

Town of Middlesex

1216 Route 245
Middlesex, New York 14507

PLANNING BOARD
Wednesday, May 7, 2025 • 7:00 p.m.

The following minutes are the official and permanent record of the actions taken by the Town of Middlesex Planning Board, as recorded by the Planning Board Clerk.

Meeting called by: Case Smeenk

Board members present: Nate Duffy
Terry Mott
Gordon Stringer

Alternate: Position vacant

Staff present: Alan Pearce, *Code Enforcement Officer*
Beth Altemus, *Planning Board Clerk*
Jerome Means, *Stantec Engineering*
Jeff Graff, *Attorney for the Town of Middlesex*

The meeting was called to order at 7:00 p.m. by Mr. Duffy.

OLD BUSINESS:

1. Site Plan Review: App. # 112724 - SPR

Jennifer Sherwood, owner of property at 306 East Lake Road, Rushville, NY, 14507 (2.61-1-8), is seeking a site plan review for construction of a residence.

Wendy Meagher of Meagher Engineering and Amanda Valle, attorney for Ms. Sherwood, were representing.

Mr. Smeenk indicated that Ms. Sherwood is seeking site plan approval and a special protected area waiver. He asked Mr. Means, who has conducted an engineering review of the project, for his comments. Mr. Means indicated that the applicant didn't provide new calculations for the square footage of the area of disturbance within each steep slope zone. Ms. Meagher indicated

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that these disturbances are shown on the sequencing plan, and that the disturbance is 535 square feet.

Mr. Smeenck commented that the Board doesn't agree with that disturbance calculation. He also commented that they have not delineated the areas of extremely, very and moderately steep slopes on the site plan.

Ms. Valle commented that she feels they have sufficiently addressed the code requirements. Ms. Meagher commented that the proposed area of disturbance on the site plan is just over a half of an acre. Mr. Means asked what the breakdown of that disturbance is in each of the steep slope zones.

Ms. Valle commented that all that's prohibited is in the extremely steep slope area, and other uses are allowable in the other slope zones. She also indicated that at the March meeting the validity of the survey was being questioned.

Mr. Smeenck commented that the survey itself was not in question, but rather the analysis that resulted in a calculation of 535 square feet of disturbance, and inquired what the additional disturbance for the septic and driveway would be. Ms. Meagher indicated that these are all depicted on the maps.

Mr. Means commented that on page six of his engineering review he asked for the area of disturbance in each zone, but this information was not provided.

Ms. Meagher commented that she analyzed the slopes beyond the area of disturbance, and Mr. Smeenck indicated that it's required by code to project the steep slope areas one hundred feet past the property line of the areas being disturbed, and if that can't be achieved via survey then LIDAR may be used.

Ms. Meagher commented that the area of disturbance is documented on the plan, and that the area where the house is to be built is within or under forty percent slope, and the only extremely steep slope is where the manmade roadway is.

Mr. Smeenck indicated that the area where the septic tank is to be installed and the area to the north where the rip rap is to be installed are also very steep.

Ms. Meagher indicated on the map where that information is defined. Mr. Smeenck commented that it does not call out the extremely steep slope and a single family residence is not allowable in those slopes. He indicated that if they are going to disturb an extremely steep slope the Board needs to know the limits of disturbance within it.

Ms. Meagher commented that they are nearing final septic approval from the State Health Department, with a few minor comments, and she believes the area of disturbance of the septic

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is their jurisdiction. Mr. Smeenck commented that the area of disturbance in steep slopes is the Planning Board's jurisdiction.

Ms. Meagher asked where in the code they're limited to five hundred square feet of disturbance. Mr. Smeenck read from section 707.3.5.1 of the Steep Slope Law, indicating the allowable uses in extremely steep slopes greater than forty percent slope and that installation of structures shall include less than five hundred square feet of disturbance. He also indicated that according to 707.4.3, they cannot segment the zones to stay under this disturbance limit.

Ms. Valle commented that they can't submit separate steep slope applications for each zone, and they must allow differentiation of zones; she also commented that it sounds like Mr. Smeenck's interpretation is that there can be no new construction on steep slopes, and Mr. Smeenck agreed. Ms. Valle commented that she believes they have sufficiently shown this development can happen in a responsible manner.

Mr. Smeenck asked where the delineation between slopes is, and Ms. Meagher indicated it's color coded on the map; Mr. Smeenck commented that this is only done where the house is proposed.

Mr. Mott commented that where the house is proposed he sees slopes over forty percent, and it appears they have extended the cross sections of the slopes out to lower contours in order to calculate lower slopes. Mr. Smeenck agreed, commenting that they are running lines from areas of twenty-five to thirty percent slope into areas of over forty percent slope and averaging that distance, resulting in a deceiving slope calculation. He further commented that there are inconsistent cross section lengths, which results in inconsistent slope calculations.

Mr. Smeenck requested to move the conversation back to Mr. Mean's engineering review, and Mr. Means indicated his comment regarding encroachment on the north side of the property and the need to add those lines to the plans. Ms. Meagher indicated she can add those metes and bounds.

Mr. Means indicated that the pump station on the north side requires elevations on the invert, and Ms. Meagher indicated that she had adjusted that due to the State Health Department's request to shift the pump station farther away.

Mr. Means indicated that the silt fence on the new phasing plans should be placed parallel to, not perpendicular to, the contours, and if heading down along a hill they should turn the end such that it directs water to the sediment trap at the bottom. There was discussion that silt fence with metal fencing incorporated into it is to be used.

Mr. Means indicated that when moving from one sequence to another the silt fence disappears, so they should add notes on whether the previous silt fence is to remain. Ms. Meagher commented that the areas of disturbance will be protected with silt fences, then stabilized as

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they move uphill. Mr. Means indicated that he would like to see the silt fence from the previous phases left in place for protection, and Ms. Meagher agreed to do so.

Mr. Means indicated that there are elevations called out for the retaining wall on the north side by the pump station, and now slope grades are also given. Ms. Meagher indicated that the pump station was shifted so the wall was eliminated and there will be grading instead.

Mr. Smeenck commented that the stormwater collection tank looks like it's in the fifteen feet setback, and there was discussion that that's acceptable as long as it's still on the Sherwood property.

Mr. Smeenck inquired if there were any elevations for the bottom of the wall, and Ms. Meagher indicated she had given these to Mr. Means and showed these to Mr. Smeenck on the map.

Mr. Means indicated that he had no further comments from the engineering review.

Mr. Smeenck commented that there had been a question regarding the reciprocating easement, and Mr. Means indicated that they showed the metes and bounds for that, including which will be granted to Ms. Sherwood and which to the neighbor.

Mr. Smeenck inquired about the supports for the drainage pipe under the tram, and Mr. Means indicated that they intend to replace them using the ground as support. Mr. Smeenck commented that they need assurance from the tram company that the pipes will support the tram.

Mr. Smeenck inquired how the water and sanitary lines running uphill from the structure below will be installed, and Ms. Meagher indicated they will be insulated but seasonal. Mr. Smeenck inquired how they'll be held in place, and Ms. Meagher indicated they'll be on the ground and supported by the tram supports, will be buried when feasible, and only exposed as they run up the cliff. Mr. Smeenck indicated that he'd like that description included in responses from the tram installer and their assurance that this won't void the warranty or affect the load.

Mr. Mott and Mr. Smeenck inquired how any potential movement of the lines as water comes on and off could be mitigated; Mr. Means commented that as long as the movement is linear it shouldn't have too much thrust. Mr. Mott inquired whether the lines need to be inspected yearly, and there was discussion that they do not, however it would behoove the owners to do so. Mr. Mott commented that concern would be with breakage of the sanitary line, and Mr. Smeenck reiterated that the tram installer should confirm the arrangement won't be problematic.

Mr. Smeenck addressed the lot coverage, indicating that including the house, accessory structure, stairs, tram, driveway and walls over three feet high he calculated 9,280 square feet of coverage, whereas the plans indicate 9,093 feet of coverage. He indicated that these calculations do not include the roadside parking, however.

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Ms. Meagher indicated that the parking area is within the right of way, and she and Mr. Smeenck briefly discussed where the parking area lies in relation to the right of way. It was agreed that the parking area is within the right of way and therefore not on the property or subject to lot coverage calculations.

Mr. Smeenck commented that the lot coverage calculations do not show the existing stairs, transformer and generator pads, pump stations or catch basins, all of which total 166 square feet of impervious coverage. He also commented that the rip rap could be included in the impervious surface calculations as well, and would bring the total coverage to well over twenty percent.

Ms. Meagher commented that the rip rap is used to dissipate the energy of storm water and allow it to infiltrate the ground.

Mr. Means indicated that if rip rap contains a high volume of fine particles it can be considered impervious, so a note should be added stating that the contractor will remove the fines from the rip rap. Mr. Smeenck indicated that without the rip rap and roadside parking, the total lot coverage is under twenty percent.

Mr. Smeenck moved the discussion to the existing house on the property, indicating that it has two bedrooms, two bathrooms, a kitchen, electric and heating, and is therefore considered to be a dwelling and the primary structure on the property. He indicated that the code states there may not be more than one single family residence on a property, so it cannot remain and be considered an accessory structure if another house is built.

Ms. Valle commented that the house is currently uninhabitable, and Mr. Smeenck commented that deterioration does not preclude it from being the primary dwelling, though it can be abandoned and torn down.

Mr. Smeenck indicated that a variance from the Zoning Board would need to be obtained to have two residences on the property; he also indicated that the tram landing falls within forty feet of the mean high water line and would therefore also need a variance. He summarized that the four variances needed would be for the building height, the shared driveway, the location of the tram landing, and a change of use for the existing structure.

Mr. Smeenck indicated that Ms. Sherwood is requesting a steep slope area protection permit, which would need to be approved for the project to move forward. Mr. Mott commented that until there is agreement about the slope percentages the permit can't be approved, and Mr. Graff commented that the application also needs approval from Yates County Planning.

Mr. Stringer inquired if it had been resolved whether the existing driveway should be included in the extremely steep slope. Ms. Meagher commented that she would like a ruling on the definition of the man made roadway and whether Ms. Sherwood can have grading done. Mr. Smeenck indicated that she cannot do so without a permit.

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Ms. Valle commented that they are requesting a waiver to rebuild the roadway, and that it's well engineered and follows the steep slope law. She argued that Ms. Sherwood doesn't need a permit to grade the driveway as the code only refers to disturbance of the natural contours.

Mr. Means commented that the man made roadway existed at the time of purchase and was therefore natural at that point. Mr. Graff commented that it is up to the Code Enforcement Officer to interpret that.

Ms. Valle commented that they have given more than enough information for the Board to grant the steep slope permit, and that the steep slope law defines disturbance to include grading or filling of natural contours.

Ms. Valle also indicated that the code allows LIDAR data to be used to define slopes, and they used one foot contour spacing when the code requires only two feet. She indicated that perhaps they should seek an interpretation by another party.

Mr. Pearce commented that this interpretation falls to the Code Enforcement Officer. He discussed with Ms. Meagher their intent for the man made extremely steep slope, and Ms. Meagher indicated they plan to restore it to the native slope.

Mr. Pearce indicated that it appears they'll be exceeding the five hundred square feet limit of disturbance, and Ms. Meagher commented that's true only if the man made road is included, but all other slopes will be improved and stabilized, and their stormwater prevention plan will hold a one hundred year storm in pipes and release it at less than pre existing levels.

Mr. Pearce commented that the Board is asking them to be more specific regarding the extreme grades so everyone is in agreement.

Ms. Meagher commented that the only area that's non-compliant with the code is the dug roadway, and Ms. Valle commented that it's an allowable use. There was general discussion about whether the allowed uses are for existing homes and structures or also apply to new builds.

Mr. Graff commented that perhaps Mr. Pearce should interpret the code and respond to this particular section of the zoning law. He indicated that Mr. Pearce should be asked to interpret specific items and the slopes in which they fall, for example the stairs, tram, driveway and septic system. Ms. Valle commented that this process could be avoided if they were given a waiver, and Mr. Smeenck indicated he would not vote to grant a waiver at this point.

Ms. Valle suggested LIDAR alone be used to show that the majority of the site and disturbance is in an allowable, developable area. Mr. Graff referred to the section of Town code that states that a survey is required and LIDAR may only be used on neighboring property if access permissions could not be obtained.

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A regional LIDAR map which includes Ms. Sherwood's parcel was examined and discussed. There was also general discussion about whether LIDAR data could be superimposed on the site plans.

Mr. Pearce indicated that he would visit the site in person to make an interpretation about the slopes where the house, stairs and tram are proposed, and commented that it would be helpful to see LIDAR superimposed onto their maps. Mr. Smeenck and Mr. Mott stated that they would also like to revisit the site.

Mr. Smeenck indicated that there is a bank approximately five feet high by three to four feet wide between the lake and the existing building where the main stormwater discharge is, and he inquired what they plan to do with the discharge at that point. Mr. Means commented that they have planned an apron there to handle the discharge, and Ms. Meagher indicated that large rip rap stones will be installed at the bank to disperse the water being released from the pipe coming down from above. She indicated that this pipe will discharge above the mean high water line, daylighting at the 690 feet contour.

Mr. Smeenck inquired whether this area will need DEC approval, and there was discussion that because it releases above the mean high water line and will involve adding fill rather than removal of a berm DEC approval is not needed.

Mr. Smeenck suggested that the application be tabled until Mr. Pearce makes a determination.

Ms. Meagher requested that their application be sent to Yates County for review. Mr. Graff explained that proposals on slopes of fifteen percent or greater in lakefront zoning districts need to go to Yates County for review. He also indicated that if the County Planning Board approves the application, the Middlesex Planning Board can then vote on the application as they normally would, however if the County denies the application or approves it with modifications the Middlesex Planning Board would need a supermajority to approve the application.

Ms. Valle asked if a written request for a CEO interpretation of the site should be submitted, and Mr. Pearce indicated it should.

Mr. Smeenck made a motion to forward the application to the County, with the understanding that the Town of Middlesex Planning Board has given no approvals yet. Mr. Duffy seconded.

Ms. Meagher asked if they could be referred to the ZBA as well, and Mr. Smeenck indicated they could.

Mr. Stringer, Mr. Smeenck and Mr. Duffy voted in favor, Mr. Mott opposed, and the motion passed.

NEW BUSINESS:

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2. Site Plan Review: App. # 040325-SPR

Thomas Erdle, owner of property at 5820 Widmer Road, Middlesex, NY, 14507 (Tax Map ID# 31.78-1-3), is seeking a site plan review for a retaining wall replacement.

Joseph Cull of Brawdy Marine was representing Mr. Erdle.

Mr. Smeenck commented that Mr. Erdle's property is on a steep slope on the lake, and he'd like to shore up an existing retaining wall.

Mr. Mott asked for clarification if the wall will be shored up or torn down, and Mr. Cull indicated that they will leave what's existing, but remove the top four tiers, increase the front dimension by one foot, and tie into the bank behind it.

Mr. Smeenck asked if they would be accessing the site and bringing in materials via the water, and Mr. Cull indicated they would.

Mr. Smeenck commented that the plans give no dimensions, but it's roughly sixteen feet, three inches on one end and twenty-two feet on the other end, and it's all above the mean high water line. He also indicated that the engineering design was completed by McCormick Engineering, and they will be putting deadmen inside the existing wall. Mr. Cull indicated that the wall will taper in the front section.

Mr. Duffy made a motion to accept the application. Mr. Stringer seconded.

There was no public discussion. All Board members voted in favor, none opposed, and the motion passed.

3. Site Plan Review: App. #042025-SPR

Daniel Guerreri, owner of property at Hagerty Road, Middlesex, NY, 14507 (Tax Map ID# 23.02-1-10), is seeking a site plan review for construction of a residence and barn.

Bill Grove of Grove Engineering, and Mr. and Mrs. Guerreri were representing.

Mr. Smeenck summarized that they would like to build a barn with living quarters and a house. Mr. Grove explained that the living quarters in the barn would be temporary to give the Guerreri's a living area while they build the house.

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Mr. Mott inquired what will be in the temporary residence, and Mr. Grove indicated that there would be a bathroom, one bedroom, a kitchen and heating.

Mr. Mott indicated that once the house is completed they will need to remove the bedroom and kitchen from the barn so it's no longer a dwelling. Mr. Smeenck indicated that this situation has been approved in the past, but he wondered if they will need a special use permit to use the pole barn as a temporary dwelling for a limited amount of time.

Mr. Grove commented that it's a permitted principle use as it's being built to residential codes. Mr. Pearce indicated that once the house is finished the aspects that make it a living space would need to be removed, including the kitchen.

Mr. Grove indicated that they have septic approval from the Canandaigua Watershed.

Mr. Smeenck asked how long they estimate the house will take to build, and Mr. Guerreri indicated they estimate to finish in three to five years, and the barn itself will take one year.

Mr. Mott and Mr. Pearce discussed that Mr. Pearce would make removal of the living space a condition on the building permit.

Mr. Smeenck indicated that the condition is that the living space in the barn shall be removed so there is no habitable space in the barn once the house is constructed in order to meet Town code.

Mr. Mott made a motion to approve the application with the condition stated. Mr. Duffy seconded.

There was no public discussion. All Board members voted in favor, none opposed, and the motion passed.

4. Site Plan Review: App #042325-SPR

Stephen Miller, owner of property at 690 East Lake Road, Middlesex, NY, 14507 (Tax Map ID # 11.58-1-2), is seeking a site plan review for an addition.

Tim O'Brien was representing.

Mr. Mott commented that the map submitted with the application is dated 2008, and he had confusion about the project, but after talking with the owners he understands their intent and request. Mr. Smeenck indicated that he understands they are requesting to add on to an existing home.

Mr. O'Brien explained that the owners want to add another eight feet to their three season room for a larger family gathering spot. He showed Mr. Smeenck on the map where the addition, deck,

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and roof will be. Mr. O'Brien explained that the original project design has since changed, and some demolishing has been done.

Mr. Smeenck made a motion to approve the application, as only eight feet are being added on, and the deck maintains a fifty feet clearance from the lake and therefore meets code requirements. Mr. Duffy seconded.

There was no public discussion. All Board members voted in favor, none opposed, and the motion passed.

5. Site Plan Review: App #043025A - SPR & App. #043025B - SPR

Floyd Rayburn, owner of property at 1379 East Lake Road, Middlesex, NY (Tax Map ID# 31.01-1-2), is seeking a site plan review for renovation of an existing boathouse and construction of a dock and boat station.

Mr. Rayburn and Kevin Dooley of Worden Hill Marine were representing.

The Board addressed the application for the boathouse renovation first.

Mr. Dooley indicated that they have two components to their request, one for another dock and boat station, and another for renovations to an existing structure. Mr. Rayburn indicated that the latter is not a boathouse, but a two story building located next to the water and four feet from the road. He indicated that the floor is unlevel, and the door opens towards the road.

Mr. Smeenck asked if they would be keeping the existing footprint, and Mr. Rayburn indicated they would be. He commented that they plan to raise the building with piers and will not disturb the ground underneath the structure. Mr. Dooley indicated that they have DEC approval for the project.

Mr. Smeenck moved to approve the raising of the boathouse as long as it doesn't exceed or move the existing footprint.

There was a discussion between Mr. Smeenck and Mr. Rayburn about the height of the building being seventeen feet, with the road being higher than the door, and that the portion of the building currently over the water will be removed. Mr. Rayburn indicated that he will relocate the door to the north side and leave the window on the road side.

Mr. Smeenck indicated that structures over the water have a fifteen feet height limit, but because this is a pre-existing accessory structure and will not be over the water they will allow the seventeen feet height.

Mr. Mott made a motion to approve the application. Mr. Stringer seconded.

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There was no public discussion. All Board members voted in favor, none opposed, and the motion passed.

The Board next reviewed Mr. Rayburn's application for the dock.

Mr. Smeenck commented that the Town code allows for two docks on up to two-hundred feet of lakefront, and one additional dock for each additional one hundred feet over that. There was a brief discussion about the interpretation of the code and how many docks are allowed. Mr. Smeenck read from the code and it was agreed that Mr. Smeenck's comment is correct.

Mr. Smeenck also referenced the limit of 720 square feet for dock area, and there was a discussion about whether the area of the boathouse counts as dock area as some of it is located on the land side of the mean high water line. Mr. Pearce commented that the area of the structure that goes beyond the mean high water line towards the water should count in the square footage. It was agreed that the square footage of the boathouse and dock meet the code.

There was discussion about whether the property can have a third dock, and Mr. Smeenck indicated that they cannot have three and will therefore need to reconfigure. There was discussion that perhaps they could remove one of the existing docks or tie the two existing docks together. Mr. Rayburn indicated that he does not want to tie the docks together and wants to keep one of the docks.

It was also suggested that Mr. Rayburn could modify one of the docks, and Mr. Dooley commented that they would need DEC approval to do so. Mr. Rayburn indicated that he would be willing to remove one of the docks.

Mr. Stringer made a motion to approve a new dock with the condition that one of the existing docks is removed. Mr. Stringer seconded.

Mr. Dooley asked if he would be allowed to begin construction of the new dock before the old one is torn out, and Mr. Smeenck indicated he could.

There was no public discussion. All Board members voted in favor, none opposed, and the motion passed.

6. Site Plan Review: App #042125 - SPR

Ingrid & Brian Watkins, owners of property at 1327 South Lake Road, Middlesex, NY, 14507 (Tax Map ID# 21.79-1-7.000), are seeking a site plan review for construction of a residence.

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Ty Allen, architect with ARK Design Studio, John Jones of Marks Engineering, and Ingrid and Brian Watkins were representing.

Mr. Smeenck asked the applicants to explain the changes that had been made to the house plans since last coming to the Board. Mr. Allen indicated that he has redesigned the entire house, but is keeping the existing retaining wall to serve as the back wall of a two car garage, which is now much smaller than the original. He indicated that they have already received a variance for the south side setback, and they will be maintaining that line as well as the west line; the east line is close to the original plan, however the north line is now shaped differently.

Mr. Smeenck asked if one of the retaining walls is new, and Mr. Allen indicated that it was on the previous plans. Mr. Allen commented that he tried to leave all the walls the same, but extended the retaining wall along the driveway and pulled it around to deal with the grading. He also indicated that he relocated the septic tank, moving it up the hill.

Mr. Smeenck inquired if they had calculated the lot coverage, and Mr. Allen indicated the coverage is less than twenty percent.

Mr. Jones explained that the walk out elevation from the garage is the same, and the garage has been moved to the south to create more level space for cars. He also indicated that the Canandaigua Watershed has approved the shifting of the septic tank location and that nothing else about the system has been changed.

Mr. Mott asked whether the Town engineer should review the plans, and Mr. Smeenck commented that they haven't changed the site at all. Mrs. Watkins commented that the main engineering concern earlier had been aspects of the retaining wall that's already been constructed.

Mr. Mott inquired what changes have been made to the design, and Mr. Watkins commented that after the retaining wall was approved they needed to make the house smaller. Mrs. Watkins commented that the house is now only two stories instead of three, there is no longer a room above the garage, and the stairs along the south side have been removed. Mr. Allen commented that the footprint is smaller, but the grading and drainage have not changed.

Mr. Smeenck inquired whether the twelve inch culvert under the road was reinstalled, and Mrs. Watkins indicated that a lot of drainage was put under the road when the wall was built.

There was a discussion that they have received all necessary variances, and Mr. Jones commented that the south side is now further from the setback. It was agreed that they do not need to adhere to the twelve feet setback variance requested because they are now 14.8 feet from the setback and therefore more conforming.

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Mrs. Watkins indicated the the septic has received state approval, and Mr. Smeenck commented that only the tank location was changed, and the system was approved by Tyler Ohler of the Canandaigua Watershed.

Mr. Smeenck made a motion to approve the application as presented. Mr. Duffy seconded.

There was no public discussion. All Board members voted in favor, none opposed, and the motion passed.

OTHER BUSINESS:

Mr. Smeenck commented that the Sherwood application has been pushing for comments and reviews, and it needs to be remembered that the Board members are volunteers; he raised new questions tonight because he didn't have time before to discover these questions.

Mr. Duffy commented that he sympathizes with being given new concerns tonight, however they are still not providing what the Board has asked for. Mr. Mott commented that they appear to be using contours to their advantage to lower the slope percentages.

There was a discussion that the property is generally not in good shape and they're not providing the information they're being asked for.

Mr. Smeenck indicated that he is investigating the option of putting up a performance bond on the site that stipulates how long the site can remain open once the project commences, and Ms. Meagher has indicated that Ms. Sherwood is amicable to that.

Mr. Smeenck made a motion to approve the April meeting minutes. Mr. Mott seconded.

Mr. Duffy indicated that he has not had an opportunity to read the minutes.

Mr. Stringer, Mr. Smeenck and Mr. Mott voted in favor, Mr. Duffy abstained, and the motion passed.

Mr. Smeenck adjourned the meeting at 9:15 p.m.