

Town of Newington, NH

PLANNING Board

Meeting Minutes, Monday, November 12, 2019

- Call to Order:** Chair Hebert called the November 12, 2019 meeting at 6:00 p.m., followed by the pledge of allegiance.
- Present:** Chair Denis Hebert; Vice-Chair Erika Mantz Board Members: Russ Cooke; Christopher Cross; Ben Johnson; and Peter Welch; Alternate Board member, Jim Weiner; Town Planner, Gerald Coogan and Jane Kendall, Recorder
- Absent:** Alternate Board member, Rick Stern; Board of Selectmen's Representative, Mike Marconi;
- Public Guests:** John Briggs with Vera Roasting Company; Todd Shilman; Spencer Tate with Meridian Land Services; Alishia Busconi, V.P. for KeyPoint Partners; John Klanchesser; Emily Savinelli;

Chair Hebert announced that Board of Selectmen's representative, Mike Marconi, would not be attending the meeting, and that Alternate Board member, Jim Weiner would not be voting.

1) Old Business:

A) New tenant proposal for Mooney building located at **436 Shattuck Way, Tax Map 7, Lot 12**

This item was added to a revised agenda. Chair Hebert said he talked with Town counsel, Attorney John Ratigan about last minute additions to the agenda without advanced posting, and Attorney Ratigan said advanced posting was required for a public hearing, but this was just a preliminary work session.

Chair Hebert stated that the Board had received a letter from Vera Roasting agreeing to the conditions for a change of use in their sublet to Starkin Auto Works; however, Starkin Auto Work's financing fell through, and now Vera Roasting was recommending another tenant.

John Briggs from Vera Roasting said Todd Shilman, from Bostonian Cabinets was now interested in the sublet.

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Chair Hebert asked Mr. Shilman how many parking spaces he would need, and Mr. Shilman said he would only need one for himself, and another for a part-time assistant.

Chair Hebert asked Mr. Shilman if he would finish the cabinets. Mr. Shilman said he jobbed out the finishing to a company in Maine, and only did occasional touchups, and everything was water based, so there were no solvents, and it was an odor free operation. Mr. Shilman added that this operation was next to another brewery on Islington Street in Portsmouth, and there were no conflicts.

Chair Hebert asked if he would be doing any spraying, and Mr. Shilman said he had a small spray booth, but the product was 90% used water based.

Mr. Weiner asked if he used a fully automated vacuum system. Mr. Shilman said he did, and the sawdust was picked up.

Chair Hebert asked if doors or windows would be open in the facility. Mr. Shilman replied that he didn't use air condition, so he might have a window open in the summer, but all the dust would be caught.

Board member, Chris Cross asked if an occasional customer would visit, and Mr. Shilman replied that there was no showroom, he didn't advertise, and most meetings were held in someone's house so visits would be very rare.

Chair Hebert said he would be fine without holding a public hearing so long as he saw the building inspector, and the fire chief had no issues.

Chris Cross moved to accept Bostonian Cabinets as a compatible light manufacturing use sublet in the Mooney building Unit #1 located at 436 Shattuck Way, Tax Map 7, Lot 12. Erika Mantz seconded the motion, and all were in favor.

B) Landscape amendment proposal by Essential Power Newington, LLC at their property located at # Shattuck Way, Tax Map #, Lot #

Chair Hebert informed the Board that it had been brought to his attention in a from Town Planner, Gerald Coogan late the day before that this item had also been added to the agenda, so they would review the information for clarification, and then post a public hearing later.

Chair Hebert said the mounds and trees were placed on the site for noise abatement, and the Conservation Commission and the Board thought they were just cutting trees under the power lines, so will post for public hearing later and minor discussion tonight.

Spencer Tate with Meridian Land Services appeared on behalf of Essential Power Newington, LLC. Mr. Tate said the State informed them that the trees were growing too high under the power lines, and this was the same plan that they presented to the Newington Conservation Commission to cut and revegetate an area of 21,100 square feet under the power line. Mr. Tate said the Commission made a recommendation to approve the plan, but since that time they realized that they also

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needed to cut some of the trees on the mound to maintain a minimum radius clearance for breaking and falling trees from the high-power voltage lines too.

Mr. Tate said they added an additional species per the Conservation Commission request, but they would not be changing the grading, drainage or storm. West water patterns. He added the stumps would be ground, not pulled.

Mr. Tate said the self-storage facility immediately across the street, and a property on Patterson Lane were the only abutters.

Mr. Weiner said the Conservation Commission approved that the plantings were done for various reasons at the time of approval, but were now growing too high under the power lines, however, he didn't recall discussion of cutting on mounds.

Chair Hebert said trees planted now would have a huge failure rate because there was no water available during the late fall freeze. Chair Hebert said they were past the growing season, so approval was not an emergency.

Mr. Cross responded that the State said they wanted a plan as soon as possible, and they wanted approval now so that they wouldn't have to seek last minute approval. Chair Hebert responded that they it appeared to be a misunderstanding, but Town counsel, Attorney John Ratigan confirmed that the law said that a public hearing was required if there were any changes in the motion, especially if the trees were planted on the mounds for sound abatement. Chair Hebert said the trees didn't face Patterson lane, but they still needed to notify the property owners, especially if the trees came down or failed, and questions were asked. Mr. Coogan said that the next meeting would be on Monday, December 9, 2019 in order to allow enough time for abutter notification.

C) Update on lighting for the Crossings Mall 45 Gosling Road, Tax Map 34, Lot 3

Alishia Busconi, V.P. for KeyPoint Partners, property managers for the Crossings Mall passed out a visual plan, and information on LED lighting from their engineer. Ms. Busconi also passed out a copy of the Town's lighting regulations.

Ms. Busconi said they were replacing all parking lot and decorative lighting with LED lighting in all zones of the mall, except Longhorn Steakhouse and McDonald's. Ms. Busconi said the Board had already approved Aldi's lighting plan on the Woodbury Avenue side, PetSmart's lighting, and that McGovern Subaru and the Crossings would be using the same lighting plan as had been approved for Aldi.

Mr. Weiner commented that replacing the existing lights with LED lighting would save 70% of their lighting costs.

Mr. Cross asked if they would be using the same color texture on the fixtures so there would be a shift from cool, warm and yellow lights from one site to another. Ms. Busconi said they would be using neutral lights on the same poles, but with different fixtures, Walpaks, and decorative lights

Chair Hebert said he wanted to be sure there was no indirect LED glare on the highway or surrounding roads. Chair Hebert pointed out that the numbers on the lighting

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plan were not visible for review as required by the regulations, and that an increase from the current 1.4 to 2.4 lumens was substantial, but he understood that it might have something to do with the degradation of the existing. Ms. Busconi said that she would provide photometrics.

Vice-Chair Mantz responded that the applicant had provided a letter from professional lighting engineer, and she didn't recall the Board asking for such detail from other applicants she had heard. Chair Hebert replied that the regulations required photometrics from all applicants, but he couldn't read this printout, and this was a massive parking lot.

Mr. Cross said photometrics were available online, and the applicant was willing to provide printout. Mr. Cross said the Board reviews general concerns, and already approved the same lighting on three other sites at the Crossings. Mr. Cross said he was also concerned that the Board gets too involved in the process. Chair Hebert responded that the issue was that the Board usually received photometrics that were stamped by an engineering professional, and that they had only receiving an unsigned letter without visible data. Chair Hebert commented that if the public complained that the lights were too bright, the Board's decision would come into question.

Chair Hebert asked when they wanted to make the change out, and Ms. Busconi replied that they would like to do it as soon as possible Black Friday.

Chair Hebert asked when the lighting for Aldi's was approved, and Mr. Coogan stated that it was approved on August 26, 2019. Chair Hebert responded that a condition of the approval during Aldi's approval was that all lighting was going to change. Chair Hebert said that they were asking for the mall lighting plans since.

Mr. Cross asked if the Board would want to approve the lighting subject to final approval by Chair Hebert to avoid a two-week delay, but Chair Hebert stated that the plan should be reviewed and approved by entire Board. Chair Hebert suggested giving plan to Altus for approval as a condition, along with a letter signed by a licensed engineer, and then providing a stamped plan.

Ms. Busconi asked if they could start at their risk, and Chair Hebert said they could.

Chris Cross moved to accept the lighting for the Crossings Mall 45 Gosling Road, Tax Map 34, Lot 3, subject to detailed photometrics reviewed by Town engineering consultant, Altus Engineering, and providing a signed letter with a licensed engineering stamp. Peter Welch seconded the motion, and all were in favor.

A) Proposed 2020 Zoning Ordinance Amendments

Mr. Coogan passed out public hearing notice for Monday, November 25, 2019 at 6 p.m.

Chair Hebert asked that information and updates be included in Board member packets.

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Mr. Cooke asked that the listing of the amendments be consistent in their numbering and include the Article, and Section, and page numbers for reference. Mr. Weiner agreed that it was important that information on notices be informative for the public.

- 1) Zoning Amendment: **Residential Solar Ordinance** proposal *"to encourage the development of ground mounted solar systems in the Residential District "R" only. The size of the proposed solar system is directly related to the amount of electricity required by the individual residence. A solar cooperative system is now allowed. The provision includes requirements regarding location, buffers, setbacks and lighting. A ground-mount or pole mount solar energy system is an accessory use and a homeowner shall apply for a building permit for such a system."*

Mr. Cross asked if wind energy should be included on the same page. Chair Hebert responded that this discussion was regarding the proposal to add solar energy that wasn't in the Ordinance, so they were going to leave wind energy alone for now.

Mr. Coogan said this item would go under Alternative Energy, Article 15.

Mr. Coogan said Clay Mitchell did the original ordinance, and Attorney Ratigan proposed the language. Mr. Coogan said he sent the latest draft to Attorney Ratigan for review, but hadn't received any comments.

Mr. Weiner said solar units were taxed in 21 states, and asked if taxation would be addressed. Mr. Coogan replied that the assessors had a procedure for assessing solar units, but it wouldn't be appropriate to talk about taxes in a land use board.

Mr. Cross said he was concerned with the suggestion that the ordinance was fully adopting State regulations, and suggested that they scratch the words "fully adopt" and substitute the term "support". Chair Hebert agreed considering that RSA's changed, but he was concerned that there could be a legal issue.

Discussion ensued regarding wording, and the RSA reference. Chair Hebert suggested removing "adopt" and write "Newington fully supports, specific to RSA 672". Mr. Cooke said he would be fine with putting the reference at the bottom, and Mr. Weiner agreed.

Board member, Ben Johnson asked they couldn't leave it as is, and remove "fully".

Mr. Cross said didn't the third, fourth or fifth lines. Vice-Chair Mantz suggested removing them completely. Chair Hebert said Mr. Coogan would need to do a rewrite, and then they would need to schedule another meeting.

Chair Hebert recommended going to public hearing on November 25, or December 9, 2019.

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Erika Mantz moved to send Zoning Ordinance for Article 15 Residential Solar under the Alternative Energy as amended section to a public hearing as modified or amended. Ben Johnson seconded the motion, and all were in favor.

- 2) Amendment: **Building Code Modification** proposal: "No building shall be started or altered without the benefit of a permit, if the value of said construction or alteration is (\$2,500 Residential, \$1,000 Commercial) or more, and no building shall be put to any use different than the use on the day of the enactment of this ordinance until a permit has been issued under the terms of this ordinance. No permit is required (residential only) for repairs necessitated by normal wear and tear provided that such repair is not a structural repair."

Mr. Coogan said this amendment came at building inspector, Kevin Kelly's recommendation. Mr. Coogan said that Mr. Kelly also wanted to delete a dollar amount, but Board the disagreed.

Ben Johnson moved to send the Building Code amendment with modifications to public hearing. Peter Welch seconded the motion, and all were in favor.

- 3) Amendment: **Deletion of Building Code Item #8 – Piping Materials**

Mr. Coogan said building inspector, Kevin Kelly made this recommendation as it was antiquated, goes against code, and is inconsistent with Item #7 - Sewer Connections.

Erika Mantz moved to send a recommendation to delete Item #8 – Piping Materials from the Building Code to a public hearing. Russ Cooke seconded the motion, and all were in favor.

- 4) Zoning Amendment: **Article IV General Provisions, Section 14 – Gas Transmission Pipeline** proposal: to provide a buffer from a major gas transmission line: "There shall be no new residential construction nor construction of a new building that will contain 50 or more persons within 200 feet of a major gas transmission line in the Town of Newington."

Mr. Cross said a 50-foot construction setback was the only Federal requirement, but there were no Federal or State safety setback recommendations, so he was recommending a 200-foot-high consequence setback. Mr. Johnson asked if that meant 200-foot setback on each side, and Chair Hebert said it did.

Mr. Weiner commented that he thought that they shouldn't set a number 50 as a number because he thought many facilities might have less than 50 employees. Mr. Cross agreed, but said the gas line by Northeast Credit Union (NECU) was only half the diameter.

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Chair Hebert stated that he would vote against the proposal if it included "any building" because he thought it would kill several businesses, and thought it should only apply to residential buildings. Mr. Cross said he thought they had been talking about the safety of larger numbers of people, and the setback for NECU and Wilcox Industries was less than 100 feet.

Mr. Johnson asked if other towns had a setback, and Mr. Cross replied that the Federal government didn't require them. Chair Hebert said Canada does, but the United States didn't because a 400-foot-wide corridor was viewed as costly to businesses.

Chair Hebert said he understood that a building facing that side of a high pressure gas line would be at more risk, and suggested that developers consider hurricane windows; but he believed developers in the industrial area already knew the risks, and right now the Board could only address residential areas as a priority, which would be a minor impact to the existing residents. Mr. Cross responded that the Board should only mention the 30-inch, Class I main line then, and construction recommend that new developers in and near the industrial area use a berm, brick, or better windows.

Vice-Chair Mantz said the implications were still not clear as to who this would affect, so Chair Hebert demonstrated the path of the gas line that crossed the Spaulding Turnpike from Shattuck Way, followed Arboretum Drive, down the Pease runway to Portsmouth, and on to Greenland. Chair Hebert said it limit would limit some development on one vacant lot on Patterson Lane, but would not impact three pre-existing residents that were abutters.

Mr. Cross and Board member, Peter Welch agreed that they could specify that this was within the 200-foot right-of-way of the major PNG/Maritime gas transmission line that ran along Arboretum Drive and Patterson Lane.

Vice-Chair Mantz asked if abutters had been notified, and Chair Hebert said it was not required, but they were as a courtesy. Vice-Chair Mantz most people understood that there were risks wherever they lived, but she was not sure if they would want anything in writing. Mr. Cross responded that risk mitigation was always a calculated balance on the value of land. Mr. Cross said the parcels in question were all larger than minimal lots that could could adjust and still use their property within the parameters of the Ordinance.

Mr. Weiner commented that the Board was there to protect the town, and not do things just because there were a few of people against it.

Chris Cross moved to send the zoning amendment: Article IV General Provisions, Section 14 – Gas Transmission Pipeline proposal as drafted and amended for a 200-foot right-of-way setback from the major PNG/Maritime gas transmission line that ran along Arboretum Drive and Patterson Lane to a public hearing. Erika Mantz seconded the motion, and all were in favor.

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5) Zoning Amendment: **Wetlands Overlay District**

Chair Hebert said he and Mr. Coogan talked to Town wetlands consultant, Mark West with West Environmental. He said Mr. West was meeting with the Conservation Commission in a couple of days to discuss changes, so he recommended waiting until the Conservation Commission got back to the Board.

Mr. Cooke asked if Mr. West was working on updating the Town's wetlands map. Mr. Weiner said Mr. West was finalizing the map for review with the Conservation Commission, and he would get back to the Planning Board to continue the discussion at the Monday, November 25, 2019 meeting.

Mr. Cross announced that wouldn't be present for the next Board meeting, and that he was under the impression that there would be a significant change to contiguous wetlands setbacks. Chair Hebert responded that the Conservation Commission and the Board had been working on clarifying the wetlands definitions and setbacks for a long time, and they needed to wait until Mr. West could present the old and new changes side-by-side to explain that the proposal was not to add wetlands, but would reduce many wetlands setbacks throughout town.

Mr. Cross said Mr. Coogan sent out maps two months prior, and it appeared that there were new wetlands on his and Lulu Pickering's property that weren't there before. Chair Hebert replied that Mr. West was only mapping what was there, but they would have public meetings for further discussion.

Mr. Coogan explained the difference between public meetings and public hearings where the Board would hear public opinion before deciding.

Mr. Cross said he thought there would be a lot of discussion by some, and he would attend the next Conservation Commission meeting. Mr. Weiner replied that the Town was only addressing water that were contiguous to wetlands that flowed directly to Great Bay because they had been asked to protect water going to the bay by a larger number of residents.

Chair Hebert commented that he thought everyone was worrying that something was being taken from them, when it was not. He said the map was a tool, but wetlands on properties already existed, and that anyone that wanted to build on their property were required to hire a wetlands scientist to delineate the wetlands, as well as a third-party review to determine whether building could occur or not, so nothing was changed in that regard.

Mr. Cross said there were wetlands that rose four feet below his property, and the aerial didn't show definition. Chair Hebert said Mr. West was not present to address anyone's concerns, anyone that wanted to develop would hire a wetland scientist as required to confirm whether wetlands setbacks were required.

Mr. Cooke asked what would happen if there was disagreement. Chair Hebert said the Town always had a third-party review of delineation. Chair Hebert said there had been much debate over what wetlands were during past developments, so the mapping was a tool to give both better information before hand to save money and time.

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Mr. Cooke agreed that a map would convey areas of concern for public record before hand as well.

Mr. Weiner said he hoped the Conservation Commission would have an updated write up for the Board after the meeting on Thursday, November 14, 2019.

Chair Hebert said the Board had a busy schedule, and suggested that they could meet earlier and have Mr. Coogan take notes if Ms. Kendall couldn't attend earlier meetings.

Mr. Coogan said he thought it would take half an hour on each article at the most.

E) Fabyan Point and Lydia Lane Road Updates

Chair Hebert announced that except for a couple of minor things, including the legal transfer of land. Mr. Coogan said he was still waiting for a letter from Altus Engineering, and that the Planning Board could just make a motion to recommend acceptance as a Town owned road to the Board of Selectmen, who would then schedule a public hearing for acceptance. Chair Hebert agreed so long as there was an opportunity for input from the public with either board.

II) Additional Discussions:

A) Master Plan and Capital Improvements Plan

Chair Hebert informed the Board that they needed to finish the Master Plan by the end of the year, do the mixed-use study, and then move on to the Capital Improvements Plan (CIP). Chair Hebert said they decided to do the Master Plan instead of the CIP at the end of 2016, so the CIP went delinquent, but now they could go on with the CIP now that they were wrapping up the Master Plan.

Chair Hebert said he wouldn't be able to award a CIP contract until after the budget passed in March 2020, so he also might need to go back to the Board of Selectmen to change the budget for next year in order to encumber for the following year.

Chair Hebert said the entire Board didn't have to be involved, but a significant number needed to assist. He added that updating the CIP was primarily the Planning Board's responsibility, but the Board of Selectmen, Town Administrator, Martha Roy, fire and police departments would also be involved in planning ahead for major expenditures for level taxation.

Mr. Cooke asked why the CIP wasn't a function of the Budget Committee. Chair Hebert replied that the RSA required that the Planning Board take the lead in planning for major projects in the town. Mr. Cooke said he had been on the Budget Committee, and it sounded just like what they did. Chair Hebert responded that the Budget Committee did annual budgets, but the CIP planned for budgets for decades.

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Mr. Weiner asked why department heads couldn't keep track of past expenditures rather than recreate the wheel for the CIP every time. Chair Hebert replied that former Town planner, Tom Morgan had done a lot of work on the previous CIP that the Planning Board didn't do, but it just sat on a shelf instead of being utilized.

Chair Hebert said the CIP had requirements for participation from other departments, but so far, he hadn't heard from anyone just like last time, and the Planning Board ended up doing the whole thing; however, now the Board of Selectmen wanted to use the CIP, and the Planning Board could utilize Rockingham Planning Commission's assistance.

Vice-Chair Mantz asked if the CIP was redundant and moot considering that different departments requested funds be set aside in their budgets for various projects. Mr. Weiner replied that the purpose of the CIP was to project out larger expenditures.

Chair Hebert said the CIP was important, and if there was no CIP planning, it could be difficult to enforce an impact fee if unexpected infrastructure increased suddenly.

Mr. Cooke asked if warrant articles determined that funds would be put into budgets each year, and Mr. Cross said it could. Chair Hebert commented that an example was that the fire department kept putting funds in for a new fire truck, but then spent the funds on maintenance of the old truck instead. Chair Hebert said he has been recommending that they set aside separate funds in the CIP for larger expenditures for years, and now they were finally considering doing it.

Mr. Cross suggested a rule that no funds could be set aside for future unless it was designated in CIP.

Mr. Cross said the Master Plan would be mostly done by December 2019, so they could get together with the Budget Committee after Town Meeting in March 2020.

Vice-Chair Mantz suggested that they encumber the funds from the remainder of this year and start in January 2020. Mr. Welch agreed.

Emily Savinelli of Fabyan Point commented that she attended a New Hampshire Municipal Budget Workshop after she had been newly elected to the Budget Committee, and they talked about master plans and capital improvement plans, and they recommended that everyone look at the Town of Bow's website as a good example for planning. Chair Hebert agreed that anyone could check out the website, but asked that everyone go through the chair rather than calling the NH Municipal Association's legal line.

A) Planning Board Schedule

Chair Hebert said he didn't want to spend his summer days in Town Hall anymore so he wanted the Board to the Board would need to have extra meetings and would like to start.

Vice-Chair Mantz said she had suggested moving meetings from 6:30 p.m. to 6:00 p.m. in hopes of getting out earlier, but she still thought some agendas didn't justify the

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amount of time spent making the same points over and over, and that the Board could use their time more judiciously.

Chair Hebert said that they didn't need to go through details on whether an application was substantially complete because engineers and the Technical Review Committee reviewed application before public hearings, and the Board could review their reports prior to the public hearings.

Chair Hebert said it was a small town and he found that allowing people to speak diffused some angst, but sometimes people repeated themselves; however, it was important to listen to the community. Mr. Cooke suggested setting a time for speakers. Chair Hebert said he could, but many would complain they were not heard. Mr. Cross commented that dissatisfied people would say that anyhow.

Mr. Weiner said Board members tried to help with creative ideas and engineering, but they should simply let applicants know regulations, and not fall into the trap of trying to solve applicant's issues. Mr. Cross agreed, but said that there were things the Board presented to promote certain features such as sidewalks for walkability, or thoughtful traffic flow beyond an individual lot. Chair Hebert said Board has presented some good alternative solutions, but it is not their job, however he did want to hear suggestions from Board members.

Minutes: *Erika Mantz moved to approve the Minutes for the October 28, 2019 meeting with corrections as noted. Ben Johnson seconded, and all were in favor.*

Chris Cross moved to approve the Minutes for the October 31, 2019 Mixed-Use meeting with corrections as noted. Erika Mantz seconded, and all were in favor, with Russ Cooke abstaining.

Russ Cooke moved to approve the Minutes for the Non-Public Minutes of the October 15, 2019 meeting with corrections as noted, and that they be sealed indefinitely. Erika Mantz seconded, and all were in favor.

Adjournment: *Russ Cooke moved to adjourn the meeting. Peter Welch seconded the motion and the meeting adjourned at 9:48 p.m.*

Next Meeting: Monday, November 25, 2019

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

These Minutes were approved and adopted at the November 25, 2019 Planning Board Meeting.