

DEPARTMENT OF PLANNING & LAND MANAGEMENT

Definitive Subdivision Plan #246
1440-1450 Main Street

Revised Report Date: December 7, 2020
Prepared by: Elizabeth Hughes, Town Planner

GENERAL INFORMATION

Owner: Faye Erhard Hayes
P.O. Box 1262
Concord, MA 01742

Applicant: Symes Development & Permitting, LLC
50 Dodge Street
Beverly, MA 01915

Requested Action: **Render a decision on Definitive Subdivision Plan pursuant to MGL Ch. 41, Section 81 and the Planning Board Subdivision Rules & Regulations.**

The application was submitted on July 17, 2020. The Applicant has provided a time extension for the Decision to be filed with the Town Clerk on or before December 30, 2020

Location/Zoning/Existing Conditions & Land Use/Utilities: The Project Site (Site) is approximately 7.97 acres, comprised of six lots. There are 4 existing Approval Not Required lots with two of the lots (140 Main St. & 110 Highland St.) have an existing dwelling. The other two lots are undeveloped. The Site is located on the north side of Main Street in the Residence C Zoning District with the rear of the Site within the Wetland Conservancy District. The Fitchburg Commuter Rail line abuts the northern property boundary. Town water, sewer, and electric, as well as gas service is available from Main Street.

The Site is generally flat along Main Street and then begins to slope upwards to a level plateau then slope steeply down to a non-jurisdictional isolated wetland and up again to the Commuter Rail line. The Site is generally wooded, becoming denser towards the rear.

Surrounding Land Uses/Zoning: To the south, west and east is existing residential properties, including the Center Village PRD and are located in the Residence C Zoning District. Across the Commuter Rail line to the north is the Conant Street mixed use residential/commercial development and Rideout Playground. To the northeast is the Junction Square, a commercial and professional office complex in the West Concord Business Zoning District.

I. Proposed Project

The application states it has provided a conventional subdivision plan showing 16 lots off a new roadway with two cul-de-sacs through the use of Parcel G, Parcel H and excess land from lots (A & D) following the creation of Lots A1 & D1. The application states that Lot E and Lot F are not part of the Definitive Subdivision Plan. However, temporary grading easements are to be provided on Lot E and Lot F to construct the new road and maintain sight lines.

Stormwater drainage will be handled through the use of catch basins and subsurface drainage system with outfalls directed towards two sediment forebays that will have overflows to the non-jurisdictional isolated wetland. The Applicant states that the grading for the roadway, utilities and stormwater drainage will require the removal of approximately 60,840 cubic yards (c.y.) of earth from the Site. The project requires the demolition of both existing dwellings.

All 16 lots within the subdivision and Lot A1, Lot D1, Lot E and Lot F will be served by Town water and electric. All 16 lots and Lot A1 will have private on-site sewage disposal systems. Lot D1, Lot E and Lot F are proposed to be served by Town sewer.

II. Zoning Bylaw Lot Requirements

The property is located within the Residence C Zoning District, which requires:

1. Minimum Lot Area = 10,000 SF – **All of the lots have over 10,000 s.f. of area.**
2. Minimum Lot Frontage = 80 LF – **All of the lots have over 80 feet of frontage.**
3. Minimum Lot Frontage Exception = 80 LF – **not being utilized**
4. Minimum Lot Width = 64 LF – **All of the lots are over 64 feet of lot width.**
5. Minimum Front Yard Setback = 20 feet – **The Plan does not show building envelopes.**
6. Minimum Side Yard Setback = 15 feet – **The Plan does not show building envelopes.**
7. Minimum Rear Yard Setback = 30 feet – **The Plan does not show building envelopes.**
8. Minimum Corner Clearance = 10 feet – **Not applicable.**
9. Maximum Height = 35 feet – **Insufficient information to make a determination.**

III. Subdivision Rules and Regulations

On May 6, 2020, the Planning Board issued a Preliminary Plan Decision with the following conditions for submission of the Definitive Subdivision Plan:

1. *The Preliminary Plan is granted without any waivers and any Definitive Plan will require an Earth Removal Special Permit from the Zoning Board of Appeals.*
The Applicant has not applied for or received an Earth Removal Special Permit from the Zoning Board of Appeals.
2. *The Preliminary Plan shows a compliant cul-de-sac that appears to be feasible for adequate emergency vehicle access. The Definitive Plan shall include detailed plans showing the road section, proposed curbing, hydrant location, the cul-de-sac turning radius, as well as, information regarding on-street parking in order to make any final determination on whether adequate emergency vehicle access is provided.*
3. *The Definitive Plan shall be subject to the Town of Concord Stormwater Regulations and demonstrate that the project is constructed with appropriate stormwater Best Management Practices to meet state and local stormwater management standards. The Definitive Plan shall have no increase in stormwater rate or runoff volume for up to and including the 100 year event and also provide water quality treatment at all design points.*
4. *The Applicant shall provide drainage calculations demonstrating that the groundwater will not impact abutting developed properties or the newly developed properties.*
5. *The drainage pipe layout does not clearly define whether stormwater from the sediment forebay flows into the underground system or if the underground system flows into the forebay. The Definitive Plan shall clarify this and include inflows, invert elevations and pipe slopes.*
6. *The Definitive Plan shall define “DVMH” structure.*

7. *The drainage/infiltration system under the center island in the cul-de-sac presents a maintenance issue for the Town. If the Applicant intends to petition the Town to have the road accepted as a public way, then the system shall be revised to be in full compliance with the Subdivision Rules and Regulations and the Concord Public Works Design Standards. If the roadway and all utilities are intended to remain private, the Applicant shall provide detailed information on the maintenance.*
8. *The Definitive Plan shall provide the design speed of the roadway so that the roadway dimensions can be confirmed.*

For Condition 2 through Condition 8, the Concord Public Works Engineering Staff outlined various issues and concerns in an October 8th memo. The Applicant provided additional information and revised plans from October 27th to November 13th. In a memo dated December 2, 2020, the CPW Engineering Staff has completed their review of the revised material and has found that all previous issues and concerns with the plans and stormwater drainage have been address with recommended conditions of approval.

9. *Pursuant to Subdivision Rules and Regulations Section 6.10.1, sidewalks shall be provided on one side of the street. The Definitive Plan shall show a sidewalk going all of the way around the cul-de-sacs.*

The revised plans include a sidewalk around the entire cul-de-sac for Road A.

10. *Pursuant to Subdivision Rules and Regulations Section 6.13.10, where it is necessary to carry drainage across lots within the subdivision, adequate easements shall be provided. The Definitive Plan shall show the location and dimensions of all easements for the stormwater drainage system located on individual lots.*

The Plans show the location and dimensions of the stormwater drainage system easements.

11. *The Engineering Divisions reserves the right to comment on future submittals related to any new or previously submitted information provided to the Town for review including the Definitive Subdivision Plan and supporting documentation.*

In a memo dated December 2, 2020, the CPW Engineering Staff has completed their review of the revised material and has found that all previous issues and concerns with the plans and stormwater drainage have been address with recommended conditions of approval.

12. *The Applicant is advised that the proposed water and sewer service connections shown on the plan do not meet the requirements of the Water and Sewer Use Rules and Regulations, and the Water and Sewer Design and Construction Standards, and Subdivision Rules and Regulations. Any deviations from the Water/Sewer Divisions Rules and Regulations, requires review and approval by the Public Works Commission. Public Works Commission review will only be considered at such time that the proposed development has received support through approvals from other Concord Town Boards.*

The CPW Water/Sewer Engineer has reviewed the revised plans and additional information. She has determined they address the comments in the September 2nd letter and conditions of approval will be required regarding final design.

13. *The Subdivision Rules and Regulations 6.14.3 requires reasonable provisions be made for extension of the water main to adjoining property, including easements, as necessary. The Water Use Rules and Regulations require that for a lot to be eligible for water service the lot must front*

a water main in a public or private way. A Subdivision seeking connection to the municipal water system will require the applicant to submit an application for a Water Main Extension in order to create frontage to a water main. Any approval of a water main extension will require that a water system loop be created. The proposed common water main shown on the plan set "dead ends" in each of the two proposed cul-de-sac's and does not provide a system loop.

The CPW Water/Sewer Engineer has reviewed the revised plans and additional information. She has determined they address the comments in the September 2nd letter and conditions of approval will be required regarding final design.

- 14. The Applicant will be required to submit to the Concord Board of Health a Request for Title 5 Building Review (Form S) to identify any potential increase in wastewater flow and associated Sewer Improvement Fee. Based on existing wastewater capacity constraints, flow increases over 1,000 gallons per day will be administratively denied by the Water/Sewer Superintendent. An appeal may be made to the Public Works Commission seeking relief for an increase in flow over 1,000 gallons per day.*

The Definitive Plan Decision will incorporate this requirement as a condition of approval prior to endorsement of the Plan should the Planning Board move forward with the granting of the Definitive Subdivision Plan.

- 15. The Applicant shall provide to the Fire Department for review three alternative names for the new subdivision road. All homes that front on the roadway shall have their own street address, separate from Main Street.*

The Applicant has proposed the following names for the new subdivision roads:

Road A: Fowler Lane; Hayden Lane; Hogan Lane

Road B: Hayes Circle; Carter Circle; Sullivan Circle

The Fire Department has reviewed the proposed names and does not have any issues with them except for Hayes Circle since there is already a Hayes Road. The Historical Commission has not provided any feedback on the proposed names.

- 16. The Definitive Plan shall incorporate the proper amount of hydrants and/or hydrants appropriately placed throughout the development.*

The revised plans show four hydrants within 400 feet of each other. The Assistant Fire Chief has reviewed the revised plans and additional information and has no further comments at this time.

- 17. The Applicant shall provide the Fire Department for review and approval a NFPA 241 construction safety plan. This standard shall apply to structures in the course of construction, alteration, or demolition, including those in underground locations. This standard is intended to prescribe minimum safeguards for construction, alteration, and demolition operations in order to provide reasonable safety to life and property from fire during such operations.*

The Definitive Plan Decision will incorporate this requirement as a condition of approval prior to site work should the Planning Board move forward with the granting of the Definitive Subdivision Plan.

- 18. The Definitive Plan shall require approval from the Army Corps of Engineers, or documentation that the Army Corps of Engineers has determined the isolated wetland is not jurisdictional as a federally isolated wetland.*

The Applicant states that the isolated vegetated wetland is jurisdictional under the Army Corps of Engineers and was assigned a File Number: NAE-2020-00193 earlier in the year (January 17, 2020). This was in response to the submittal of a Self-Verification Form (SVNF) for the General Permits for Massachusetts (GPs for MA) associated with the previously proposed PRD development. Additional correspondence with the ACOE Project Manager will be conducted by the Applicant in association with the final design plans for the conventional subdivision. Similar to water main and septic systems (17. & 19.), the Applicant believes a condition of approval prior to site work is appropriate.

19. *Individual sewage disposal systems shall be designed, permitted and constructed in accordance with:*

- a. *Title 5 of the State Environmental Code, 310 CMR 15.000, Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage, and*
- b. *Concord Board of Health regulation, Minimum Requirements for the Disposal of Sanitary Sewage in Unsewered Areas.*

The Definitive Plan Decision will incorporate this requirement as a condition of approval prior to the issuance of any building permit should the Planning Board move forward with the granting of the Definitive Subdivision Plan.

20. *Town water shall be available.*

The CPW Water/Sewer Engineer has reviewed the revised plans and additional information. She has determined they address the comments in the September 2nd letter and conditions of approval will be required regarding final design.

21. *Any wells for domestic water, irrigation purposes, or heat pump use, shall be designed, permitted and constructed in accordance with the Concord Board of Health regulation, Minimum Sanitation Standard for Private and Semi-Public Water Supply.*
22. *No underground fuel storage systems shall be installed without a variance granted by the Board of Health in accordance with Section 4 of the Underground Storage Tank Bylaw adopted by the April 1993 Town Meeting.*
23. *Tree stumps and wood wastes generated by land-clearing operations shall not be buried on site. (DEP's solid waste regulations 310 CMR 16.05(3) (d) and 310 CMR 19.013(1) (h) prohibit stump dumps on lots being developed for sale.)*
24. *All proposed lots as part of the subdivision shall comply with the Town's Underground Utility By-Law.*

Conditions 21 through Condition 24 will be incorporated into the Definitive Plan Decision as a condition of approval should the Planning Board move forward with the granting of the Definitive Subdivision Plan.

25. *Prior to the submission of the Definitive Plan, the Applicant shall coordinate with CMLP to determine which pole or poles the new underground duct bank will rise and connect to the existing overhead system.*

26. The Definitive Plan, as depicted in the plan set dated March 4, 2020, shall be designed in full conformance with CMLP standard requirements.

The CMLP Engineering Staff has reviewed the revised plans and additional information and does not have any issues.

Subdivision Rules & Regs. Section 5.4 Site Evaluation

A Site Evaluation shall be submitted for all subdivisions which create frontage for six or more lots. The Board may require that certain elements of the site evaluation be prepared by qualified experts. The Board may require that certain of the following information is necessary to evaluate a plan for less than six (6) lots as well, because of special circumstances relating to the location, natural features, or the proposal itself.

5.4.2 A Narrative Statement

(a) Impact of the subdivision upon surface and groundwater quality and level;

The Board asked for specific information regarding the removal of the significant amount of earth and all of the trees and vegetation on the site and the impact to the overall groundwater recharge for the site and impacts to abutting properties.

The Applicant states that each subdivision road (Sheets 3 & 4) will be provided with deep sump hooded catch basins, and an offline sediment forebay to collect and treat the first 1-inch of runoff from impervious surfaces. The combination of the catch basins and sediment forebay will maintain the groundwater quality associated with each street. The remainder of each storm event is then routed to a subsurface infiltration system under the cul-de-sac island. Each System has been sized to store and recharge the necessary runoff volume to maintain existing conditions. This recharge of stormwater runoff associated with the streets and the roof drywells will maintain the level of groundwater in this subcatchment.

In a memo dated December 2, 2020, the CPW Engineering Staff has completed their review of the revised material and has found that all previous issues and concerns with the plans and stormwater drainage have been address with recommended conditions of approval.

(b) Effects upon important wildlife habitats, outstanding botanical features, scenic or historic sites or buildings;

The Applicant states the standard vegetation removal and grading requirements associated with the road (subdivision regulations), with each dwelling lot (zoning bylaw & state building code) and with each septic system (Title V) results in the removal of the existing vegetation within both the road layout and within each typical minimum lot area (10,000 sq. ft). Due its location in proximity to an abutting rail way and town center, there will not be any effect on areas designated as important wildlife habitat. The site also does not contain any outstanding botanical features, any scenic or historic sites or designated historic buildings.

Furthermore, in response to comments relating to wildlife within the site, the Applicant's Professional Wetland Scientist, has provided the following additional information, at the request of the Applicant. The property is not mapped as Estimated Habitats of Rare Wildlife or Priority Habitats of Rare Species by the Division of Fisheries & Wildlife Natural Heritage and Endangered Engineers | Planners | Surveyors Williams & Sparages, LLC 189 North Main Street | Suite 101 | Middleton, MA Telephone: 978 539 8088 ☐ Fax: 978 539 8200 www.wsengineers.com Page |6

Species Program (NHESP) according to the current NHESP Atlas. In addition, the property does not contain any certified or potential vernal pools according to the NHESP. On April 16, 2019, Greg J. Hochmuth, PWS, RS, CWS from Williams & Sparages LLC conducted a detailed investigation on the property to evaluate the isolated vegetated wetland (IVW) to determine if it may be functioning as a vernal pool. The IVW did not meet the certification criteria that is detailed in the Division of Fisheries & Wildlife NHESP Guidelines for the Certification of Vernal Pool Habitat, dated March 2009. The IVW is very shallow and underlain with well drained sandy soils. It does not appear that the IVW hold water long enough to support vernal pool species. In most area the IVW was less than knee deep. In addition to the IVW investigation, the Professional Wetland Scientist walked the remainder of the property and no unique wildlife habitat components were noted

The Applicant is proposing that the existing dwelling at 1440 Main St. be demolished, which the Historical Commission has found under the Demolition Review Bylaw that the structure is historically significant and preferably preserved. The Commission issued a one-year demolition delay, which expired on December 18, 2018.

(c) Capability of soils, vegetative cover, and proposed erosion control measures to support proposed development without erosion, silting or other instability;

The Board requested specific information regarding the capability of soils to support the development without erosion, silting or other instability due to the removal of all of the existing trees and vegetation and the impact the removal of the significant amount of earth and proposed slope will have on abutting properties.

The Applicant states that the capability, of the above items, is very good to support the proposed development, thru implementation of the provisions specific to this site to protect against erosion, silting and other soil stability. The revised plan set, includes erosion control measures (Sheets 11 & 12) based upon the grading proposed (Sheet 5) at this site. Erosion Controls measures to be provided per the specifications provided by the Concord Public Works.

In a memo dated December 2, 2020, the CPW Engineering Staff has completed their review of the revised material and has found that all previous issues and concerns with the plans and stormwater drainage have been address with recommended conditions of approval.

(d) Estimated increase of peak run-off caused by altered surface conditions, and methods to be used to return water to the ground;

The Applicant has submitted a revised stormwater drainage report dated November 2nd, which they assert that there will not be an increase of peak run-off due to the implementation of the subsurface infiltration systems to store and recharge runoff (See Revised Stormwater Report).

In a memo dated December 2, 2020, the CPW Engineering Staff has completed their review of the revised material and has found that all previous issues and concerns with the plans and stormwater drainage have been address with recommended conditions of approval.

(e) Description of proposed alterations of wetlands or flood plain areas;

A condition of the Board's Preliminary Plan Decision required approval from the Army Corps of Engineers, or documentation that the Army Corps of Engineers has determined the isolated wetland is not jurisdictional as a federally isolated wetland be submitted with the Definitive Plan application.

The Applicant states that the onsite Isolated vegetated wetland does not have a buffer zone, therefore a permit under Chapter 131 WPA is not required. Also there will not be any alteration to the flood plain. The proposed filling of a portion of this Isolated vegetated wetland (Sheet 5) will be completed in accordance with the provisions of the U.S. Army Corp. of Engineers.

Additionally, the Applicant notes in the revised information that the isolated vegetated wetland is jurisdictional under the Army Corps of Engineers and was assigned a File Number: NAE-2020-00193 earlier in the year (January 17, 2020). This was in response to the submittal of a Self-Verification Form (SVNF) for the General Permits for Massachusetts (GPs for MA) associated with the previously proposed PRD development. Additional correspondence with the ACOE Project Manager will be conducted by the Applicant in association with the final design plans for the conventional subdivision. Similar to water main and septic systems (17. & 19.), the Applicant believes a condition of approval prior to site work is appropriate.

(f) A report estimating the traffic flow at peak periods in relation to existing traffic on the streets in and adjacent to the subdivision, and the effect of the project on public services such as water, sewer, schools, police, fire, waste disposal, and recreational facilities;

The Applicant has submitted a Supplemental Access Assessment from a traffic engineer estimating the vehicle trips and vehicle travel speeds and has determined that the proposed subdivision will not have a significant impact on adjacent roadways. The Engineering Division has reviewed this assessment and has no objections to the information provided.

The Applicant states there will be an increase in public services demand associated with creation of sixteen (16) four- bedroom residential dwelling units as follows:

- Town Water - 7,700 gallons per day (16 x 440 gpd/dwelling).
- Town sewer – No-impact due to private septic systems on each lot. ANR lots will maintain available access rights to sewer connections associated with the three existing parcels.
- Standard obligations per dwelling unit for schools, police, fire, waste disposal and recreational facilities.

(g) A summary tabulation of the total area being subdivided, the total area of all lots, the total area dedicated for streets and drainage or utilities, and the total area reserved for recreation, parks or other open land;

The application provides the following chart:

Definitive Plan – July 14, 2020 (Sheet 2 of 12)	Area (sq. ft. +/-)
Total Area Subdivided	347,300
Total Area of Subdivision Lots (1-16)	259,519
Total Area of ANR Frontage Lots (A1 & D1)	22,899
Total Area of Streets (ROAD A & B)	64,876
Total Area Reserved for recreation, parks, open land	0

(h) A projection of the direct, current Town costs and revenues associated with this development;

The Applicant has provided the following estimate:

Annual Revenue 16 dwellings @ \$1,350,000 = \$21,600,000 x tax rate of \$14.23/M = \$307,368.

Average value of vehicles estimated at \$30,000/household, 16 x \$30,000 x \$25/M = \$12,000 Total annual estimated revenue is \$319,368.

One Time Revenue Permit Fees: 16 x \$4500 = \$72,000.

Costs for the town would be the same as all other residences within the town, police, fire, DPW and schools. New growth revenue for 2021 is budgeted at \$900,000 in the Finance Committee Report for the September 2020 Town Meeting. The Town's Budget & Purchasing Director estimates that the annual cost of Town services per household is \$15,374. The Applicant estimates the Town expense for this project is \$245,984.

(i) An analysis of the sight distances at the intersections of the proposed street(s) with any other street(s);

The Applicant's Traffic Engineer has reviewed the Applicant's plan that illustrates the sight lines at the Project site driveway intersection with Main Street and states that it will meet the recommended sight distance for safe operation of the access based on an approach speed of 40 miles per hour (mph) along Main Street (305 feet is recommended), which is higher than both the measured 85th percentile vehicle travel speed documented in the July 2018 Transportation Impact Assessment (38 mph) and the posted speed limit (30 mph). As such, access to the Project site for construction vehicles by way of the Project site driveway intersection can be afforded in a safe manner. The Applicant has committed to the use of a police detail during the construction phase of the Project when trucking activities will occur, which will also serve to facilitate the safe movement of trucks in and out of the Project site.

(j) Impact of the subdivision on any historical or cultural resources located within one hundred (100) feet of the proposed development as identified in the Survey of Historical and Architectural Resources and Historic Resources Masterplan;

The Applicant states that to the best of the preparer's knowledge, there will not be an impact based upon site address location in relation to items of interest.

(k) Impact of the subdivision on any open space or natural resources located within one hundred (100) feet of the proposed development as identified in the Town of Concord Open Space Plan.

The Applicant states that to the best of the preparer's knowledge, there will not be an impact based upon site address location in relation to items of interest.

The Board requested information on the impact of the subdivision on the wetland that extends onto the abutting property. The Applicant states that the rate and volume increases indicated are to an arbitrary interior analysis point along the edge of Isolated vegetated wetland flags. The ORAD Plan illustrates the existing topography and locations of the five Depressions within this Isolated Vegetated Wetland. This does not represent an increase in runoff at the boundary to the upgradient Junction Square Condominium.

Runoff from Junction Square actually discharges onto our site along northeasterly boundary to a low area (Depression Areas #5, #4 & #3) located partially within the Junction Square Open Space Parcel and within our site. The minor increases in question are collected by Depression Areas (#1 & #2) where the storm events are mitigated in separate low areas located completely within our site, thus resulting in no increase in runoff at the site boundary (See ORAD Plan).

Subdivision Rules & Regulations Section 6 Design Standards

6.2.1 Protection of Natural Features: In laying out a subdivision, the subdivider shall give due regard for all natural features such as large trees, watercourses, scenic or historic spots, aquifers, flood plains, habitats of rare or endangered species, and similar community assets which, if preserved, would add attractiveness and value to the subdivision. These features shall be left undisturbed wherever practical and the Board may waive design requirements in order to protect important natural features.

The Plans do not show any large trees, which under the Tree Protection Bylaw are trees with a diameter breast height of 6 inches. The Board asked for specific information regarding the impact on the site and to abutting properties due to the removal of the significant amount of earth and all of the trees and vegetation on the site, the impact to the overall groundwater recharge, and the impact to the abutting property due to stormwater drainage being directed to the wetland and impacts to abutting properties.

In the Applicant's engineer's November 2nd letter, he states that per Section 4.2(a) of the Tree Preservation Bylaw, the requirements of the Tree Bylaw shall not apply to the subdivision of land under the Town of Concord Rules and Regulations. The Town Planner notes that this is correct and was just noting the size of a Protected Tree as a reference point for what should be considered a "large tree" under this Section. Additionally, the Applicant's attorney has provided a second opinion dated October 27th regarding the applicability of this Section. In a letter dated November 13, 2020, the Applicant has provided additional information and opinion regarding the applicability of this Section.

However, it should be noted that while the Tree Bylaw does not apply to the work required for the construction of the subdivision roadway, it does apply to the construction of the individual lots. The difference in those grading areas is shown on Sheet 5 of 14 of the Applicant's highlighted plan set dated October 29, 2020.

6.2.2 Unsuitable Land: Land which the Planning Board finds to be unsuitable for development due to flooding, improper drainage or adverse drainage, adverse topography, poor soils, bedrock, location of utility easements, or other features which the Board has reason to believe would be harmful to the safety, health and general welfare of the present or future inhabitants of the subdivision and/or its surrounding area, shall not be subdivided or developed unless adequate measures are formulated by the subdivider and approved by the Board to eliminate any short-term or long-term impacts created by development of the unsuitable land.

Due to the steep topography, the Applicant is proposing to remove approximately 60,840 c.y. of earth from the Site. The Board needs to determine if the removal of approximately 60,840 c.y. of earth from the Site is due to adverse topography and, that such earth removal would be harmful to the safety, health and general welfare of the surrounding area.

The Board requested and the Applicant has provided detailed information on the size and number of trucks required to remove this volume of earth and the duration required for the completion of the earth removal, as well as other mitigating measures proposed to minimize the long- and short-term impacts created by development of this land. The Applicant has also added the Street Topographic Plan (Sheet 5) to show minimal cut grading necessary to construct subdivision roadway, with labels pointing out where proposed grades match existing grades within turnaround area per regulations. The Site Topographic Plan (Sheet 6) has been adjusted to minimize grading on Lots 1-5 along boundary in common with Center Village and the house footprints have been reduced on Lots, 1, 2 & 5, with a garage under now proposed on Lot 4 to reduce extent of cut volume. Additionally, the Applicant's attorney has provided a second opinion dated October 27th regarding the applicability of this Section.

The Board should utilize this information, as well as the information provided under Section 6.2.1, to determine if this land is unsuitable for development and should not be subdivided.

In a letter dated November 13, 2020, the Applicant has provided additional information and opinion regarding the applicability of this Section.

Section 6.20 Reservation of Land for Public Purposes

The Planning Board may require the designation of a portion of the subdivision tract for reservation for a period of three years for municipal purposes. Reservation of land shall not be unreasonable in relation to the size of the tract being subdivided and to the prospective uses of the reserved land.

The Plans do not show any land dedicated for public purposes. The Board should discuss whether a portion should be dedicated, and if so, the size in relation to the size of the development.

In a November 13, 2020 letter, the Applicant acknowledges the Board's ability to reserve land for a park and offers one of the remaining Main Street ANR lots, which is outside of the subdivision.

Section 6.21 Reservation of Land for Housing Purposes

In order to serve the public purposes of the Inclusionary Housing Bylaw adopted by the 1992 Town Meeting as Article 61 of addressing the Town's affordable housing needs and of encouraging the availability of housing in the Town for persons of all income levels, the Planning Board shall require, as a condition of approval of each new residential subdivision, the reservation of land within the subdivision for purchase by the Town or its designee, in accordance with the following specific requirements, procedures and exceptions:

6.21.1 Minimum Tract Size: The requirement for reservation of land shall apply to all tracts containing at least five (5) times the area required for a single family house lot in the underlying zoning district.

The Site is approximately 347,173 s.f. and located in the Residence C Zoning District, which requires 10,000 s.f. per lot. Under Section 6.21.1, a subdivision containing more than 50,000 s.f. requires the reservation of land for affordable housing purposes, unless that reservation meets one of the exceptions noted in Section 6.21.2.

6.21.2 Minimum Area To Be Reserved: With the exceptions stated in this paragraph, no less than ten (10) percent of each residential subdivision to which the reservation requirements applies shall be reserved for purchase by the Town or its designee for housing purposes. The exceptions are as follows:

- (a) *If reservation of ten (10) percent of the subdivision tract area would reduce by more than twenty (20) percent the number of lots that could otherwise be created by the subdivision, then the Planning Board may designate less than ten (10) percent of the area, but not less than one-half (1/2) acre of buildable land, for reservation. If reserving one-half (1/2) acre of buildable land would reduce by more than twenty (20) percent the number of lots that could otherwise be created, then no area shall be designated for reservation.*
- (b) *The Planning Board may designate less than ten (10) percent of the subdivision tract area for reservation if it determines that reserving ten (10) percent of the area would result in a subdivision layout that would be deleterious to the Town.*

The reservation of 10% of the Site is approximately 34,717 s.f. or 3 lots. The Applicant is proposing 16 lots, which 20% is 3.2. The reservation of 3 lots is not more than 20% the number of lots that could otherwise be created by the subdivision.

6.21.3 Designation of Lots: After such consideration of comments from other Town boards and committees as the Planning Board deems appropriate, the Planning Board shall designate on the subdivision plan the specific portion of the tract to be reserved. Such land may be in one or more locations within the subdivision as the Board may determine.

In determining the areas to be designated for reservation, the Planning Board shall consider, at a minimum, the following characteristics of the land:

- (a) *Suitability of soils for location of on-site sewage disposal systems;*
- (b) *Availability of Town sewer;*
- (c) *Availability of Town water;*
- (d) *Relationship of the lots or area to be reserved to the location and type of vehicular and pedestrian circulation;*
- (e) *Topography;*
- (f) *Location of the area(s) to be reserved in relation to wetlands, floodplain, and other surface water and groundwater resources, and;*
- (g) *Location of the area(s) to be reserved in relation to existing and proposed open space, active recreation areas, and trail networks.*

The area or areas designated by the Planning Board for reservation shall be shown as one (1) or more lots on the Definitive Subdivision Plan approved and endorsed by the Planning Board.

The Applicant needs a waiver to Section 6.21 to set aside land for affordable housing to be built by the Town and has not demonstrated any reasons to waive this provision. In a September 27th letter from the Applicant's attorney, the Applicant respectfully disagrees and asserts that requirements of setting aside land for affordable housing are beyond the scope of review allowed under the Subdivision Control Law.

Town Counsel has reviewed this opinion and disagrees with it, noting that the Inclusionary Housing Bylaw and this Section of the Subdivision Rules and Regulations have been duly adopted by Town Meeting.

Requested Waivers

Under MGL c. 41§ 81R, the Planning Board may grant waivers of its regulations that are “in the public interest and not inconsistent with the intent and purpose of the subdivision control law.” The Applicant has not requested any waivers to the Subdivision Rules & Regulations.

V. Town Department Comments

A. Fire Department

In a July 30, 2020 memo, the Assistant Fire Chief notes that the fire department operates a ladder truck and the grade of the roadway should not exceed a seven to eight degree slope in grade, in particularly the entrance into the subdivision. Anything greater would cause the ladder truck to bottom out. Additionally, the placement of fire hydrants in the subdivision needs to be ensured and consulted with the fire department.

The Assistant Fire Chief has reviewed the revised plans and additional information and has no further comments at this time.

B. CPW Engineering Division

In a memo dated December 2, 2020, the CPW Engineering Staff has completed their review of the revised material and has found that all previous issues and concerns with the plans and stormwater drainage have been address with recommended conditions of approval.

C. CPW Water/Sewer Division

In an September 2, 2020 memo, the Water-Sewer Engineer notes while the plan set submitted shows an extension of a water main to adjoining properties and results in a water distribution system loop, service connections to each lot are not shown on the plans submitted and it not clear how lots A1, 14, and 15 will obtain water service. Water service that is not proposed to come from a water main in a public or private way may result in the requirement of water utility easements, proposed easements locations should be shown on the plan. The Water Use Rules and Regulations require that for a lot to be eligible for water service the lot must front a water main in a public or private way. Provide a revised utility plan showing some additional detail to allow the Division to confirm that the proposed Subdivision meets the minimum requirements for each lot to be eligible for water service. Any easements that may be required should be shown on the plan. It should be noted that if the applicant considers requesting the Town accept the road and utilities as a public way, the water utilities shall be in a public way and not within in easement on private property whenever possible.

Additionally, she states that the plan set submitted conceptually demonstrates a sewer service configuration that meets the minimum requirements of the Sewer Use Rules and Regulations which allows for a single sewer service connection per parcel to a single building on the parcel and that the applicant will be required to submit to the Concord Board of Health a Request for Title 5 Building Review (Form S) to identify any potential increase in wastewater flow and associated Sewer Improvement Fee. Based on existing wastewater capacity constraints, flow increases over 1,000 gallons per day will be administratively denied by the Water/Sewer Superintendent. An appeal may be made to the Public Works Commission seeking relief for an increase in flow over 1,000 gallons per day.

The CPW Water/Sewer Engineer has reviewed the revised plans and additional information. She has determined they address the comments in the September 2nd letter and conditions of approval will be required regarding final design.

D. Concord Municipal Light Plant

The CMLP Engineer has reviewed the revised plans and additional material and has no issues at this time.

E. Building Inspections Division

The Building Commissioner notes that the Definitive Plan plans shall comply with 521 CMR Architectural Access Board Rules and Regulations for public sidewalks and that a special permit will be required from the Zoning Board of Appeals for the earth removal.

F. Health Division

In a September 8, 2020 letter, the Board of Health approved the Definitive Subdivision Plan subject to five conditions regarding compliance with Title V and Board of Health Regulations, availability of Town water, and requirements regarding on-site wells, underground fuel tanks and wood debris. These conditions would be included in the Definitive Subdivision Decision should the Planning Board move to approve the Plan.

G. Natural Resources Division

The Natural Resources Commission determined that the isolated wetland at the rear of the parcel is not jurisdictional under the MA Wetlands Protection Act or Concord Wetlands Bylaw (DEP File No. 137-1408). Approximately 4,930 SF of the IVW is proposed to be filled, and Overflow Outlet #2P is proposed within the wetlands. Approval from the Army Corps of Engineers, or documentation that the Army Corps of Engineers has determined the isolated wetland is not jurisdictional as a federally isolated wetland, should be provided with the Definitive Plan submission.

H. Planning Division

The Town Planner notes that the Applicant states the Plan is for 16 lots off a new roadway and that Lot E and Lot F are not part of the Definitive Subdivision Plan. It appears that permanent grading easements on Lot E and Lot F are required to construct the new road and adjacent lots and maintain sight lines. Additionally, Lot E and Lot F are shown to have various utilities and driveway access from the new subdivision roadway. As such, Lot E and Lot F should be included in the analysis of the subdivision.

The Applicant has included the runoff from Lot E and Lot F in the Stormwater Report watersheds. The Applicant's Traffic Engineer included these two lots in his analysis.

VI. Town Planner Recommendation

The Town Planner believes that the Planning Board should discuss the outstanding items raised in this report to reach a consensus on a decision, close the public hearing, provide direction to the Town Planner for the drafting of a decision, and continue the application to the December 22nd meeting to review and vote on the decision so that it can be filed with the Town Clerk on or before December 30th.