

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – October 15, 2012

- Call to Order:** Chair Denis Hebert called the October 15, 2012 meeting to order at 6:32 PM.
- Present:** Patty Borkland; Bernie Christopher; Jack Pare; Dick Spinney; Alternate Member, Peggy Lamson; Board of Selectman Representative, Rick Stern (arrived at 7:05 PM); Jane Kendall, Recorder; and Thomas Morgan, Town Planner
- Absent:** Mike Marconi, Vice Chair
- Public Guests:** Jane & Michael Mazeau; Attorney Bernie Pelech; Attorney John Ratigan; Alex Ross; Kay & Joe Akerley; Tim Haggan; Joe Mitchell, Mr. Short of Short Family Ltd., Chris Ten Hagen

1) Public Hearings:

A) Proposal by **Michael & Jane Mazeau** for lot line adjustments, and a subdivision that would convert two lots into five lots at 124 Fox Point Road, Tax Map 11, Lots 13 & 14.

Board Chair, Denis Hebert expressed concern regarding proceedings without the entire Board present, including Vice Chair, Michael Marconi, and Board of Selectmen representative, Rick Stern, stressing the importance of attendance and familiarity with documentation for all Board members.

Mazeau counsel, Attorney Bernie Pelech expressed frustration with Town Planner, Tom Morgan's responses to the most recent plans and easement deeds in Morgan's October 11, 2012 memo to the Board, "Outstanding Issues – Mazeau Subdivision Application". Pelech said he sent the easement documents to Town counsel, Attorney John Ratigan along with changes as requested, and did not think Mr. Morgan should be "second guessing" his work though Pelech did go through Morgan's questions on the easement documents. Alternate Board member, Peggy Lamson said she took umbrage with Attorney Pelech's criticism of Mr. Morgan doing his job, asking questions and communicating them to the Board for consideration. Lamson reminded Attorney Pelech that while his actions are based on payment by his client, Board members are not paid for their review of applications and Town ordinances.

Board member, Patty Borkland said she thought the driveway maintenance agreement should've been provided to Board members as requested two meetings ago regardless of Tom Morgan's memo. Chair Hebert said the responsibility ultimately rests on the applicants' legal counsel, not the Board or Town counsel.

Attorney Pelech said he had not provided the third Fox Point Road culvert easement at that time because he thought the Town would do it. Board members, Bernie Christopher and Jack Pare both recalled that the Board said they would provide

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – October 15, 2012

the initial draft for Attorney Pelech to finalize. Town counsel, John Ratigan said it would make no difference who drafted the document in the first place until it was approved by the Board.

Peggy Lamson asked Michael Mazeau if the Board had the current plan, and he said they did. Tom Morgan said he had received the plan on the previous Thursday, and Mr. Mazeau said it was the same plan as the previous month, but the notes had been updated in response to Altus Engineering's queries.

Chair Hebert said his main concern with the current plan still remained with the 10' by 200' strip that ran from Lot 14-6 along the front of Lot 14-7. Hebert said he had again considered alternatives, and wondered if they might create a shared drive out the back of Beane Lane. Michael Mazeau said there had been another plan recommendation for the house envelope for Lot 14-6 to be further back, but said that would infringe on his current septic reserve area, and would prefer to stick with the current plan "for better or worse". Tom Morgan said one of the reasons there is concern with a 10-foot strip along Lot 14-7 is the potential for setback ordinance issues to abutters and the wetlands which would require additional variances should any future land owners want to do anything like install a storage shed in their backyard. Mr. Mazeau said it is their intention to eventually sell their current home and move onto the Lot 14-7 upon retirement, and they had no intention of putting up any additional structures. Chair Hebert said that may be, but there would be no accounting for what another owner might want to do in the future, so it was important to consider now.

Chair Hebert asked the Board to carefully review the application. Chair Hebert said Tom Morgan's memo referenced the intent of the Town's Master Plan. Board member, Dick Spinney said he was okay with the 10-foot strip. Peggy Lamson complimented Tom on his work, but said the math hadn't been considered when the ordinance was created. Jack Pare said there clearly was a hole in the ordinance considering the geometry of lots, but there was no zoning to prevent gerrymandering. Patty Borkland said she didn't like it, but agreed it appeared legal, and until zoning was reviewed and fixed, they would be stuck with it. Tom Morgan said Recommendation #19 of the Master Plan says lots are to observe wetlands setbacks, and the lot in the back would require a variance for any changes.

Chair Hebert commented that in the history of past subdivision applications, including Hodgson Farm Road and Mott Cove, applicants had resolved any objections the Planning Board had to prevent hardships to future landowners. Mike Mazeau replied that he thought the Board was more flexible with other subdivisions, and Chair Hebert said the lack of flexibility with this application had been self-imposed. Attorney Pelech interjected that Chair Hebert had asked the Board what they thought of the 10-foot strip, and the Board had okayed it, and he thought they should move on. Board of Selectmen representative, Rick Stern arrived at 7:05 p.m. and Chair Hebert updated him on the discussion. Rick Stern said he wanted to be sure there wouldn't be any legal issues. When asked about denying an application out of concern for future liability, Attorney Ratigan said ordinance or zoning reasons would have to be provided. Chair Hebert commented that even if the gerrymandering is legal, the Board does not have to agree,

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – October 15, 2012

and he also believed they didn't have to approve the plan if there is a viable alternative. Bernie Christopher said he wished he'd known that earlier. Attorney Pelech wanted to know if he needed to take the case to Superior Court. Jack Pare commented that the Board couldn't re-engineer an applicant's plan. Dick Spinney wanted to know if it would be out of order to make a motion for a vote, as he was ready to vote for the plan as it was. Jack Pare said they should move on, but they still need to dot their i's and cross their t's. Patty Borkland responded that it appeared there was nothing more the Board could do, and Rick Stern said there is something that can be done. Chair Hebert said in good conscience he could not approve the application, and would be willing to go to Superior Court if the Board was behind him, but would also move forward if the Board preferred. Hebert asked Attorney Pelech to give his easement documents to Attorney Ratigan for review.

Alex Ross with Ross Engineering then came before the Board and addressed issues brought up by Town consultant, Altus Engineering. Chair Hebert asked why some of the questions were repeated, and Ross said he didn't know, but had a face to face meeting planned on Friday, October 19, 2012. Hebert suggested the engineers meet and include Tom Morgan so he could provide the information to the Board. Mr. Ross said he had met with PSNH, Fairpoint, and the City of Portsmouth to review the utility access plan, and would request memos. Ross said he would provide a letter from Mike Jenkins at the City of Portsmouth Water Department, but Hebert said Jenkins is an engineer in the maintenance department without the needed authority. Chair Hebert said he will need to provide signed letters from the utility's' chief engineers.

Tom Morgan asked if there would be any hay bales on the site, and Ross said there would not be. Dick Spinney said mulch hay seldom has anything besides clover or timothy hay, and Chair Hebert agreed, but said there would be no way of knowing where the hay came from, and if it would bring in seed from invasive species.

Mike Mazeau then said he would like to discuss Tom Morgan's suggestion that he request waivers, with the first regarding the conformity to the Master Plan. Tom Morgan suggested that the Board review the Master Plan first.

The second would be to request a waiver of city water on Lot 14-6, using well water instead due to access difficulties. Again, Alex Ross said he would provide a letter from the City of Portsmouth Water Department.

The third would be to request a waiver of survey pins. Chair Hebert asked if there is a pivotal center point, and David Hislop of Knights Hill Surveying said they are usually just along the road, and at the back corners. Hebert asked Hislop to sign and provide a plan.

Lastly, Mr. Mazeau said he would like the bond requirement waived as he thought it didn't apply to a private, shared driveway. He also said Lots 14-6, 14-7 and 14-9 would have single service utilities, and Lot 13 & 14-8 would share an oversized power line, and individual water lines. Tom Morgan said the bond is for sewer and water service, and would therefore apply, and would require a waiver. Attorney Ratigan said the bond is usually controlled by the occupancy permit. Chair Hebert said bonds had previously been controlled by the Planning Board, but the Board of Selectmen now

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – October 15, 2012

wanted to take that role. Rick Stern said they would need an excavation permit for tearing up the road.

Chair Hebert reminded the applicant that land buyers needed to be informed that there is no mail, trash or school bus pickups on a private driveway, and they would need to be brought down to the curb cut on the Town road.

Tom Morgan said he noticed some discrepancies between the Hislop and Ross plans. Chair Hebert said they needed to be fixed and submitted to Mr. Morgan.

Chair Hebert continued the public hearing to next month, Monday, November 19, 2012.

B) Proposal by **Kay Akerley** for a 2-lot subdivision at 325 Fox Point Road, Tax Map 9, Lot 2; and a proposal by Kathleen Akerley, and Charles and Jan Stuart for lot line adjustment at 311 Fox Point Road, Tax Map 10, Lot 24.

Alternate Board member, Peggy Lamson recused herself as an abutter to the applicants.

David Hislop of Knights Hill Surveying came before the Board with plan updates, noting that the application was changed from a three lot subdivision to a two lot subdivision with a lot line adjustment because Jan & Dan didn't want an extra lot beside them, though they did test pits anyhow. Hislop said he applied for State Subdivision approval, and the documentation would be forthcoming.

Dick Spinney asked why the back line on Jan and Dan's lot was not straight, and Dave Hislop said they didn't have enough land available to make it straight.

Town Planner, Tom Morgan said he had received a letter from Rockingham County Conservation District that said the test pits meet all of their standards. Chair, Denis Hebert said the pending DES permit is the only hold up, and continued the public hearing to the next month, Monday, November 19, 2012.

2) Preliminary Discussions:

Proposal by **Short Family Ltd.** To construct a gasoline station at 399 Shattuck Way, Tax Map 7, Lot 16

Attorney Bernie Pelech came before the Board on behalf of Short Family Ltd. prior to a meeting with the Zoning Board of Adjustment (ZBA) for a variance for a non-allowed use, which Town Planner, Tom Morgan reminded him is a Planning Board policy. Attorney Pelech said the proposal would require two lots between Custom Pools and the exit ramp to be consolidated, and the present dwelling near the ramp to be removed. Pelech said DOT would be moving the turnpike and ramp toward the west away from the property and he had a verbal understanding that the right of way owned by the State would be conveyed to the Short family upon completion of the Spaulding Expansion project. Chair Denis Hebert asked if there were any other right of ways crossing the property, and Mr. Short said only utility crossings, and the DOT culvert and drainage easement which caused additional wetlands to the area.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – October 15, 2012

Chair Hebert asked what hardship they would be presenting to the ZBA, and Attorney Pelech said it was none of the Planning Board's business, but the property had been on the market for 15 years, and the Short family felt they couldn't do anything with it except build a gas station. Chair Hebert asked if any other group had made an offer on the property, and Attorney Pelech said the only other group was a flea market and a variance had already been approved. Chair Hebert said a variance request is usually used for a wetlands setback, and asked if they had ever considered approaching the Planning Board to get the area rezoned instead of getting a variance for spot zoning. Tom Morgan asked if the wetlands had been mapped, and Pelech said they had.

Joe Mitchell of Mitchell's Gulf said he recalled there being an ordinance restricting any more gas stations in Town. Tom Morgan said that was correct, if a use was not listed, then it was prohibited. Attorney Pelech said he could still apply for a variance.

Peggy Lamson said she thought it would be a detriment to the community to have another gas station there. Tom Morgan said his experience with gas stations is that oil companies are particular, and he didn't think that the area depicted would meet the needs of any one of them. Pelech said the plan presented was replicated from a previous applicant with 8-16 pumps.

Attorney Pelech said traffic studies had been done, and Chair Hebert said the Board would like to see the drawings of the proposal. Tom Morgan asked if they would provide the traffic study for the Planning Board to review, and Pelech said he was only required to bring in the preliminary plan, and that was all he would do. Morgan asked if he planned on bringing the traffic study to the ZBA meeting, and Pelech said they may if asked. Morgan said the ZBA would need to see them to determine the impact on the community. Chair Hebert said the Planning Board would like to have information so their representative on the ZBA could be informed.

3) Great Bay Marine – No one showed up.

4) Discussion

Board of Selectmen representative, Rick Stern asked Town counsel, Attorney John Ratigan if the Board of Selectmen should take questionable requests for variance up with the ZBA, and Ratigan said it might be a good idea for the BOS to file the request for the ZBA hearing, and review to be sure they go through the five criteria. Ratigan also said it would be useful if the Planning Board and the ZBA worked together, otherwise it saddles the Planning Board with a zoning problem. He suggested they could call a joint meeting of the Planning Board and the ZBA to work together on the application.

Minutes: Jack Pare motioned to approve the Planning Board Minutes with corrections for September 24, 2012. Peggy Lamson seconded the motion, and all members voted in favor.

Adjournment: Bernie Christopher motioned to adjourn. Dick Spinney seconded, and all were in favor. The meeting adjourned at 9 p.m.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes – October 15, 2012

Next Meeting: Monday, October 22, 2012

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