

# Town of Newington, NH

## PLANNING BOARD

### & Board of Adjustment

Meeting Minutes, Monday, February 25, 2013

**Call to Order:** Planning Board Chair Denis Hebert called the February 25, 2013 meeting at 6:30 PM.

**Present:** Planning Board: Vice Chair, Mike Marconi; Patty Borkland; Bernie Christopher; Dick Spinney; Alternate Member, Peggy Lamson; ZBA: Chair, Matt Morton; Ted Connor; Ralph Estes; John Frink; Steve Prefontaine; Jane Kendall, Recorder; and Thomas Morgan, Town Planner

**Absent:** Jack Pare and Board of Selectmen Rep, Rick Stern

**Public Guests:** Attorney Paul G. Sanderson, NH Local Government Center

**Work Session:** Procedural Basics for Planning & Zoning Boards

Planning Board Chair Denis Hebert opened the meeting saying it is not possible to consider everything when creating ordinances, so it is important to interpret the intent and use common sense when reviewing applicants' proposals. Hebert went on to say Board members have to keep their personal biases separate when considering proposals and understand that it is sometimes necessary to go to court to follow through with the intent of the ordinances and the Master Plan. Mike Marconi added that judges usually look at whether common sense is being used.

Attorney Paul G. Sanderson from the NH Local Government Center (LGC) joined the meeting, walking the Boards through a Power Point Presentation of "Basic Principles for ZBA Members". Attorney Sanderson said towns are still using the "Procedural Basics for Planning and Zoning Boards" put out by the LGC, but there is not as much advisory assistance available to towns as there used to be.

Patty Borkland asked if applicants can see all deliberations, and Attorney Sanderson said the Right to Know law says any discussions have to be made available to the public, and although information can be shared in person or via email, private discussions and emails are not permissible. Denis Hebert asked if one on one discussions were permissible, and Sanderson said it is not advisable. Not only could someone be asked to recuse themselves, or resign from the board, but now board members could be fined out of their own pockets if found in violation of the Right to Know law. Denis Hebert asked if it is a good idea to ask an applicant if a board member who missed meetings could remain, and Sanderson said it is a good idea to pose the question, giving the applicant the opportunity to speak or forever hold their peace.

Patty Borkland asked if an applicant should go to the Planning Board before going to the ZBA. Denis Hebert said it has been the practice to go to the PB first to keep them informed. Attorney Sanderson said an applicant can go to the ZBA first to request a special exception, but would question it if they needed a subdivision or site review from the Planning Board first.

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Tom Morgan asked about denials by building inspectors, and Attorney Sanderson said it is best practice to get a written record of everything. Dick Spinney said this would have been a good meeting for the Town building inspector to attend. John Frink asked what the procedure would be for an applicant that never went to the Planning Board for a site review, then went before the ZBA after being denied by the building inspector, and then took it to court after the ZBA denied the variances. Sanderson said there is no statute on how to handle, but the boards could create their own rule of procedure, and the chairs of two boards can refer to the other board and conduct a joint meeting. Sanderson said typically speaking it is better to work with planning boards and get it right the first time rather than go before the ZBA, have difficulty proving hardship, and be denied.

Discussion on the logistics of joint meetings ensued. Sanderson said a joint board meeting has to be posted publicly prior to the meeting, and the applicant and abutters need to be notified by certified mail. Attorney Sanderson said the joint meeting would usually be after the planning board does a site design review, and if the plan does not comply with the ordinances, they would then send the applicant to the ZBA. Sanderson emphasized that ZBA has to have an actual variance or exception request, and cannot meet for a site design presentation, although any board member can sit in on one another's meetings. Mike Marconi said he gives the ZBA feedback as the Planning Board rep. Attorney Sanderson said RSA 672:2 says a joint meeting can be petitioned, but boards can also make their own rules of procedure. Sanderson said it is also helpful to have a technical advisory committee of the building inspector, fire department and public works to meet together rather than asking for different things at different times, as well as getting a checklist of recommendations to speed the process. John Frink asked about the Right to Know law when the town planner creates a checklist, and Sanderson said it would be best practice to make that available as public record as well.

Attorney Sanderson described several court cases such as Newington vs. Simplex (2002) and City of Portsmouth vs. Bocca (2004), and said even Peter Loughlin who is known as one of the best municipal attorneys in the state still found the rules confusing. After the Harborside vs. Parade Residence Hotels case the legislature recodified RSA 674:33 in 2010 to create the five elements (criteria or tests) for approval of a variance, which asks if the proposal would hurt anyone or anything. John Frink asked about someone making an erroneous claim that a proposal does or doesn't hurt something, and Sanderson said both the applicant and the boards can bring in their own experts to make their cases.

The Board asked Attorney Sanderson if he would consider returning at another time for further discussion, and he said he would be glad to.

**Adjournment:** The Boards adjourned at 9 p.m.

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