

Town of Newington, NH
PLANNING BOARD
& Board of Adjustment
Meeting Minutes, Monday, March 25, 2013

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

Present: Planning Board: Vice Chair, Mike Marconi; Patty Borkland; Dick Spinney; Alternate Member, Peggy Lamson; Jack Pare; ZBA: Chair, Matt Morton; John Frink; Board of Selectmen Rep, Rick Stern; Building Inspector, John Stowell; Town Planner, Thomas Morgan; and Jane Kendall, Recorder

Absent: Planning Board: Bernie Christopher; ZBA: Ted Connor; Ralph Estes

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

Work Session: Procedural Basics for Planning & Zoning Boards Continuation

Planning Board Chair Denis Hebert welcomed LGC Attorney, Paul Sanderson back, and said he liked the idea of joint sessions with other boards when appropriate. Attorney Sanderson said many town boards don't communicate with one another, or leave communication to staff members as go-betweens, not necessarily because they don't trust one another but because they don't fully understand what the other boards do. Sanderson said a planning board's role is to be the broad thinkers who discuss and establish ordinances, whereas zoning boards role is to consider adjustment requests on a case by case basis without questioning the ordinance itself.

Chair Hebert said he was under the impression that the boards were not to talk to one another. Town Planner, Tom Morgan said he had cautioned Planning Board members not discuss cases coming to the Board for site review because it could give the wrong impression. Attorney Sanderson said that would be true for a specific case, but it would still be acceptable to discuss zoning ordinance interpretation outside of the particulars of a case. Peggy Lamson said she knew board members aren't supposed to discuss cases on meeting agendas outside of meetings, but believes it's very helpful to discuss procedures. ZBA Chair, Matt Morton said he is careful not to discuss cases when he notifies members of a meeting, and agreed that they had to review each applicant on a case-by-case basis. But Morton said he was often concerned with denying cases out of concern for causing hardships, which might result in applicants saying their properties would be unusable without variances, and insisting on tax relief, or even asking the Town to purchase the properties. Attorney Sanderson said it is important to make the process as easy as possible for the applicants in a timely manner, and inform abutters.

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John Frink asked if the ZBA can or should recommend that applicants go to the Planning Board first. Attorney Sanderson said it depends on the case. If the case involves preliminary planning or design review, then they should go to the planning board first, but if for instance it is an exception to acceptable use, then the applicant should go to the ZBA first, and then go to the planning board after the issue has been resolved. Denis Hebert said it makes sense when an applicant wants to do something that is strictly against permitted use, but asked if in other cases, an applicant might go to the Planning Board before going to the ZBA to consider a different solution, eliminating the need to go to the ZBA. Attorney Sanderson agreed that it would need to be determined if they needed to go to the ZBA, and that the ZBA doesn't need to know all the design review issues. Attorney Sanderson agreed that in most cases it is appropriate to go to the planning board first unless it is a simple variance issue like a setback with no other alternative. Tom Morgan also noted that there are a certain number of days for the Town to respond after an applicant files an application with the ZBA. Attorney Sanderson said the burden of proof is on an applicant as a civil dispute in something like a property line or covenant, and not within a town's jurisdiction. John Frink said applicants used to go to the Planning Board for everything, and there were rulings against irregular lots which made everything easier to decide, but many applicants use savvy engineers now which complicate issues.

Attorney Sanderson said RSA: 676:4 says planning boards must go through three stages when reviewing applications: 1) Prepreliminary Review; 2) Design Review; and 3) Application, and it is important not to confuse or combine the processes, or drag the design review out longer than a year, allowing ordinances to be changed in the middle of a review, whether the changes be against or in favor of an applicant. Sanderson said it is important not to rush through the review processes and into the application process however because there is a limited time of 65 days to give adjudication for the application process unless the applicant waives the time limit. Denis Hebert said the Planning Board had a recent case where the "target kept moving" with back biting, bait and switch, constant changes after DES had denied a wetlands permit, as well as presenting different plans for approval from the utilities than had been shown to the Board. Jack Pare asked if the time limit would count if the plan was not complete, and Attorney Sanderson said the plan has to be complete, or substantially complete with staff listing what is and isn't complete. Chair Hebert said one of the problems is that there is often not enough time or enough Board members, and projects and applications are reviewed at the meeting. Selectman, Rick Stern said it now sounds like they went into the application stage too soon on a recent case when the applicant had not complied with the review process. Attorney Sanderson said it is very important to give people deadlines, to note the submission dates from plans and any changes, and not approve projects until they meet all the deadlines and requirements. Matt Morton asked if it is legal for the ZBA to set schedules for completion, and Attorney Sanderson said yes it is.

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Tom Morgan said sometimes they still see problems even when approvals are made with conditions. Peggy Lamson asked what could be done about construction projects that do not comply or go unfinished in a timely manner. Attorney Sanderson said although neighbors can sue for nuisance, it puts a burden of legal expenses on them, and so it is important for towns to require construction bonds. Denis Hebert agreed, objecting to too much responsibility being put upon the building inspector. Sanderson said boards are not enforcement agencies, but towns can then declare a public nuisance, impose fines, not return the bond, or go to Superior Court to get an injunction for a change of behavior. Sanderson said, however RSA: 676:4A also allows the revocation of a plan by holding a public hearing, but noted that State building code, RSA: 676:34 was changed this summer that combines the building and fire code. John Frink questioned whether Boards should pursue public nuisance issues rather than allowing neighbors to address on their own. Sanderson said planning boards, building inspectors, fire chiefs and police chiefs need to make enforcement a team effort and bring issues to the Board of Selectmen to get voluntary compliance within a reasonable time frame.

Chair Hebert asked how Boards could conduct a joint meeting to avoid so many problems. Attorney Sanderson said it is easier if the applicant goes along with the planning board in the first place, keeping in mind that the ordinances and procedures are established and not up to the applicant. Attorney Sanderson said in summary that it is important for boards to have strong communications, understand the rules of procedure, which include the prepreliminary review, design review, and application procedures without being pushed into skipping steps, and identify if applicants are complying or in violation. Denis Hebert said it is often challenging when ordinances cannot foresee every angle or possibility. Sanderson said according to RSA 674:21, boards can draft innovative techniques for wetlands land use and buffer zones so long as they are not too extreme.

Attorney Sanderson informed the Board that the NH Local Government Center would be presenting a lecture covering land use on Saturday, May 11, 2013. Tom Morgan said there are also law lecture series each fall in early September or Early October. Board members were encouraged to attend them.

Adjournment: The Boards adjourned at 9 p.m.

Respectfully

Submitted by: Jane K. Kendall, Recording Secretary