

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes, Monday, February 10, 2020

- Call to Order:** Chair Denis Hebert called the February 10, 2020 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 members, Rick Stern and Jim Weiner; Board of Selectmen's Representative, Mike Marconi; Town Planner, John Krebs and Jane Kendall, Recorder
- Public Guests:** Town engineering consultant, Eric Weinrieb with Altus Engineering; Brenda Blonigan; Craig Daigle; Ann Hebert; Jeff Hiatt; Abby and Katy Hood; Sam Pottier; Emily and Jared Savinelli; Jennifer Weiner; Derek Wilson

### I) Subdivision and Site Plan Regulations Review

Chair Hebert opened the discussion for consideration of potential amendments in consultation with Town engineering consultant, Eric Weinrieb with Altus Engineering.

Mr. Weinrieb stated that there were design review guidelines, site plan regulations, specific regulations for residential and subdivision roadways. Mr. Weinrieb said the residential construction specifications were rewritten extensively nine years earlier, and were in pretty good shape, but a few changes like pavement thickness could be updated. Mr. Weinrieb went on to say that the section on Town acceptance of subdivision roads needed to be reviewed closer by the Board of Selectmen and the Planning Board.

Mr. Weinrieb said he thought road construction could be addressed in the conditions of approval, but subdivision review was most important to work on, adding that subdivision regulations and site plan regulations should be addressed together because they overlapped.

Town Planner, John Krebs suggested that they start with the subdivision regulations because sweeping changes needed to be made, and then they could do road standards later.

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Chair Hebert responded that the Board needed to work on Capital Improvements Program (CIP) after the Master Plan was finished done, and that Mr. Weinrieb and Mr. Krebs could work together on regulations changes because he didn't think it was that large. Mr. Krebs replied that he found a lot of procedures and requirements were out of date with State statutes, and that he thought he could redline changes with Mr. Weinrieb, and present recommendations to the Board in totality in a couple of months.

Mr. Krebs added that minor revisions to site plans sometimes didn't require the Planning Board approval as many towns established square foot limits. Mr. Weinrieb added that the lighting ordinance and parking ordinance also needed to be updated, and that he would welcome the board's input.

Chair Hebert said that Eversource just announced that they were no longer doing an electrical loop unless there were 40 homes, so he wanted to be sure that the regulations be updated to require low recycle fill, and flowable filler around conduits instead of concrete so that could be isolated and repaired if there was a break.

Chair Hebert said he also wanted to be sure that cul-de-sacs were tear drop shaped like the cul-de-sac on Hannah Lane to make plowing easier. Mr. Weinrieb said he would make a draft on simple road construction, and would then work with Mr. Krebs.

Mr. Krebs stated that the changes would only require a public hearing. Mr. Krebs added that the State statute changed a couple years ago, and publication of hearings in local newspapers was no longer required, and he wasn't sure that anyone read the papers for notices anyhow. Mr. Krebs stated that legal requirements would be covered so long as notice was posted on the Town bulletin board and website in a timely manner. Board of Selectmen's representative, Mike Marconi commented that they tried to get notices out quickly, but agreed that posting in the newspaper was no longer necessary.

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*Chris Cross moved that the Board recommend look at the Planning Board Subdivision, Site Plans, and Road Regulations, and have Board members send comments to Town Planner, John Krebs by the end of February 2020. Erika Mantz seconded the motion.*

Chair Hebert responded that he thought it was a good idea, but he wasn't sure that everyone had the same experience so he didn't think contributions should be mandatory. Board member, Chris Cross responded that everyone on the Board was property owner, and that they would have thoughts based on their residential experience. Mr. Weinrieb added that Board members could highlight any sections that were not clear, and ask for clarifications.

Chair Hebert announced that there was a full board so alternates would not vote for the evening.

*The motion passed with all in favor.*

### **II) Public Information Session: Proposed 2020 Zoning Amendments**

Chair Hebert presented a brief overview of the amendments for public discussion.

Board member, Russ Cooke asked where the public could get copies of the ordinances as written instead of the synopsis of what would go on the ballot. Mr. Krebs replied that he could make copies available at Town Hall, and he would be sure that it was on the website.

#### **A) Building Code Amendment #1**

Chair Hebert stated that this amendment came at the recommendation of the building inspector. Chair Hebert said that the Board didn't want to change the \$2,500 limit, but decided to strike out that last sentence. He said they still hoped to make it more succinct next year.

#### **B) Building Code Amendment #2**

Chair Hebert stated that this amendment was simply an update in materials technology changing from cast iron piping to PVC piping.

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### **C) Zoning Amendment #1, Mounted Solar Systems in the Residential District**

Chair Hebert stated that this was a new amendment.

Mr. Marconi noted that State law only allowed systems that would generate what was used over the course of a year. Chair Hebert added that the intent was to avoid yards becoming generation facilities.

Craig Daigle of Nimble Hill Road commented that Massachusetts allowed excess generation to be stored in the grid, but not in batteries. Chair Hebert responded that battery technology for independence was improving, but it was not there yet. Alternate Board member, Jim Weiner added that the Town didn't allow communal solar, which would get fed into the grid, with profits paid to the investors get payment for extra.

Derek Wilson of Coleman Drive asked how use would be estimated. Board member, Ben Johnson said his was based on a year's worth of electric bills. Chair Hebert added that the intent was what average family would use.

Sam Pottier of Fox Point Road asked if the ordinance was supported by the Board of Selectmen. Chair Hebert replied that ordinance proposals were recommended by the Planning Board, and not the Board of Selectmen.

Mr. Wilson asked what the purpose and intent of the proposal was. Chair Hebert replied that it was to provide alternative energy opportunities, without infringing on abutters and still preserve the rural character of the Residential District.

Mr. Cross added that the New Hampshire Legislature had initiated green energy over the last ten years, and passed a regulation to encourage solar power. He added that there were no restrictions so individual towns were able to and established their own restrictions.

Mr. Daigle commented that his sister lived in the southwest where people put solar panels up in their front yards because there were no regulations, so he supported this proposal.

Brenda Blonigan of Hannah Lane agreed that it was a good start to protect the town.

### **D) Zoning Amendment #2, Article IX – Signs**

Chair Hebert read through clarifications on size, setbacks, duration, etc.

Jennifer Weiner asked what would prevent a violation similar to what happened last summer from happening again. Chair Hebert said he was not sure of all the details from last summer, and he was not sure if any could guarantee that it would never happen again, but this was the recommendation made in conjunction with the Board of Selectmen, Town legal counsel, and the American Civil Liberties Union (ACLU).

Mr. Cross commented that there were lots of reasons for signs, but the sign ordinance was to prevent the town from being overrun by signs, and the Board of

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Selectmen, attorneys, and ACLU all came up with an agreement that would also uphold people's Constitutional rights. Chair Hebert agreed that the ordinance was both about protecting the appearance of the town, and protecting freedom of speech.

Abby Hood of Coleman Drive said she appreciated the work done on updating the ordinance with a legal standard, but still wanted to know about enforcement. Mr. Krebs added that the code enforcement officer, and the Board of Selectmen were to enforce the ordinances, not the Planning Board.

Ms. Hood commented that the difference between the old and new ordinance seemed minor, and asked if it would be problem putting up an ad for her son's birthday. Mr. Krebs replied that the ordinance wasn't about enforcing temporary signs.

Ms. Hood commented that the previous ordinance had a table showing if a sign permit was required. Mr. Daigle commented that the best thing was to go to the Town Hall and ask the appropriate official to read the ordinance and follow it. Chair Hebert agreed should it was a good idea to ask questions before putting signs up, especially if it was not clear.

Ms. Weiner asked Mr. Marconi to take the message back to the Board of Selectmen to uphold the ordinance and resident rights. Mr. Marconi replied that the Board of Selectmen thought this amendment was fair by mutual agreement. Emily Savinelli of Fabyan Point Road said that she heard there was a process if any enforcement issues came up again.

Mr. Cross said he heard that the public would still like an explanation from the Board of Selectmen or code enforcement officer on how this update would prevent what happened last summer. Mr. Marconi replied that it should not be a problem if the ordinance was followed. Mr. Cross suggested posting an explanation on the website or pass out an explanation. Chair Hebert noted that it would need to happen before Town Meeting.

### **E) Zoning Amendment #3, Article XVIII – Workforce Housing Overlay Zoning**

Chair Hebert read the Explanatory Note: *“All municipalities in New Hampshire have been required to provide “reasonable and realistic opportunities for the development of workforce housing, including rental and multi-family housing” since January 1, 2010 per NHRSA 674:58. The proposed amendment does not change or modify in any way the existing zoning of the three parcels, but rather, permits (overlays) an additional permitted use – Workforce Housing.”*

Chair Hebert presented a map proposing that three parcels identified as Tax Map 12/Lots 13, 15, and 16 for workforce housing. Chair Hebert stated that this would allow the current property owners to continue with their businesses, , but also allowed them to develop or sell their lots close to the residential zone with municipal sewer and water for workforce housing if they wanted.

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Mr. Cross stated that the State passed legislation a decade earlier to address the lack of affordable workforce housing in New Hampshire. He said the Planning Board and Town reviewed the legislation, and didn't think enforceable based on limitations of available and affordable properties in town. Mr. Cross said the Planning Board put forward an accessory dwelling unit (ADU) ordinance a couple of years ago to provide some affordable housing at the choice of residents, but now Governor Chris Sununu has since put a task force together to fast track larger solutions.

Mr. Daigle commented that it seemed like it gave the property owners more opportunities. Chair Hebert responded that these property owners couldn't subdivide beyond the minimum lot size of five acres per lot, leaving non-conforming lots. Chair Hebert added that he didn't know if the residential overlay would increase the value of the office zoned property. Mr. Cross said he didn't know if the workforce housing overlay would add value for the existing property owners, but if it did, it would be good for the town because the tax base would go up.

Mr. Cross went on to say that Newington's zoning was designed to preserve properties for the best commercial, office and industrial uses. Mr. Cross said residential properties were the costliest because of the facilities and services required, but this overlay district lots had the lowest cost base compared to properties across the highway. He added that this location was closer to the existing community, and walkability to the village as well.

Ms. Blonigan said the law was passed ten years ago, and the old drive-in theatre had been identified for workforce housing before the State took it over for a laydown area, but the Board hadn't come up with anything until now. Ms. Blonigan stated that she wrote a letter to the Board of Selectmen, saluting the Planning Board for taking action to protect the town from a developer from taking a random lot that the State would support.

Ms. A. Hood asked if they had considered including the site where the old hotel was located, and Chair Hebert replied that they had not at this time.

Ms. A Hood asked why an additional parcel had not been added. Chair Hebert replied that they could do more, but this was a start to be compliant with the State mandate. Chair Hebert added that there was another parcel in town that was available for a million dollars, but he wondered if it could be developed into a lucrative workforce housing for a million-dollar parcel. Chair Hebert went on to say that there were many inquiries from a developer that wanted to build high end housing when Eversource was selling their property, but the Town wanted to protect the only working port for the state.

Jeff Hiatt of Little Bay Road commented that part of the Economic Development Committee wondered if they were addressing the floundering Fox Run Mall. Chair Hebert replied that they had commissioned a study regarding mixed use at the mall, but it most likely would be mostly high-end housing, and would only have 3-10% of workforce housing, so this proposal was to be compliant with the State mandate.

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Mr. Cross commented that the EDC could advertise in a way that a planning board couldn't, but higher end properties weren't considered affordable workforce housing for those earning under \$50,000 as required by the State workforce housing RSA mandate.

Maggie Cooke of Hannah Lane stated that she appreciated that Board's efforts, and asked what percentage of housing had to be for workforce housing. Mr. Cross replied that the State required that 50% of the workforce housing had to include two bedrooms, and that it had to be economically attainable by developer.

Mr. Krebs stated that he worked for Rockingham Planning Commission (RPC) in the 1990's, and no one could provide a number, however, the State said that 100% of available residential land had to accommodate workforce housing. He said that Newington had a lot of wetlands, and no public sewer, but thus far this proposal was the best recommendation. Chair Hebert stated that a workforce housing development had to be 40% green, and stay within a maximum height, and a minimum requirement of five units. Mr. Cross added that 75% had to be affordable workforce housing, and 25% could be full market, but both had to be built to the same standard. Chair Hebert added that towns couldn't make a workforce housing proposal difficult by denying the opportunity.

Chair Hebert stated that the former Thermo Fisher building just sold 8.6 million dollars, and, along with Portsmouth, New Castle, and Rye, properties were so high that it was difficult to find available properties.

Mr. Daigle commented that he had always supported land conservation in town, and Newington had uniquely a small population supported by a commercial and industrial tax base, so he wondered how the existing facilities and services would respond to new residents. Mr. Daigle asked if it was possible that residents could be secure knowing that no megastructure would be built along the highway. Chair Hebert replied that the Board would write up the restrictions.

Mr. Daigle asked if workforce housing would be homes as well as apartments, and Chair Hebert replied that they would probably be apartments, but it would depend on the developer. Chair Hebert commented that the Town's ADU ordinance had almost no impact on residents so long as the requirements were met, and it would be the same with workforce housing. He said the ordinance provided a possibility, but it would be up to a property owner and developer to implement it.

Ms. Weiner commented that she thought that this proposal controlled where workforce housing could go. Chair Hebert responded that workforce housing could still go on an available lot, but the developer would still need to meet the requirements. Mr. Marconi added that it would still be a question of whether it would be cost effective. Chair Hebert agreed, and said that was part of why they had proposed placement near Town sewage. Chair Hebert added that there was sewer connection only a quarter mile from the Town soccer field as well.

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Mr. Daigle asked if it would come up for a Town Meeting vote, and Chair Hebert replied that it would be a ballot vote. Mr. Daigle asked what would happen if it was voted down. Mr. Krebs stated that residents needed to understand that the State had intervened, and if a developer proved that the Town was impeding a proposal, they could take the Town to court, so this ordinance had been written by the Town legal counsel to protect the Town. Mr. Krebs went on to say that the Board could make improvements next year, but this still had to pass a reasonable test.

Chair Hebert added that three judges would rule on the question because there was a crisis with a shortage of workers living in the area. on of business and shortage of workers.

Ms. A. Hood said she felt a lot a lot of diversity that she knew growing up in town left when Pease Air Force Base closed, and she was excited for a humanistic approach with the prospect of providing housing opportunities for local workers.

Ms. Hebert said that compliance was important because the town could be at risk of having the State decide for them if they delayed with more studies and debate.

Ms. Hebert stated that she had reviewed 14 months of Minutes from Board of Selectmen meetings, and had never seen any discussion or motion regarding workforce housing, and yet Mr. Marconi had said that the Board of Selectmen were not in favor of the proposal, and she wondered if they had discussed it offline or in a non-public meeting. Mr. Marconi replied that it was the feeling of the Selectmen that they couldn't support the proposal if they didn't understand it enough to explain it to others. Ms. Hood stated that she had no problem understanding the issue through reading about it, and listening to the discussions.

Ms. Pottier stated that she thought the meeting was very informative, and wanted to hear specifics of the Board of Selectmen objections. Mr. Marconi said he also commended the Board for moving forward, and although he originally supported the proposal for workforce housing at the former drive-in theatre site when it was private property, he didn't think a judge would say that that an overlay on State property could be rezoned and enforceable for workforce housing, and he didn't support the other two lots either.

Mr. Marconi said he also felt that this proposal was premature prior to receiving results from the mixed-use study for the mall area, even if it encompassed more uses. Chair Hebert said a housing study for the mall area was asked by the Board of Selectmen, but different than this because that would be high- income housing.

Ms. Savinelli commented that she appreciated the public discussion, but she was frustrated that more didn't attend with only a month away from election day, and that there was discord from the Board of Selectmen. She said she made an effort to attend, record and review meetings, and hadn't heard anything more from the Board of Selectmen outside of the public meeting. Ms. Savinelli said there was a long document on the internet that the New Hampshire Housing Authority put out on workforce housing, and she thought it important for leaders to come together to understand the proposal



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and direct people to attend if they didn't understand because not doing anything could result in undesired consequences.

Ms. Savinelli asked why the State property was an issue if the proposal had been vetted by Town legal counsel. Chair Hebert responded that David Choate was part on the Seacoast Housing Partnership board, and had talked to the EDC, and then appeared before the Planning Board. He said Mr. Choate thought that the Board had made a good attempt at becoming compliant. Mr. Hiatt replied that Mr. Choate actually said he did have an issue with the three parcels that were recommended. Chair Hebert said he didn't get that, but that he had also heard that if a developer could work with the state to make the site land.

Ms. Cooke asked if Newington could find another place if the three lots earmarked didn't work. Mr. Cross replied that constructing multifamily workforce housing would take several years so there would be plenty of time for additional consideration. He said any developer considering a development would consider their financial incentives, including State funding, and tax reduction of business profits because the cost of property on the Seacoast was so high.

### **III) Other Business:**

Board member, Peter Welch said he had been of the opinion that offshore wind power was expensive, but he recently learned that it was now less expensive than nuclear power. He said plans to develop offshore wind power to produce up to 8,000 megawatts would endanger power plants further. Mr. Welch said his question was if runs all the time. Mr. Weiner responded that buoys and wave generation were two forms of commercially viable power that showed promise also.

Mr. Cross said Federal studies showed that the highest winds were on the eastern seaboard from Cape Cod up to Searsport and it was near constant.

### **V) Additional Discussions:**

Vice-Chair Mantz announced that she had received notification for the Spring New Hampshire Municipal Planning and Zoning Conference on Saturday, May 30, 2020 from 8 a.m. to 4 p.m. in Concord.

Chair Hebert commented that there was a proposal that all municipal board members would be required to attend training and take a test. He wondered if elected board members would not be able to vote unless they passed the test.

Chair Hebert added that the Governor had also appointed a three-member panel for a lengthy study to decide if town regulations were too strict.

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**Minutes:**     *Mike Marconi moved to approve the Minutes for the January 27, 2020 meeting with corrections as noted. Erika Mantz seconded, and all were in favor.*

**Adjournment:**     *Mike Marconi moved to adjourn the meeting. Peter Welch seconded the motion and the meeting adjourned at 8:30 p.m.*

**Next Meeting:**     Monday, February 25, 2020

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

*These Minutes were approved and adopted at the February 24, 2020 Planning Board Meeting.*