

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, October 23, 2023

- Call to Order:** Chair Denis Hebert called the October 23, 2023, meeting at 6:00 p.m., followed by the pledge of allegiance.
- Present:** Chair Denis Hebert; Vice-Chair Christopher Cross; Board Members: Ben Johnson; Jim Weiner and Peter Welch; Alternate Board member, Rick Stern; Town Planner, John Krebs and Jane Kendall, Recorder
- Absent:** Board Member Russ Cooke; Board of Selectmen's Representative, Bob Blonigan;
- Public Guests:** Attorney John Bosen; John Stebbins, Eben Tormey, and Joe Geoheghan, Partners with Tidemark; Town counsel, Attorney John Ratigan; Mark Phillips

I) Discussions:

A) Continuation of discussion on **Planning Board Rules of Procedure**

This item was delayed to hear the following item first.

B) Preliminary Discussion on **Proposed Zoning Amendment and Development Proposal** on the southwest side of the Spaulding Turnpike and adjacent to Shattuck Way

Town Planner, John Krebs asked the potential applicants if they had any issue with Board member, Ben Johnson was with North and South Construction, and Alternate Board member, Rick Stern was an abutter sitting at the table. Attorney John Bosen replied that they had no issue with Mr. Johnson and Mr. Stern listening to the discussion.

Attorney Bosen said they wanted to start a dialogue regarding a proposal in the office zone that would require a mixed-use overlay zone between Shattuck Way and the Spaulding Turnpike.

Attorney Bosen passed out copies of the proposal for a nursing facility to Board members. Attorney Bosen said the 150–175-unit nursing home would involve three

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, October 23, 2023

levels of care for independent living, assisted living and memory care, and the potential for small retail on the adjacent property on the corner of Nimble Hill Road and Shattuck Way that was divided by wetlands.

Attorney Bosen noted that much needed nursing facilities for the ageing population were scarce, and operation would have limited impacts on Town services.

Attorney Bosen said they would then have to go before town if the proposal for an overlay district was supported by the Planning Board, and then present specific senior housing project. Attorney Bosen said this wouldn't take the office use away, but they didn't see office use development as a usable option, they would consider retail for the abutting lot.

John Stebbins, Partner with Tidemark said that combining independent living, and assisted living with the memory care facility was good for couples as they aged, and the site would be an easy access of the highway.

Mr. Stebbins said the facilities would also provide three meals a day, and recreation.

Mr. Stebbins showed similar sized senior housing facilities of approximately 120 units that they had constructed in New London, New Hampshire, Weymouth, Massachusetts, Coopers Corner, New York, Belair and White Marsh, Maryland. Mr. Stebbins said that the facility that they had designed and built in Sheldon, Connecticut won a national award.

Board member, Jim Weiner asked how many locations they had done, and Mr. Stebbins replied that ProCon, their design and construction division had designed approximately 30 , and built approximately 20 sites.

Mr. Weiner asked if part of the site plan included parking for residents' vehicles. Mr. Stebbins replied that it was part of the site plan as residents could and do have cars, but they don't use them that often. Mr. Stebbins added that shuttles were provided for shopping and medical appointments.

Mr. Johnson noted that they might need a variance for parking pavement, and Mr. Krebs agreed.

Mark Phillips of Hodgdon Farm Lane asked if the units were rentals or buy in. Mr. Stebbins said he was not sure, but the group that operated the senior living facility in Hampton rented exclusively, but Riverwoods in Exeter and Durham have buy-ins.

Mr. Weiner asked what kind of emergency services would be needed. Mr. Stebbins replied that he would find out.

Chair Hebert commented that there likely would be a higher demand for ambulance services, as well as a higher demand for wastewater treatment. Mr. Torrens responded that there were gas, sewer, and water connections on site. Attorney Bosen added that there were medical services on site, and there wouldn't be a big impact on local services

Chair Hebert asked about staffing. Mr. Stebbins said he imagined there would be around 20 to 30 at a time, but he could find out.

Town of Newington, NH PLANNING BOARD

Meeting Minutes, Monday, October 23, 2023

Chair Hebert asked if medical care and hairstylists, etc., would be provided. Mr. Stebbins replied that they would provide nursing care, three cart and buffet meal services a day, a hairdresser, nail care, a small convenience or gift store, multipurpose theatre room, fitness room, and communal gardens.

Mr. Weiner asked if their services would be offered to others, and Mr. Stebbins replied that services were generally only for residents.

Chair Hebert said he would imagine that they would want complimentary retail use for a high-end senior housing facility. Mr. Stebbins said they didn't have any specific plans for retail at this time, but they were thinking along the lines of a bakery coffee shop or banking.

Chair Hebert asked how much of the parcel would be used for senior housing. Mr. Stebbins said they would probably use two-thirds for senior housing, and the remaining third would be retail.

Mr. Weiner said he was not sure why they were going after retail a challenge, and a smaller memory care that would be more lucrative so long as they had internal retail support.

Mr. Torrens replied that they were proposing separate retail use because the lots were divided by wetlands. Mr. Torrens added that the layout of the memory care unit was for ease of services to move through the building.

Chair Hebert commented that many commuters would be interested in coffee shops, and asked if they considered access to site. Mr. Stebbins said he imagined the access would be off Shattuck Way because access off the highway or ramp would not be a good location. Mr. Stebbins said the entrance to the retail lot would be at the existing curb cut on Shattuck Way.

Eben Torrens, partner with Tidemark noted that the corner of the lot off Exit 4 of the Spaulding Turnpike onto Nimble Hill Road was used for utilities. Mr. Torrens said the access to the senior housing lot would be near the current construction entrance on Shattuck Way.

Mr. Torrens said they kept the dimensional requirements in mind, and maintained the existing setbacks in the proposed overlay district.

Vice-Chair Cross asked about construction on the elevation differences from Shattuck Way and Spaulding Turnpike. Mr. Torrens stated that the top of the site was level, and away from the slope easement to maintain Shattuck Way. Mr. Torrens added that the driveway elevation would be about 15 feet above Shattuck Way, wrap around the building.

Mr. Torrens said they would work grades into the building as well.

Vice-Chair Cross asked if the four stories would be above the Spaulding Turnpike elevation, and Mr. Torrens said they would.

Vice-Chair Cross said walking along the bay would be attractive, and asked if they could build an overpass over Shattuck Way to the bay. Mr. Stebbins said it would be cost prohibitive, but they could do paths on site.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, October 23, 2023

Chair Hebert asked if they were making any accommodation for the highway noises. Mr. Stebbins said they would design the site to operators' specifications, and exterior walls and windows would be constructed to reduce decibels. Mr. Torrens added that it would never be 100%, but would be greatly reduced.

Mr. Weiner said it would be up to the residents if they wanted to live there, but he thought they should have a good sound engineer for sound abatement because they were near the bridge, highway, and water.

Mr. Stebbins said they owned two hotels on a highway in Massachusetts, and there were no complaints.

Mr. Johnson commented that they could not hear highway noise at their offices unless the windows were open.

Mr. Stern responded that the noise of vehicles thumping over the bridge, and jake brakes were audible from his house on Trickey Cove off Shattuck Way.

Mr. Stern added that the proposed entrance was across the street from his driveway, and he often had trucks come up on him quickly. Mr. Krebs asked where he thought they should put the drive, and Mr. Stern recommended closer to Atco Air. Mr. Stebbins said they could consider the entrance further to the south.

Vice-Chair Cross said the Town might be interested if they would consider work force housing for the abutting lot. Mr. Torrens said they hadn't discussed it, but could entertain the idea.

Chair Hebert commented that a 20% increase to the town's population would change the voting demographics. Attorney Bosen said they could provide data showing that senior housing residents were rarely active in their communities. Mr. Stebbins added that most senior housing residents didn't vote either.

Vice-Chair Cross asked if dependents would be allowed to reside at the facility. Mr. Stebbins said they would not.

Mr. Krebs said senior housing usually restricted primary residents under 55, or 65, but a younger spouse could reside there, and some places allowed short stays for grandchildren. Mr. Stebbins agreed that was the reason for additional independent housing for spouses of those in memory care.

Chair Hebert asked if they would offer the town's people a special option. Attorney Bosen said he didn't know because they had to be mindful of the point-of-sale base of tax base. Mr. Stebbins said could ask the operators.

Chair Hebert asked that they provide a rate for each resident. Mr. Stebbins said the market rates for a standard or higher end facility similar to the Hampton facility.

Chair Hebert said the Town already allowed residents the option of building accessory dwelling units for senior parents, so they needed to ask what the benefits to citizens in town would be because not all residents would get placement. Mr. Torrens said will be attractive for many people to downsize and move into a facility near their existing communities.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, October 23, 2023

Mr. Weiner asked how they could respond to residents that might want to be considered for facility. Mr. Stebbins agreed that it would be fine to give residents an option so long as an applicant could meet the market rate.

Attorney Bosen said they would have to look into the Fair Housing Act.

Mr. Krebs said the Fair Housing Act only protects against discrimination, so they would only have to say that they would give residents a fair opportunity.

Town counsel, Attorney John Ratigan agreed that would be something for a business to determine, and was not something a municipality could mandate with a private business.

Attorney Bosen added that the Portsmouth Housing Authority gives preference points for Portsmouth residents, or employees of some duration. Mr. Stebbins added that the Housing Authority dwellings were below market rate so there was a long wait list.

Chair Hebert asked if they would include Atco Air in the overlay district? Mr. Stebbins said they didn't rent the parcel, but had talked with the renters, but hadn't talked to the owners. Mr. Torrens said they wouldn't change the use, and would allow them to continue their use.

Chair Hebert asked if they would be willing to remove the retail use off the list, and return after they had something specific in mind.

Chair Hebert said Great Bay Cross Fit, Mainely Grass, and Mitchell's Gulf were nearby, and this site was only 10 acres, so he was concerned with spot zoning for a single use. Attorney Bosen said the proposal would be specific, so it would be up to the Board, but they could expand the overlay district.

Mr. Krebs agreed that they needed to be a little concerned, and that was why he suggested that the Board look at the five permitted uses, and if they would be affiliated with senior housing, compared to a chain restaurant that would change the character of the neighborhood with a lot of traffic.

Mr. Weiner noted that the Town preferred to maintain zoning district uses, and would want to be sure that they didn't go further.

Chair Hebert commented that they would be up against other challenges with a high density of up to 150 residents on the lot.

Chair Hebert asked what the timeline of the project would be. Mr. Krebs responded that they were aware that the Planning Board would need to propose an amendment for an overlay district if they were interested. Mr. Krebs said the Board would have to work on the zoning amendment over the next couple of months before holding a public hearing on zoning by the end of December. Mr. Krebs said, if the Board was not interested, they could submit a citizen's petition for the Planning Board's recommendation.

Attorney Bosen agreed, and said he would still need to work up a design proposal.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, October 23, 2023

Chair Hebert agreed that it would be a beautiful spot for residential housing, but the topic was new to everyone, so he suggested that they return after the Board had time to mull the proposal over.

Mr. Krebs said they should include an idea of what the proposal would look like when they returned.

Chair Hebert pointed out that this was a busy time of year for the Planning Board, and they should have been approached earlier in the year if they wanted to start construction next spring. Chair Hebert said the next meeting probably wouldn't be scheduled until the end of November because of a lack of availability of the Board.

Mr. Tormey said they knew they still had to go through the site review process.

Mr. Krebs announced that he would be out of the office from November 4 to November 18, 2023.

Chair Hebert said they could probably put them on the next agenda for Monday, November 27, 2023.

I) Discussions:

A) Continuation of discussion on Planning Board Rules of Procedure

This item was delayed to hear the previous item.

Chair Hebert announced that he had asked Town counsel, Attorney John Ratigan to attend to answer the Board's question.

Mr. Krebs pointed out that he had highlighted the change items that were previously discussed.

Discussion ensued regarding the order of agendas.

Mr. Krebs noted that the recommendations were in the statute, but it was acceptable to be flexible, such as doing minutes at the end of meeting as most boards do so they can hear applicant presentations first. Mr. Krebs added that virtually no town had a secretary, or anyone do roll call.

Mr. Weiner said he had reviewed the changes, and would not support the term "generally" regarding the order unless the Board voted on the change for a reason.

Chair Hebert reminded Mr. Weiner that this item was voted on at the previous meeting to allow the acting chair to make that determination with an announcement.

Chair Hebert said he would like to retain approval of the Minutes toward the end of the meeting so applicants wouldn't have to sit through the Board going through the Minutes, and he didn't see any liability.

Mr. Weiner said that someone had told him that they were upset when asked to wait when the Chair changed the order of the agenda, and that he wanted to maintain continuity from each meeting.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, October 23, 2023

Mr. Weiner said the chair sets the agenda, and facilitates the meeting, but he was not in favor of the chair making decisions by personal preferences. Mr. Weiner said the Board of Selectmen reviewed their Minutes for approval up front, and applicants could plan accordingly.

Chair Hebert said Minutes were sent out to Board members to read before meetings so they would be up to speed with discussions. Mr. Weiner said Chair Hebert often decides not to correct minutes because he was too tired at the end of meetings.

Jim Weiner moved to open a revote on the changes to term "generally" to "shall" regarding following the order of meeting agendas.

Vice-Chair Cross asked what new information was before the Board for a revote. Mr. Weiner replied that he had been told at the previous meeting that the only way to change the order of the agenda was by saying "generally," but he discovered that a change to the agenda could be done by voting.

Chair Hebert responded that changing the term from "generally" to "shall" for the order of the agenda removed the authority and flexibility of the facilitating chair. Chair Hebert added that he wanted to keep review of the Minutes at end of the meeting to be fair to other issues on the agenda.

Alternate Board member, Jill Semprini asked if Board members could object to changes to the agenda rather than vote.

Mark Phillips of Hodgdon Farm Lane expressed dismay with the time that Mr. Weiner was taking over his disagreements. Mr. Weiner responded that this was Board business, to which Mr. Phillips replied that he was a resident, and the meeting was to be run by the chair. *(Mr. Phillips left at this point in the meeting.)*

Jim Weiner moved for a second to his vote, but there was not a second. Vice-Chair Cross announced that the motion failed with no vote.

Mr. Krebs distributed an email from absent Board member, Russ Cooke asking for a committee to review the rules and procedures.

Board member, Peter Welch said they should change paragraph 5 that states that regular meetings be held at Town offices at 205 Nimble Hill to say that they should be held at a Town facility. Mr. Krebs said it was rare, but there could be a site walk or an off-site meeting. Chair Hebert suggested that it say "unless otherwise scheduled" so that a change of meeting place could be declared. Attorney Ratigan pointed out that site walks could also be considered meetings, so meetings could be held at a different site.

Chair Hebert announced that Alternate Board members, Rick Stern and Jill Semprini would be voting.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, October 23, 2023

Denis Hebert moved to change to the term "generally in the 1st, 3rd, and 4th paragraphs. Rick Stern seconded the motion, and all were in favor.

Chair Hebert noted that page 7 said public hearings, and didn't say anything about public meetings.

Mr. Krebs asked if a roll call was required. Attorney Ratigan replied that they should change it to "as required for non-public meetings.

Peter Welch moved to change 9B to say, "a roll call shall be called as required for non-public meetings." Chris Cross seconded, and all were in favor.

Mr. Weiner commented that a roll call might be required for a telecom or Zoom meeting. Mr. Stern responded that the term "as required" would cover it.

Chair Hebert pointed out that the recording secretary was different than the administrative assistant in Town Hall that assisted Mr. Krebs and occasionally the Chair.

Chair Hebert said that these were guidelines that the Board used as required, and weren't always in order, but Attorney Ratigan would review them step by step as requested by a Board member to be sure that the Board stayed out of trouble.

Mr. Weiner said the Board could determine whether to have legal counsel present so they could hear the answers together, or to take calls with questions.

Vice-Chair Cross said legal counsel usually writes a response to legal questions that were brought up, and those were usually shared with the Board, but he was also comfortable with the Chair or Town Planner contacting the attorney with simple questions. legal questions.

Vice-Chair Cross said Board members should be able to operate within the Ordinances, Rules, and Regulations without debating the details, and he was not in favor of having legal counsel stand by on telephone alert on the second and fourth Monday evening of every month to recreate a question four different ways.

Mr. Weiner said he liked legal responses, and agreed that it was not necessary to have four different answers, but he had a problem with gray areas, so he preferred having legal counsel present for clarifications, especially for items not on the agenda.

Mr. Stern said he liked written answers best because he experienced different answers to questions when he was on the Board of Selectmen.

Chair Hebert said it saved cost and time for Mr. Krebs or any chair to obtain a quick legal answer, but the Board could always ask Mr. Krebs to recheck if they were not happy with an answer.

Mr. Krebs said his need for legal counsel was mostly to review amendments, easements, and homeowner association agreements, but seldom Board matters. Mr. Krebs said otherwise, months could go by without talking to legal counsel, or he might

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, October 23, 2023

need a two-minute call for a quick and simple question, but he agreed that a paper trail could be helpful.

Mr. Weiner said he wanted open communication, and at \$180 an hour, he didn't want to hear second-hand legal responses to regulations from the Chair.

Mr. Krebs said he talked with Mr. Cooke regarding his concerns before he received his email, and told him that it wasn't necessary to dive that deep, but it was his opinion, so he shared it with the Board.

Mr. Krebs said he had worked with a lot of boards in a lot of towns, and had never spent as much time on rules and procedures because most boards used boiler plate rules and procedures.

Mr. Krebs said he understood wanting to spell everything out, but they could make the rules and procedures ten inches thick, and would still need to deviate because things were not always black and white.

Vice-Chair Cross commented that public procedures had to be posted, and the Board can't do informal subcommittee. Mr. Krebs noted that administrative mistakes could be fixed at any time without a town meeting.

Rick Stern moved that changes be sent to legal counsel for review of the time of year on page 5, and swapping the order of the Minutes with Public Hearings be swapped on the order of agenda. Chris Cross seconded, and all were in favor.

Chair Hebert said he would also want the Chair and the Board to be able to ask the Town Planner about their concerns or clarifications regarding the formal public hearing process on page 9.

Mr. Krebs said it was written the way it should be. Chair Hebert asked Attorney Ratigan if the Board should include in the motion that an applicant could expand their presentation after being accepted as substantially complete. Mr. Weiner said it could be flexible, and should be up to Mr. Krebs whether the applicant needed to present more.

III) Additional Discussions:

Vice-Chair Cross said he thought that legislation indicated new restrictions on some 55 and above housing could become null and void, and a town could allow other housing on that parcel in the future. Attorney Ratigan said he thought that the New Hampshire Municipal Association had said that might be for the area, but he was not certain. Attorney Ratigan said the Town could add workforce housing to the overlay district, and that would shut down other types of housing, however.

Mr. Johnson asked if impact fees were levied by the Planning Board or the Board of Selectmen. Mr. Krebs replied that Newington could never have impact fees for their schools because they had to show bonded debt for growth, and they had their own

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, October 23, 2023

school and tuition. Mr. Krebs went on to say that Rollinsford did a study and showed no growth.

Mr. Krebs said some towns charged emergency services, road, recreation, or sewer fees, but they had to prove their necessity.

Mr. Krebs went on to say that Dover charged residential impact fees for single family homes because they had a lot of residential growth, but a town can't ask someone to pay for poor housing upkeep.

Mr. Johnson asked about sewer impact fees. Mr. Stern said Newington Wastewater Treatment had a lot of capacity.

Mr. Weiner said he thought it would be a good idea to get a list of every impact to see if the applied.

Mr. Krebs said they might be able to charge a direct fee for a crosswalk or traffic light configuration as they have for an industrial applicant on Shattuck Way that brings in more employees, however.

Chair Hebert added that they could also ask a large developer like the mall to contribute to the Coast Bus service also.

Mr. Krebs said there was also an issue with administration for impact fees in Tow because there was a short period to spend, and it was costly.

Attorney Ratigan said he had experience assisting with impact fees, but you had to have growth changes going on.

II) Town Planner's Monthly Report

Mr. Krebs informed the Board that Wilcox Industries appeared before the ZBA on Thursday, October 19, 2023, to request for a six-foot setback variance from the 75-foot front and 30-foot side setbacks for their proposed one-story parking deck for 1271 parking spaces, but withdrew their application after a discussion and straw vote. Mr. Krebs said Wilcox anticipated no more than 800 employees, so he suggested that the ZBA consider a joint meeting with the Planning Board to discuss it further, but ZBA Chair Jennifer Weiner said she would prefer not to have a joint meeting.

Mr. Krebs said Don Knolls Tree Service from North Hampton had finished mowing the invasive species on Fox Point had been done for the second time this fall at the Conservation Commission's request, and it looked nice.

Mr. Krebs said the Woodbury Avenue hotel developers had their bonds in place for when they were ready to go.

Mr. Krebs said the engineers and owners of the Fox Run Mall were traveling from the Midwest to California to determine potential uses, and he hoped that they would

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, October 23, 2023

come before the Board in the next couple of months to present ideas for a combination of renovations and new developments.

Mr. Krebs informed the Board that Until announced that they would be removing their substation next to the Cumberland Farms on the corner of Woodbury Avenue and Gosling Drive next spring. Mr. Krebs said the Board had suggested that they put in a sidewalk along Gosling Drive, but the bus stops along that side.

III) Other Business:

Mr. Weiner said he had been informed that Chair Hebert had been asked to get new bids for engineering consultants during his presentation of the Planning Board budget recently, but had not. Mr. Weiner said he didn't necessarily disagree, but he was concerned about not having an alternate engineering consultant for whenever Altus Engineering sunsets.

Mr. Weiner said he also thought the Board should have been consulted on whether to send out a bid.

Chair Hebert said he had only been asked if the Board had plans to send out a request for another bid, but they could go into non-public session if he wanted to discuss the matter further.

Mr. Krebs noted that the Board of Selectmen have also used Altus Engineering for the past 15 years.

Mr. Krebs went on to say that he didn't know of any towns that sent out bids for consultants. Mr. Krebs said he had rates for most consultants, and not only was Altus reasonable, and appreciated his responsiveness whenever he called for a quick answer compared to other consultant firms that would provide a six-page response for \$6,000.

Mr. Krebs said the Town had used another engineer for structural evaluation on the Shackford lots because Altus Engineering didn't do structural engineering work.

Mr. Welch agreed that engineers were determined by their qualifications and not their price bids, but Mr. Weiner said had done both.

Mr. Krebs added that unlike the City of Portsmouth Planning Department, Altus Engineering agreed that they wouldn't work in Newington to avoid conflicts of interest.

Chair Hebert added that there was not enough work in Newington for two engineers, and Altus Engineering was familiar with the rules, regulations, and history of Newington, so he was worth his rate.

Mr. Weiner said he was not disagreeing that they should keep Altus Engineering as a consultant, but thought they should have a backup engineering consultant as a tie breaker if there was a disagreement.

Chair Hebert said the Town had hired others at a one-time premium price on occasion when needed, but most engineers would prefer to make more money consistently somewhere else than what they would make for occasional consulting.

Town of Newington, NH
PLANNING BOARD

Meeting Minutes, Monday, October 23, 2023

Mr. Weiner added that the Board of Selectmen always asked Boards to come in flat, and not go over the previous year's budget. Chair Hebert responded that the 2024 budget had already been discussed and voted on by the Board.

Minutes: *Peter Welch moved to approve the Minutes for June 26, 2023, with corrections as noted. Chris Cross seconded, and all were in favor.*

Peter Welch moved to approve the Minutes for the August 14, 2023, meeting with corrections as noted. Rick Stern seconded, and all were in favor.

Peter Welch moved to approve the Minutes for the September 11, 2023, meeting. Ben Johnson seconded, and all were in favor.

Adjournment: *Rick Stern moved to adjourn the meeting. Ben Johnson seconded the motion and the meeting adjourned at 9:12 p.m.*

Next Meeting: Monday, November 20, 2023

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