

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes, Monday, November 25, 2019

- Call to Order:** Chair Denis Hebert called the November 25, 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; Ben Johnson; and Peter Welch; Alternate Board members: Rick Stern and Jim Weiner; Board of Selectmen's Representative, Mike Marconi; Town Planner, Gerald Coogan and Jane Kendall, Recorder
- Absent:** Board Member: Christopher Cross
- Public Guests:** John Lorden, P.E. with Tighe and Bond; Attorney John Bosen; Corey Caldwell and Chris Rice with TF Moran; Brendon Quigley and Jim Gove with Gove Environmental; Town engineering consultant, Eric Weinrieb, P.E. with Altus Engineering; Town wetlands consultant, Mark West of West Environmental; John Biron; Brenda Blonigan; Maggie Cooke; Marilee Downey; John Frink; Sally Frink; Ann Hebert; Abbie and Katy Hood; Board of Selectman, Ken Latchaw; Peter McDonald; Luanne and Jack O'Reilly; Lulu Pickering; Emily Savinelli; Meghan Waas; Wayne Wood

*Chair Hebert announced that there was a full agenda, and that each applicant would be given no more than 45 minutes, with no more than 3 minutes per speaker.*

### I) Public Hearings:

- A) Continuation of Site Review for **Subaru Automotive Sales Facility** to be located at the former Toys "R" Us building at **85 Gosling Road, Tax Map 34, Lot 3-1**

*Chair Hebert announced that the applicant had requested a continuation to Monday, December 16, 2019.*

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B) Proposal by **Doloma Investment of Portsmouth, Inc.** for a 98-room, four (4) story Home2 Suites hotel at **141 Shattuck Way, Tax Map 20, Lot 4-C**

John Lorden, P.E. with Tighe and Bond informed the Board that he had presented a revised hotel proposal to the Board in January 2019, and that it was similar to the previous hotel project that was approved in 2007.

Mr. Lorden stated that they worked closely on delineation of the wetlands with Town wetlands consultant, Mark West of West Environmental, and had since shifted the placement of the building away from Paul Brook after discussion with Mr. West and the Newington Conservation Commission to reduce the wetlands impacts.

Mr. Lorden stated that Gove Environmental did an analysis of the wetlands, and showed the impacts to the wetlands where some filling was required.

Mr. Lorden said the building itself would not be in the front setback, but the parking and sidewalk would be, so they applied to the Newington Zoning Board of Adjustment (ZBA) for variances, and were now returning with a full design.

Mr. Lorden said access would be from Shattuck Way because access was not allowed from Woodbury Avenue. Mr. Lorden stated that gas and water service lines would come in from Shattuck Way, that they would tie into the existing sewer main, and that utilities would come in from Woodbury Avenue.

Mr. Lorden said they would need a recommendation from the Conservation Commission for their Department of Environmental Services (DES) Wetlands Permit, an Alteration of Terrain (AoT) permit, a Conditional Use Permit for wetland disturbances, sewer connection approval, and a waiver from the building height limitation. Mr. Lorden noted that the height on the updated proposal was not as high as the previous proposal.

Town Planner, Gerald Coogan asked what variances they received from the ZBA and what the Conditional Use Permit would be for. Mr. Lorden showed the area of disturbance that would require a Conditional Use Permit. Mr. Lorden went on to remind Mr. Coogan that the Planning Board determined that Woodbury Avenue could serve as frontage, so they requested a variance for dimensional setbacks for structures, and variances for work and disturbances within the 100-foot setback of Paul Brook, as well as disturbance within the 50-foot and the 25-foot setbacks.

Board member, Russ Cooke asked if Mr. West had provided statement on the wetlands impacts. Mr. Coogan replied that he believed they were in agreement.

Mr. Lorden stated that the previous proposal was for a Comfort Inn, but they were now proposing a Home2 Suite, and had changed the number of rooms to comply with the branding. Chair Hebert commented that it seemed that brands changed overnight, and he was concerned that the next brand would have a different requirement that the Board hadn't approved. Mr. Lorden suggested that a stipulation of approval be added.

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Vice-Chair Mantz asked Mr. Lorden to expand on the branding difference from a Comfort Inn, and Mr. Lorden replied that they promoted suites for longer business stays, but said they stipulate that they stay couldn't be any more than a week.

Chair Hebert commented that a hotel in the middle of a swamp wouldn't be very appealing, and asked what their plans were to improve the appearance for success. Mr. Lorden replied that they would be removing a lot of invasive species along entrance. Mr. Lorden went on to say that they would need permitting from the State to do additional removal or plantings.

Board member, Peter Welch asked if they made plans for any sidewalks. Mr. Lorden replied that the plans showed a sidewalk around the entire building and up to Piscataqua Drive.

Mr. Welch asked about a sidewalk crossing to the mall. Mr. Lorden said it had been discussed many times, and there were concerns with putting a sidewalk to an area with no crossing that would endanger anyone. Mr. Lorden said the last he knew the Department of Transportation (DOT) had not made any plans to put in a crossing signal from Piscataqua Drive to the entrance of the Fox Run Mall. Mr. Welch responded that he heard there was a plan to put a crossing signal in eventually. Mr. Lorden said it would make a lot of sense if the crossing signal was already there. Mr. Welch suggested that they consider putting a sidewalk along Woodbury Avenue to prepare for the future. Mr. Lorden suggested that they could put a fund aside for the sidewalk.

Alternate Board member, Jim Weiner commented that an additional sidewalk would be helpful to people from Wilcox Industries, and Chair Hebert agreed that there were businesses along Shattuck Way and Woodbury Avenue that would use a hotel on Shattuck Way.

Mr. Welch asked if the equipment on the roof would be shielded, and Mr. Lorden said that was part of the parapet's job.

Chair Hebert said the Board needed to determine if the plans were substantially complete before getting into greater detail, and asked what plans were done. Mr. Lorden replied that they provided a site plan, alteration of terrain plans, wetland buffer plans, building elevation plans, floor plans, drainage plans, landscaping plan, utility plans, and stormwater management plans including drainage under the pavement, and tree wells throughout the site with mulch and a special filter.

Town engineering consultant, Eric Weinrieb, P.E. with Altus Engineering said he hadn't looked at plans yet, and asked if there was a lighting plan. Mr. Lorden said they did not have the lighting plan yet. Mr. Weinrieb stated that the plans sounded complete, otherwise.

Mr. West stated that he had reviewed the wetlands delineation in the field with Brendon Quigley and Jim Gove with Gove Environmental before the site had been surveyed. Mr. West said he agreed with the functional assessment, and right now there were no beavers, but flood storage would be more important if beavers returned.

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Mr. West agreed that there were a lot of invasives, and said he would like to see a landscaping plan with screening on one side because it was a steep area by Paul Brook that would be difficult to mow.

Chair Hebert asked if they could clean up the invasives to improve appearances so the site wouldn't be a swamp. Mr. West responded that it would be good to review a proposal.

Mr. Weinrieb said DOT's improvements to Woodbury Avenue were mostly done, and the State would be turning it over to the Town soon. He went on to say that the DOT would not allow a cross walk from Piscataqua because there was no place to go on the other side; however, a connection could be made to the crosswalk from Arboretum Drive to Fox Run Road in the future.

Mr. Lorden asked if they could remove the sidewalk that runs from the site to Shattuck Way in exchange for a sidewalk to the Fox Run Mall. Chair Hebert replied that it could be discussed, but he thought it would be good to do both.

Chair Hebert announced that Alternate Jim Weiner would vote in place of absent Board member, Chris Cross on this item, and that Alternate Board member, Rick Stern would not vote.

*Erika Mantz moved accept the proposal by Doloma Investment of Portsmouth, Inc. for a 98-room, four (4) story Home2 Suites hotel at 141 Shattuck Way, Tax Map 20, Lot 4-C as substantially complete with the understanding that Altus Engineering would review the forthcoming lighting for the technical review committee. Peter Welch seconded the motion, and all were in favor. all were in favor, including Jim Weiner's vote*

Mr. Coogan announced that the Board would need to accept or deny the application unless the applicant requested a continuation before the next 65 days.

Chair Hebert continued the public hearing to Jan 13, 2019.

C) Subdivision proposal by **John Liatsis** for a thirteen (13) lot subdivision with 11 single family units, and two duplex units to be located at **271 Nimble Hill Road, Tax Map 3**

*Mr. Cooke recused himself as an abutter.*

Corey Caldwell with TF Moran appeared before the Board to present updated plans for the development of the applicant's property.

Mr. Caldwell stated that the applicant currently owned a two unit dwelling in the middle of approximately 31 acres that he was proposing to develop further.

Mr. Caldwell stated that there were 25 acres of uplands, and 6.4 acres of wetlands on one side of the road that ran from front to back were fed by a culvert

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crossing Arboretum Drive, and another contiguous wetland that ran on the other side of the proposed road.

Mr. Caldwell stated that there was 1,104 feet of frontage on Arboretum Drive. He said they approached Pease Development Authority with a request for access, but were told that they didn't want residential traffic on Arboretum Drive, so it was necessary to put in a cul-de-sac on the property.

Mr. Caldwell said they hired Gove Environmental to talk about the wetlands and buffers. Jim Gove with Gove Environmental stated that Brendon Quigley had done the delineation for him.

Mr. Gove stated that he had walked the property earlier in the day, and that his findings were different than what was shown on the GIS map, that one of the channels of Pickering Brook separated and flowed around an upland island going under the road into a dual culvert system, on to the end of Fox Point Road under a large culvert before continuing.

Mr. Gove said another wetland came from another an intermittent stream from the larger wetland area and flowed off the property to other side of Fox Point Road, but it didn't connect with Pickering Brook.

Mr. Gove said he couldn't find any definition of surface waters in Section 7 of the Ordinance, but that the standard definition was that surface waters were perennial lakes, ponds and streams.

Mr. West responded that the current Wetlands Ordinance went into place in 2005, with 100-foot setbacks from prime wetlands and surface wetlands.

Mr. West showed that Pickering Brook was labeled in the top left corner, and it drained to Railroad Brook that drained into Trickey's Cove in Great Bay, which the town had indicated that they wanted to protect. Mr. West stated that the wetlands were defined as contiguous because they were connected to prime and contiguous wetlands in the watershed, so it didn't matter if the source was on the property or not.

Mr. West said he didn't hike areas on private property, but he had walked down Arboretum Drive and Fox Point Road. Mr. West said he looked at the Lidar maps, and the found culvert on Fox Point Road didn't carry much water. He agreed that it was not connected, but said that there were still intermittent stream connections on the property. Mr. West said there was another culvert just off site, and there was an intermittent stream channel visible from the road that fed into the wetland on the property.

Mr. Gove asked if surface wetlands were defined in the Town's Ordinance. Mr. West replied that surface waters were not clearly defined, but the Town had done an interpretation that streams leading to Great Bay needed protecting.

Mr. Gove asked what the Town's plans were regarding clarifying the definitions, and Mr. West replied that the Town had asked him to work on the issue of wetlands

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contiguous with surface or perennial streams, but right now they were focused on the existing ordinance.

Mr. Caldwell informed the Board that Chris Rice, P.E. with TF Moran designed the road and stormwater management. Mr. Caldwell said they were proposing to pave the road, and that they would use the area in the middle of the cul-de-sac, and two other areas for stormwater management with an infiltration basin.

Mr. Rice stated that the 12 proposed house lots that consisted of ten single, family homes met all the minimum lot size requirements of 3,000 square feet, and the two duplexes were 6,000 square feet. Mr. Rice said the lots met the form factor requirements, except for one lot that had a factor of 31 because of wetlands.

Mr. Rice said the homes would have onsite septic, underground utility connections, and connection to City of Portsmouth water.

Mr. Rice stated that the roadway followed the topography of the lot, and would be 22 feet wide with two-foot-wide shoulders per Town standards, but the Town requirement of 1,500 feet long, and the proposed road would be 2,150 feet long to access the lots so they would need a waiver. Mr. Rice added that the frontage was only 50 feet wide, and part of the right-of-way for the first 700 feet so they would require another waiver.

Mr. Rice said he had reviewed the Hannah Lane and Nimble Hill Road traffic study memo submitted on May 2019 that found a traffic count of 1,300 average trips per day with peak morning trips from 7:45 a.m. to 8:45 a.m., and slightly higher traffic during the evening peak from 4:45 p.m. – 5:45 p.m.

Mr. Rice stated that they placed the roads, driveway access, and houses to minimize wetlands impacts where possible, but there would be 1,400 square feet of driveway impacts.

Mr. Rice stated that the development would require Alteration of Terrain (AoT) permits, Conditional Use Permits, DES Dredge and Fill permits for wetlands crossings, and stormwater design permits.

Chair Hebert stated that the entrance plan did not meet the required distance of 400 feet from Hannah Lane. Mr. Rice stated that they were 225 feet from the center line of Hannah Lane. Chair Hebert responded that they would need to determine if a waiver or variance was required.

Mr. Coogan stated that enough information had been submitted to approve the plan as substantially complete.

Chair Hebert stated that he would not allow the application review to continue for another year if any required information was missing after the timeclock started.

Chair Hebert asked what plans were available, and Mr. Rice said that they had the subdivision plan, the site prep and demolition plan, grading and drainage plans with

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erosion control notes, and a stormwater management report that showed that they were reducing the rate of existing runoff prior to treatment.

Mr. Coogan noted that Mr. West's memo expressed disagreement with Mr. Gove's wetlands findings, and suggested that they meet to talk it out, noting that a complete redesign would be required if the wetlands were found to be contiguous. Chair Hebert responded that the Board could vote that the application was substantially complete even if placement of homes had to change.

Mr. Weinrieb stated that they provided all the required information, and package was detailed, but there were still a lot of issues that needed to be vetted.

Chair Hebert announced that Mr. Weiner would be voting in place of Mr. Cooke on this item.

*Erika Mantz moved to approve the subdivision proposal by John Liatsis for a thirteen (13) lot subdivision with 11 single family units, and two duplex units to be located at 271 Nimble Hill Road, Tax Map 3 as substantially complete, and to authorize Town engineering consultant, Eric Weinrieb, and Town wetlands consultant, Mark West to review the wetlands delineations to come to an agreement. Jim Weiner seconded the motion, and all were in favor.*

*Chair Hebert opened the hearing to public comment.*

Jack O'Reilly of Fox Point Road Extension said there had been a question regarding access through his property onto Fox Point Road, and had reviewed the notes on his deed regarding the O'Reilly property right-of-way that said, "...lot may be subject to an access right of way easement in favor of Tax Map 18, Lot 3A...per RCRD (Rockingham County Registry of Deeds) bk, 589, pg. 472...prescribed as follows per RCRD bk, 478 pg. 485, "Hoyt reserves a right-of-way on the front side of the house, sufficiently wide for teams to go to and from his land and said right-of-way shall not be obstructed by more than two gates."

Emily Savinelli of Fabyan Point said she heard reference to duplexes, and asked if they were accessory dwelling units (ADU's) or if duplexes were allowed in town. Chair Hebert replied that duplexes were allowed so long on three acres with separate septic, utilities, water, etc., but they could have a common area.

Board of Selectmen's representative, Mike Marconi asked if the existing multi-family dwelling had one septic system, and Chair Hebert replied that it did because it was allowed with ADU's.

Mr. Weinrieb noted that DES preferred four-bedroom, single family homes based on soils, and this was a lot of loading for eight bedrooms.

John Frink of Nimble Hill Road that lived across the street from the applicant said he was impressed with attempts to control stormwater, but he wanted the applicant to

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realize that the detention area that had been installed on Hannah Lane that was parallel to Nimble Hill Road that had been installed to prevent runoff to his property had been bypassed by abandoned in lieu of a culvert. Mr. Frink said that infrastructure was bypassed by the Abbots with Cosmas locovazzi at one time, and would require reinstitution, that had been a condition of approval as shown in a previous Planning Board Minutes.

Mr. Rice stated that their drainage design didn't depend on anything from Hannah Lane, and that their drainage plan would decrease the current flow. Mr. Frink stated that water ran down Nimble Hill Road and into a culvert onto his field instead of going to detention treatment that was intended on Hannah Lane.

Chair Hebert added that there was a concern with water sheeting down the steep hill onto the roads, and onto the Frink property.

Chair Hebert asked if any soil testing had been done, and Mr. Rice said it had not. Chair Hebert commented that he thought that they would find a lot of ledge on the site that would affect drainage.

Mr. Weiner commented that he had noticed a property on Little Bay Road that caused water to run into the road that turned into ice on the road, and he would not be able to support a proposal that would cause that. Chair Hebert pointed out that Mr. Weinrieb would review the issue with the Technical Review Committee (TRC). Mr. Weinrieb agreed that he would review the design, and would then walk the property. He said he was aware of historic drainage issues from Hannah Lane, and Mr. Frink's concerns, and would see if there was an opportunity to return to the original issue.

John Biron of Hannah Lane stated that he had recently purchased the house on the end of Hannah Lane on the corner lot that abutted the proposed access road, and although the speed on Hannah Lane was posted as 20 miles per hour, he believed that residents of the new development would most likely drive in and out of the development at 40 miles per hour. Mr. Biron added that he was concerned with water sheeting off the access road and draining toward his home.

Mr. Biron said he intended to install a pool, and was concerned with runoff from the development into his dry basement. Mr. Biron added that he would also be impacted by the project being so close to his yard where his two children played, and wished he had been aware of the project before he purchased the property.

Brenda Blonigan and Maggie Cooke of Hannah Lane, and Ann Hebert of Gundalow Landing all agreed that the proposal required too many waivers from the ordinances.

Ms. Cooke said that she thought the additional traffic from additional residents would create an unsafe intersection, and thought that the Board should stick to the 400' rule, as well as the length requirement of 1,500 feet.



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Ms. Cook added that a road on three sides of Mr. Biron's home would devalue the house on the corner, and would devalue her property.

Chair Hebert stated that the applicant would have an opportunity to address each of the issues raised, especially the wetlands.

Mr. West stated that in addition to questions regarding setbacks, there were four wetlands crossings, two that were relatively narrow, and two that were not, and another that was a 300-foot crossing at the widest section. Mr. West pointed out that requests for a Conditional Use Permit had to be the least detrimental option, so he didn't think the proposal met the Ordinance or DES requirements in that regard.

Chair Hebert said there was a lot of concern with sheeting of runoff onto other properties. Mr. Rice responded that water already flowed from higher points to lower points, but they were putting in detention areas that would reduce the existing flow so that would be an improvement to residents on Hannah Lane.

Chair Hebert said he was also concerned with downhill runoff from increased impervious surfaces. Mr. Weinrieb agreed that it would be important to know the percentage of impervious surfaces because these would be large homes with large yards, and he assumed that they made conservative estimates, keeping in mind that they were applying for an AoT Permit, and Cornell's stormwater management required that a 15% increase in management.

Mr. Weiner commented that he thought a 40% increase in road length over the 1,500 feet requirement seemed unacceptable because it appeared that the lot layout was all over the place.

Mr. Weiner went on to say that he understood the concerns of the abutter on the corner lot, and thought the 30% turning radius at the intersection of Hannah Lane was not necessary, especially if they were closer than the required 400 feet.

Regarding the 30-foot radius, Mr. Weinrieb noted that there would be an opportunity to put a flare in if the entrance was in the middle of the lot, and he understood that wasn't possible because the road was up against an abutting property. Mr. Weinrieb said he also understood the 400-foot rule, and safety concerns, but again there would be no opportunity for development, and the Board had to consider property owner rights to use this much property.

Ms. Cooke commented that there had already been an accident at the intersection of Hannah Lane and Nimble Hill Road, and that she felt that the applicant should follow the rules of the Ordinance. Mr. Coogan explained that applicants requesting waivers had to give good reasons for their extenuating circumstances, and the Board had to weigh the merits and their property rights.

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Mr. Rice asked if a shared driveway would be an acceptable alternative, and Chair Hebert said that shared driveways were no longer allowed according to the Ordinance.

Mr. Welch asked if the retention and detention ponds would be in topsoil and ledge, and if the ponds were designed to infiltrate water back on ledge that would flow to property owners. Mr. Rice replied that the stormwater management was designed as required, but the detention pond at the entrance didn't infiltrate.

Mr. Weinrieb noted that he had never seen a stormwater management device system under a paved roadway get approval before. Mr. Rice responded that the Storm Tech system under the road was approved by DEs. Chair Hebert stated that the Town would not take ownership of that system with additional infrastructure costs.

Mr. Caldwell commented that the City of Portsmouth had approved the Storm Tech system for greater filtration for a similar subdivision with more buffer impacts, but he understood that each town was different. Chair Hebert replied that he understood the merit, but he was concerned that it would create a tax burden on the town to maintain. Mr. Weinrieb agreed, noting that the Town didn't like to maintain stormwater management as it was.

Mr. Frink asked if there were bioretention area ponds with no outlets, and Mr. Rice replied that they had an overflow outlet. Mr. Rice said the water already went into a swale. Chair Hebert expressed concern with overflow from a full pond if there were heavy rains, and would like to see the water be released more slowly.

Chair Hebert informed the applicant that the Board was holding a public hearing for an Ordinance amendment for a gas line setback of 200 feet, and wanted to be sure that anyone purchasing homes nearby would be aware. Mr. Rice asked when the notice was posted, and Mr. Coogan replied that the notice had been posted on November 12, 2019, and they had submitted their application on November 4, 2019.

Chair Hebert recommended that the property owner give permission to have Mr. West go on property to review the wetlands. The property owner, John Liatsis said he would like to know when. The applicant's legal counsel, Attorney John Bosen said Mr. Liatsis would like to go with Mr. Gove or Mr. Quigley when Mr. West walked the property.

Mr. West said he would need to know what the Board wanted him to check, and Chair Hebert said he wanted him to review the delineation of wetlands with setbacks.

Mr. Liatsis said he talked to Jack O'Reilly about going through his easement, but there wasn't enough of a setback, but he noted that there was a parcel that abutted the O'Reilly's property, and wondered if he could connect to the rotary at the end of Fox Point Extension. Chair Hebert replied that the public hearing was to review the

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application before then, and that the Town couldn't provide a solution for a private property owner.

Mr. Weinrieb commented that he could wait to review the plans until the applicant was ready if they were going to make changes. Mr. Rice responded that continuing the meeting to January 2020 would be fine.

Chair Hebert continued the meeting to Monday, January 13, 2020, noting that the applicant could request a continuance to Monday, January 25, 2020 if they needed more time.

### **D) 2020 Zoning Amendments**

*This item was delayed to discuss the following items first.*

## **II) Other Business**

*Russ Cooke returned to his seat.*

### **A) Fabyan Point Road Development**

*Board member, Ben Johnson recused himself as developer.*

Chair Hebert stated that the Board had done several site walks of the development, and asked what was needed to complete transmission of ownership of Fabyan Point Road to the Town so that residents could receive trash pickup and snow service.

Mr. Weinrieb said he listed outstanding issues in his November 19, 2019 letter to the Board, which included providing a three-year maintenance bond, completion of as-builts completed, address issue between the owner and another property owner through private agreement, installation of wetlands plaques in the no cut buffer, reseeding where necessary, provide flags for fire hydrants for snow coverage, and repair of minor cracks in pavement.

Mr. Weinrieb said Altus had observed construction, and issues come up with all projects, but the Johnson Builders had been very good about addressing, so he felt comfortable making a recommendation that the Planning Board could vote to recommend acceptance by the Board of Selectmen.

Chair Hebert asked Mr. Johnson if he could get the work done. Mr. Johnson replied that he was going to send the deed to Town counsel, Attorney John Ratigan to complete the transfer of ownership, and would also address the road maintenance bond with the attorneys. Mr. Johnson went on to say that he needed to obtain the wetlands

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plaques from the Town Hall, and that he would repair the cracks in the road in the Spring.

Emily Savinelli of Fabyan Point Road said she noticed a line painted at the stop sign, but no line was at the stop sign Swan Island Lane, and she thought it took away from rural character. Mr. Coogan replied that the line was part of road safety requirements.

*Jim Weiner moved to recommend that the Town planner write a letter of recommendation to the Board of Selectmen for approval of the Fabyan Point Road Subdivision upon completion of issues pointed listed in the November 12, 2019 letter from Altus Engineering. Peter Welch seconded, and the motion passed with Mike Marconi abstaining.*

*Mr. Johnson rejoined the Board.*

### **B) Dennet Farm Condos on Lydia Lane, Tax Map 17, Lot 14**

Mr. Weinrieb stated that the development still needed to complete their as-built provided, provide additional striping, provide their Federal stormwater permit, replace their street sign, provide their road maintenance bond and file notice of termination of ownership.

Chair Hebert stated that a \$15,000 cash bond had been posted, and the developer, Joe Calderola was informed that it would be kept until conditions of approval were met. Chair Hebert recommended that a letter of conditions be written that the road maintenance bond be posted, and held until the conditions were met.

Chair Hebert pointed out that snow would be falling soon, and recommended getting snow stakes in the ground before further freezing. Chair Hebert noted that one property owner had planted right up to the Town's right-of-way, and asked Mr. Coogan to notify them that snow plow could damage.

Chair Hebert announced that Mr. Stern would be voting on this item.

*Peter Welch moved to recommend that the Town planner write a letter of recommendation to the Board of Selectmen for approval of the Dennet Farm Condos on Lydia Lane, Tax Map 17, Lot 14 upon completion of conditions of approval as discussed. Russ Cooke seconded, with all in favor, including Rick Stern's vote.*

### **I) Public Hearings:**

#### **D) 2020 Zoning Amendments**

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*This item was delayed to discuss the previous items first.*

Discussion ensued regarding incomplete posting on the Town website. Ms. Savinelli said the Zoning Amendment notice was on the News section, but she couldn't find it on the agenda posting.

Abbie Hood of Coleman Drive said that only one page of the notice was posted. Lulu Pickering of Little Bay Road added that there was nothing about amendment changes.

Mr. Coogan responded that they published a summary with a comment that said copies of changes were available at Town Hall upon request. Chair Hebert added that the reason was that sometimes changes were many pages long.

Ms. Pickering said she would appreciate having it published online so that voters could be informed prior to public hearings.

- 1) Zoning Amendment #1: to **Article XV** title change to **Renewable Energy Systems** (including Part A – Small Wind Energy Systems), and to add **Part B – Solar Energy**

*The proposed amendment encourages 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 not 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. Frink asked Chair Hebert to explain the intent of the amendment. Chair Hebert replied that roof mounted solar panels were allowed, but concern had been expressed over the appearance and size of ground mounted solar systems, so the Board came up with guidelines requiring a screen.

Mr. Cooke asked if roof mounting was also allowed. Chair Hebert replied that it was, but that another Board member had suggested that the amendment address pedestal or pole mounted solar panels as well.

Mr. Coogan reminded the Board that minor administrative changes did not require another public hearing.

*Jim Weiner moved to accept the Zoning Ordinance amendment proposal for the title change to Article XV to Renewable Energy Systems (including Part A – Small Wind Energy Systems), and to add Part B – Solar Energy as previously discussed and agreed with a minor administrative change. Peter Welch seconded the motion, and all were in favor, including Jim Weiner's vote.*

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### 2) Amendment #2: **Modifications to the Town's Building Code, Item #2 on page B-1.**

*2. No building shall be started or altered without benefit of a permit, if the value of said construction or alteration is (\$2,500 Residential, and \$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 therefore 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. , restores the structure to original condition and the repair does not affect more than 50% of the value of the structure. (Electrical, Plumbing and HVAC permit threshold \$100).*

Mr. Coogan stated that these were minor changes to the building code that the building inspector recommended.

Ms. A. Hood said she was curious about the dollar amount, which seemed problematic. Chair Hebert responded that a percentage of a home's value had been listed before, but the Board thought that might be a huge amount for a home of greater value. Chair Hebert added that there had been a lot of discussion about a value of \$2,500, and it was decided that they wanted people to be able to maintain their homes for minor amounts without a building permit.

*Rick Stern moved to recommend the proposal modify the Town's Building Code, Item #2 on page B-1 as discussed and written. Russ Cooke seconded the motion, and all were in favor with Rick Stern voting.*

Ms. A. Hood said her concern was with the \$2,500 or \$1,000 amounts, because it seemed silly to need a building permit to update a pantry with a built in. Chair Hebert said he didn't think there would be a problem with redoing a closet, but something electrical, or structural would require a permit.

Katy Hood of Coleman Drive asked what the difference was between residential and commercial. Chair Hebert replied that the Board wanted to give residents the flexibility to do home repairs without obtaining a building permit for minor repairs.

Ms. K. Hood commented that she felt that the code made it difficult for her in two ways because their business, Haugh Storage was designated as Commercial, but had a residence for their caretaker and manager.

Vice-Chair Mantz noted that the building inspector wanted to remove all dollar amounts. Chair Hebert stated that the dollar amount was already in the code, and the Board settled on that amount because some were abusing the regulation by not seeking building permits.

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Mr. Weiner said the building inspector was very fair when asked for consideration.

Mr. Marconi added that it was less costly to do minor repairs now because the previous building inspector wanted permits for everything.

- 3) Amendment #3: This amendment will **delete Item #8 – Piping Materials in the Town Building Code**, on page B-3, which is antiquated and contradicts Item #7 – Sewer Conditions

Chair Hebert commented that buildings had been updating from steel to PVC now allowing plastic pipe.

*Mr. Cooke moved to recommend the proposal to delete Item #8 – Piping Materials in the Town Building Code, on page B-3, which is antiquated and contradicts Item #7 – Sewer Conditions. Rick Stern seconded the motion, and all were in favor with Rick Stern voting*

- 4) Amendment #4: Proposal to add **Article IV General Provisions, Section 14 - Gas Transmission Pipeline**: *There shall be no new residential construction within 200 feet of the right-of-way of a major gas transmission line in the Town of Newington, specifically the PNGTS / Maritime gas line that runs along Arboretum Drive and Patterson Lane*

Chair Hebert stated that the Board had reviewed studies after explosions in the Midwest and the East, and were specifically talking about the high-pressure 30" gas line that ran from Maine to Patterson Lane, to Arboretum Drive, and Greenland. Chair Hebert said he had heard from a few people on Patterson Lane that seemed happy for the additional protection.

Ms. Pickering asked if they were talking about all gas lines that ran through the residential area. Chair Hebert replied that they were only talking about the high-pressure 30" gas transmission lines, and not distribution gas lines.

Ms. Pickering asked if the State had guidelines. Chair Hebert replied that Canada had them, but Federal and State left it up to local guidelines.

Ms. Pickering asked what would happen if anyone wanted to put a gas line through town as Eversource had with their transmission lines. Chair Hebert said they would go through site evaluation committees, and the town would be allowed an opportunity for input, but the decision would be up to the State and Federal approval.

Ms. Pickering said concerned that would be concerned with 200' setback because she was afraid, she would lose more property if something else went through her property. Chair Hebert asked if she would want to have her family home beside a

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high-pressure gas line. Ms. Pickering replied that she was in the flight path of Pease, so risk was relative.

John Frink's sister, Sally stated that they had an agreement that Eversource's easement could only be used for the Seacoast Reliability project, and nothing else.

Chair Hebert agreed that Eversource said nothing else could be put in within 25 feet of the power lines, and said the Board was trying to do what was best for the town and residents, and they couldn't do "what if's" forever.

Ms. Pickering asked if there were 200-foot setbacks from Sea-3's propane operation on Shattuck Way. Chair Hebert replied that this ordinance proposal was talking about residential areas only.

Chair Hebert said Patterson Lane already had a 50-foot easement on the north side that was zoned residential, but the other side was zoned waterfront industrial. He said this setback would only affect two to three lots that were previously owned by Eversource. He said the new property owner could still develop the rest of the property.

Chair Hebert said the setback might affect one lot on the Liatsis property that already had a lot of wetlands anyhow, and another lot that was nearby.

Ms. Pickering said she thought the Board's intentions were good, but felt it was taking 400 feet of property owner's property.

Mr. Weiner said the Board put together ordinance proposals for the protection of the town, but it was up to the residents to decide, but no one should suggest that the Board not make the attempt.

Mr. Weiner stated that the Board discussed a 750-foot safety setback, but thought it would be too egregious, so they decided on a 200-foot setback compromise.

Mr. Marconi said he would like to have more time.

Mr. Weiner asked why Mr. Marconi wanted an extension considering that Board member, Chris Cross had reviewed and presented a scientific study that Canada implemented to recommend a 750' safety setback, so the Board thought 200' was more than acceptable. Mr. Marconi said he was concerned with liability. Chair Hebert replied that Mr. Cross brought up that the 200' setback would only be a consequence setback, not a safety setback to avoid liability.

Mr. Stern recommended that the Board add "consequence setback" to the ordinance.

Ms. Pickering said the Federal government didn't have any safety setbacks, and they could run a gas line under someone's home, so she thought the Board should consider property rights more.

Ms. A. Hood said she supported putting this forward for resident's protection.

Ms. Savinelli said a part of her agreed that property owners had rights, but she also wondered about liability if nothing was done and something catastrophic happened to emergency personnel, so she wondered why anyone wouldn't want to establish some protections.



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Vice-Chair Mantz said she felt that the amendment was brought forward to limit development on Patterson Lane after the Board proposed a buffer last year, and she didn't feel good about it. She said she was concerned that the proposal would be perceived as a way of rejecting development, and was concerned with liability. Vice-Chair Mantz added that there was a fundamental responsibility of buyer beware for anyone purchasing a home near a high-pressure gas line near their home.

Mr. Welch commented that he respected Mr. Cross for bringing the suggestion forward, but he didn't think a 200-foot setback with 30 seconds to get out to a 750-foot safety area would be enough. Mr. Welch recommended showing the gas line on the tax maps to inform residents of the hazard.

Mr. Johnson wondered if the Town would be liable for fire fighters going out if a gas line blew. Chair Hebert said they would not run toward a giant fireball, but they knew there was risk with their jobs.

Mr. Cooke stated that he would be fine with allowing the town to decide, however he would prefer that the proposal specify the size and pressure of the transmission line rather than name the company. Chair Hebert agreed that they shouldn't mention the name.

Mr. Stern said he was in favor of the proposal, but was also concerned with liability. Chair Hebert replied that was the reason that Mr. Cross had recommended referring to it as a consequence setback.

Chair Hebert continued the public hearing to Monday, December 16, 2019.

### 5) Amendment #4: **Wetlands Overlay District:** Discussion only

Town wetlands consultant, Mark West began the discussion by pointing out that he had been asked to map the current wetlands for clarification of updated definitions of existing wetlands and setbacks.

Mr. West noted that anyone applying for a development project had to hire their own wetlands scientist to flag their wetlands, and he was frequently called in to clarify questions on definitions, and buffer setbacks. Mr. West said that the idea of the updated map was to assist that the property owners, developers, land use boards and wetlands scientists in identifying the important wetlands and buffers.

Mr. West went on to say that the maps would show the original prime wetlands as designated by the State, newly distinguished contiguous wetlands with 100' setbacks, smaller intermittent streams with 75' buffers, and vernal pools with 50', but not wetlands below 5,000 square feet, or drains and swales, so if a wetland wasn't on the map, there was no need to worry about 100 foot buffers.

Mr. West noted that there were two man-made canal systems, McIntyre brook, and Railroad Brook that turned into Flagstone Brook that were included on the map.

Ms. Pickering said wanted to have attachments with agenda.

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Ms. Pickering said she wanted to have attachments with agenda so that she could follow along. Chair Hebert responded that he had wanted Mr. West to display the new and older charts at the bottom of page Z25 in the Zoning Ordinances beside each other, but someone took remote for the overhead project, so Mr. Coogan made copies of chart.

Chair Hebert pointed out that the prime wetlands with 100 foot buffers at the top of the chart were the same, but now contiguous wetlands were defined and called out by name, and the buffers for contiguous intermittent wetlands were dropped to 75 feet, wetlands larger than 5,000 square feet didn't change, and still had a setback of 50 feet but wetlands under 5,000 square feet didn't have a setback at all.

Board of Selectman, Ken Latchaw of Nimble Hill Road said it appeared as if Mr. West had added more wetlands with 100-foot setbacks than were on the 2005 prime wetlands map. Members of the Board and the audience responded that the area that Mr. Latchaw was pointing to had already been there with a 100-foot setback. Mr. West added that only prime wetlands were mapped previously, but the current ordinance also required a 100-foot setback to all surface wetlands even if they weren't shown on the tax maps.

Mr. Latchaw stated that 70 abutting property owners were notified when the Town warrant for the wetlands setbacks went into effect in 2005, adding that 16 properties were identified as having prime wetlands in 2003, and two on Pease Development Authority, coming to 252 acres with 100-foot buffers. Mr. Latchaw said the Board of Selectmen sent the Planning Board a letter on October 21, 2019 asking that the Board do the same for the newly mapped wetlands. Mr. Latchaw said prime wetlands map was attached to the tax map with map and lot numbers which made it easier to identify properties.

Mr. Latchaw showed a map from Rockingham County Planning Commission that showed how the wetlands had grown over the last 60 years. Mr. Latchaw added that he thought that the Town should look at the height and runoff to Motts Pond because he thought that it could be impeding the natural draining from Spinney's field.

Mr. Latchaw said he met with Chair Hebert and Mr. Coogan earlier in the afternoon, and agreed that the chart was better, but was concerned that abutters needed to be sent a public notice.

Chair Hebert responded that the Board asked Mr. West to do the mapping last year after objections were raised when the wetlands revisions were first recommended. Chair Hebert pointed out that the Board of Selectmen didn't notify every resident or business when they changed a law that might affect them. Mr. Latchaw replied that there were only a few people in town that would be affected, and that it could be done.

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Mr. West said public notice to abutters was required by DES for the prime wetlands. He agreed that the digital information should be added to tax maps, but said notifying all property owners would only tell them that the existing ordinance would protect the 100-foot setback anyhow.

Chair Hebert stated that former Conservation Commission Chairs Peggy Lamson and Justin Richardson had recommended change that the Planning Board change the Wetlands Ordinance in 2003, and if they didn't, he thought the setbacks would be worse.

Ms. Pickering said she thought the Town should have a committee to discuss their wetlands. Chair Hebert replied that the State RSA's authorized municipal conservation commissions), and for planning boards to amend their zoning amendments.

Ms. Pickering asked how many wetlands were needed, and suggested that the Town look at whether they needed to protect wetlands anymore. Ms. Pickering said some towns only protected prime wetlands, but that many towns didn't protect wetlands at all, and that she thought that the Town was trying to be too safe.

Ms. Pickering and Mr. Frink commented that there were wetlands in town that had not been there before because wetlands had increased. Ms. Pickering said that she couldn't ditch and drain her property once the prime wetlands had been designated so now the wetlands were increasing, adding that the town did construction in 2013 to prevent the water from flowing onto her property, where cattails had grown in. Mr. West agreed that agricultural ditches used to be maintained, and got backed up once they were not maintained, and then a new wetland gets created.

Mr. Frink noted that years ago the Town was able to remove a board from Motts Pond seasonally, and when a storm was coming. He said he had not maintained his ditches over the year, and watched his fields get wetter, and said Gove Environmental recently informed him that soil type changed when water sits.

Mr. Frink said he was in consultation with the government to see if he could revert his property back to its original agricultural conditions. He said if he was doing something benign and organic, it would do no harm. He said he had an agricultural easement so he thought he could ditch, but he didn't know if Ms. Pickering could ditch her property.

Mr. West pointed out that under Section 4 of permitted uses listed was agriculture, including grazing, pasture management, and crops, the State allowed ditching and draining, and that agricultural use could be renewed regularly. Mr. Johnson added that it included managing wildlife habitat.

Mr. Weiner commented that he agreed with agricultural management of wetlands, but for others, wetlands remained once they came into being.

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Mr. Latchaw said he didn't agree with the summary statement. Mr. Weiner said the Board would send out a flyer explaining the new ordinance proposal and refer to the tax map, and the reductions. Mr. Cooke requested that Mr. West identify the names of brooks and streams in question.

Chair Hebert continued the discussion to December 9, or December 16, 2019.

### III) Additional Discussions:

Chair Hebert informed the Board that there would be a non-public meeting on Tuesday, December 3, 2019 at 5 p.m.

Mr. Marconi thanked everyone for their service to the town and the late hours that they put in.

**Minutes:** *Jim Weiner moved to approve the Minutes for the Nov 12, 2019 site walk meeting. Ben Johnson seconded, and all were in favor with Mike Marconi and Russ Cooke abstaining.*

*Peter Welch moved to approve the Minutes for the Nov 12, 2019 meeting. Ben Johnson seconded, and all were in favor, with Mike Marconi and Russ Cooke abstaining.*

*Peter Welch moved to approve the Minutes for the Nov 7, 2019 Master Plan meeting with corrections. Ben Johnson seconded, and all were in favor, with Mike Marconi and Rick Stern abstaining.*

**Adjournment:** *Mike Marconi moved to adjourn the meeting. Peter Welch seconded the motion and the meeting adjourned at 10:45 p.m.*

**Next Meeting:** Monday, December 9, 2019

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

*These Minutes were approved and adopted at the December 9, 2019 Planning Board Meeting.*