

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, February 24, 2020

- Call to Order:** Chair Denis Hebert called the February 24, 2020 meeting at 6:00 p.m., followed by the pledge of allegiance.
- Present:** Chair Denis Hebert; Vice-Chair Erika Mantz Board Members: Christopher Cross; Ben Johnson; and Peter Welch; Alternate Board member, Jim Weiner; Board of Selectmen's Representative, Mike Marconi; and Jane Kendall, Recorder
- Absent:** Board member, Russ Cooke; Alternate Rick Stern; Town Planner, John Krebs
- Public Guests:** John Lorden, P.E. with Tighe and Bond; Jim Gove with Gove Environmental; John Liatsis; Attorney John Bosen; Corey Caldwell with TFMoran; Brenda Blonigan; Maggie Cooke; Ann Hebert; Jack and Luanne O'Reilly; Town counsel, Attorney John Ratigan; Town wetlands consultant, Mark West with West Environmental

Chair Hebert announced that Alternate Board member, Jim Weiner would be voting in place of Board member, Russ Cooke.

I) Public Hearings:

- A) Continuation of Site Review proposal by **Doloma Investment of Portsmouth, Inc.** to construct a 98-room hotel on property located on **Shattuck Way, Tax Map 20, Lot 4-C.**

John Lorden, P.E. with Tighe and Bond stated that they submitted a new plan dated February 5, 2020 after addressing Technical Review Committee comments, and that they expected to make additional comments after they received a response from Town engineering consultant, Altus Engineering. Mr. Lorden said they added some wetlands buffer seed mix to their landscape plan, and they would be going before the Newington Conservation Commission on Thursday, March 5, 2020.

Mr. Lorden said they had revised their lighting plan, and added a sidewalk that would cross over to Old Dover Road.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, February 24, 2020

Mr. Lorden said that Altus Engineering commented that the Town required a stamp on the existing conditions plan by a licensed engineer from TFMoran, but Tighe and Bond combined the existing conditions and demolition plans. Chair Hebert said he had never seen it done that way, but he thought could try it.

Chair Hebert reminded Mr. Lorden that the Board would want to see the plan and notes before submitting them to Rockingham Registry of Deeds.

Mr. Lorden stated that there was a minimum requirement of 98 for 98 rooms, but would be providing 100 spaces. Chair Hebert responded that he thought they would have more than two employees. Mr. Lorden said there would be times when it was crowded, but they met the minimum requirement, and the hotel would have to determine if they would have people park off site, and shuttle them in. Mr. Lorden added that sometimes a single vehicle might also take two rooms.

Chair Hebert asked how many employees would work at the hotel. Mr. Lorden replied that there would be a maximum of 7-10 for busy shifts. Chair Hebert said he wanted to know if there would be vacancy times.

Alternate Board member, Jim Weiner expressed concern that the staff would end up parking on the lawn when rooms are sold out, and. He suggested that it be a condition of approval that the employees be shuttled in from across the street. Chair Hebert pointed out that site regulations didn't allow offsite parking.

Board member, Chris Cross said parking was an issue, and wondered where buses or tractor trailers would park. Mr. Lorden said this site would not have parking for oversized vehicles, though buses could drop off larger groups.

Mr. Lorden said they looked at alternatives, and were concerned with vehicles backing into traffic if they squeezed more parking in one area, and they also considered parallel parking along the access road. Chair Hebert suggested that they review parking at the entrance on the uplands. Mr. Lorden responded that they couldn't have entrance plantings and parking too.

Chair Hebert said he didn't want to borrow parking from another site, and stated that the Board could address safety issues even if there was a plan met a regulation.

Town counsel, Attorney John Ratigan reminded the Board that couldn't deny an application when it met regulations. Attorney Ratigan said the tenant wanted to get it right for their patrons, so if Hilton submitted a letter saying it was acceptable then it was. He said if the Town found out there was a public safety issue, then they could require the applicant to create additional parking at the entrance.

Board member, Ben Johnson said he doubted that the parking lot would ever be full, especially if a number of guests were dropped off by buses or Lyft or Uber taxis. Mr. Weiner agreed, and said he didn't think they should skip the landscaping at the entrance.

Chair Hebert said still wanted to know the number of employees working at one time so could make a condition of approval at the discretion of the Town.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, February 24, 2020

Chair Hebert asked that the applicant send a request for an extension to Town Planner, John Krebs for a continuation to Monday, March 23, 2020.

B) Continuation of 13-Lot Subdivision proposal by John Liatsis to be located at 271 Nimble Hill Rd, Tax Map 18, Lots 3B.

Chair Hebert stated that the Board did a site walk with at 4 p.m., and that the applicant's wetlands consultant, Jim Gove with Gove Environmental, and Town wetlands consultant, Mark West with West Environmental had different interpretations of the wetlands.

Mr. Gove stated that he and Mr. West agreed on the location of stream channels and wetlands on the property, but he questioned how the wetlands ordinance was written and interpreted. Mr. Gove said that Mr. West's January 23, 2020 letter said that contiguous wetlands were waters that met Great Bay or the Piscataqua River, and the purpose was to protect tidal waters, but he couldn't find any written documentation. Mr. Gove said that Mr. West stated that Section 7 said that all wetlands greater than 3,000 square feet that were contiguous with surface waters had a 100 foot setback, but the Article 9: Wetlands Overlay District did not provide any guidance under Section 7 on what was contiguous or not contiguous, and there was no other guidance in the chart.

Mr. Gove said Mr. West stated that it was consistently the interpretation of the Conservation Commission and the Planning Board since the ordinance was written, but the wetlands were stopped by culverts and man-made ponds, as well as man-made ditches leading to Trickey's Cove, and therefore he didn't believe that the waters on the Liatsis property were contiguous.

Mr. Gove added that said he and Mr. West saw one channel that was more scoured than another, but two other wetlands scientists read the ordinance, and did not agree with Mr. West's interpretation.

The applicant, Mr. John Liatsis passed out two letters from Meridian Land Services and another by North Country Soil Services. Board of Selectmen's representative, Mike Marconi asked if letters supported Mr. Liatsis' point of view, and Mr. Liatsis said they did. Mr. Marconi asked Mr. Gove if he would submit his meeting notes for comparison, and Mr. Gove said he would.

Chair Hebert informed the applicant that the Board required that new information be submitted to Town Planner, John Krebs the week before meetings to give the Board time for review. Mr. Liatsis said he didn't know he was supposed to submit things for the Board to review before meetings. Mr. Gove stated that he had only seen the letters just before the meeting. Mr. Chair Hebert responded that last minute submissions only caused more delays.

Mr. West stated that his January 23, 2020 report was submitted a month earlier, but Mr. Gove had not submitted any notes. Mr. West said hydrologic connection is important. Mr. West said many town ordinances protected surface water resources, and

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, February 24, 2020

there were many cases where perennial streams flowed under culverts or rivers flowed under roads, and that didn't stop the water.

In response to Mr. Gove's statement that wetlands and soil scientists disagreed sometimes, Mr. West pointed out that wetlands scientist, Brendon Quigley with Gove Environmental had consistently agreed with the 50- and 100-foot buffer setbacks for the hotel off Shattuck Way, yet they were taking issue with the setbacks on this proposal. Mr. West said other sections in the ordinance had to do with the purpose of wetland protections, which also says that swamps and streams are included in wetlands as part of the process on how the ordinance is interpreted as a whole instead of isolated words.

Mr. Gove responded that they did an analysis of the ordinance at Mr. Liatsis' request, but in the case with the hotel site, the client accepted the setbacks, and didn't require an analysis.

Chair Hebert said there had been other reviews of streams that showed scouring, and as far as he was aware, the Town had always interpreted those surface waters as contiguous. Mr. West agreed that was the case for any reviews he had done since 2005.

Mr. Liatsis commented that he thought the wetlands on Lydia Lane and on Edna Mosher's former site had been deemed to require 50-foot setbacks. Mr. West replied that the wetlands on the former Beane estate were not part of the stream that went up to the back of the Lydia Lane development. Chair Hebert added that the stream on this lot had a 50-foot setback similar to the one on Lydia Lane. Mr. Weiner agreed that it wasn't heavily scoured.

Mr. Gove commented that the manmade detention basins were not construed as wetlands. Mr. Weiner stated that as far as the New Hampshire Department of Environmental Services (DES) was concerned, any hole of a certain size that was put in the ground, and filled with water was considered a wetland. Mr. Gove agreed that DES had jurisdiction, but said that Newington's Ordinance didn't reference DES regulations. Mr. Weiner responded that DES would disagree, and that the Town had been consistent. Mr. Gove agreed that the State would consider that they were flaggable.

Chair Hebert asked about the manmade pond. Mr. Gove said there was a pond that interrupted the flow after it left the culvert. Mr. Gove said it was manmade and detained water. Mr. Liatsis pointed out the pond, and showed where it flowed through the culvert, then dissipated under a driveway into a slipway that held the water back, then flowed to a manmade ditch out to Trickey's Cove. Mr. Gove said it had an outlet structure to hold the water back.

Mr. West noted that there was another area of ditching that flowed to the pond, and then continued to flow through to the spillway, and that the language in ordinance was written to consider water flow and wetlands.

Chair Hebert asked if he thought the water flowed when Fox Point Road was built. Mr. Liatsis said there were large dual culverts that were mostly dry at the end of

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, February 24, 2020

Fox point Road. He said Pickering Brook was cut off after Pease Air Force Base was built, and it spilled into a swampy area on Arboretum Drive.

Mr. Liatsis said the wetlands were wrong on Google Maps, and the U.S. GIS Maps too. Mr. Weiner responded that he was confused because they were digital maps. Chair Hebert said it didn't matter because technology changed, and that was the reason for having scientists examine wetlands on the ground during an application review.

Chair Hebert opened up comments from the public.

John Byron of Hannah Lane commented that interpretations changed depending who you asked. Mr. Byron said no one thought about it years ago, but people know that now that any chemicals that new residents applied in their yards would into a culvert, a pond, or a stream to Great Bay. Mr. Byron said the scouring in the streams, and the trees that were undermined on the upper side showed that there was a study flow from the tributaries on the property,

Mr. Byron said the stream was scoured on the northern side of the property, but he didn't think there should be any setback difference on either side. Mr. Weiner said it depended if it was contiguous and running or not. He said they were trying to protect the Bay, but they were not trying to be a taker of property. Mr. Byron said it would all go to the same place as the area was a bowl that would flow toward Great Bay, so he was concerned with development within 50 feet, as well as chemical fertilizers.

Mr. Liatsis said that the amount of water that would leave the property would be greatly reduced. He said aside from the homes, and driveways, there would still be permeable lawns.

Mr. Liatsis said Mr. West had done a site walk with Mr. Quigley from Gove Environmental. He said it was never formally submitted in a report, but this was his interpretation, and this was the result showing 50 feet on one side and 100 feet on another side, and a few little fingers.

Chair Hebert went on to say that the stream predated the road regardless of any manmade detention basins or treatment swales, so it didn't mean there wasn't a stream just because the Air Force cut into the stream.

Chair Hebert added that the manmade pond was also a consistent surface water. Mr. West said he had never been down to the pond to know how deep it was, but agreed that it connected to surface waters.

Ann Hebert of Gundalow Landing said the ordinance had been in place for years, and cautioned the Board to carefully consider the opinions by paid consultants.

Brenda Blonigan said she didn't understand why they were talking about the subdivision without a new plan since the waiver for the roadway was been turned down.

Vice-Chair Mantz asked if the Board had to vote on all waivers even though the driveway length waiver was denied. Attorney Ratigan said not necessarily. Mr. Cross said the hearing was to address key points regarding the wetlands that would affect boundaries and setbacks for the original proposal. Chair Hebert added the applicant

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, February 24, 2020

would need a Conditional Use Permit to cross the wetlands to get upland, and they would want to know where they sit for a revised proposal.

Mr. Weiner said he still wanted to know why they were still discussing a proposal considering that the waiver request for a road greater than 15,000 feet, with no other proposal being presented. Mr. Cross said there was a non-phased subdivision before the Board, but if it was, the Board would ask what the long-term intention was, and he could say he wasn't developing a second phase or he could; but Mr. Liatsis was being upfront, and wanted to discuss the wetlands review to address a question on setbacks.

Mr. Weiner said he knew Mr. Liatsis needed to figure out the lowlands, but he was presenting an argument on the setbacks, and he still didn't understand why he wasn't focusing on the uplands, and presenting a proposal for access. Chair Hebert responded that although the waiver was denied, the application was not, and they needed clarity on the wetlands; however, the Board has been consistent in review of wetlands and setbacks, and definitions. Chair Hebert said he agreed with Mr. West's interpretation just as they always had application after application. Mr. Johnson said he agreed with Mr. West as well because he had a history with consulting for the Town.

Chair Hebert said there were many other issues, including the form factor waiver, and road design reviews, but they didn't want to incur unnecessary engineering expenses if the road kept changing. Chair Hebert said they went into discussions on the road at the last meeting.

Mr. Cross said it might be that a development reduced outflow from property, but they would need to verify that there would be no increase in runoff as upland lawns would freeze and allow runoff in a way that a forest would not.

Mr. Cross said he was taken back by the question of surface waters as they have talked about protecting runoff to Great Bay. He said just because they couldn't find a definition, didn't mean that the Board would specify surface waters of six feet or deeper considering there were such shallow streams running to Great Bay. He said didn't agree that wetlands had to be continuous on every stream because there would be breaks, whether they were culverts, ditches, or a gorge, and that was the way it was for the last 20 years that he had served in the town.

Mr. Cross said the ordinance existed to protect the environment. Mr. Cross said each property was reviewed individually and not compared to others, but the Board and the Conservation Commission had been consistent in their definition of surface waters. Mr. Marconi said he agreed with Mr. Cross' statements.

Chris Cross moved that the surface waters identified on John Liatsis' property located at 271 Nimble Hill Rd, Tax Map 18, Lots 3B should be observed as 100 feet as per the Board's deliberation.

Chair Hebert adjourned the public hearing at 7:45 p.m. so that the Board could consult with legal counsel for ten minutes.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, February 24, 2020

The public hearing reconvened at 7:59 p.m.

Chris Cross withdrew his incomplete motion.

Erika Mantz moved that the board deny the application for a 13-Lot Subdivision by John Liatsis to be located at 271 Nimble Hill Rd, Tax Map 18, Lots 3B without prejudice based on the denial of the waiver request for an access road over 15,000 feet, and to not make a decision on the two newly presented letters from wetlands consultants until it was reviewed by legal counsel. Peter Welch seconded the motion, and all were in favor.

Mr. Liatsis responded that he still didn't know the result of his confusion on the wetlands. Attorney Ratigan replied that he had been asked to review the letters from wetlands consultants that Mr. Liatsis had submitted, and he would send Mr. Liatsis notification in 60 days.

Mr. West left the meeting at 8:02 p.m.

II) Updates and Announcements:

Chair Hebert asked Board members to review informational handouts on nitrogen the EPA's Nitrogen Permit for Great Bay, and on affordable workforce housing.

Chair Hebert announced that there would be an informational meeting on workforce housing on Monday, March 2, 2020 at 6 p.m.

Chair Hebert informed the Board that the mixed-use study had been sent out. Chair Hebert said it was impossible to find another community with Newington's uniquely small residential population, commercial, industrial, waterfront, and airport features, but they selected three different case studies for comparison, and would present their findings at the next meeting on Monday, March 9, 2020.

V) Additional Discussions:

Mr. Marconi commented that the Board of Selectmen had discussed it further, and wanted the Board to know that they were in support of affordable workforce housing in Newington, but were not in favor of the overlay locations proposed by the Planning Board. Chair Hebert said Mr. Marconi had stated in the previous Minutes that the Board of Selectmen were against workforce housing. Mr. Marconi clarified that they were said not totally against it, just not in favor of the proposed locations, and would like more information.

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, February 24, 2020

Chair Hebert commented that the Board had a work session on workforce housing on February 10, 2020 that invited residents, and the public but no selectmen attended. Mr. Marconi suggested that the Board could reach out to the Selectmen with questions.

Mr. Marconi stated that the Board of Selectmen would prefer that anyone having questions submit them in writing, or ask in person so that all three selectmen could respond because he could not speak for the others. Mr. Cross commented that he had attended a Selectmen's meeting to discuss their reasons for not supporting the overlay district, but only two selectmen were in attendance. He said they said they supported workforce housing, but didn't want to discuss the overlay district proposal.

Mr. Weiner said it sounded as if the selectmen were refraining from supporting the Planning Board efforts, but criticizing it later without working with the Board. Mr. Marconi responded that he couldn't speak for the other two selectmen, but he felt they needed more information before deciding. Chair Hebert asked Mr. Marconi to share the research information with the Board of Selectmen.

Chair Hebert explained that the thought of the Board was that the Department of Transportation (DOT) lot had been identified as a favorable workforce housing site before the State bought it, and he thought there was a chance they could sell as they did in Hampton Falls.

Chair Hebert said considering that the FAA said that housing was not considered to be compatible near air traffic, they were also wondering if Pease Development Authority would consider giving DOT the lot at the top of the hill so that DOT's current lot could be sold.

Chair Hebert said the Board also felt they needed to get something on the books to be compliant with the State mandate, even if it wasn't perfect. He said realtor David Choate had sent a letter to the Economic Development Committee stating that he wished they had different lots, but still thought it was a good start.

Mr. Marconi commended the Board for the attempt as well, but said he was afraid that a judge would not approve of an overlay district on State property. Mr. Cross commented that the other two properties were locations for consideration, just as housing could be an option at the mall.

Mr. Marconi commented that businesses couldn't keep being built without places for people to live so he thought workforce housing was important.

Mr. Cross commented that the State had given up on Section 8 housing, and had approved of housing for 120% of median income, but there was no requirement for affordability for housing, but laws were being pushed through. He added that the requirement for training was only for new board members in their first year.

Town of Newington, NH
PLANNING BOARD

Meeting Minutes, Monday, February 24, 2020

Minutes: *Mike Marconi moved to approve the Minutes for the February 10, 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 8:38 p.m.*

Next Meeting: Monday, March 2, 2020

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

These Minutes were approved and adopted at the March 2, 2020 Planning Board Meeting.