legal standard for review and approval of subdivision applications. He stated that the subdivision control law had a narrow review scope which was

limited to dimensional and safety requirements. Items such as livability and attractiveness, which the Board addressed through their review, were standards too vague to issue a denial over. The Board addressed concerns for the development's conformity to the Master Plan which also created a vague standard for denial. Additionally, the Board addressed concerns for the application's conformity to bylaws limiting earth removal which were codified after the submission of the subdivision application which the applicant was not made aware of. Lastly, the Board was relying on a letter of denial from the Board of Health which was sent prior to the receipt of the peer-review comment letter which presented contradictory points to the Board of Health's letter. Chair Hutchison replied that the referenced earth removal bylaw was a general bylaw and not under zoning or subdivision regulations. Additionally, the Board did not make any specific findings regarding the applications conformity to the zoning bylaw as they were not the ultimate arbiter of such. Within the Board's review of the subdivision standards, the Board identified two standards that the applicant had not adequately satisfied.

Jason Ouellette thanked the Board for their review of the application and reiterated that the property had been owned by his family for generations and wished to maintain a good relationship with the Town.

Chair Hutchison opened the hearing to public comment at 7:16

Steven Garabedian, 803 Federal Street Belchertown, submitted a google form (attached) which indicated his interest to speak at the hearing and included a written question. He was the author of the 2004 USGS study which was utilized throughout hydrogeological assessment of the site. He clarified that he no longer worked for USGS and was speaking as a private citizen on the matter. He identified that Dry Brook hill, the location of the proposed subdivision, was a vulnerability to the public well. Within the hydrogeological report, the analyses identified the level of contaminants which could reach the aquifer. However, it did not consider the amount of contaminants which would remain in the soil. He stated that the most troubling figure identified in the study was the amount of potential benzene contamination, which exceeded the permissible threshold. He described that the amount of benzene which could fill a milk carton was able to contaminate 21 million gallons of water.

As Steven Garabedian had a background in hydrogeology and was familiar with the site, he invited the Board to ask questions. Clerk Brown asked Steven Garabedian to speak to the potential level of risk the development posed to the aquifer based on the scenarios performed within the McLane Hydrogeological report. Steven Garabedian replied that additional analysis would be required to understand potential risk as the study did not evaluate risk. Clerk Brown stated that the USGS study was performed in 2004 and inquired if new technologies or methodologies had been developed which could offer more precise understandings of the aquifer. Steven Garabedian replied that the USGS study was done as completely as possible with the information available. If new information was available, such as readings from a new monitoring well, it could be incorporated into the study.

Attorney Michael Siddall addressed the supplemental hydrogeological analyses performed. He stated that prior to generating the scope of work, the consultant sought a meeting with the

Planning Board and Board of Health. However, the Board of Health was not represented during scope development. Therefore, it was not feasible for the analyses to include items, such as a risk assessment, which were identified during a recent Board of Health meeting. He stated that the models used for analysis were reviewed and endorsed by Weston and Sampson and were identified as more germane to offer projections of conditions than that of the USGS report. Lastly, the Board of Health denied the application prior to receiving the peer-review letter which identified that the levels of contaminants reviewed in the analyses were conservative relative to impacts as they assumed the most drastic scenarios. Richard Harris clarified that the consultant did not seek a meeting with the Planning Board. They requested a meeting with a representative of Weston and Sampson, as the peer-reviewer, and himself, as the planning director. As he understood, representation from the Board of Health was not secured.

Rob Levesque asked Steven Garabedian if he was aware of cases in which single-family home development was prevented in Zone 2. He added that there were already homes and roads existing within Zone 2 near the proposed project site. Steven Garabedian stated he could not answer this question as his background was not in zoning or residential development.

Rob Levesque asked Steven Garabedian if residential home development was less impactful in Zone 2 than mining. Steven Garabedian responded that he could not answer the question. He would advise the applicant to retain a consultant to analyze the risk factors associated with both uses.

Al Werner, 106 Wendell Street Shutesbury, submitted a google form (attached) which indicated his interest to speak at the hearing. However, he was not present at the virtual meeting.

Robert Pleasure, 10 Jewett Lane, submitted a google form (attached) which indicated his interest to speak at the hearing and included written comments. He stated that he reviewed and supported the draft decision included within the agenda background materials. He thanked the Board, town staff and town council for their work in reviewing the application materials

Kathy Davis, 7 Saybrook Circle, submitted a google form (attached) which indicated her interest to speak at the hearing. She stated that she intended to make the Board aware of Steven Garabedian's comments to the Board of Health at a recent meeting to consider the North Pole Estates Subdivision application. However, Steven Garabedian addressed the Board directly earlier in the evening.

Kevin McCaffrey, Director of Government and Community Relations at Mount Holyoke College, submitted a google form (attached) which indicated his interest to speak at the hearing. He stated that multiple local boards and organizations expressed concern for the proposed subdivision. He referenced a comment letter from Al Werner, a professor at Mount Holyoke College, which identified how subdivision development could negatively affect the aquifer.

Robert Schwartz, 7 Ashfield Lane, used the virtual meeting's 'raise hand' function to indicate his interest to speak at the hearing. He inquired why the applicant did not choose to construct homes in the existing gravel pit as the applicant indicated that they were planning on transitioning the use of the area to residential. Robert Levesque replied that the subdivision regulations define

road width and grade specification. The existing mining entrance road did not conform to the requirements of a subdivision road.

Winston Baldwin, 311 Hadley Street, indicated his interest to speak through the virtual meeting's 'question and answer' function. He stated that mining appeared to be the primary objective in creating the proposed subdivision. He did not support the extent of proposed soil removal over the public aquifer.

Robert Schwartz, 7 Ashfield Lane, used the virtual meeting's 'raise your hand' function to indicate his interest to speak at the hearing again. He stated that the applicant indicated they would continue to mine the site. However, the applicant also indicated an interest in converting the site into residential use. He pointed out how these ideas were contradictory.

Nate Therien, 25 Jewett Lane, submitted written comments through the virtual meeting's 'question and answer' function (attached) which were read out loud.

Pauline Casey, Fire District #1, submitted comments through email (attached) which were read out loud.

As there was no further public comment, the Board began review of the drafted decision that was included in the agenda background materials.

Clerk Brown stated that the draft decision referred to 'appropriate town officials and boards'. She questioned if the draft should be edited to reflect precise town officials and boards. Attorney Brian Winner replied that the language was laid out in Chapter 40A of Massachusetts general law. As it was a matter of statute, the language of the decision was not changed.

Chair Hutchison noted a grammatical error within the draft. The revision was incorporated.

Richard Harris noted that he incorporated a reference to a correspondence which Member O'Brien identified was absent from the draft decision.

Members indicated approval of the draft and saw it as a good summation of the application review process.

The Board considered if they should vote on the permit applications during the hearing or after its close. As it was customary for the Board to vote on a decision after the close of the hearing, Chair Hutchison stated he would accept a motion to close the hearing.

Motion: Vice-Chair Mulvaney moved to close the public hearing. Member O'Brien seconded the motion. Four (4) out of four (4) voting members voted in favor of the motion through roll call.

The regular meeting reconvened at 8:24 PM (See regular meeting minutes)

Respectfully Submitted,

As Approved

Colleen Canning, Senior Clerk, Planning and Conservation Department

Appendix

Document	Document Location
Meeting Q &A	Attached
Draft Decision	Attached
Steven Garabedian Google Form	Attached
Al Werner Google Form	Attached
Robert Pleasure Google Form	Attached
Kathy Davis Google Form	Attached
Kevin McCaffrey Form	Attached
Pauline Casey Email	Attached

March 22, 2021 Planning Board Regular Meeting and Public Hearing 'Question and Answer' Transcript

#	Question	Asker Name	Asker Email	Answer(s)
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2	Hi, Colleen, Did you receive my request to speak at the meeting? Kathy Davis	Kathy	kdavis@educ.umass.edu	Yes
3	tk	Kathy	kdavis@educ.umass.edu	okay
4	Mr. Levesque stated that the subdivision plan is one that provides transition from mining to residential. 1) does that mean that the current mining will stop? 2) if the claim is true, can the residences be moved to the current grandfathered pit? That seems connected to Mr. Levesque's claim.	Robert Schwartz	rschwart@mtholyoke.edu	Brought into the meeting
5	Mr. Siddall seems to express surprise that the Board of Health is concerned about risk, and asks why the question of risk is only raised now. Yet the letter the Board of Health addressed to the Planning Board November 2, 2020 explicitly reported its dismay that the Applicant had not addressed the Board of Health's concern about risk.	Nate Therien	natetherien@gmail.com	Comments read
6	Applicant has asked which activity poses the most risk to the water supply, more mining or a subdivision. This is not the choice faced by either Board.	Nate Therien	natetherien@gmail.com	Comments read
7	My husband would like to raise a question	Lori Souder (she/her)	lorijeansouder@gmail.com	Thank you

BRAD HUTCHISON, Chair 1
DIANE SUPCZAK-MULVANEY, Vice-Chair 2
JOANNA BROWN, Clerk
MELISSA O'BRIEN, Member
NATE THERIEN, Member
MICHAEL ADELMAN, Associate Member 3
4

RICHARD HARRIS, Director of Planning & Conservation
rharris@southhadleyma.gov

NOTICE
CERTIFICATE OF PLANNING BOARD DECISION DENYING
APPLICATIONS FOR DEFINITIVE SUBDIVISION PLAN AND STORMWATER
MANAGEMENT PERMIT SUBMITTED BY:

APPLICANT: Chicopee Concrete Service, Inc.
c/o Jason Ouellette
652 Prospect Street
Chicopee, MA 01020
OWNER(S) Phillip Lizotte III, Leo Concrete Services, Inc.
J& L Realty Management, LLC
Peter J. Edge
SUBDIVISION NAME: North Pole Estates
LOCATION: West side of Hadley Street (Route 47) and along Sullivan Lane
South Hadley, MA 01075
Assessor's Map Number #54 as Parcels #15 & #20 and on
Assessor's Map Number #56 as Parcels #20, #26, #42, #43, #43A,
#104, #109, #112, and #121.
SURVEYORS & ENGINEERS: R Levesque Associates, Inc.
40 School Street
Westfield, MA 01085

I. INTRODUCTION AND PUBLIC HEARING

A public hearing process was held beginning November 18, 2019 and concluded March 22, 2021
in accordance with the South Hadley Subdivision Regulations and the Massachusetts General Laws. The
public hearing was opened on November 18, 2019 and continued successively to December 16, 2019; and
February 10, 2020.

On March 10, 2020, however, the Governor of the Commonwealth of Massachusetts (the
"Governor") declared a state of emergency to respond to the COVID-19 virus, a contagious, and at times,
fatal, respiratory disease now labeled a pandemic.

1
2 On March 10, 2020, the Governor also issued an “Order Suspending Certain Provisions of the
3 Open Meeting Law, G.L. c. 30A, § 20” and on April 3, 2020, the State Legislature enacted special
4 legislation, Chapter 53 of the Acts of 2020, staying all permitting deadlines within which a board must
5 act, including the deadlines set forth in the Subdivision Control Law. Chapter 53 of the Acts of 2020,
6 among other things, stayed the deadline by which an application could be constructively approved until
7 forty-five (45) days after the Governor terminated the State of Emergency. Notwithstanding, the public
8 hearing resumed on June 15, 2020; June 22, 2020; July 13, 2020; September 14, 2020; October 5, 2019;
9 November 2, 2020; November 30, 2020; January 25, 2021; March 8, 2021; and concluded March 22,
10 2021. Public hearing sessions held prior to March 2020 were conducted “in person” while all successive
11 sessions, due to the COVID-19 State of Emergency, were conducted virtually in accordance with the
12 Governor’s State of Emergency Declaration. In addition, the Applicant gave written extensions for the
13 Board to continue the public hearing through March 22, 2021 and to issue and file its decision through
14 March 26, 2021.

15
16 This Certificate is filed in accordance with the provisions of Chapter 41, Section 81U of the
17 Massachusetts General Laws to show that the Planning Board at its regular meeting on March 22, 2021 by
18 a vote of () out of four (4) members present (Nate Therien did not participate in the hearings as a
19 member of the Planning Board nor in this decision as he was not on the Board when the public hearing
20 began November 18, 2019) DENIED the above-referenced Application for Approval of a Definitive Plan
21 and Stormwater Management Permit for the North Pole Estates subdivision project as described herein
22 and made the findings regarding such applications as stated herein.

23 24 **II. BACKGROUND**

25
26 In 2018, the applicant submitted a Special Permit application to expand their earth removal
27 operation to encompass much of the subject property. Following multiple public hearings, in January
28 2019, the applicant withdrew the Special Permit application – which the Planning Board permitted
29 without prejudice.

30
31 Approximately four months after withdrawing its Special Permit application, the applicant
32 submitted a Preliminary Plan for a subdivision proposing 59 lots on most of the subject property which
33 the Planning Board approved with conditions on April 29, 2019. The Preliminary Subdivision Plan did
34 not encompass a portion of the subject property owned by Peter Edge (Assessor’s Map #56 – Parcel #42
35 and #120).

36
37 In October 2019, the applicant submitted a proposed Definitive Plan encompassing the subject
38 108.93 acres which is owned by multiple parties. The proposed Definitive Plan depicts a subdivision of
39 only a small portion of the entire site shown on the Preliminary Subdivision Plan. As noted above, the
40 proposed Definitive Plan also added land owned by Peter Edge (Assessor’s Map #56 – Parcel #42 and
41 #120) which was not shown on the Preliminary Subdivision Plan.

42
43 As originally proposed, the Definitive Plan would have created a roadway approximately 800 feet
44 in length and 9 lots (5 of which were proposed as developable lots and 4 of which are already improved
45 with single family homes). During the course of the public hearings, the applicant revised the plan to

1 create only 8 lots. Of these 8 lots, four were proposed as new developable houses lots while the other four
 2 lots are already improved with structures thereon but may or may not be part of future development of the
 3 overall site. Further, the applicant indicated an intent to submit ANR Plans to create additional lots
 4 (estimated to be 3 new lots) once the grading was completed. The initial Definitive Plan envisioned the
 5 removal of approximately 437,500 cubic yards of material from the site. Subsequent revisions to the
 6 Definitive Plan increased the amount of earth removal associated with the project to approximately
 7 497,000 cubic yards.

8
 9 **III. SUBMISSIONS DURING THE PUBLIC HEARING**

10 This decision is based on the following Plans and information, which are incorporated herein:

11
 12
 13 **General**

- 14
 15 1. Public Hearing Minutes (including materials referenced therein) of the Planning Board hearings
 16 regarding this project.
 17 2. Meeting Minutes. Minutes of the Planning Board meeting held March 22, 2021.
 18 3. Departmental Review meeting. The record of the departmental review meeting held March 18,
 19 2021.

20
 21 **Initial Submittal 2019-10-25**

- 22 1. Hadley Street - North Pole Estates Definitive Plan - Application - 2019-10-25
 23 2. Hadley Street - North Pole Estates Definitive Plan - Application and Reports Narrative
 24 Clarification - 2019-10-28
 25 3. Hadley Street - North Pole Estates Definitive Plan - Application Plan Sheets 2019-10-25
 26 4. Hadley Street - North Pole Estates Definitive Plan - Hydrogeologic Study - 2019-10-25
 27 5. Hadley Street - North Pole Estates Definitive Plan - Perc Logs - 2019-10-25
 28 6. Hadley Street - North Pole Estates Definitive Plan - Stormwater Report - 2019-10-25
 29 7. Hadley Street - North Pole Estates Definitive Plan - Traffic Study 01 - Report - 2019-10-25
 30 8. Hadley Street - North Pole Estates Definitive Plan - Traffic Study 02 - Appendix - 2019-10-25

31 **Materials from Applicant Submitted 2019-11-18**

- 32 1. Hadley Street - North Pole Estates Definitive Plan - 2019-11-18 Letter of Updates
 33 2. Hadley Street - North Pole Estates Definitive Plan - 2019-11-18 Plan Sheet P-1

34 **Letters from Applicant Submitted 2019-12-16**

- 35 1. Hadley Street - North Pole Estates Definitive Plan - 2019-12-16 Letter Regarding Changes
 36 2. Hadley Street - North Pole Estates Definitive Plan - 2019-12-16 Waiver Request Septic Design
 37 3. Hadley Street - North Pole Estates Definitive Plan - 2019-12-16 Waiver Request Updated

38 **Revised Submittals from Applicant 2020-01-22**

- 1 1. Hadley Street - North Pole Estates Definitive Plan - 2020-01-20 Revisions – O and M Plan
- 2 2. Hadley Street - North Pole Estates Definitive Plan - 2020-01-20 Revisions - Plans
- 3 3. Hadley Street - North Pole Estates Definitive Plan - 2020-01-20 Revisions - Stormwater
- 4 4. Hadley Street - North Pole Estates Definitive Plan - 2020-01-20 Revisions - Timeline
- 5 5. Hadley Street - North Pole Estates Definitive Plan - 2020-01-20 Septic Memo Lot 02
- 6 6. Hadley Street - North Pole Estates Definitive Plan - 2020-01-20 Septic Memo Lot 03
- 7 7. Hadley Street - North Pole Estates Definitive Plan - 2020-01-20 Septic Memo Lot 06-07
- 8 8. Hadley Street - North Pole Estates Definitive Plan - 2020-01-20 Septic Memo Lot 08
- 9 9. Letter of Transmittal and Acknowledgement of Receipt

10 Letters and Emails of Review from Boards and Departments

- 11 1. Hadley Street - North Pole Estates Definitive Plan - Title 5 Plan Review - Third Party Review
- 12 2020-06-10 Emailed
- 13 2. North Pole Estates Definitive Plan - 2019-11-13 Water Commissioners Dist. 2 Letter
- 14 3. North Pole Estates Definitive Plan - 2019-11-14 Conservation Commission Letter
- 15 4. North Pole Estates Definitive Plan - Email from Chief of Police 2019-11-15
- 16 5. North Pole Estates Definitive Plan - Email from Public Health Director 2019-11-18
- 17 6. North Pole Estates Definitive Plan - Email from Water Superintendent 2019-11-13
- 18 7. North Pole Estates Definitive Plan - Letter 2019-12-05 from Health Director
- 19 8. North Pole Estates Definitive Plan - Letter 2020-01-22 from DPW Superintendent
- 20 9. North Pole Estates Definitive Plan - Letter 2020-06-12 from Board of Health Chair
- 21 10. North Pole Estates Definitive Plan - Letter 2020-06-16 Emails from Public Health Director
- 22 11. North Pole Estates Definitive Plan - Letter 2020-06-19 from Board of Health 2020-06-22
- 23 12. North Pole Estates Definitive Plan - Letter 2020-10-15 from Board of Health 2020-10-21
- 24 13. North Pole Estates Definitive Plan - Letter 2020-11-02 from Board of Health
- 25 14. North Pole Estates Definitive Plan - Letter 2020-03-03 from Building Commissioner regarding
- 26 definition of incidental
- 27 15. North Pole Estates Definitive Plan - Letter 2021-02-16 from Building Commissioner

28 Peer Review Reports

- 29 1. Hadley Street - North Pole Definitive Plan Peer Review 2020-03-05
- 30 2. Hadley Street - North Pole Definitive Plan Peer Review 2020-03-05 Corrections Highlighted
- 31 3. Hadley Street-North Pole Estates-Definitive Plan Submittal 2019-Review of Applicant Responses
- 32 to Peer Review 2020-04-29
- 33 4. Weston and Sampson PowerPoint for 2020-06-15
- 34 5. Hadley Street - North Pole Definitive Plan Peer Review 2020-03-17

35 Requests for Continuations

- 36 1. Hadley Street - North Pole Estates Definitive Plan - 2020-03-09 Request for Continuation
- 37 2. Hadley Street - North Pole Estates Definitive Plan - 2020-03-18 Request for Continuation

38 Responses to Peer Review Reports 2020-03-16 and 2020-06-10

- 1 1. Hadley Street - North Pole Plan - Response to Peer Review 2020-03-16 - CB Hood
- 2 2. Hadley Street - North Pole Plan - Response to Peer Review 2020-03-16 - Letter of Response
- 3 3. Hadley Street - North Pole Plan - Response to Peer Review 2020-03-16 - O and M Plan
- 4 4. Hadley Street - North Pole Plan - Response to Peer Review 2020-03-16 - Traffic
- 5 5. Hadley Street - North Pole Plan - Response to Peer Review 2020-06-12 - Traffic

6 Other Notices of Continuation

- 7 1. Hadley Street - North Pole Estates Definitive Plan - 2020-04-06 Continuation to 2020-05-18
- 8 Posting
- 9 2. Hadley Street - North Pole Estates Definitive Plan - 2020-05-05 Continuation to 2020-06-01
- 10 Posting
- 11 3. Hadley Street - North Pole Estates Definitive Plan - 2020-05-20 Continuation to 2020-06-15

12 Post 2020-09-14 Public Hearing Submittals

- 13 1. Hadley Street - North Pole Estates Definitive Plan over Preliminary Plan 2020-09-22
- 14 2. North Pole Estates Definitive Plan - 2020-09-24 Planning Board Members Comments as to
- 15 Inconsistencies
- 16 3. North Pole Estates Definitive Plan - 2020-09-28 Letter Responding to Inconsistencies

17 October 2020 Submission Materials

- 18 1. Hadley Street - North Pole Estates - 2020-10-05 Questions for Peer Reviewer and Applicant
- 19 Representative
- 20 2. Hadley Street - North Pole Estates - 2020-10-19 Memo from Weston and Sampson-Peer Reviewer
- 21 Responses
- 22 3. North Pole Estates - 2020-10-23 Letter from Rob Levesque
- 23 4. Hadley Street - North Pole Estates - Definitive Plan - Aerial overlay 2020-10-16

24 November 2020 Submission Materials

- 25 1. Hadley Street - North Pole Estates Definitive Plan - 2020-11-23 Letter
- 26 2. Hadley Street - North Pole Estates Definitive Plan - Aerial Overlay - Received 2020-11-30

27 January 2021 Submission Materials

- 28 1. Hadley Street - North Pole Estates Definitive Plan - 2021-01-04 Letter from Applicant Consultant
- 29 2. Hadley Street - North Pole Estates Definitive Plan - 2021-01-22 Revised Plan Set
- 30 3. Hadley Street - North Pole Estates Definitive Plan - 2021-01-22 Revised Plan Email Transmittal
- 31 and Explanation
- 32 4. Hadley Street - North Pole Estates Definitive Plan - 2021-01-25 Draft Placard
- 33 5. Hadley Street - North Pole Estates Definitive Plan - 2021-01-25 Traffic Consultant Response
- 34 6. Hadley Street - North Pole Estates Definitive Plan - 2020-07-10 Traffic Consultant Response
- 35 7. Hadley Street - North Pole Estates Definitive Plan - 2020-07-15 Traffic Consultant Response

1 March 2021 Submission Materials

- 2 1. Hadley Street - North Pole Estates Definitive Plan - Supplemental Hydrogeologic Analyses -
- 3 2021-03-02
- 4 2. Hadley Street - North Pole Estates Definitive Plan - 2021-03-08 Power Point Slides for
- 5 Supplemental Hydrogeologic Analyses Presentation

6 **IV. REVIEW BY DEPARTMENTS/COMMISSIONS AND BOARD OF HEALTH AND**
 7 **PUBLIC COMMENT**

8
 9 A. Town Departments/Commissions and Board of Health

10
 11 In accordance with Planning Board procedures and practices, the application materials were
 12 submitted to the following departments, boards, and commissions for review:

- 13
- 14 ○ South Hadley Board of Health
- 15 ○ South Hadley Conservation Commission
- 16 ○ South Hadley Fire District #2 Fire Department
- 17 ○ South Hadley Fire District #2 Water Department
- 18 ○ Building Commissioner
- 19 ○ Public Works Superintendent
- 20 ○ Police Chief

21
 22 Over the course of the review, these various departments, boards, and commissions provided a
 23 variety of comments and correspondence as identified below:

24
 25 *Police Chief (2019-11-15):* I have reviewed the Traffic Impact Study Residential Development North
 26 Pole Estates as provided by McMahan and can provide the following comments:

- 27 1) I reviewed the proposed vehicular trip generation (increase) as a result of this development and
- 28 could not identify any concerns as it relates to the impact of this proposed development.
- 29 2) I reviewed the level of service approach for the existing roadways that would be impacted
- 30 (Sullivan Street and Pearl Street) as well as the new northern and southern approaches from North
- 31 Pole to Hadley Street. Given the analysis within the traffic study provided I could not identify any
- 32 concerns as it relates to the impact of existing traffic/ (and anticipated non-build traffic growth of
- 33 1% per year), on Hadley St.

34
 35 Further comments:

36
 37 A. Lighting: With increase access/volume in the Hadley St area, I would recommend
 38 a lighting needs assessment as it relates to vehicular, pedestrian and cyclist safety. While
 39 my perception is just that, perception, this is a dark roadway and could benefit from
 40 enhanced lighting.

41
 42 B. Speeding/Signage: Similarly, a more advanced evaluation regarding speed
 43 regulations on Hadley St would be warranted to determine if the posted speed (40 MPH)

are appropriate for the increased vehicle trips on the roadway (and even existing vehicle trip activity). The Police Department receives complaints from residents of Hadley St. regarding speeding on this roadway and the Police Department does make efforts to enforce the speeding regulations with personnel, but our opportunities during peak hours are limited given staffing and call volume. Per the traffic impact study, 85% of the traffic is within 47 MPH, but the remaining 15% is travelling in excess of 47MPH is concerning for other motorists, pedestrians/cyclists. This area of Hadley St. may be a good candidate for electronic speed signs, even absent development.

Water Department District 2 Superintendent (2019-11-13): The applicant must meet with the Superintendent to discuss the following requirements:

- 1) South Hadley Water District No. 2 Rules and Regulations for Housing Developments.
- 2) Water Impact assessment application.
- 3) Material Standards for District No. 2 Water Department.
- 4) Copy of the Water Billing Structure.
- 5) Payment Fee for the development plans.
- 6) Connection Fee's shall be paid to the department before any connection is made to the distribution system.

Additionally, the Water Superintendent for District 2 also provided a letter from the Board of Water Commissioners expressing some concerns and comments.

Water Department District 2 Superintendent (2019-12-10): Submitted a letter regarding the water service relative to the size of the development.

Director of Public Health (2019-11-15): In a telephone conversation, the Director of Public Health expressed concerns about the extent of excavation and possible fill activities at locations where perc tests were conducted. She indicated that these activities could pose challenges for or even impede installation of septic systems in these locations. I anticipate a letter or email with her concerns prior to the hearing on Monday.

Director of Public Health (Update 2019-11-15): Subsequent to the November 18, 2019 Public Hearing, the Director of Public Health provided a letter denying the Definitive Plan.

Director of Public Health (2020-06-10): The Director of Public Health submitted copies of the third-party review of the Title 5 plans submitted by the applicant.

Director of Public Health (2020-06-16): The Director of Public Health submitted an email to the applicant and their consultant regarding requirements for the Board of Health permitting:

“Based on the third-party review from D3 Engineering, dated June 4, 2020 for the Title 5 plan review of the North Pole estates subdivision, the South Hadley Health Department would like to see elevations be associated with each one of the deep holes and percolation tests done on each lot and that each deep hole and percolation test elevation be referenced to a benchmark that cannot be

1 moved. Those elevations are to be indicated on a plan for the North Pole estates subdivision: a
2 copy to be given to the South Hadley Health Department.

3
4 Also, prior to any construction of a system on any of the lots, a surveyed elevation for that test site
5 must be done to verify that the elevation for those deep holes and percolation test locations are the
6 same as the original elevations. Any disposal works construction permit will need to meet all
7 requirements of 310 CMR 15.000: THE STATE ENVIRONMENTAL CODE, TITLE 5:
8 STANDARD REQUIREMENTS FOR THE SITING, CONSTRUCTION, INSPECTION,
9 UPGRADE AND EXPANSION OF ON-SITE SEWAGE TREATMENT AND DISPOSAL
10 SYSTEMS AND FOR THE TRANSPORT AND DISPOSAL OF SEPTAGE.”

11
12 She also attached a copy of the letter and reports transmitted in her June 10, 2020 email to the
13 Director of Planning & Conservation.

14
15 *Conservation Commission (2019-11-15):* The Conservation Commission provided a letter which
16 notes, in part, that the work in proposed Phase 1 of North Pole Estates as presented on the plans “will
17 not require a permit from the Conservation Commission”. However, they also note that subsequent
18 work on proposed Lots #4 and #5 might require Conservation Commission permitting. Additionally,
19 subsequent phases of the subdivision might require Conservation Commission permitting action (NOI
20 or RDA). Additionally, the Commission provided further comments and suggestions (letter attached
21 to the minutes).

22
23 *South Hadley Electric Light Department – SHELD (2019-11-18):* SHELD will provide electric
24 service based upon any town approved plans, both for the initial design, and the full conceptual plan.
25 I don’t anticipate any unusual or unique conditions that would limit our ability to design, construct,
26 operate and maintain the electric system for the development.

27
28 *Fire District #2 – Fire Department (2019-12-09):* South Hadley Fire District #2 Fire Department has
29 reviewed the plans for the proposed development off of Hadley Street (route 47) and participated in
30 the walk through. We have no concerns at this time in regard to road width, fire access, and hydrant
31 locations. Any questions or concerns please let me know.

32
33 *Building Commissioner (2019-12-06):* Per § 255-84 of the zoning bylaws, if the subdivision site
34 preparation activities for North Pole Estates “involve the removal, excavation, and/or addition of
35 5,000 or more cubic yards of material for use on parcels of land other than the parcel(s) from which
36 the materials were removed or extracted”, a special permit from the planning board will be required
37 prior to issuance of a permit from this office for said activities. Incidental activity exemptions (not
38 requiring a special permit) apply only to premises for which a building permit has been issued or for
39 the development of site improvements for a subdivision for which definitive plans have already been
40 approved. Neither exemption applies.

41
42 *Building Commissioner (2020-03-03):* Provided a statement as to the meaning of “incidental” and
43 how this relates to the proposed development.
44

1 *Building Commissioner (2021-02-15):* Provided a memo indicating that even if the Planning Board
2 approves the subdivision, a Special Permit is required.

3
4 *Acting DPW Superintendent (2019-11-22):* The DPW Superintendent submitted a letter regarding the
5 issue of a possible sanitary sewer extension to serve this development.

6
7 *Acting DPW Superintendent (2019-12-13):* The South Hadley DPW would like to request that the
8 Planning Board have the plans reviewed by an outside expert with particular focus on stormwater and
9 traffic.

10
11 *Board of Health Chair (2020-06-12):* The Board of Health Chair submitted a letter via the Public
12 Health Office.

13
14 *Board of Health Chair (2020-09-23):* The Board of Health Chair submitted a letter to the applicant
15 regarding a planned Board of Health meeting to deliberate on the application scheduled for October
16 13, 2020. The Public Health Office provided a copy to the Planning & Conservation Department.

17
18 *Board of Health Chair (2020-10-15):* The Board of Health Chair submitted a letter to the applicant
19 regarding the Board of Health review of the proposed development and identified issues the Board of
20 Health had in reviewing the project. The Public Health Office provided a copy to the Planning &
21 Conservation Department.

22
23 *Board of Health Chair (2020-11-02):* The Board of Health Chair submitted a letter to the Planning
24 Board regarding the Board of Health review of the proposed development, following its September
25 15, 2020 public hearing and deliberations on October 13, 2020 both attended by the applicant and the
26 applicant's representatives, and stating that the Board found that "the areas shown on the North Pole
27 Estates Subdivision Plan cannot be used for building sites without injury to the public health" and
28 listed their reasons for such determination.

29
30 *Building Commissioner (2020-03-03 and 2021-02-15):* Building Commissioner provided comments
31 as to his interpretation of "Incidental" and that approval of the Subdivision would require a Special
32 Permit to excavate more than 5,000 cubic yards.

33
34 *Board of Health Chair (2021-3-12):* The Board of Health Chair submitted a letter to the Planning
35 Board regarding the Board of Health review of the proposed development, following its March 9,
36 2021 public meeting attended by the applicant and the applicant's representatives, and and stating that
37 the Board found that "the areas shown on the North Pole Estates Subdivision Plan cannot be used for
38 building sites without injury to the public health" and listed their reasons for such determination.

40 B. Public Comment

41
42 In addition to the comments received by the Board from other Town Departments/Commissions
43 and the Board of Health, the Board received extensive comments from the public both in writing and
44 orally throughout the public hearing. The plans and other submission materials were reviewed by the
45 Board and its consulting legal counsel. Throughout its deliberations, the Board has been mindful of the

statements of the applicant and its representative(s), and the comments of the general public, all as made at the public hearing.

V. FINDINGS AND DELIBERATIONS

1) Board of Health’s Recommendation

Pursuant to Section 360-23A(1) of the South Hadley Subdivision Regulations, and G.L. c. 41, 81U, the Board of Health reviewed the proposed development and determined, as stated in the November 2, 2020 letter from the Chair of the Board of Health, that:

The areas shown on the North Pole Estates Subdivision Plan cannot be used for building sites without injury to the public health, for the following reasons:

- *The removal of 400,000 cubic yards of material to a depth in some place of over fifty feet will allow the intrusion of harmful substances into the public water supply.*
- *The placement of roads and houses on top of the aquifer and in the recharge area at a decreased elevation level to the water table will allow for the intrusion of harmful substances in the public water supply.*

At the applicant’s request and upon the submissions of supplemental materials, to wit, the Supplemental Hydrogeological Report, the Board of Health met again on March 9, 2021 with the applicant and subsequently provided the Planning Board with a letter dated March 12, 2021 which states in relevant part:

The Supplemental Report does not assuage the Board’s concerns. Moreover, it does not address the specific issues raised in the Board of Health’s November 2, 2020 letter. While the Board of Health recognizes the expertise and professionalism reflected in the Supplemental Report, it is not the contents of the Supplemental Report that the Board finds unpersuasive. It is what is not in the Supplemental Report that is of concern. Additionally, the Board of Health does not raise these concerns in a vacuum. The overwhelming consensus among the Board member’s and the public’s comments, including Stephen P. Garabedian, PhD, the author of the USGS Study upon which the Supplemental Report is based, is that the Supplemental Report is considerably non-responsive...

Notably, the Supplemental Report does not undertake any risk analysis despite the Board of Health’s November 2, 2020 recommendation being based upon risk analysis. The Applicant’s representative explicitly stated that no attempt was made to assess risk. The Supplemental Report makes a variety of assumptions that are inaccurate or that omit critical information...

Accordingly, it remains the opinion of the Board of Health that the Applicant has still failed to meet its burden to demonstrate that the project can be constructed without injury to the public health despite having ample notice of the Board’s concerns and ample opportunity to provide substantive responses. Accordingly, after careful consideration of all the additional evidence provided, both for and against, the Applicant’s proposal, the Board of Health voted not to revise its prior recommendation. Should the Applicant address the issues raised in this letter and the

1 *Board of Health’s November 2, 2020 letter, the Board would take that information into*
 2 *consideration and might reconsider its position, if warranted, at that time.*

3
 4 2) Compliance with Design Standards

5
 6 The Planning Board reviewed each of the Design Standards listed in Article VII of the South
 7 Hadley Subdivision Regulations (Section 360-31 through Sections 360-35 and 360-43) and determined
 8 that the proposed Definitive Plan failed to meet all of the Design Standards. Specifically, the Definitive
 9 Plan fails to meet the following:

- 10
 11 a. 360-31A(1) “All streets and ways shall be designed so that, in the opinion of the Planning
 12 Board, they will provide safe vehicular travel. Due consideration shall also be given by the
 13 subdivider to the attractiveness and design of the street layout in order to obtain the
 14 maximum livability and amenity of the subdivision. As far as practicable, streets should
 15 follow natural contours.”
 16
 17 b. 360-31A(2) “The proposed streets shall conform, so far as practicable, to the Master Plan
 18 as adopted in whole or in part by the Planning Board.”
 19
 20 c. 360-33B “Due regard shall be shown for all natural features such as large trees,
 21 watercourses, scenic points, historic spots and similar community assets, which, if
 22 preserved, will add to the attractiveness and value of the subdivision and the Town.”
 23
 24 d. 360-34 “No plan of a subdivision shall be approved unless all of the lots shown on the plan
 25 comply with the Zoning Bylaw.”
 26

27 With respect to other design standards, the Board determined that the Definitive Plan either complied
 28 and/or that conditions could have been imposed in an approval to address remaining areas of concern.
 29 Notwithstanding, the Board’s findings are predicated solely upon the record in this proceeding.
 30 Accordingly, should the applicant submit a new or revised definitive plan in the future, the Board would
 31 need to reassess these findings and determine, at that time and based upon that record, whether that
 32 definitive plan complies with each of the Design Standards listed in Article VII of the South Hadley
 33 Subdivision Regulations (Section 360-31 through Section 360-35).
 34

35 3) Determinations and Reasons for Decision

36
 37 G.L. c. 41, § 81U states, in relevant part:

38
 39 *After the hearing required by section eighty-one T and after the report of said health board or*
 40 *officer or lapse of forty-five days without such report, the planning board shall approve, or, if*
 41 *such plan does not comply with the subdivision control law or the rules and regulations of the*
 42 *planning board or the recommendations of the health board or officer, shall modify and approve*
 43 *or shall disapprove such plan. In the event of disapproval, the planning board shall state in detail*
 44 *wherein the plan does not conform to the rules and regulations of the planning board or the*

1 *recommendations of the health board or officer and shall revoke its disapproval and approve such*
 2 *plan which, as amended conforms to such rules and regulations or recommendations.*

3
 4 Here, the Board of Health has twice, after a public hearing and meetings with the applicant,
 5 recommended denial of the Definitive Plan. In both the Board of Health’s November 2, 2020 and March
 6 12, 2021 letters to the Planning Board, the Board of Health stated that the areas shown on the North Pole
 7 Estates Subdivision Plan cannot be used for building sites without injury to the public health because the
 8 removal of over 400,000 cubic yards of material to a depth in some place of over fifty feet will allow the
 9 intrusion of harmful substances into the public water supply and the placement of roads and houses on top
 10 of the aquifer and in the recharge area at a decreased elevation level to the water table will allow for the
 11 intrusion of harmful substances in the public water supply.

12
 13 The Planning Board may not approve a subdivision plan which does not comply with the
 14 recommendation of the Board of Health and the Planning Board's options in such a case are limited to
 15 those of disapproving the plan or modifying it in such fashion as to bring it into conformity with the
 16 recommendation of the Board of Health. The Board of Health has reported to the Planning Board that the
 17 applicant had not assuaged the Board of Health’s concerns and had not addressed the specific issues
 18 raised in the Board of Health’s November 2, 2020 letter. The Board of Health noted that the applicant has
 19 still not undertaken any risk analysis and that the applicant’s Supplemental Report makes a variety of
 20 assumptions that are inaccurate or that omit critical information. Accordingly, the opinion of the Board of
 21 Health remains that the applicant has still failed to meet its burden to demonstrate that the project can be
 22 constructed without injury to the public health.

23
 24 While the Board of Health again invited the applicant to address the issues raised in its letters and
 25 noted that the Board would take that information into consideration and might reconsider its position, if
 26 warranted, at that time, the applicant has had approximately five months since the Board of Health’s
 27 initial public hearing and has still not persuaded the Board. Accordingly, while the Planning Board could
 28 condition an approval of the Definitive Plan on the applicant’s resolution of the Board of Health’s
 29 concerns, doing so would appear fruitless as the applicant has failed to do so thus far despite ample
 30 opportunity and because such an approval would result in a nonviable subdivision in any event.
 31 Accordingly, the Planning Board believes the preferred course of action and the one that honors the Board
 32 of Health’s recommendation is to deny approval.

33
 34 Consistent with the Board of Health’s concerns, the Planning Board cannot find that the applicant
 35 has satisfied Sections 360-31A(1), 360-31A(2), 360-33B, or 360-34 of the Design Standards listed in
 36 Article VII of the South Hadley Subdivision Regulations. Simply put, the proposed Definitive Plan
 37 appears to be, in reality, an earth removal project for which the applicant seeks approval without having to
 38 obtain a special permit.

39
 40 Per Sections 360-31A(1) and 360-31A(2), the applicant is required to design streets and ways so
 41 that they will provide safe vehicular travel and to consider the attractiveness and design of the street
 42 layout in order to obtain the maximum livability and amenity of the subdivision. As far as practicable,
 43 streets should follow natural contours and the streets should be consistent with the Town’s Master Plan.
 44

1 As a preliminary matter, the proposed grades off Hadley Street will fail to maintain the character
2 of the corridor as proposed in the Town's adopted Master Plan. The Master Plan recognized the existing
3 earth removal operation but did not recommend expansion as it would alter the character of the area.
4 Additionally, per Section 360-33B, the applicant must give due regard to all natural features such as large
5 trees, watercourses, scenic points, historic spots and similar community assets, which, if preserved, will
6 add to the attractiveness and value of the subdivision and the Town. Here, while the applicant has
7 proposed a design and proposed mitigation to address the "attractiveness", "livability" and "natural
8 contours" of the subdivision, the applicant revealingly chose a location for the proposed way and lot
9 which is the least amenable to each of these factors. As shown on the Preliminary Plan, the applicant had
10 at one time sought to subdivide the entire site. The Definitive Plan proposes a subdivision of only a small
11 portion of the entire site. That portion now proposed to be subdivided happens to be Dry Brook Hill and
12 happens to be adjacent to and connected to the existing earth removal operation. The subject site
13 encompasses much of Dry Brook Hill which is in Zone II of the South Hadley Fire District Two's public
14 water supply wells. This proposed Definitive Plan does not seek to maintain the environmental or
15 aesthetic character of Dry Brook Hill and the Zone II in which it is located. Accordingly, the small
16 portion of the site proposed to be subdivided in the Definitive Plan results in a subdivision that is the most
17 intrusive and requires the most alteration/disruption of the site. It also results in a smaller practical net lot
18 yield since four of the lots already contain single family homes and some of the lots could be created
19 through an Approval Not Required/Form A Plan. Had the applicant selected another portion of the site,
20 the same or a similar subdivision could be accomplished with substantially less alteration/disruption and
21 could potentially yield more house lots. When taking into account the entire site for the sake of argument,
22 the applicant has not demonstrated that they even sought to follow the natural contours. Rather, the
23 applicant could have chosen to access the site in several different locations – including the northernmost
24 access shown on their Preliminary Plan – which would have resulted in less earth removal; therefore,
25 more closely followed the natural contours than is proposed. The 2005 Dry Brook Village condominium
26 development previously approved on a portion of the subject property appears to have necessitated much
27 less change in the overall contours of the site than what is presently proposed.
28

29 In response to this concern, the applicant has stated in different ways and on different occasions,
30 e.g. in the September 14, 2020 letter from R Levesque Associates, Inc., that the quantity of materials is
31 not relevant to whether earth removal is incidental and that the quantity of materials is merely a byproduct
32 of the intended design which had to account for various engineering considerations such as the location of
33 stormwater basin, perc tests, and the feasibility and grading of proposed house home sites. The applicant
34 has also stated, e.g. in the October 23, 2020 letter from R Levesque Associates, Inc., the proposed layout
35 was chosen based on the knowledge that a subsequent subdivision would likely be pursued and so this
36 roadway was placed in the most logical location to allow for the current subdivision design to provide for
37 future subdivisions to extend from its terminus. Even were the Board to accept these explanations as true,
38 they miss the point. While the choice of which land to subdivide is not for the Planning Board to make,
39 the Planning Board cannot ignore the fact that the choice was made and that options, more consistent with
40 the Planning Board's Design Standards, were disregarded. Indeed, the choice reveals the unmistakable
41 truth that this subdivision is, in reality, a pretext for an earth removal operation.
42

43 As stated in Weston & Sampson's October 19, 2020 peer review report to the Board:
44

1 We have not previously encountered construction of two single-family lots requiring the removal
2 of a volume of soil as large as proposed. In our experience, soil is typically reused on site to avoid
3 the expense of import/export of soil. This approach intends to result in something approaching
4 zero net removal and generally limits adverse impact to the landscape. Given this, we find the
5 proposed volume of soil removal to be at best atypical and not clearly essential for the purpose of
6 constructing this subdivision.
7

8 Additionally, the development proposes to create lots abutting an active earth removal operation
9 with screening limited to a thin line of trees. Such a “buffer” fails to provide sufficient noise, safety, odor,
10 or sight screening to make such locations residentially livable. Although the applicant has proposed this
11 mitigation, the choice to subdivide this particular area of land on Dry Brook Hill and adjacent to the
12 existing earth removal operation is what makes the need for more robust mitigation so significant and
13 necessary. It appears puzzlingly counterintuitive that the applicant would strive to design livability
14 mitigation but locate the subdivision the area least suited to that goal. Stated another way, the proposed
15 continued operation of the “pre-existing” earth removal operation abutting the proposed residences will
16 not be an amenity to the residents of the subdivision and this apparent conflict could have been avoided.
17

18 Section 360-34 of the Design Standards mandates that “[n]o plan of a subdivision shall be approved
19 unless all of the lots shown on the plan comply with the Zoning Bylaw.” While the Planning Board
20 received and has considered the comments from the Town’s Building Commissioner regarding Section
21 255-84 of the Zoning Bylaw, as noted above, the Planning Board cannot ignore the facts deduced at the
22 public hearing. The applicant is proposing to remove approximately 497,000 cubic yards of material for a
23 net practical yield of two lots. The proposed subdivision involves creation of two lots which could be
24 created by ANR Plans using frontage off Hadley Street – an existing public way. Thus, only two of the
25 new building lots shown on the proposed Definitive Plan require the construction of a new roadway. This
26 amounts to an earth removal ratio of approximately 248,500 cubic yards per new residence being created
27 via the subdivision. The Building Commissioner has indicated that the earth removal contemplated by the
28 applicant for this subdivision is not incidental. The applicant’s stated valuation of the materials being
29 removed when compared to the unchallenged estimates of the net value of the building lots relative to the
30 costs associated with the improvements supports this determination. During the public hearings, it was
31 determined that the value of the resulting building lots will be less than the costs associated with
32 development of the building lots. However, the value of the materials being excavated by the applicant
33 (who previously sought a Special Permit to expand the earth removal operations) is substantially more
34 than the gross value of the finished lots being proposed. The anticipated sales value resulting from the
35 developed lots is greatly exceeded by the cost of developing the subdivision. Conversely, the value of the
36 excavated materials, as represented by the applicant, exceeds the value of the proposed lots – even
37 without considering the cost of the improvements. While a precise figure is impossible to calculate, it
38 appears that that the value of the earth exceeds the value of developing the lots by a factor of nearly 22:1.
39 Compliance with zoning does not entail merely meeting setback and lot dimension requirements. It also
40 entails conforming to the requirements associated with creation of those lots. The Building Commissioner
41 has determined that the extent of the earth removal is likely beyond “incidental”; therefore, a Special
42 Permit would be required to undertake the subdivision as it is proposed. Here, the applicant has not
43 demonstrated any efforts to minimize the amount of earth removal.
44

1 While the Board will defer to the appropriate Town officials and boards to make a determination
 2 under Section 255-84 of the Zoning Bylaw if and when it is appropriate for them to do so, the substantial
 3 earth removal proposed in association with the creation of the proposed way and lots makes it virtually
 4 impossible for the Planning Board to find that this Definitive Plan is consistent with the above design
 5 standards. The applicant had a variety of approaches to developing this proposed subdivision, but
 6 presented an approach which appears to maximize the amount of earth removal. Of the 156 weeks the
 7 applicant projects this “subdivision” will entail, 126 weeks are devoted solely to the “Excavation,
 8 Removal and Truck Clearing of Overburden Material” as laid out in their project schedule. That schedule
 9 results in 3,944 cubic yards of material removed per week based upon the estimated 497,000 cubic yard
 10 figure provided by the applicant. That figure appears to clearly and substantially exceed the thresholds set
 11 forth in the Town’s bylaws.

12
 13 In sum, the removal of earth is major in significance when considering the ultimate proposed end
 14 use of the proposed subdivision property and there are several options available to the applicant which
 15 would reduce the volume of material needed to be removed while maintaining the number of lots the
 16 application proposes to create. While it is not clear by how much earth removal could be reduced by
 17 electing one or more of these options, it is clear that the reduction could be significant. Similarly, the
 18 Board finds it difficult if not impossible to agree that unlimited excavation is incidental regardless of the
 19 quantity of the earth materials to be removed simply because the proposed use, a subdivision, might be
 20 considered as-of-right. Additionally, the Board finds it difficult if not impossible to agree that the
 21 excavation is incidental to the development of the subdivision, where the applicant’s proposal involves
 22 the removal of approximately 497,000 cubic yards of fill over several years and an excavation which
 23 would provide substantial funds in excess of the costs of constructing the subdivision. Such an
 24 interpretation would be entirely inconsistent with the Design Standards set forth in Sections 360-31A(1),
 25 360-31A(2), 360-33B, or 360-34 requiring the design to provide safe vehicular travel, to consider the
 26 attractiveness and design of the street layout in order to obtain the maximum livability and amenity of the
 27 subdivision, and to follow natural contours and the streets should be consistent with the Town’s Master
 28 Plan. The applicant could elect one or more of design options which would be significantly more
 29 consistent with the Board’s Design Standards. Thus far, however, the applicant has not been inclined to
 30 explore those options, electing instead to pursue the least harmonious approach.

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1 In accordance with the provisions of Chapter 41, Section 81-U, M. G. L., a copy of this Certificate is sent
2 by certified mail to the applicant (subdivider/developer) as a notice of the action taken by the Planning
3 Board. A copy has been filed with the Town Clerk.
4

5 ATTESTED AND AFFIRMED
6

7
8 S/ _____

9 Richard Harris, Director
10 Planning and Conservation
11 Signed as authorized by the
12 South Hadley Planning Board
13 March 22, 2021
14

15
16 Cc: Town Clerk (Date Filed: _____)
17 Town Administrator/Selectboard
18 Building Commissioner
19 Chicopee Concrete Service, Inc
20 R Levesque Associates
21 Town Counsel.
22
23
24
25

DRAFT

March 22, 2021 Public Hearing - North Pole Estates

This session of the Public Hearing is expected to begin with a review of any supplemental information received since the March 8, 2021 public hearing with particular note of new information and review of hydrogeological issues and a review of some of the outstanding issues identified by Board members. It may encompass a discussion of any of the materials submitted for project.

Email address *

karinaandsteve@hotmail.com

Please note the Planning Board's Virtual Hearing Guidelines/Protocols posted at <https://southhadley.org/1043/Virtual-Public-Hearing-Guidelines> *



Check an acknowledgement that this was noted.

Please State Your First and Last Name *

Stephen P. Garabedian

Please State Your Street Address including City/State *

803 Federal Street, Belchertown, MA 01007

Please State Your Email Address

karinaandsteve@hotmail.com

Do you wish to speak at the public hearing on March 22, 2021? *

Yes

No

You may also submit written comments and/or questions. Do you wish to submit written comments and/or questions at this time? *

Yes

No

Please state any comments or questions you wish to submit at this time.

Has McLane Consultants submitted any other written materials to the Town of South Hadley Boards since the last Board of Health meeting on March 9, 2021?

Do you have any other comments, questions, or information that the Board should be aware of? *

Yes

No

If "yes" to previous question, please provide such other comments, questions, or information below.

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Email address *

awerner@mtholyoke.edu

Please note the Planning Board's Virtual Hearing Guidelines/Protocols posted at <https://southhadley.org/1043/Virtual-Public-Hearing-Guidelines> *



Check an acknowledgement that this was noted.

Please State Your First and Last Name *

Al Werner

Please State Your Street Address including City/State *

106 Wendell Rd. Shutesbury, MA 01072

Please State Your Email Address

awerner@mtholyoke.edu

Do you wish to speak at the public hearing on March 22, 2021? *

Yes

No

You may also submit written comments and/or questions. Do you wish to submit written comments and/or questions at this time? *

Yes

No

Please state any comments or questions you wish to submit at this time.

Do you have any other comments, questions, or information that the Board should be aware of? *

Yes

No

If "yes" to previous question, please provide such other comments, questions, or information below.

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March 22, 2021 Public Hearing - North Pole Estates

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Email address *

robertpleasure@comcast.net

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Check an acknowledgement that this was noted.

Please State Your First and Last Name *

Robert Pleasure

Please State Your Street Address including City/State *

10 Jewett Lane South Hadley, MA

Please State Your Email Address

robertpleasure@comcast.net

Do you wish to speak at the public hearing on March 22, 2021? *

Yes

No

You may also submit written comments and/or questions. Do you wish to submit written comments and/or questions at this time? *

Yes

No

Please state any comments or questions you wish to submit at this time.

Do you have any other comments, questions, or information that the Board should be aware of? *

Yes

No

If "yes" to previous question, please provide such other comments, questions, or information below.

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Email address *

kdavis@educ.umass.edu

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Check an acknowledgement that this was noted.

Please State Your First and Last Name *

Kathleen Davis

Please State Your Street Address including City/State *

7 Saybrook Circle, South Hadley, MA 01075

Please State Your Email Address

kdavis@educ.umass.edu

Do you wish to speak at the public hearing on March 22, 2021? *

Yes

No

You may also submit written comments and/or questions. Do you wish to submit written comments and/or questions at this time? *

Yes

No

Please state any comments or questions you wish to submit at this time.

Dr. Stephen P. Garabedian presented critical remarks regarding the peer review McLane Environmental presented to the Board of Health on Tuesday, March 9th. Please Share Screen his remarks via the link provided below.

<https://vimeo.com/channels/shctv15/522348972>. (2:10:34 - 2:23:08)

In addition, he provided the Board of Health with this letter, which he wished for me to include in my comments tonight.

March 8, 2021

Comments and Observations on the report
"Summary of Supplemental Hydrogeologic Analyses
Proposed North Pole Estates Subdivision South Hadley, MA"
by McLane Environmental for Chicopee Concrete Services

Prepared by Stephen P. Garabedian, Ph.D., for the South Hadley Board of Health

Chair and Board Members,

The following are comments and observations I have provided on the subject report at the request of several people interested in the outcome of the applicant's (Chicopee Concrete) proposed mining and development activities on Dry Brook Hill in South Hadley, including South Hadley residents and Mount Holyoke College faculty. I am one of the authors of the USGS report "Delineation of Areas Contributing Water to the Dry Brook Public-Supply Well, South Hadley, Massachusetts", WRIR03-4320. The USGS report indicated that Dry Brook Hill provides a significant portion of the water (as recharge) that is pumped from the supply well, which is operated by South Hadley Fire District no. 2 and supplies water to much of the Town of South Hadley at a sustained rate of about 300 gallons per minute (gpm). I provide these comments and observations as a private citizen and these comments should not be considered anyone else's, particularly the U.S. Geological Survey or any other governmental agency. I preface these comments and observations by noting that I have had less than one week to review the report and have only had the time to review the REMFuel modeling results; this is only a partial review of the report.

The subject report was produced by McLane Environmental at the request of Chicopee Concrete Services (applicant) to fulfill a requirement of contaminant fate and transport modeling by the South Hadley Board of Health, recommended by Weston and Sampson (W&S), consultants, after a Hydrogeological Assessment Study (HAS) completed by O'Reilly, Talbot & Okun Associates, Inc. (OTO). The studies documented in the report were done as the applicant proposes to remove additional sand and gravel from an existing mining operation at the top of Dry Brook Hill, along with a proposed residential development after mining is completed.

The report documents McLane's assessment (pg. 1, subject report): "To address W&S's comments, McLane Environmental (at the request of Chicopee Concrete) performed a series of analyses to assess 1) possible future impacts to the Dry Brook Supply Well from a potential petroleum spill during grading and construction; 2) potential nitrate impacts caused by residential septic systems and lawns; 3) potential

impacts associated with snow removal and road salting within the proposed development; 4) potential impacts associated with the discharge of household chemicals to septic systems; and 5) future changes to groundwater flow from increased impervious surfaces and altered groundwater recharge. These analyses were performed using a series of publicly and commercially available modeling software, including REMFuel, MassDEP's Nitrogen Loading Model, SEVIEW, and AnAqSim."

REMFuel, a USEPA model, was used to evaluate the potential impact from a spill of 95 gallons of diesel fuel 1400 feet from the Dry Brook supply well. The introductory sentence of the model documentation states "An analytical solution, called REMFuel (for Remediation Evaluation Model for Fuel hydrocarbons) has been developed for simulating the transient effects of groundwater source and plume remediation for fuel hydrocarbons." (USEPA download at <https://www.epa.gov/water-research/remediation-evaluation-model-fuel-hydrocarbons-remfuel>). This model was used by McLane for the first assessment objective: (page 4, subject report): "REMFuel was selected to model potential impacts to the Dry Brook Supply Well resulting from a hypothetical accidental diesel release from equipment associated with grading and excavation activities related to construction of the proposed residential subdivision."

The most significant results from the REMFuel modeling studies are summarized as following (section 3.1.2, page 5, subject report): "REMFuel modeling results for low dispersivity conditions (Scenarios 1-2) show concentrations less than the Massachusetts Maximum Contaminant Levels (MA MCLs) for all constituents except for benzene at the Dry Brook Supply Well. The highest benzene peak concentration for this hypothetical scenario occurs under Scenario 2 at approximately 44.6 µg/L (Figure 4b); Scenario 1 produces similar results with a benzene peak concentration of approximately 42.9 µg/L (Figure 4a)."

Figure 4b from the subject report is shown below:

The maximum contaminant Limit (MCL) for benzene is 5 µg/L (blue dashed line above) and the modeling study indicates that a plume of this known carcinogen could arrive at the Dry Brook supply well at a concentration about 9 times greater than the drinking water standard. It is noted in the report that (page 5 in subject report): "The concentrations plotted on the breakthrough curves reflect the highest groundwater concentrations along the centerline of the hypothetical plume at the water table and do not take into account dilution at the wellhead." and "Wellhead dilution is caused by the well capturing groundwater from outside of a plume as well as from within a plume. For the Dry Brook Supply Well, areas north of Dry Brook Hill and south of the well would not be within the hypothetical plume area."

The above statement that the benzene plume would be diluted by non-contaminated water was not supported by a calculation of the potential dilution rate, nor an estimate made of the concentration of the supply well discharge as the benzene plume was entering the well. This was not an oversight as the REMFuel model is a one-dimensional transport model, and this reveals an inherent flaw in the modeling approach used in this study, which is that the flow around Dry Brook supply well approximates two-dimensional radially convergent flow. The modeling results in the report therefore don't answer the question: "What are the concentrations in the well water if the contaminant (benzene) plume does get to the supply well?" and it fails to fulfill the first study objective noted above.

Further notable study results are that the peak of the hypothetical benzene plume after 1400 feet of transport is shown in figure 4b as 2.1 years ($v = 664$ ft/y). The conservative constituent transport time, using the values in report table 1, is 1.5 years ($v = 929$ ft/y). The difference between these two estimates is due to the retardation of the benzene caused by the estimated adsorption of the benzene to the aquifer materials (retardation factor = 1.4). Both transport times are indicative of the very rapid movement of

potential contaminants through the aquifer. In addition, note that the plume remains above the 5 ug/l MCL for about 6 months in figure 4b. It should be noted that the velocity of the groundwater would be much greater as it gets closer to the supply well due to the converging flow inherent in radial flow to a pumping well.

To provide some perspective on the potential of benzene as a contaminant, it should be noted that the plume simulated above was generated by a release of 95 gallons of diesel fuel containing 0.78 Kg of benzene. A calculation of how much water can be contaminated by 0.78 Kg of benzene to the MCL of 5 µg/L is 156 million liters of water, or 41 million gallons of water, the equivalent of pumping the Dry Brook supply well continuously for 95 days at 300 gpm.

It should also be noted that although the above REMFuel simulations are characterized in the report as “worst-case” scenarios, it is entirely possible that a fully loaded fuel delivery truck could spill much more fuel than 95 gallons. Many fuel trucks contain thousands of gallons of fuel, and a potential spill of 2000-3000 gallons would be a more likely “worst-case” scenario. In the case of a 3000 gallon spill the mass of the “worst-case” contaminant, benzene, would be increased 30-fold to about 25 Kg. This size of spill would create a much larger plume, a much greater concentration of the contaminant, and a much greater likelihood of a longer-term loss of Dry Brook supply well as a source of potable water.

You may contact me at spg.hydro@gmail.com if you have questions regarding the above comments.

Sincerely
Stephen P. Garabedian, Ph.D.
Belchertown, MA

Do you have any other comments, questions, or information that the Board should be aware of? *

- Yes
- No

If "yes" to previous question, please provide such other comments, questions, or information below.

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Email address *

kmccaffr@mtholyoke.edu

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Check an acknowledgement that this was noted.

Please State Your First and Last Name *

Kevin McCaffrey

Please State Your Street Address including City/State *

11 College 4 South Hadley, MA

Please State Your Email Address

kmccaffr@mtholyoke.edu

Do you wish to speak at the public hearing on March 22, 2021? *

Yes

No

You may also submit written comments and/or questions. Do you wish to submit written comments and/or questions at this time? *

Yes

No

Please state any comments or questions you wish to submit at this time.

Do you have any other comments, questions, or information that the Board should be aware of? *

Yes

No

If "yes" to previous question, please provide such other comments, questions, or information below.

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meeting

Pauline Casey <pcas010@comcast.net>
To: SHPlanBoard@southhadleyma.gov

Mon, Mar 22, 2021 at 4:11 PM

To Planning Board: Although I have not watched every meeting I have followed the results and thank you for your diligence and patience. I believe you are heading for the right decision for the value of the aquifer to the town. I am from District 1 therefore not directly affected but over all we are all affected. Again thank you and thanks to our other boards involved. Pauline Casey
Sent from my iPhone