

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, August 11, 2014

Call to Order: Chair Denis Hebert called the August 11, 2014 meeting at 6:30 PM.

Present: Vice Chair, Mike Marconi; Bernie Christopher; Chris Cross; Jack Pare; Justin Richardson; Alternate Member, Peggy Lamson; Board of Selectmen Representative, Rick Stern; and Jane Kendall, Recording Secretary

Public Guests: Attorney Chris Mulligan; Attorney Bernie Pelech; Attorney John Ratigan; Mike Cuomo with Rockingham County Conservation; Doug LaRosa with TriTech Engineering; Mike Mazeau; Edna Mosher; Lorna Watson; Jim Teetzle with Wilcox Industries; David Choate; Dawn Lewis, Great Bay Services

1) Public Hearings:

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.**

Attorney Chris Mulligan informed the Board that they were waiting for Doug LaRosa with TriTech Engineering so this item was taken out of order.

B) Proposal by **Estate of Paul J. Beane** for a 3-lot subdivision at **Tax Map 17, Lot 4.**

Chairman Hebert announced that the Board had requested a third party soil scientist to review the wetlands on the property and provide comments on areas of dispute between the applicant's mapping of the wetlands and the review done by Town wetlands consultant, Mark West.

Mr. Mike Cuomo introduced himself as a soil and wetlands scientist and septic designer that worked for the Rockingham County Conservation District. He said he was working for the Town and was not working for any abutters, did not live in town and had no stake in the project.

Mr. Cuomo said he and his supervisor, Lynne Lord examined the Beane lot and areas of dispute that were labeled ditches and potential wetlands. He said it was a difficult area to identify streams and wetlands on the site because it had been highly manipulated by human and agricultural activity and forestry.

Mr. Cuomo stated that drainage ditch #1 that was constructed in an upland area to carry water from one wetland to another, but it was a drainage swale and not an

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actual wetland according to the State of NH definitions. He said the State would not require a fill permit because it was not a regulated natural resource.

Mr. Cuomo stated that drainage ditch #2 curved between two wetlands and the upper 65' ditch that went through an upland area was not a regulated wetland or stream, however the lower portion was a wetland that extended 6' on either side and 65' down to a culvert in a previously delineated wetland which had a 50' setback shown on the plan.

Mr. Cuomo said that drainage ditch #3 met the State's definition of an ephemeral stream because it did not intercept the water table, but it did not meet the Town's wetlands definition, but it would be regulated by the State.

Mr. Cuomo said there was no dispute that ditch #4, which appeared to be a scoured channel with rock fragments, met the soil hydrology and vegetation criteria to meet the definition of an intermittent stream.

Mr. Cuomo said wetlands area "B" and "L" were separated in an area between the setbacks, but didn't meet wetlands soil criteria in either the State or Town Ordinance.

Mr. Richardson asked what differences there were between DES and Town definitions of ephemeral and intermittent streams and contiguous wetlands. Mr. Cuomo said he thought most of the definitions were similar, and his objective was to provide strong evidence for his wetlands definitions that would be defensible, but it would be up to the Town to make finite decisions on areas of ambiguity.

Chairman Hebert said his concern was that the plans showed a house foundation in the middle of a wetland and the developer had stated that they wanted to divert a stream into a hill further from the proposed house. He asked if that would be permitted by the State and Mr. Cuomo said that State has allowed wetlands fill in compensation mitigation, but he was not sure if it was the same kind of situation and they tended to discourage it. Mr. LaRosa said this was the first time they heard the area was wetlands, but they would re-evaluate their plan and move forward.

Chairman Hebert said it was pretty dry now, but it was much wetter in the spring and he was concerned that there would not be adequate drainage for a potential homeowner during certain times of the year. He asked Mr. Cuomo what time of year he did his study and Mr. Cuomo said it was on July 29, 2014, but he was aware that the site could be wet in the spring, but not all the sites met the criteria for wetlands designation and regulation. He said that didn't mean there might not be issues where water was high, which would require proper construction for drainage.

Chairman Hebert asked how the wetlands and the frost line would affect construction and Mr. Cuomo said it would depend if the outfall was lower in the upland areas and on how well the water table drained. He said an engineer could compensate with intelligent building design and construction, but there was no guarantee if it would be done well or not.

Ms. Lamson said there were four swales and asked if they would need to bring in fill. Mr. Cuomo said it was something planners and construction developers should consider because they would be fools not to.

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Vice-Chair Marconi said he was an abutter to a drainage area and wondered if people ever used cisterns for excess water. Mr. Cuomo said he had never seen them used.

Mr. Richardson how different his opinions were from Town wetlands consultant, Mark West's opinions. Chairman Hebert said the last three sentences of Mr. Cuomo's letter said his focus was only on the areas of disagreement and he was comfortable that his findings were defensible.

Chairman Hebert said everyone the Board had consulted with agreed that the site was very wet and couldn't be built on in a couple of locations. He said he still wasn't sure if there would be approval to divert or fill certain wetlands areas either. He said they had consulted several professional experts who had different opinions in some areas, but it would ultimately be up to the Board to make the best decision for the subdivision based on the information they had heard.

Board of Selectmen representative, Rick Stern said the idea of diverting water from wetlands concerned him because it would most likely drain onto someone else's property. Mr. Richardson agreed and said he was concerned that filling an area that did not meet a wetlands definition with non-permeable material could change the water flow and hydrology of the area. Mr. Cuomo agreed that could happen. Chairman Hebert said the developer's engineer stated that they would review the new information provided by Mr. Cuomo and consider changes and return.

A brief discussion on the test pits ensued and Mr. Cuomo said some of the test pits were dug before the wetlands delineations were done. Mr. LaRosa said he believed their test pits were within the 50' setback of curved wetlands area and none were done in hydric soils.

Mr. LaRosa said he had asked Altus Engineering for a response to their plan several times, but they said not to go ahead until the wetland decision had been made. He said he had correspondence with Mr. West that said he agreed with Mr. Cuomo's wetlands designations and wanted to know if the Board was in agreement. Chairman Hebert said the Board would need to see Mr. West's email and Ms. Lamson said Mr. West's statement had to be on paper.

Attorney Pelech agreed that it didn't make to make comments on plans that might change, but thought they could move to the next step. Mr. LaRosa said there would be no changes to the existing home and the 8.1 acre lot would have the same house locations with the same road design except for moving the driveway so he wondered if the Board would grant approval at the next meeting. Chairman Hebert said the Board still needed time to review the wetlands designation and plan. He said he was not comfortable with settling on the plan before the Conservation Commission had an opportunity to comment on the plan and he would ideally like to see the plan go from three lots to two lots. He said they had to consider how the plan would affect people downstream.

Mr. LaRosa said Altus Engineering had reviewed the road plan, and the revised plans and they had responded to their comments already. Attorney Pelech asked if Altus Engineering could review the changes prior to the next meeting. Mr. Richardson said the Board would be granting approval before they heard from their civil engineering

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consultant and they needed to be careful about approving a moving target with plan changes. He said they should be able to re-notice so abutters would know the plan had changed. Attorney Pelech said his client would have no problem with re-noticing. Chairman Hebert asked if they would agree to an extension rather than re-noticing and provide something in writing. Attorney Pelech said they would and they would also submit revised plans. Mr. LaRosa said he would try to provide plans in the next week. Chairman Hebert informed him that they would stop the approval process if the Board, the Town Planner or Town counsel saw any indication that the plans were changing without notification.

Chairman Hebert said at this point they were proposing a cul-de-sac for a single home and wondered if they could look into other opportunities. Mr. Mike Mazeau of Fox Point Road wondered if they might consider a land swap with abutting Town property. Discussion ensued whether that would be advantageous for the Town or not.

Attorney Pelech said his client had delivered \$10,000 in escrow and he had requested a cost report several times. Chairman Hebert said they could request a report any time, and Town Planner, Tom Morgan could provide that to him when he returned from vacation, but it would not yet include Mr. Cuomo's charges. Mr. Stern said he would provide an accounting for him before Mr. Morgan returned from vacation.

Chairman Hebert continued the hearing to September 8, 2014.

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.**

This item was taken out of order because of a delay in the arrival of Mr. Doug LaRosa from TriTech Engineering.

Mr. LaRosa with TriTech Engineering said they applied for a Dredge and Fill permit for the driveways over wetlands crossings, but the Conservation Commission had not made a recommendation for approval because they did not have final plans before the Planning Board and thought the application was premature. He said the New Hampshire Department of Environmental Services (DES) requested more information for the Dredge and Fill application so he presented the latest subdivision plans and said they were in their "final format" for three lots with three driveways.

Mr. LaRosa said they reviewed comments from Altus Engineering that suggested looking at different access ways with less impact, but their current plan impacted less than 3,000 square feet of wetlands and other options impacted more. He said they considered placing a roadway adjacent to the Wilson's property, but that did not meet the zoning requirement and going through wetlands anywhere would need a Special Exception so they felt their plan made the least impact. He said Town Planner, Tom Morgan and David Price from DES and the Board indicated they were looking for less wetlands impact, but he was not sure how they could accomplish that.

Mr. Cross suggested a driveway to access the property did not have to go through the 200' frontage if there was a shorter distance that was sufficient so long as

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there was 200' OF frontage elsewhere. Mr. LaRosa said that was done on the Mazeau property for a shared driveway, which required a zoning variance, whereas this proposal was permitted.

Attorney Chris Mulligan said an issue had come up whether a driveway through wetlands was a permitted use under the zoning ordinance, Article 10, Section 4:B6 and they believed it was. He said there was a question whether a subsequent definition of Special Exception for access ways would be different than a driveway. He said he didn't think the ordinance would talk of two different things unless that was the intention. Chairman Hebert said the ordinance was written to allow for short distances, not a long driveway through a middle lot.

Chairman Hebert said there was also an issue is safety coming onto Nimble Hill Road during rush hours, regardless of enforcement issues. Mr. LaRosa said they provided a traffic count and Mr. Richardson said there needed to be a distinction between the number of vehicles as opposed visibility and speed of the traffic. Chairman Hebert agreed that they the traffic study was not complete and they were seeing an increase in faster moving traffic cutting through town during the Spaulding Turnpike construction and they might see more.

Mr. Michael Mazeau of Fox Point Road said he didn't see the same safety concerns with the middle lot driveway coming out opposite the Town Hall entrance. He said a curb cut across the Wilson's property had been approved at the rise in the road, and he thought a driveway further down should be even safer. He said he didn't think a four-way crossing at the entrance wouldn't be any different than any other four-way crossing. He said he didn't know that there had been any accidents coming out of the Town Hall, but he thought they might look into that further. He said the Town Hall was also rented out for receptions of up to 200 people that allowed drinking all night and he didn't think a driveway across the street would add to the danger. He said the Town could also revisit the possibility of a four-way stop or flashing light and advance signage if there were any issues on Nimble Hill Road.

Chairman Hebert said he agreed with many of Mr. Mazeau's remarks, but he still didn't like the middle lot crossing wetlands.

Ms. Lorna Watson of Fox Point Road said she had observed near accidents on Nimble Hill Road when vehicles were traveling too fast to stop in response to turkey crossings. Vice-Chair Marconi said deer crossing the roads were a problem too.

Mr. Richardson said the objective was not just to determine if an area had accidents in its current configuration, but also to avoid potential accidents that might result from a poorly placed access. He said there were no regulations or authority to build an access on private property to the standard that was used in building the Town Hall access with more width, signage and better visibility at a greater distance.

Mr. Richardson reminded the Board of his discussion during the last meeting regarding RSA 676:14, on local land use that said the more stringent standard shall be followed. He said for better or worse, access ways and driveways were used synonymously and one section of the ordinance said a wetlands crossing would be permitted if necessary and another section said it would require going before the ZBA for a Special Exception. He said it was simply crazy to say the Town would allow a

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driveway through a wetland, but building only a footpath would require a Special Exception.

In response to the suggestion that there were no alternative access possibilities for the proposal, Mr. Richardson said it was reasonable to consider building on fewer lots. He said a lot line adjustment was originally approved because it was said that the original lot was too small for one building, but now three lots were being proposed. He said this kind impact on wetlands with a congested appearance with was not the type of development people wanted to see in town, but it would be up to the ZBA to decide on the Special Exception. Attorney Mulligan disagreed and said RSA 676:14 referred to competing ordinances, but in this case, Section 4 contained ambiguity within itself in reference to access ways and driveways.

Mr. Mazeau said he had deeded access directly across from the site and commented that he had not been notified as abutter of the public hearing. Chairman Hebert said he believed someone else owned the shared driveway and the owner would have been notified. Mr. Mazeau expressed concerns that there could be problems in the future with additional driveways across from his lot. However, in regards to the subdivision, Mr. Mazeau thought the 3-lot subdivision met the zoning requirements with sufficient acreage where homes could be built in the uplands area. Chairman Hebert said the issue was that the original lot line adjustment was for a single home lot and not the 3-lot subdivision that the current owner was not proposing. Mr. Mazeau said he understood that the Board felt they had been had, but the Town was culpable as to how wet the lot was due to runoff from the Town Hall and a lack of culvert maintenance. Mr. Cross said the most problematic thing was the possibility of three duplexes with six residents. He said the center lot was low in the wetlands and it was not reasonable to suggest that there would be sufficient visibility so whatever the traffic level on Nimble Hill Road. Mr. LaRosa said they were proposing a minimal amount of dredge and fill crossing the wetland, but there would be a 6% grade and over 400' of safe sight distance as recommended by Altus Engineering. Chairman Hebert at 30' it would be 2%, which would keep water from sheeting onto the road.

Ms. Lamson and Vice-Chair Marconi both agreed with Mr. Cross that they didn't like the access coming onto Nimble Hill Road and thought access on Fox Point Road would be safer.

Board member, Bernie Christopher said he never had a problem with the middle drive, but he did have a problem with the driveway next to the Wilson' driveway because that would have the biggest impact where the hill started. He said it was fine if everyone was doing the speed limit, but they all knew traffic was heavy in the morning and evenings.

Mr. Richardson said he understood that everyone was trying to represent their various interests, he was trying to represent the interests of the Town and Attorney Mulligan trying to advance the interests of his client, but he didn't agree and suggested that the Board get a legal opinion from Attorney Ratigan. He said if Attorney Ratigan determined that the Special Exception provision did not apply, then the Board should propose that change at Town Meeting. Chairman Hebert said someone would need to

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make a motion to go into closed discussion. Ms. Lamson said she didn't like non-public meetings. Attorney Mulligan said he would be fine with it.

Mike Marconi moved that the Board go into a 15-minute adjournment to confer with legal counsel. Mr. Richardson seconded the motion and all were in favor.

The meeting closed at 8:22 p.m. and the Board reconvened at 8:57 p.m.

Chairman Hebert said the Board reviewed the wording and intent of the ordinance where Section B6 talked about permitting a driveway, but Section 4C talked about the requirement of a Special Exception for the construction of the driveway or road.

Chairman Hebert said other options had also been discussed and there was some concern that there might be a perception that the Board was trying to lead the applicant down a path, but the Board was just trying to work the applicant. Mr. Cross proceeded to discuss the possibility of accessing properties without going through primary frontage that justified the lot. He said there was more uplands in the northeast corner of the lot away from the wetlands. He reviewed the possibility of access to the "L" shaped lot that would not require crossing the wetlands. Attorney Mulligan asked for clarification that Mr. Cross was suggesting a pork chop shaped lot with frontage on two sides. Mr. Cross said the second frontage would be too small to justify a lot, but would allow access.

Mr. Richardson said he thought an alternative reasonable use listed in the Special Exceptions criteria for productive use might be to approve two lots instead of three, thereby eliminating one wetlands crossing and eliminating the safety issue of a second access on Nimble Hill Road. He said he recalled when the outdated zoning ordinance was revised with the Special Exception criteria to mirror DES regulations and this would mirror the intent of the zoning ordinance by minimizing wetlands impacts, creating lots of sufficient size and limiting congestion. He said the Special Exception criteria was meant to allow driveways for access to lots without crossing wetlands, which DES would never allow.

Board member, Jack Pare the Board could easily make a recommendation for frontage to the ZBA. Vice-Chair Marconi agreed that the Planning Board determined frontage.

Chairman Hebert said it was up to the Planning Board to determine whether these were buildable lots and he didn't want overcrowded lots with so much wetlands and a small area of uplands. He said home owners would be living on an island and they needed to figure out how that would work if there were two families instead of a single family and if they would consider creating a workable plan for a 2-lot subdivision. Vice-Chair Marconi said he would even like to see them go back to one lot.

Mr. Richardson said having reached an interpretation of the Special Exception requirement, the ZBA would need to determine if the two driveways met the Special Exception to inform the Board if they would be considering three lots or not. The Board

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members all concurred that the applicant would need to go before the ZBA. Mr. Stern commented that they would not need a Special Exception if they modified their plan. Chairman Hebert said the Board agreed that a 2-lot subdivision might be easier for the Board to approve rather than a 3-lot subdivision, but informed the applicant that they would need approval for a Special Exception for any access across wetlands. Attorney Mulligan said he understood.

Chairman Hebert continued the public hearing to September 8, 2014.

2) Preliminary Discussions

A) Proposal by **Keith Frizzell** to construct a 32,00 square foot industrial building at **34-46 Patterson Lane, Tax Map 19, Lot 6 and Map 13, Lot 11.**

Mr. Stern said he believed Mr. Frizzell was not able to attend and temporarily cancelled his discussion. This item was continued to September 8, 2014.

B) Proposal by **Edna Mosher** or a 2-lot subdivision at **97 Nimble Hill Road, Tax Map 12, Lot 10.**

Ms. Mosher presented a plan to divide 6.92 acres of her 8.7 lot. She said she had Jack Hayes do the wetlands study and David Vincent did the preliminary sketch showing the wetland setbacks. She said she did perk tests when she subdivided another lot three years ago, but would need to do them again.

Chairman Hebert asked Ms. Mosher to show the access and setbacks. Ms. Mosher presented a plan, but said she would like to add 50' more to her home farm lot that would impact the wetlands setback. Ms. Mosher said it wasn't very wet there. Chairman Hebert said she would be in wetlands setback and wouldn't have room to put a driveway in. Mr. Cross said could she could within 25', but she would need a variance to go further.

Discussion regarding house placement ensued and Chairman Hebert said she was only looking for subdivision at this point. He said she would be fine so long as she stayed away from wetlands, provided a driveway corridor and provided perk tests.

C) Proposal by **Wilcox Industries** at **25 Piscataqua Drive.**

Mr. Jim Teetzle of Wilcox Industries appeared before the Board with realtor, Mr. David Choate, representing Great Bay Services and Ms. Dawn Lewis of Great Bay Services. Chairman Hebert informed the Board that this item was not on the agenda and Mr. Teetzle was only discussing a concept at this point.

Mr. Teetzle said they initially developed a subdivision plan next to their one story brick building, but they discovered that they needed 120,000 square feet of acreage

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with a minimum of 300' feet of road frontage so they were needed to do a lot line adjustment with Great Bay Services to make their acreage compliant. He said they discussed the adjustment with Ms. Lewis at Great Bay Services and she was in agreement.

Mr. Teetzle said the purpose of the lot line adjustment was so they could expand their facility. Chairman Hebert said the lot was in office zoning and Mr. Teetzle said he thought it was in multi-purpose zoning and asked if they could do light manufacturing. Mr. Choate said it was the same zoning as the Allard property and Chairman Hebert agreed that light manufacturing would be allowed. Chairman Hebert read through the allowed uses in the office zone that included light manufacturing. Mr. Teetzle added that they had robust environmental plan recycling all their metals, coolants and oils at the facility.

Mr. Teetzle said they were trying to make the lot compliant so they could apply for a lot line adjustment without a variance. He said they also wanted an easement so they could use the road as intended to access the back of their development. He said they worked out a plan with Great Bay Services who would own the property. He said putting they were putting together a two year lease so they wouldn't have to close and move out right away and would donate the rent so that would give Great Bay Services the funds to find another facility. Ms. Lamson asked if the residential homes would remain and Mr. Teetzle said they would. Mr. Teetzle said they would install a security fence and shrubs between the properties.

Mr. Choate said the issue for Great Bay Services was if the easement area could be included in the lot area. Mr. Teetzle said the lot line would be as is and they were looking for an easement of use and the property line would go through the road. Chairman Hebert said the issue would be what the easement agreement said and permitted uses. Mr. Richardson suggested they consult with legal counsel regarding an access way through an easement. Chairman Hebert said Shattuck Way was on an easement. Mr. Richardson said it was a Town road, not an easement over private property for access. Mr. Teetzle said they would do research first.

Mr. Teetzle said part of their master plan would be to work with the Board over the next 24 months to develop a drainage plan so that they could start construction on their new facility as soon as Great Bay Services moved out. Vice-Chair Marconi asked if the 24' access road would be wide enough for their truck traffic and Mr. Teetzle said they could make that part of the approval. He said it would only be light truck traffic. Mr. Richardson asked what the access would be for and Mr. Teetzle said it would be minimal use for delivery. Chairman Hebert asked if they would be opposed to turning down Piscataqua Drive and Mr. Teetzle said they would rather not because of accessibility, parking and security reasons.

Mr. Teetzle presented the plan for the Shattuck Way extension to Gosling Road proposal. Mr. Teetzle said they received their plans to replace the water main that went through PSNH property along Shattuck Way and met with the Selectmen, the City of Portsmouth, and Tyco to sign off on the plans. Chairman Hebert said the Town would be meeting with Mr. Teetzle to discuss the Shattuck Way plans on August 18, 2014.

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Mr. Teetzle said they had to close their agreement with Great Bay Services in 60 days and wondered how soon they could get their subdivision application approved. Chairman Hebert said they were only in preliminary discussions and there were other public hearings on the upcoming agenda, but asked if everyone would be able to attend two meetings in September. Chairman Hebert said they could review subdivision on September 8, 2014, and then have a preliminary hearing on September 15, 2014 or possibly September 22, 2014 to go through the site plan for expansion. Chairman Hebert said they would want to give the plan to Altus Engineering for review.

Chairman Hebert asked Mr. Teetzle to contact Mr. Morgan on Monday.

Minutes: *Mike Marconi moved to approve the Minutes for the July 14, 2014 meeting with corrections. Rick Stern seconded, and all were in favor.*

Adjournment: *Justin Richardson motioned to adjourn, and Mike Marconi seconded. All were in favor and meeting adjourned at 9:50 p.m.*

Next Meeting: Monday, September 8, 2014

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