

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – Monday, May 12, 2014

Call to Order: Chair Denis Hebert called the May 12, 2014 meeting to order at 7:00 p.m.

Present: Mike Marconi, Vice Chair; Bernie Christopher; Christopher Cross; Jack Pare; Justin Richardson; Alternate Member, Peggy Lamson; Board of Selectman Representative, Rick Stern; Jane Kendall, Recorder; and Thomas Morgan, Town Planner

Public Guests: Attorney Bernie Pelech; Attorney John Ratigan; Doug LaRosa and Bob Stowell from TriTech Engineering; Mark West with West Environmental; Jim Weiner; Elizabeth Mathes; Lorna Watson; Alan and Lillian Wilson; Bill Murray; John Bernier with Bernier Construction; Muhammad T. Ebrahim

1) Public Hearings: Proposal by the **Estate of Paul J. Beane** for a 3-lot subdivision at **233 Nimble Hill Road, Tax Map 17, Lot 4.**

The Planning Board and Mark West of West Environmental met with Bob Stowell and Doug LaRosa from TriTech Engineering, and Attorney Bernie Pelech at 5:30 p.m. at 233 Nimble Hill Road to inspect the property.

Chairman Hebert said the site walk was informative. Chairman Hebert said he would have liked to have seen a plan showing the before and after elevations, however. Alternate Board member, Peggy Lamson agreed that she would have liked to see a plan with the homes also. Ms. Lamson said she walked the lot on Saturday when it was raining and the house lot appeared to be on an island.

Board member, Justin Richardson expressed concern over a discrepancy in the wetlands shown by the applicant and those on the wetlands mapped out by wetlands consultant, Mark West. Chairman Hebert said Mr. West had just received the applicant's information earlier in the day and needed more time to review. Chairman Hebert said he would need something more to substantiate TriTech's findings for lighter soils when they bored down in the field. Mr. West commented that there had been two findings and he needed more information. He said he would need to digest the information further before preparing a report.

Chairman Hebert asked Mr. Stowell if they intended to terminate the swales and Mr. Stowell said they needed to review the things that Mr. West had asked them to look at first. He said they had not received comments back from Altus Engineering either. Chairman Hebert asked Mr. West if he considered the location a wetlands area and Mr. West said had they had a discussion on the wetlands changes, he had prepared a memo to the applicant and cc'd the Town, and was hearing a response for the first time tonight. Mr. LaRosa said the criteria for hydric soil was above 20" and he did an auger boring at 20", which was hydric. He said a soil scientist did the additional work and report. Vice-Chair Marconi suggested they needed a second opinion before they could make any decisions.

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Chairman Hebert asked Town Planner, Tom Morgan if the lot was in the residential district and within a certain distance from the property border. Mr. Morgan said it did not unless there was a structure on the adjoining lot, and then it was subject to the setback. Mr. Richardson said they were referring to DES wetlands rules, which would not permit an impact to jurisdictional rules within 20' of a property line without an abutter's permission or a waiver. He said there might be some incorrect calls on the wetlands delineation, swales and streams. Mr. West said the 11" x 17" map showed connections of critical areas, although it was not exactly to scale. Mr. Richardson said the Board could not reach any agreement on the wetlands boundary until they received more information. He said water would back up if they put the corner of a building in the middle of a swale. Chairman Hebert said it had been proposed to re-route the swale. Mr. Richardson said someone would call the Wetland Bureau if they rerouted the swale.

Conservation Commissioner, Jim Weiner said he would like to echo Vice-Chair Marconi's recommendation that they needed an independent, second opinion on the study provided by the land owners which would be the same as allowing the fox to manage the hen house.

Chairman Hebert asked the applicants if they had met with the Conservation Commission and Mr. LaRosa said they had not for this application.

Mr. West said he was not sure if it would be appropriate for him to flag the wetlands, which was usually done by the applicant, but suggested it would be easier to survey with notes. Chairman Hebert said he was concerned with the Board getting accurate data. He said engineers for a developer that had not been identified had been presented with wetlands maps. He said Mr. Stowell showed a plan with ditches and Mr. West showed them as wetlands. Mr. West replied that TriTech's map showed a curving ditch coming out of the culvert and one ditch looked straight and another looked curved. Chairman Hebert said he was concerned with where the wetlands were and he wanted to be sure they were delineated clearly because they could expand. He said once the lots were sold, the buyers who lived there would have to live with any mistakes that were made. Mr. West added that jurisdictional wetlands would require more accurate mapping of the wetlands. He said it would be better to have a new map to identify where the wetlands boundaries had changed, then to use a topographical map to do his report based on the revised plans. Mr. LaRosa said would he would provide that information to him.

Ms. Lillian Wilson of 224 Nimble Hill Road said she and her husband purchased their home next door that there was only one house next door, but now three houses were being proposed. Ms. Wilson said she was concerned where the water would go if they were built in a heavy wetlands area and she wondered whose responsibility it would be to inform prospective buyers that the houses built would be surrounded by wetlands. Chairman Hebert said subdivisions were all part of public record, but towns didn't seek out prospective homebuyers. Attorney Bernie Pelech, representative for the developer said houses built near wetlands needed wetlands permits, which were listed on the deed, and it was up to prospective buyers to research the history.

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Mr. Richardson said he was concerned that they might build across the farmer's ditch, and suggested they follow Mr. West's recommendations and verify that the changes were on the plans. Chairman Hebert said the applicant said they wanted to redirect the swale as was shown on the plan submitted the previous week.

Chairman Hebert asked the applicants to go through plan, but Mr. Stowell said their plans might alter depending on Mr. West's findings. Chairman Hebert asked that the house be shown on the site plan. Mr. LaRosa said it was shown on the 11" x 17" plan.

Mr. LaRosa began a preliminary review pointing out a culvert pipe that was blocked. He said their wetlands scientist showed them the drainage ditch, which they were proposing to relocate, either underground or overland. He said they would cut into the bank and put in a culvert and add a swale away from the home.

Vice-Chair Marconi expressed concern for adequate drainage considering the added expense he incurred to replace proper drainage for his home. Mr. LaRosa said they would use a stone infiltration system around each home that would handle the rate and volume of runoff anticipated in a 100 year storm. Vice-Chair Marconi asked what the lifespan of the system was and Mr. LaRosa said some drainage systems built in 1980's were still functioning. Vice-Chair Marconi said his was built in the 1960's and had to be rebuilt. Board member, Jack Pare asked if they were proposing to use fabric around the drainage rock and Mr. LaRosa said the drainage plans showed stone wrapping.

Board member, Chris Cross asked for more explanation on the driveway absorption swales. Mr. LaRosa said they were showing potential home locations to show that the sites were buildable and the drainage would have to be built around the homes and drives, but it was up to the builder and he had no idea if they would actually be built that way. Mr. Cross said there was no guarantee that they would if the lots were sold to an unknown builder.

Vice-Chair Marconi asked if the drainage was going toward the other development at the back. Mr. LaRosa said looked at hydrologic connection on April 7, 2014 when most of the snow had melted and there was no water flowing through, but he said it could be ephemeral. Chairman Hebert said the Town typically didn't want to get into culvert pipes that could be blocked and cause flooding.

Ms. Lamson asked what the elevation of the house would be and Mr. LaRosa provided the proposed dimensions. He said the back of house was almost a walk out. Ms. Lamson said the proposal listed a two-family duplex and wondered if the lot could handle two-family dwellings. Ms. Lamson said proposed a duplex could be there, but the land was wet and wanted to know if they had plans for a septic backup. Mr. LaRosa said they dug a test pit and they had a reserve area and they met all the setbacks and were separated by fields so he thought it would meet DES' approval. He said the State also allowed them to pull out and rebuild in place. Chairman Hebert asked if the proposed septic would be chambered and Mr. LaRosa said they were proposing a bioretention system, but they required proper venting. Vice-Chair Marconi said the problem was that there was no guarantee that the average builder would build it properly.

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Chairman Hebert informed the applicants that they would ask them to give the Town Planner a contingency fund of \$5,000 for legal fees, wetlands scientist and other expenses that the Town might incur. Attorney Pelech asked if the Town would advise them before they engaged in any other experts. Chairman Hebert said he was informing them now that there would be expenses associated with the services of Town counsel, Attorney John Ratigan and West Environmental. Attorney Pelech said he didn't know what legal issues there were and Chairman Hebert said they retained Attorney Ratigan for the same reason his applicant had hired him.

Mr. Pare suggested that a notation be made on the plan that the existing house was eligible for the National Register of Historic Places so that buyers would know what they had. Mr. LaRosa said he would mention it to their client.

Chairman Hebert asked what time frame they were looking at and Mr. Morgan said the application was first submitted on December 30, 2013 and the Board voted that the application was substantially complete on April 16, 2014. Attorney Ratigan said the deadline for a decision would be on June 20, 2014. Chairman Hebert continued the hearing to June 9, 2014.

3) Preliminary Discussions

A) Proposal by **Bruce C. Belanger** for a 3-lot subdivision at the corner of Nimble Hill Road and Fox Point Road, **Tax Map 17, Lot 11-2.**

Town Planner, Tom Morgan passed out a copy of a letter from TriTech Engineering requesting a continuation of their proposal. Mr. Morgan said he was troubled with the DES Dredge and Fill permit that was submitted in late April. He said usually there is a preliminary site review so that the Planning Board and DES can work together. Chairman Hebert said he wanted to write a letter to DES that the Planning Board needed to review and discuss the plan further before they made any decisions. Mr. Morgan said that was why a postponement was requested.

Mr. Stowell said they applied for their DES permit and the application was not well received at the Conservation Commission so they wanted to figure out what would be appropriate. He said the applicant was in limbo since they had discussed access with abutter, or an alternate road coming in from Fox Point Road.

Mr. Richardson said the Conservation Commission could request an investigation for a 40 day delay. He said there was always a problem when the State moves forward and the local process was interrupted. He said the State doesn't have setbacks but there were local setback requirements. Chairman Hebert said he wanted to be sure protect the Town's rights and he wanted the State to know the Town was on hold.

Conservation Commissioner, Jim Weiner said in considering the applicant's DES Dredge and Fill application, the Commission reviewed the history of the property and found that the original lot line adjustment and curb cut across from Town Hall on Nimble Hill Road was granted by the Planning Board to avoid wetlands crossings for one lot. He said the new owner knew that the curb cut was for one lot, but they still asked for two

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additional curb cuts that would cross wetlands. Mr. Weiner said the gist of RSA 482:A was that wetlands crossings could only be granted if there was no alternative access to a property. He said the Conservation Commission could only make recommendations to DES, which they did not because they determined there was already a curb cut that did not require crossing a wetlands to gain access to the property.

Mr. Richardson asked Mr. Weiner if the Conservation Commission had sent out a letter of decision and Mr. Weiner said he called Mr. David Price at DES and left a message, but had not received a response as yet. Mr. Morgan said he called and left a message as well.

Vice-Chair Marconi suggested that environmental consultant, Mark West look at the wetlands. Mr. Morgan said the Conservation Commission's assumption was that the Town would get reimbursed for their expenses, but he received a call from Mr. Stowell on Friday saying his client would not reimburse the Town. Mr. Stowell said he knew the Planning Board could charge them for expenses, but he didn't know if the Conservation Commission could. Chairman Hebert said the Conservation Commission was an arm of the Planning Board. Mr. Stowell said the applicant would pay in that case. Chairman Hebert said he would like to set up contingency fund of \$5,000.

Chairman Hebert said it appeared that the applicant was trying to go to DES for their permit before the Planning Board had an opportunity to review the proposal. He said DES didn't like to go back and forth on decisions and the Planning Board had to do their due diligence first.

Mr. Richardson agreed that it would be appropriate for the Board to engage Mr. West's services because the wetlands delineation on the plan didn't look right. Ms. Lamson said it changed. Mr. Richardson said he looked at a prior plan and the wetland delineation moved 20'-45' in six months. He said perhaps different consultants were using different guidelines, but he thought they should be extra careful and seek an independent review.

Mr. Richardson said the Board approved the lot-line adjustment in December 2013. Mr. Stowell said the first wetlands map was done in 2005 and agreed that the wetlands had changed in nine years, but they had not remapped the wetlands until recently. Vice-Chair Marconi said that was why they moved the property line.

Chairman Hebert said Mr. Michael Mathes came to the Board and said he couldn't sell his lot because he didn't have enough high lands so they did a lot line adjustment along Ms. Dorothy Watson's property. He said they discussed the issue of wetlands and needing the curb cut for one lot. He said even though they discussed it, there was no agreement in writing that they would not subdivide if they met the subdivision requirements.

Chairman Hebert asked Mr. Stowell if wanted to continue the hearing and Mr. Stowell said he did. Mr. Richardson said they had a job to do in a certain time frame and they needed to engage Mr. West's services.

***Mr. Richardson moved to have Mr. West review the wetlands delineation.
Ms. Lamson seconded the motion.***

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Mr. Morgan said TriTech's letter say they wanted to continue their public hearing, which they had in January, but it was determined at that meeting that they weren't ready so they downgraded their status to preliminary review. He said there was no deadline for a preliminary review, but DES had an application before them that did have a deadline.

Mr. Richardson withdrew his motion so long as they were in preliminary discussions and not in a public hearing. Ms. Lamson seconded the withdrawal. Chairman Hebert said a motion to withdraw wasn't required.

Mr. Stowell said his applicant was willing to pay for the wetlands review regardless of the outcome if that was what was needed to resolve the issue.

Mr. Weiner said there seemed to be a lot of time setbacks and asked Mr. Morgan if it would be helpful for cross board communications so that information wouldn't be overlooked. Mr. Morgan said he heard what he was saying, but this case was unusual in that it started as a public hearing in January and was down graded to a preliminary review, which was how it was advertised. Chairman Hebert said it was a preliminary review, not a public hearing, but he was willing to continue.

Chairman Hebert said they still needed a wetlands expert to do a survey and Mr. West said he could do that. Chairman Hebert said they would need funds, but they would do things quickly and try not to be costly. Chairman Hebert asked Mr. West if he could get the wetlands survey done by the next meeting on June 9, 2014 and Mr. West said he could. Chairman Hebert asked Mr. West if could do by then and Mr. West said he could. Chairman Hebert said they would also send a letter to DES asking them to hold off on their decision.

B) Proposal by Key Auto for new sales, servicing, and car wash facility at 2025 Woodbury Avenue, Tax Map 27, Lots 5 and 5A.

Mr. Morgan announced that the applicant was not present for this discussion as previously planned.

C) Proposal by Wilcox Industries to expand their facility at 25 Piscataqua Drive, Tax Map 27, Lot 22.

Mr. John Bernier with Bernier Construction appeared before the Board on behalf of Wilcox Industries and presented their most recent plans for expansion. He said the last time he was there they discussed extending their underground test range, but they were encroaching on a lot line so the Board suggested they acquire more land. He said they acquired another 50' from (Public Service of New Hampshire (PSNH)). He said a water main was in the way and they sent a letter of approval from the City of Portsmouth. Chairman Hebert said they needed to make sure they were maintaining proper pressure for fire. Mr. Bernier said they were tying in to the Tyco water line.

Mr. Morgan asked for the dimensions of the PSNH land. Mr. Bernier said it was yet to be fully determined, but he thought it was 50' x 200'-300'.

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Mr. Bernier showed their plans and said they were designing for future expansion. Mr. Bernier said they were putting in two stories. Board member, Bernie Christopher asked if the second floor was office space and Mr. Bernier said it was.

Chairman Hebert said they were in preliminary discussions and the concept seemed fine, but they would need more detailed drawings.

Mr. Cross asked if their parking would meet their requirements for the full build out. Mr. Bernier said they should have ample parking.

Mr. Richardson asked Mr. Morgan if a helicopter landing pad on the top of the watchtower would be acceptable considering they were so close to Pease. Board of Selectmen representative, Rick Stern said the helicopter landing pad was not shown when they were first shown the watch tower. Mr. Bernier said it wouldn't be used except for a limited number of clients. Mr. Cross said it appeared that the height was lower than the PSNH towers and Portsmouth Hospital was closer to the Pease approach path than this location. Mr. Richardson said helicopters were noisier than planes, however.

Vice-Chair Marconi asked Mr. Morgan if they needed to go to the Board of Adjustment for setbacks. Mr. Bernier said they wouldn't have to now that they had the additional property. Mr. Morgan said they would submit two applications, one for a lot line adjustment and the other for site approval. Mr. Bernier said they also considered the possibility of extending Shattuck Way. He said they would work on the lot line adjustment first. Chairman Hebert said liked how they presented a little information at a time as they prepared it.

D) Proposal by the Islamic Society of the Seacoast Area (ISSA) for a change of use at 177 Shattuck Way, Tax Map 20, Lot 3A

Mr. Muhammad T. Ebrahim, Director of the Islamic Society of the Seacoast Area appeared before the Board. Mr. Ebrahim said they had been in existence for the last twenty years and were located in Durham for the first ten years before moving to their present location in Dover. He said their members had outgrown that building and they had began preliminary negotiations with the owner of this property in consideration of a larger facility to service their current and future needs. He asked the Board to advise if they could pursue the possibility.

Chairman Hebert asked what was in the current location at 177 Shattuck Way and what their proposed use would be. Mr. Ebrahim said ISSA was proposing a similar use as their operation in Dover with prayer services, which were currently attended by 70-80 people along with a weekend school attended by 25-30 children. He said they were actively engaged in an educational outreach program for the public, and had been approached by high schools and colleges for visitors, but they didn't have a large enough facility. He said they had a diverse community with different needs and were looking for no less that 2,000 square feet to accommodate their expansion. Have

Ms. Lamson said it was previously a medical office and now used as a methadone clinic. She said they would need a change of use from the office zone. Mr. Pare said a church had been permitted to congregate at the theatre in the commercial zone before.

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Chairman Hebert asked if planning to raze facility and Mr. Ebrahim said they were not. He said there were two large buildings attached by a bridge with only one tenant and they had no plans to let them go at this time. He said the only modification they planned was to open space for a large open area.

Chairman Hebert asked what they planned on doing with the building in addition to holding worship services and Mr. Ebrahim said they would have classrooms for children, two offices and a library.

Ms. Lamson asked about the hours of service and Mr. Ebrahim said the regular services would be on Friday at 1 p.m., but they would also have weekly services. He said they would also have Saturday conferences once a month, mostly for the Indonesian community. Mr. Cross asked what their outreach program would entail and Mr. Ebrahim said it would be limited to one to two hour visits with no overnights. Mr. Cross asked if there would be a kitchen facility and group dining during the prayer meal. Mr. Ebrahim said meals were usually potluck and prepared at home.

Mr. Cross asked if they would be leasing the facility or purchasing and Mr. Ebrahim said they would be purchasing. Mr. Cross asked if they would sublet to the methadone clinic and Mr. Ebrahim said they would. Mr. Cross commented that they wouldn't want to learn that the methadone outpatient office was objectionable and unwelcome under watchful and resentful eyes because it served an important service for the community. Mr. Ebrahim said no members had objected. He said there was a gym below their facility and they had good relationship with neighbors.

Mr. Richardson asked if people using the facility would use public transportation and need a bus stop. Mr. Ebrahim said 10-20% used public transportation, some from the UNH campus. Mr. Cross said the site was close to the mall and Coast offered call up service. Mr. Richardson commented that the Coast bus line ran past the site from their mall route heading out of town. Vice-Chair Marconi said there would be concerns for the safety of individuals walking to and from the mall without a lit crosswalk. Ms. Lamson said the traffic on Avery Road was heavy too.

Mr. Morgan said he recalled that there were only 40 parking spaces. Mr. Ebrahim he asked and was told there were 43 parking spaces, which would be an adequate initially. Mr. Morgan said the owner Mr. Ken Weinstein had requested more parking a few years ago, which had been approved, but was now maxed out according to the zoning ordinance so he wanted to be sure Mr. Ebrahim was cognizant of that if he was anticipating a future expansion. Mr. Ebrahim said he told the owner that they would need to add another 50 parking spaces, and the owner agreed to add 100 parking spaces. Mr. Ebrahim said it was a surprise to him that there was limited parking. Mr. Morgan said it would be helpful to look at the plan because the property was constrained on four sides and had limits. Discussion ensued whether or not more could be done to allow more parking spaces. Chairman Hebert said property in Newington was not cheap and he should find out the parking rules before making a decision. Ms. Lamson agreed that Mr. Ebrahim meet with Mr. Morgan to discuss further. Mr. Pare said they would also need the Planning Board's recommendation if they were to go before the ZBA for a change of use permit.

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Mr. Stern said he considered the use similar as that for non-profit church zoning when he heard discussions of worship. Vice-Chair Marconi said no taxes would be paid for such a use even though it was a commercial office zone.

Mr. Cross said the Town selected zones for compatibility of use and separated the office zone from heavy industry in that region. He said most religious services sought harmony and compatibility and there would be a lot of noise from Westinghouse across the street, odors and emergency signals that might disturb. He said that was the primary reason for separating the industrial area from other uses. Mr. Ebrahim said they were looking for harmony, but many their board members looked at the site, and thought it was an attractive, central location on the other side of the street from the industrial area. Chairman Hebert said there would also be train activity from the Sea-3 plant.

Mr. Morgan said they needed to see if parking was adequate first but Attorney Ratigan and Chairman Hebert had been discussing the zoning as well. Attorney Ratigan said the Board didn't have benefit of hearing the discussions.

Vice-Chair Marconi said when autistic children's school needed a variance when they came into the commercial zone so there was some precedent for considering different use. Chairman Hebert said it was a different zone. He said the establishment of the industrial zone was to avoid schools and places of worship with children for safety reasons.

Attorney Ratigan recommended they end the public session and talk with attorney client confidence. Mr. Cross said the Board owed the potential applicant a response. Mr. Richardson said agreed, but said it was also their duty to understand the legal advice of an expert. Chairman Hebert said that the Board needed more information on the zoning and asked Mr. Ebrahim to step outside for a moment.

At 8:46 p.m. Justin Richardson moved to adjourn the meeting temporarily to consult with legal counsel. Vice-Chair Marconi seconded the motion and all were in favor.

At 9:12 p.m. Bernie Christopher moved to come out of closed session. Mr. Richardson seconded and all were in favor.

Mr. Ebrahim returned and Mr. Morgan arranged to talk with him about the parking restrictions following the meeting.

4) Election of Officers:

Peggy Lamson moved to nominate Denis Hebert as Chairman. Bernie Christopher seconded, and the motion passed unanimously.

Ms. Lamson said Chairman Hebert had done a very good job and thanked him for all the work he has done for the community.

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Rick Stern moved to nominate Justin Richardson as Vice-Chair. Mr. Richardson thanked him, but said he had a problem with a heavy work and personal schedule, but he would be glad to continue as the Planning Board representative for the Zoning Board of Adjustment.

Bernie Christopher moved to nominate Mike Marconi as Vice-Chair. Jack Pare seconded, and the motion passed unanimously.

Mr. Richardson said Vice-Chair Marconi ran a good hearing, was fair, and let people speak.

Peggy Lamson moved to nominate Justin Richardson as Planning Board representative for the Zoning Board of Adjustment. Rick Stern seconded, and the motion passed unanimously.

Chairman Hebert commented that the Board had done a wonderful job in past year.

Budget:

Chairman Hebert said the Board had spent down their legal budget for the first time prior to repayment from applicants. Mr. Morgan said funding for sound engineering was low also. Mr. Stern advised the Board to send a letter to the Board of Selectmen.

Minutes: ***Mike Marconi moved accept the Minutes of the May 5, 2014 meeting. Peggy Lamson seconded and all were in favor.***

Adjournment: ***Vice-Chair Marconi motioned to adjourn. Peggy Lamson seconded, and all were in favor. The meeting adjourned at 9:20 p.m.***

Next Meeting: Monday, May 17, 2014

Respectfully

Submitted by: Jane K. Kendall, Recording Secretary