

Planning board Members Present: Denis Hebert, Vincent Frank, Michael Marconi, Chris Cross (5:58 pm) Cliff Abbott, Jack Pare

Also Present: Town Planner Tom Morgan

Pease Development Authority: Peggy Lamson, Art Nickless, Chairman, Lynn Hinchee, Dick Green, Executive Director, Maria Stowe, Robert Allard, Tony McManus, Robert Cheney, Peter Loughlin

Newington Selectmen: Jan Stuart, Chairman, Jack O'Reilly, Cos Iocovazzi (6:01 pm)

Newington Conservation Commission: Justin Richardson, Chairman, Jane Hislop

Commencement: Chairman Hebert opened the meeting at 5:36 pm

Discussion on Prime Wetlands:

Chairman Hebert explained the purpose of inviting the PDA members is to open communication between the parties and to be sure all information is being shared. The major issue is the primary wetlands that the Town of Newington has identified on the Pease Tradeport. There is a difference of opinion as to whether the Town or the State has jurisdiction over the primary wetlands on Pease. The conservation commission has worked very hard identifying the primary wetlands. Chairman Hebert explained the Farley White Pease, LLC proposal has been brought before the planning board for comment. The board feels that it is a good plan. There is a primary wetland involved with minimal impact, but there is a permit process the State requires for a primary wetlands exception that Pease should recognize.

Art Nickless PDA Chairman thanked the board for the invitation to meet. He stated the importance of understanding each other's position. Regarding the Farley White project, the PDA imposed a 100' setback on the project as they recognized it as an important wetland. The project meets PDA requirements. The control issue is a matter of law. Nickless stated that Pease is a State agency and is therefore bound by that. The Atty General's office issued a letter stating that the prime wetlands designation is a land use control which the PDA is not bound by. As a State agency, the PDA must abide by the Atty General. Regarding a wetlands permit, the DES letter which was sent back to the conservation commission's counsel also stated that the Atty General indicated the prime wetlands designation does not apply to Pease.

He further stated the PDA has a pretty restrictive wetlands management plan. He stated Justin Richardson related to him in a conversation that his concern was that the wetlands management plant was not in the PDA zoning ordinance and that the town of Newington therefore does not have any say. If it is just a wetlands management plan, the PDA could

waive it anytime they want. Nickless went on to say the PDA board would be willing to put the wetlands management plan in the PDA ordinance to give the Town of Newington the kind of review they desire.

Justin Richardson stated the conversation Mr. Nickless had was with Tom Morgan, not with him. The conservation commission has a different opinion about what the prime wetlands statute says.

Nickless stated this is a good project and unless there is a different ruling from the Atty General's office the PDA's position will be the same. The prime wetlands designation was done by the Town, not the State. The Town of Newington's litigation would be with the Atty General's office.

Justin Richardson said this is a good project and one the DES would likely approve. The conservation commission suggested the applicant file a prime wetlands application and that the PDA could, under protest say that they are not acknowledging the validity. The conservation commission would then write a letter of recommendation for the approval. The commission was told the PDA would not do that. Richardson feels strongly that the controls are there to protect the wetlands. He feels they have to let the court decide. The parties are looking at the same facts, but not coming to the same conclusions.

Chairman Hebert stated the parties want the same thing, and it comes down to the process. Unfortunately there is a project in the middle of this that is being held up.

Nickless said he would like to find some middle ground. Absent of some other ruling from the Atty General's office the PDA has no choice but to follow them.

Robert Cheney spoke regarding the history of the PDA and its creation. On the issue of land use controls, the legislature decided the property at Pease would be under the exclusive control of the PDA. In the administration of the controls, depending on where the project is, it goes to the City of Portsmouth, or the Town of Newington in the process. A way for the parties to come closer within the current structure of the PDA is to do as the PDA suggested – to put the wetlands management plan in the PDA land use controls. This would allow more input from the communities.

Jack O'Reilly suggested the possibility of drafting an agreement on this one project (Farley White).

Peter Loughlin suggested that within 60 days the PDA post a wetlands ordinance as part of the land use regulations so there is local input. The difference between the PDA wetlands plan and prime wetlands is developing a retaining/detention pond in the buffer. Justin and Tom Morgan could be involved in the drafting of the ordinance.

Chairman Hebert indicated the board would also like to have some input and the opportunity to make recommendations.

Nickless said they recognized this is a high quality wetland. The fact that PDA requires a 100' ft buffer speaks to that.

Barbara McDonald stated the conservation commission worked for 5 years on the prime wetlands designation and there was plenty of opportunity for the PDA to be involved. The deed that came from the government stated the land should be protected. If everyone is concerned about protecting the prime wetlands they should use due diligence and apply for any permits necessary for its review. Barbara fully supports Justin's efforts in his attempts to find a middle ground.

Frank asked if the State owns the PDA land, but it is in the Town of Newington, why doesn't the Town of Newington have any control over it.

Dick Green spoke saying the Pease is a State property and is bound by State regulations. Local and town regulations do not apply. The Attorney General interprets state law.

Robert Cheney stated the Town has no jurisdiction to designate prime wetlands on Pease.

Peggy Lamson spoke in favor of Peter Loughlin's proposal stating the Town and the PDA should try to work together.

Art Nickless commented that the Atty General did not approve the legality of the wetlands designation and the Town did not have the authority to do so.

Marconi spoke in favor of Loughlin's proposal.

Barbara McDonald stated that prime wetlands designation goes to a higher standard. The State is most qualified to handle these matters as they have the appropriate resources.

Lynn Hinchee stated that at the last planning board meeting, the board could not move on the application without a recommendation from the conservation commission.

Justin Richardson stated that they have a recommendation, but he does not have the minutes of the meeting as the note take had some kind of accident.

Dick Green stated the fundamental issue of control cannot be solved here.

Justin Richardson stated that the PDA has its own opinion and the Newington conservation commission has a different opinion. The conservation commission has a duty to uphold the prime wetlands and just amending the ordinance will not cover that. He is in favor of letting the court decide.

Loughlin disagrees with Richardson stating an agreement can be reached by the parties fashioning their own relief.

Hebert spoke in favor of Loughlin's proposal indicating all the Town of Newington has right now is the ability to make a recommendation on any given project.

Discussion by Cross and Richardson of the State requirements vs. Town of Newington. Richardson stated there is a higher level of scrutiny at the State level.

The meeting was closed for a brief recess at 7:22 pm.

Meeting reconvened at 7:35 pm.

Hebert spoke in favor of Justin Richardson's efforts. He summarized Green's comments regarding the current law and suggested that the board now has an opportunity to provide greater input under this proposal.

Pare stated there are really two fundamental issues. The first is the issue of the control which can only be solved by testing the law. The second issue is that of protection of the wetlands. The Town has not previously had much opportunity to do this on Pease. There is now an opportunity to do this and stressed the importance of the parties working together toward protection.

Marconi commented that the PDA agreeing to come to the meeting to try to resolve the issues represents good stewardship of the land.

Chairman Hebert closed the public session

Discussion of proposed motion

Chris Cross made a motion to approve the Farley White proposal as presented recognizing State jurisdiction and that the Newington wetlands ordinances do not apply, Abbott seconded.

Discussion of motion and whether it is a conditional approval.

Cross withdrew the motion, Abbott withdrew the second.

Chairman Hebert reopened the session to allow Barbara McDonald to comment.

McDonald challenged the legality of the meeting indicating that it was not posted in two different places in the Town. Morgan disagreed with McDonald stating the meeting is legal.

McDonald further stated that the board has not heard the recommendations of the conservation commission. Richardson stated again that he does not have minutes yet from the note taker.

Discussion of whether to take action on the proposal.

Cross made a motion to approve the Farley White project as conforming to the applicable Pease Tradeport ordinances, conditional on the PDA revising their ordinance to include the State wetlands considerations, Frank seconded.

Lynn Hinchee stated the PDA will adopt a wetlands ordinance, not a state regulation. The PDA has rules by which it adopts land use controls. It calls for notice, it calls for public hearing, etc.

Chairman Hebert stated the vote should be to approve or not approve the project with conditions. Either to approve or not approve either with or without a permit to the State. The amending of the PDA ordinances is a separate issue.

Frank withdrew second, Cross withdrew motion.

Chris Cross made a motion to approve the Farley White LLC project as conforming to applicable PDA ordinances, seconded by Marconi – all in favor – motion carries.

Chairman Hebert stated the board would like to further work with the PDA as agreed upon.

Lynn Hinchee stated the PDA has the recommendations from the conservation commission on this project.

Class VI Roadways

Discussion of whether there is a class VI road behind the transfer station and whether it needs to go to a town vote.

Marconi made a motion to recommend a warrant article to the Selectmen to discontinue road over Sam's hill, Frank seconded, all in favor – Abbott opposed – motion carries.

Minutes of October 9, 2007

Frank made a motion to approve the minutes of October 9th, Marconi seconded, all in favor – motion carried.

Pending Business:

- A) Signs in the Residential District and Other.
- B) One building per lot in the Office & Industrial Districts
- C) Restaurants
- D) Shared Driveways
- E) Connecting to utilities
- F) Class VI Roadways

- G) Architectural Design Review Guidelines
- H) Distribution Facility Parking

Marconi made a motion to adjourn, Frank seconded, all in favor – motion carries.

Meeting adjourned at 8:18 pm

Respectfully submitted,

Melia Michaud
Recording Secretary