

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, September 12, 2016

- Call to Order:** Chair Denis Hebert called the September 12, 2016 meeting at 6:30 p.m.
- Present:** Chair Denis Hebert; Vice-Chair Christopher Cross; Board Members: Bernie Christopher; Mark Phillips; Jim Weiner; Alternate Member: Ken Latchaw; Interim Planner, Gerald Coogan and Jane Kendall, Recorder
- Absent:** Jack Pare and Board of Selectmen's Representative, Cosmas locovozzi
- Public Guests:** Michael Berounsky; Joe Coronati with Jones and Beach; Eric Weinrieb with Altus Engineering; Catherine and Josh Blaisdell; Attorney Kevin Baum; Constantine Routetski; Chris and Laura Rogers; Mike Metzger; Joe Mitchell; Peter Welch; Jim Caughran and Kimberly Morgan, HR Manager with Georgia-Pacific Gypsum, Inc.; Ben Johnson

Chair Hebert introduced Peter Welch of Newington Road who was sitting in the audience as a potential Board member prior to the beginning of the meeting.

1) **Public Hearings:** Subdivision proposal by Michael Berounsky regarding property at 30 Swan Island Lane, Tax Map 53, Lot 9.

Joe Coronati with Jones and Beach Engineers presented three plans to resolve their request for a subdivision without frontage.

Mr. Coronati showed their preferred plan that would keep the cul-de-sac as it was and enlarge the right-of-way to meet the frontage requirement.

Another option would involve moving the cul-de-sac further down, but would require extending driveway to one of neighbors.

And the third plan suggested by the Board during their initial inquiry would involve extending the cul-de-sac.

Mr. Coronati said they received comments from Town engineering consultant, Eric Weinrieb with Altus Engineering, but were waiting to determine which option would be accepted before they responded.

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Interim Planner, Gerald Coogan commented that Mr. Weinrieb presented a fourth option. Mr. Weinrieb replied that the fourth option was similar to EX2, but the culvert would be placed further up. Chair Hebert added this option would create a tear drop shaped cul-de-sac. Mr. Weinrieb went on to say that it would provide proper frontage without a peanut shaped cul-de-sac and would avoid getting closer to the existing abutter's home.

Mr. Weinrieb said he knew they had worked hard on meeting the form factor requirement and this plan might not meet it, but it was close and they could require a waiver. Chair Hebert said the intent of the form factor was to avoid pork chop lots. Mr. Weinrieb said all options presented had linear frontage so that wouldn't be a problem.

Mr. Coogan said one of the options would require a lot line adjustment from the abutter.

Mr. Coronati said he thought a Town warrant would also be required to convey the right-of-way. Chair Hebert agreed that had been done in other cases and the Town would still own the property. Mr. Coronati said a long driveway would be required if the Town didn't want the property. Chair Hebert said the issue was having frontage on a Town road, but legal counsel stated it was not allowed and the Zoning Board of Adjustment (ZBA) had already denied a similar request.

Abutters Chris and Laura Rogers of Swan Island Lane asked for clarification. Chair Hebert showed that the center of the cul-de-sac would become their property and their driveway would be seventy-five feet. Ms. Rogers replied that their concern was that they paid for plowing the length of the driveway and they had just installed post lights along the driveway. Ms. Rogers also asked how it would affect their taxes.

Chair Hebert replied that 99% of their taxes were based on their location near Great Bay and so he didn't think a small addition of land wouldn't make that much difference.

Board member, Bernie Christopher asked why two lots couldn't own the property on EX1 as an association. Chair Hebert replied that Town counsel, Attorney John Ratigan stated that having frontage on Town land would be considered on the Town road and that wouldn't be allowed.

Chair Hebert said the tear drop shaped cul-de-sac was similar to EX2, but would be easier for the Town to plow and maintain than a peanut shape.

Mr. Weinrieb added that the tear shaped cul-de-sac would prevent moving the cul-de-sac closer to the abutter's home on the south side. Mr. Christopher added that both abutters' concerns would be improved to some degree.

Mike Metzger of Welch Cove commented that properties were going for \$220,000 a lot in Newington and the Ordinance required a two-acre minimum, frontage and no common driveways to maintain the rural character. Mr. Metzger stated that it sounded as if the rules were being bent to allow something to happen that shouldn't happen. He said he lived on a cul-de-sac also and wondered what would prevent

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someone doing the same thing, taking away their view and replacing their backyard with a cul-de-sac and asphalt.

Mr. Coronati said a plan was presented that complied with the rules, but they were discussing other options to address concerns of abutters.

Mr. Berounsky's daughter, Catherine Blaisdell said she moved to her parents' Swan Island Lane home when 25 years ago when she was eleven years old and she and her husband, Josh were hoping to build there since it had always been her dream to build there. She said they planned on building a small home and eventually her parents could transition to the smaller house so they could move into the larger house to raise their family in the family home. She added that no one else had lived on Swan Island Lane until the property was subdivided a few years ago.

Attorney Kevin Baum representing Constantine Routetski, the abutter on the southern boundary said he understand the proposal was for a modest home and the subdivision regulations might not explicitly prohibit, but there was nothing to stop someone from building something larger in the future, which was not in the Spirit of the Ordinance and was the obligation of the Planning Board to foresee. He added that the Board and Town counsel, Attorney Ratigan expressed concern with setting a precedence.

Attorney Baum said the proposal put the burden on the two closest abutters, especially his client that purchased with the understanding that the lot couldn't be subdivided and that the cul-de-sac wouldn't move.

Attorney Baum added that the applicant's request for a variance from the frontage had already been denied by the ZBA. He said they understood it was a beautiful area, but there were alternatives, such as an attached dwelling.

Board member, Jim Weiner asked if there was a legal document that indicated the cul-de-sac would never move. Attorney Baum replied that the point was that providing frontage on the Town right-of-way was not allowed in the Zoning Ordinance.

Mr. Weiner asked if abutters purchased their lot before or after the applicant proposed their subdivision. Attorney Baum replied that his client purchased with the understanding that no subdivision would occur and this was an atypical proposal that he typically hadn't seen before. Chair Hebert said the Board had seen various shaped cul-de-sacs before and something similar was in Gundalow Landing.

Ms. Blaisdell stated that the edge of the Routetski's swimming pool was exactly 15' to her parents' lot line and one of their gardens was also placed close to their lot line so the Routetski's were able to subdivide for another home themselves.

Chair Hebert agreed that frontage was a requirement, and also added that water was a requirement for approval of all subdivisions and developments so the applicant was presenting several options, but the Board still wanted to hear if there was any impact to abutters.

Mr. Berounsky replied that their first plan presented was suggested by the Planning Board to meet the frontage requirement. Chair Hebert replied that the Board

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informed him that he needed the frontage and that was the only way to meet it and it was up to them if they wanted to go forward to it. He said the Town also hoped to reduce the amount of pavement and maintenance, but the point of a public hearing was to hear if a proposal would impact an abutter.

Mr. Coronati said Swan Island Lane was a pretty, quiet road with little traffic. He said the only people that would regularly use the loop would be the new home owners as most of the other residents drove right into their drives. He said he didn't think there would be a large impact to the neighbor from heavy traffic or headlights, but they could plant or fence in the area to block headlights.

Mr. Metzger asked how many trees would be planted and what impact the trees would have on the view and resale value. Mr. Coronati said it wouldn't require many trees. Mr. Weinrieb said there were no view easements. He said they could build a garage today and that wasn't a fair argument against the development. There was a house near the water today, but they were within their right to rebuild and block the view of the area. Chair Hebert agreed that unless someone owned a view with a view easement, the owner has a right to develop their property regardless of who built their house first.

Chair Hebert commented that the peanut shaped design was like two cul-de-sacs merged. Mr. Weinrieb added that he didn't think any of the residents would be pleased with the design. Chair Hebert agreed and said the other proposal was smaller with less impact, but it would extend the length of the abutters driveway and this was why they were entertaining other options.

Attorney Baum added that it was the Board's duty to protect the health, safety and welfare of the community and they were talking about the modification of a Town road.

Mr. Berounsky commented that he would pay for the new road so it wouldn't impact the Town. Chair Hebert said the Town would own the road, however. Mr. Berounsky said he understood, but he initially bought and paid for Swan Island Lane that the Town now owned and he put in the irrigation and maintained the cul-de-sac, not the Town. He said it would only add another 100 feet of asphalt, not an air strip.

Vice-Chair Cross asked if there might be any kind of compensation regarding the increased size of cul-de-sac having a detriment and requiring an alteration and increased driveway length for the abutters on the EX2 proposal. Ms. Blaisdell replied that they had already invested a lot on the project and were not willing to agree to an additional financial burden.

Mr. Berounsky asked if it would work to leave the existing cul-de-sac where it was and put the peanut-shape on their property since they had to build and maintain it themselves anyhow, which would prevent the existing abutters from being impacted. A Chair Hebert reminded Mr. Berounsky that the frontage had to be on a Town road. Mr. Berounsky they could give the frontage to the Town, but they would maintain.

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Vice-Chair Cross clarified that it was Mr. Berounsky's intent to build loop to Town standards and deed it to the Town and enter a maintenance agreement. Chair Hebert replied that could create a liability issue.

Board member, Mark Phillips stated that he was sympathetic to the applicant. He stated that he also lived at the end of a cul-de-sac and had to plow six feet of road that the Town didn't clear after every snow storm. Mr. Phillips read from the Town's road standard requirements that recommended pavement of 18' where traffic did not exceed 250 vehicles. He said a plow would have to go around a cul-de-sac a dozen times to clear it and no one does so suggest they make it more narrow.

Vice-Chair Cross commented that there was a thought that the roads needed bike and walking lanes in the early 90's so that was why it was widened.

Mr. Coronati commented that he usually had a conceptual hearing before engineering plans. He stated that there was no saying how far the pavement had to be from the right-of-way, so perhaps they could make road eighteen feet wide and pull it back, and make a longer driveway so the abutter to the right wouldn't be affected as much.

Chair Hebert agreed that might be a good idea, considering the applicant was entitled to place a structure within the abutter's view, but this would protect the abutter's view forever.

He said if granted a variance, the applicant could put a two-hundred-foot driveway in if they wanted, adding that abutters might not like the view of a road, but unless they were entitled to do so unless there were safety objections, such as drainage.

Mr. Routetski commented that his children and their friends played in his yard and that he objected to the road that would become their front yard, not the house. Chair Hebert replied that his property also ran along the road and if he had kids, they could play in road, but it would be the same as everyone else living on a Town road, adding that he had to look at the Ordinances that everyone else in Town had to follow.

Chair Hebert asked the applicant if they had verified that the City of Portsmouth Water Department could supply sufficient water to another home in the area. Mr. Coronati replied that they hadn't heard yet. Chair Hebert said he needed to find out because that could be a bigger cost than the road. and a show stopper. He said he thought there was a four-inch line instead of the standard six inch for some reason.

Mr. Berounsky asked what size line was in the Fabyan Point development and Mr. Weinrieb said it was an eight-inch line and the water supply was marginal in south Newington. Chair Hebert added that the developer at Fabyan Point was paying for the eight-inch water line.

Mr. Berounsky asked if the Board would grant a conditional approval if they provided a letter from City of Portsmouth Water. Chair Hebert stated that had to go through a public hearing process for comments and wouldn't make a deal on the water.

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Alternate Board member, Ken Latchaw asked about the elevation difference. Chair Hebert said there was a storm water easement off the existing cul-de-sac that the Town approved that wasn't recorded, but it would be.

Chair Hebert wondered about the necessity of a rain garden, instead of letting the water shed in the existing wetlands easement. Mr. Coronati said water from all of Swan Island ran that way and agreed that there was plenty of treatment, but the rain garden was to meet the Ordinances. Mr. Weinrieb also agreed that runoff going through the applicant's property to the Bay wouldn't be an issue, but at the last meeting, Leonard Thomas expressed concern with runoff to his property before it went to the Bay.

Chair Hebert said they were proposing an underground treatment under the cul-de-sac that the Town would need to maintain and wondered if a swale could be used. Mr. Weinrieb said he looked at the proposal and said it sounded possible, but the questions would change if the layout changed.

Mr. Latchaw asked if it would be beneficial to see the building envelope. Mr. Weinrieb replied that the building could move and they couldn't do a deed restriction on the building placement.

Mr. Coogan suggested a site walk. Chair Hebert asked Mr. Coronati to stake out where the proposed road would be. Mr. Weinrieb suggested they meet at 5:30 p.m. before the next meeting.

Chair Hebert informed the applicant that the Town required a standard \$5,000 fee, payable to the Town of Newington to go into an escrow account to cover their consultant, engineering and legal costs. He suggested they try to move things along as quickly as possible to limit costs.

Chair Hebert continued a public hearing to September 28, 2016 that was a work-session.

2) Fabyan Point Subdivision: Underground Power Line Discussion

Chair Hebert referred to recent correspondence from the New Hampshire Department of Transportation (DOT) regarding underground power to the Fabyan Point development. Chair Hebert stated that the subdivision was approved on the condition that they comply with the Town's requirement to put utilities underground, and there had been a letter from DOT in May 2016 that agreed, but now they were saying they would not approve of going under the road.

Ben Johnson, the owner and contractor's son said they applied for an excavation permit, DOT did a site visit, and then they said they would prefer going overhead. Chair Hebert asked about directional drilling. Mr. Johnson said he hadn't heard anything about it.

Chair Hebert said he understood that Hodgson Lane and Swan Island Lane were all overhead, but he was trying to understand how DOT approved going underground

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and then changed their minds after they changed their regional director, however, he didn't want to hold the project up any further.

Mr. Weinrieb said the logic was that they didn't want to dig up Newington Road, but it still had to be dug up in the right-of-way for the water line.

Mr. Johnson said he met with Eversource, Comcast and Fairpoint and they all said they would rather go overhead as well.

Chair Hebert commented that originally there was going to be a wet pond for the fire hydrant, but there was no guarantee that the pond was going to stay wet. He said there was a catch basin on the circle because the cul-de-sac was high on a hill and the swales are deep. He said there may have been other approaches to splay out for a rain garden, but that would require a redesign, but heard that was not an option.

Mr. Johnson said the cul-de-sac was going down four feet to avoid a tree. Chair Hebert said the cul-de-sac was high on a hill and there was an opportunity to redesign the catch basin to protect the tree. He said it was not up to the Board to redesign, but he would be willing to expedite meetings if they wanted to work with an engineer and Altus so they wouldn't have to make such a deep cut. Mr. Weinrieb said the cul-de-sac was designed mirror image and there could be a field change order to put the catch basin on tilt of low side.

Mr. Coogan said it could be handled engineer to engineer. Chair Hebert agreed and said he just wanted the Board to be aware.

Mr. Weinrieb said he would need a plan to review and approve the field change and then he would send it to the Board before the end of the work Friday before his inspector went on vacation.

5) Other Business

This item was taken out of order at the recommendation of the Chair to allow members of the public to speak before going into work session.

Jim Caughran and HR Manager, Kimberly Morgan with Georgia-Pacific Gypsum appeared informed the Board that they had a signed purchase and sale agreement with Patterson Lane, LLC and they had fifty-five days to close on the agreement.

Mr. Caughran stated that they would be going door to door to meet the abutters soon and CMA Engineering was beginning to work on a formal plan that would be presented to the Board.

Chair Hebert invited Peter Welch of Newington Road, a retired engineer, who worked for Weston, a general contractor for drilling wells and monitoring at Pease to sit in with the Board as he was considering becoming a member.

Mr. Latchaw commented that having Mr. Welch would be a great addition and suggested Mr. Welch become the first choice as alternate and he be the second. Chair Hebert replied that there were no first and second choices. Mr. Latchaw stated that

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Peggy Lamson, who was an alternate when he joined the Board, made it clear that he was the second alternate.

Chair Hebert replied that it was his prerogative to recommend an appointment and to choose which alternate voted on any given application. Mr. Coogan suggested that they check with the Board of Selectmen to be sure that it wasn't them that appointed alternates.

3) **Zoning Amendment Review:** Accessory Dwelling Units (ADUs)

This item was taken out of order so that members of the public could present the fifth item before the Board discussed work session items.

Mr. Coogan stated that the State law on Accessory Dwellings hadn't passed when the Board updated the Ordinance last March and any new changes would go into effect as of June 2017.

Mr. Coogan read the Town's current definition and the State's definition for the Board. Mr. Coogan recommended making the Town's definition more consistent to the State's definition, but said the Board could also beef up the requirements as allowed.

Mr. Christopher asked if independent living facilities had to be attached or contained within the main structure. Mr. Coogan replied that an accessory dwelling had to be subordinate to the primary structure.

Chair Hebert replied that detached structures would not be allowed. Mr. Christopher asked what would be wrong with a carriage house. Chair Hebert said the intent would be to use the same utilities to retain rural character of single family homes and carriage houses had not been allowed, but that the Board could consider them.

Mr. Christopher said there was another secondary guest dwelling in town that was added to a main house ten years before that he didn't recall obtaining approval from the Board in ten years and asked if it would be grandfathered. Vice-Chair Cross replied that the garage was built for the main house before 1990 and used as a temporary apartment above the garage, had its own septic system, and was now grandfathered, along with receiving a variance from the ZBA.

Chair Hebert commented that expansions weren't allowed on non-conforming lots. Vice-Chair Cross added that they couldn't unless they went before the ZBA for a variance.

Vice-Chair Cross said the Town was hit hard last year with multiple changes and wondered if the Board should reconsider increasing size of accessory dwellings from 750 square feet to 1,000 square feet this year with a page and a half of description. Mr. Coogan said this item might be the only zoning change, but Vice-Chair Cross pointed out that they were still a long way from December when they finalized the items.

Mr. Weiner commented that there were a lot of politics last year, but he didn't think it would be that big of a deal this year.

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Mr. Weiner suggested providing a paragraph of explanation before the two pages. Chair Hebert added that too much information was provided last year, which confused many voters so he agreed that they should provide a brief explanation and then provide more information on request.

Mr. Coogan stated that he thought increasing the size of accessory dwellings and requiring them to be consistent with the main dwelling architecture was an important change.

Chair Hebert said the State required a 750 square feet minimum for accessory dwellings, but last year's Ordinance change required a maximum of 750 square feet and he wondered if 749 square feet would meet the requirement. Vice-Chair Cross clarified that the State law required a minimum of 750 square feet, but he thought an accessory dwelling could be smaller.

Chair Hebert said he wouldn't object to making it larger so long as the septic and uplands requirements were sufficient. He added that a couple of people in town suggested that they might want to divide the upper and lower level of their existing home and it wouldn't make sense to limit to only 750 square feet of one level.

Mr. Weiner agreed that he was originally against allowing larger accessory dwelling units, but now that he read the law he understood the requirements better and liked a range of 750 square feet to 1,000 square feet. Chair Hebert added that a Special Exception could be requested for over 1,000 square feet if warranted.

Mr. Latchaw said the term "in keeping with" sounds subjective and wondered if they might change the language to be more specific to retain the rural character. Mr. Coogan said the building inspector would make the determination. Vice-Chair Cross said or the Historic District Commission.

4) **Status Report** by Town Planner

Mr. Coogan read through his memo updating the Board on the status of recent and potential applicants for the Planning Board, ZBA and Conservation Commission.

5) **Other Business**

This item was taken as the third item at the recommendation of the Chair.

6) **Additional Discussions**

Chair Hebert announced that COAST bus service was having their annual meeting on September 28, 2016 from 8 a.m. to 10 a.m. in Dover and he would be glad to carpool with anyone that wanted to join him.

Chair Hebert stated that the Federal Government matches town support. He said the towns of Greenland and Stratham no longer supported the service and

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Somersworth was only supporting half. He said the Planning Board supported them, but the Board of Selectmen did not and they were looking for additional support.

Mr. Phillips suggested mall management attend the meetings and contribute toward the service since they benefit. Chair Hebert said they used to, but the malls in Newington were not the only malls in the area anymore and so there were not enough riders to the malls support the service any longer.

Vice-Chair Cross stated that the University of New Hampshire pulled out of their affiliation with COAST and established their own independent, Wildcat bus service that met their needs better. Chair Hebert replied that they were a separate special interest.

Chair Hebert announced that the Town was looking at proposals for a permanent Town Planner and they were looking for participants to serve on the committee.

Vice-Chair Cross expressed concern regarding the large sign for the businesses at the former Beane Farm was on the lot that was for sale and if sold, it would be an off premises sign and that would be non-conforming. Chair Hebert said Mr. Coogan could call to inform them.

Mr. Christopher commented that it was rare to purchase a lot without seeking approval first and they would be informed at that time.

Minutes: *Jim Weiner moved to approve the Minutes for the August 22, 2016 meeting with corrections as noted. Vice-Chair Cross seconded, and all were in favor.*

Adjournment: *Jim Weiner moved to adjourn the meeting. Mark Phillips seconded the motion and the meeting adjourned at 9:07 p.m.*

Next Meeting: Monday, September 26, 2016 at 6:30 p.m.

**Respectfully
Submitted by:** Jane K. Kendall, Recording Secretary

These Minutes were approved and adopted at the September 26, 2016 Planning Board Meeting.