Meeting Minutes, Monday, March 25, 2019

Call to Order:

Chair Denis Hebert called the March 25, 2019 meeting

at 6:30 p.m., followed by the pledge of allegiance.

Present:

Chair Denis Hebert; Vice-Chair Christopher Cross; Board

Members: Russell Cooke; Ben Johnson; Erika Mantz; and Peter Welch; and Board of Selectmen's Representative, Mike Marconi;

Planner, Gerald Coogan and Jane Kendall, Recorder

Public Guests:

Alex Ross, P.E.; John Wendell; Attorney Christopher Mulligan; Mike and Diane Donahue; Ann and Denis Hebert; Russ McKenna; Gail and Jack Pare; John Liatsis; Steven Haight; P.E. with Civil Works Engineering; Brenda Blonigan, Maggie Cooke; Mark Phillips, CEO

of The Storage Barn; Ken Latchaw, Board of Selectmen

Former Board of Selectmen representative, Ken Latchaw introduced Board of Selectmen, Mike Marconi as their new representative.

Chair Hebert introduced newly elected Board members, Russ Cooke, Ben Johnson, and Erika Mantz.

I) Public Hearing: Proposal for a two-lot subdivision by John Wendell regarding property located at 188 Little Bay Road, Tax Map 22, Lot 13.

Chair Hebert recused himself as an abutter and Vice-Chair Cross chaired this item.

Town Planner, Gerald Coogan announced that the applicant had previously presented an informal proposal on January 14, and February 11, 2019.

Vice-Chair Cross informed the Board that the first item of business was to determine if the applicant's proposal was substantially complete before discussing waivers, and continuing the hearing.

The applicant, John Wendell stated that his goal was to subdivide the 260-year-old 11.4-acre parcel for building an additional house on the lot. Mr. Wendell said his intent was to live in the historical home built in 1760 until the new home was built. Mr.

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Wendell explained that his hope was to split the new driveway off the existing long driveway rather than put in additional pavement with a parallel driveway.

The applicant's engineer, Alex Ross presented plans to subdivide five acres for the new home and keep 6.5 acres for the original house.

Mr. Ross handed out a formal waiver request from the Driveway Regulations #8 that stated that "...no drive shall serve more than one building", except that #10 stated that "...the Planning Board had the authority to waive the regulation for good reason shown". Mr. Ross stated that the applicant hoped to retain the appearance of the lot by retaining the single shared driveway, and to minimize to the wetland buffers.

Vice-Chair Cross responded that the Ordinance article stated that no driveway shall serve no more than one lot. The applicant's counsel, Attorney Christopher Mulligan replied that that was the reason for the waiver request.

Mr. Ross stated that it was a minor subdivision with minor impact for single family homes. Vice-Chair Cross responded that it was only minor regarding cost to the applicant, but it still had to meet all the Ordinance requirements for utility access and vehicle access from the street to create independence to each development.

Mr. Ross informed the Board that the tidal wetlands had been delineated by soil scientist, Jim Gove with Gove Engineering, and that he had analyzed the soils in the low, depressed area that sometimes collected water. Mr. Ross reviewed the water flow with a culvert under the existing drive, a catch basin a protective stone retaining wall to relieve the puddling.

Mr. Cooke asked if the water overflowed to abutters currently. Former property owners, Gail and Jack Pare of Dover stated that water never flowed over their driveway. Vice-Chair Cross recommended that Town engineering consultant, Eric Weinrieb with Altus Engineering review the spillway outflow calculations to be sure water didn't leave the site and flow onto abutters' properties.

Board member, Peter Welch asked if they were proposing to install a culvert at the end of the drive, and Mr. Pare replied that there was an 8-10" culvert on the Town right-of-way in front of the stone wall. which was working fine. Mr. Marconi commented that the Town was going to do survey of all Town owned culverts.

Mr. Ross stated that there were poles with lines that ran to the back of house, but they wanted to remove and install an underground line and connect it to a transformer. He said they had already done a site walk with Eversource to discuss electric power.

Vice-Chair Cross noted that they would need two transformers if they didn't get approval for shared utilities. Mr. Ross responded that the transformer would be at the fork with have two shutoffs. Mr. Wendell said a second transformer could be somewhere in the field.

Vice-Chair Cross noted that the regulations required that the conduits be four inches, and a certain depth of cover. Mr. Ross responded that he would coordinate with Altus Engineering on the Town regulations.

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Mr. Ross informed the Board that he had talked with the City of Portsmouth Water Department and was told that there was a pipe that could serve both houses, which was stated in the letter with details included in the packet.

Board member, Ben Johnson asked if any fire hydrants were planned and Mr. Ross replied that they were not. Mr. Wendell added that he would add one if he was told by the fire department that he needed one.

Mr. Marconi commented that it was a long run if there were a fire, so he thought the applicant should have the fire chief review the site. Mr. Ross stated that the City of Portsmouth Water Department recommended booster pumps to increase the pressure to 10 psi because of the elevations and distance from the street to the house.

Mr. Marconi asked if they were planning to run the conduit for utilities along the side of the drive on one property. Mr. Wendell replied that they would have to put easements in the deeds to do so. Vice-Chair Cross noted that the Town didn't allow new utilities to cross properties, despite cost savings to owners, and agreed that easements would be necessary if they were to run along the existing lot. He added that they would also be concerned with the City of Portsmouth Water Department and the Town having access to lines for each home.

Mr. Marconi asked how the utilities were on the shared driveway of the former Mazeau subdivision on Fox Point Road, and Mr. Ross replied that there was extensive legal language for shared utility easements. Vice-Chair Cross commented that the shared driveway for the Mazeau subdivision had only been approved as an exception because the Department of Environmental Services (DES) had denied individual driveways that would have had to have crossed wetlands.

Board member, Peter Welch asked about the note on the plan that said the parcel shall was not be subdivided. Mr. Ross replied that it was a condition for a previous plan back in 1967, that the owner must return to the Planning Board for subdivision approval. Mr. Coogan read, "This provision approved on March 23, 1967 by the Planning Board, and would be null and void if modified by the Planning Board".

Discussion continued regarding the length of the new driveway, the percentage of pavement compared to two driveways, and whether the width of the shared driveway would be sufficient for vehicles from both properties to pass one another. Mr. Ross stated that the existing ten-foot-wide, 700-foot-long driveway might be widened to 15 feet, and that it would be wider at the fork, to allow a vehicle to wait until another vehicle passed. Mr. Wendell added that he hoped to have a couple of areas to pull off onto shoulders on each side as well.

Vice-Chair Cross asked where the utility trench would be in relation to the driveway, and Mr. Ross said it would be on the left side of drive. Vice-Chair Cross expressed concern that construction trucks might go onto the shoulder off the pavement on occasion and so the conduit and pipes needed to be protected because private driveway construction was not as strong as a public road.

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Vice-Chair Cross asked if they might put utility conduits for each home on either side of the boundary line to avoid breaking the regulations, and Mr. Wendell said that was an interesting idea.

Vice-Chair Cross opened comments to the public.

Mr. Pare commented that the Board did a nice job after spending a lot of time on the Mazeau subdivision, and noted that it was in the Town records for reference.

Abutter Denis Hebert of Gundalow Landing commented that he had always been against shared driveways, but he thought this proposal was merited because the applicant was only proposing a two-lot subdivision instead of a four or five-lot subdivision with a Town road that would require maintenance, and create additional infrastructure costs with more residents.

Mr. Hebert said the shared driveway for the Mazeau subdivision could have been differently, but at least it was privately owned and did not require Town maintenance.

Mr. Hebert noted that the applicant stated that he didn't wanted to maintain the two lots in perpetuity, and didn't want to develop other lots. Mr. Hebert suggested that the Board could make a condition that the deed and plan contain a note that the property not be subdivided again.

Mr. Hebert commented that two long driveways would be less in keeping with the aesthetics, open spaces and rural character referred to in the Master Plan Vision; and that scenic roads were not about pavements, but about the aesthetics of rural character, stone walls, and trees.

Mr. Hebert said he was aware that water accumulated in the field every spring and during long periods of heavy rains because of the dense blue clay, but it was not a lot of water, and it gradually flowed off the property. He said he was not in favor of the creation of a berm because he was afraid that the catch basin could plug up and overflow onto his property in excess, rather than flow gradually.

Mr. Hebert pointed out that shared utilities had been allowed in certain cases, including the Rogers' property on Swan Island Lane, and with Peter Welch's electric line connection from Ted Connors' house, but he didn't think it necessary for the conduit to run beside the driveway, but the line did need to be done in concrete to prevent soil from filling in and collapsing in the voids.

Brenda Blonigan of Hannah Lane, Ann Hebert of Gundalow landing, and Michael Donahue of Little Bay Road all agreed that the proposal for a shared driveway would preserve the rural appearance of the town.

Ms. Hebert commented that any water that collected on the property was seasonal and related to weather, and that a shared driveway would reduce the amount of pavement and runoff. Ms. Hebert added that she agreed that two separate driveways from the road would look like a divided highway.

Ms. Hebert asked Mr. Coogan whether other towns had similar regulations against shared driveways, and Mr. Coogan replied that it varied, but her understood that there had been a few disagreements in town over shared drives. Mr. Coogan added that

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he agreed with everyone's statements on the benefits of a shared driveway, and noted that two driveways could create water dams and more water.

Mike Donahue of Little Bay Road commented that he and his wife, Diane who lived across the street would also benefit from a scenic view of the single shared driveway from the road. Mr. Wendell added that putting in another curb cut could conflict with the Donahue's driveway. Mr. Donahue agreed, and added that a second driveway would be closer to the 100-foot wetlands, and there would be additional runoff into the wetlands.

Russ McKenna of Gundalow Landing noted that a second drive on an elevation could cause more runoff and agreed that a single, shared driveway would be better.

Mr. Marconi asked how Mr. Hebert felt about running power and water along the boundary lines, rather than on one property along the shared drive. Mr. Hebert replied that he understood that it would be a savings on digging one trench, but he thought it would be cheaper to dig along the drive than a snow-covered field. Mr. Hebert added that although it might be preferable to have separate utilities for each home, each home would still need a booster transformer because of the length of the driveway from the road to the homes.

Mr. Coogan suggested that it would be best to have Mr. Weinrieb review the proposal, and then the applicant and the Board could discuss recommended changes.

Mr. Wendell asked what if there was anything missing in the plan for the Board to vote on it as being substantially complete. Vice-Chair Cross replied that the applicant would need to present another plan if the shared driveway request was not approved.

Mr. Hebert commented that the Mazeau's attorney and the Town attorney worked out an agreement so that the Town would have no vested interest. He said there still could be issues if one applicant didn't have funds to maintain the shared drive, so that was the one thing that attorneys needed to address. Mr. Wendell agreed that termination limits would be included.

Vice-Chair Cross commented that his fear was that disagreements could occur when property owners no longer wanted to share maintenance, and the courts always held that property owners that didn't want to maintain a shared driveway would have to pay for a new driveway. Mr. Hebert responded that the applicant's attorney would write up and review an agreement with Town counsel, Attorney John Ratigan. Attorney Mulligan commented that even an easement lasts forever unless there was evidence of abandonment and that rarely happened, and both parties would have to agree. He added that an agreement would be drafted between private property owners that wouldn't affect the Town.

Vice-Chair Cross reiterated concerns with what might happen if a future owner wasn't happy with a shared driveway. Attorney Mulligan replied that anything was negotiable if it became an issue. Ms. Blonigan stated that her experience working with the sheriff's office was that shared driveways were pretty much in stone. Mr. Wendell

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added that he felt strongly that a shared driveway from the road should and would continue to appear as it always had.

Mr. Hebert added that the applicant would need to agree to keeping the catch basin clear, but that the Town would have the right to clear and charge the property owner if it became blocked, and Attorney Mulligan agreed.

Vice-Chair Cross closed the public hearing.

Vice-Chair Cross commented that the Ordinance didn't allow shared driveways, but they had heard good reasons to waive the regulation, so they needed to state the reasons specific to this property to avoid setting a precedent for other properties that didn't have good reasons.

Russ Cooke moved to grant the waiver request to allow a shared drive for the proposal for a two-lot subdivision by John Wendell regarding property located at 188 Little Bay Road, Tax Map 22, Lot 13. Peter Welch seconded the motion.

Discussion ensued regarding justifications specific to the property for the waiver to allow a shared driveway. Mr. Coogan summed up the justifications specific to the approach as appealing to aesthetics, retaining the historic home, open spaces and scenic rural character, and having less of an environmental impact on nearby wetlands with less impervious asphalt and runoff.

Discussion ensued regarding amendments to the motion.

Board member, Erika Mantz added that the Board wanted to do something to guarantee that there would be no more subdivision of the lot. Vice-Chair Cross asked for an amendment that approval of the waiver would be contingent on a two-lot subdivision. Mr. Cooke asked how the Board could guarantee that there would only be two lots in 50-75 years.

Vice-Chair Cross stated that the waiver could be contingent upon a two-lot subdivision, which would give the owners an out if they wanted to present another plan for a future subdivision, but asked if the condition would be enforceable for future owners if either of the lots were sold, and Mr. Marconi replied that it would be if it was recorded on the plans and deed. Vice-Chair Cross asked if the owners would be bound by covenants, and Attorney Mulligan nodded that they would be bound.

Russ Cooke amended the motion with the condition that the waiver for the shared driveway was contingent upon a note on the plan and the deed that there would be no further subdivision of the property. Peter Welch second the motion and all were in favor.

Vice-Chair Cross commented that the Ordinance did not allow shared utilities, and unnecessary easements when it was possible to place trenches for the conduits on

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each parcel. Mr. Cooke responded that it made sense to put utilities in the driveway right-of-way.

Mr. Welch commented that there were two different issues because the electric line was still the property of Eversource, but the waterline became private as soon as it left the public right-of-way. Mr. Welch went on to ask who owned the cable once it left the right-of-way, and Mr. Hebert replied that the companies owned the cable or fiber optics, as well as the phone company owning land lines up to the box on the side of house. Mr. Wendell responded that he would be willing to run two separate water lines.

Peter Welch moved to amend the motion with the condition that the waiver for the shared driveway was contingent upon a note on the plan and the deed that there would be no further subdivision of the property, that shared utility lines share an easement, and that a legal agreement be established for a common easement for utilities. Erika Mantz seconded the motion and all were in favor.

Mike Marconi moved to accept the proposal for a two-lot subdivision property located at 188 Little Bay Road, Tax Map 22, Lot 13 owned by John Wendell as substantially complete. Ben Johnson seconded the motion.

Discussion ensued with Mr. Marconi stating that he wanted to be sure that water didn't freeze in the culverts, as well as his concern with water flowing in the direction of the newly repaired culvert by Captain's Landing.

Vice-Chair Cross suggested that Mr. Ross examine the culvert on the road side and either clean it out or replace it so long as they were digging the area anyhow. Mr. Marconi stated that Altus Engineering was examining all the culverts in town anyhow. Mr. Wendell replied that the stone columns were too narrow for a fire truck, so they would widen the entrance anyhow

The motion passed with all in favor.

Mr. Marconi expressed concern that there might not be enough water pressure for fire fighters on such a long line to the houses at the back of the lot.

Mr. Hebert commented that the requirements for fire hydrants would be different if it were a Town road, but they might want to discuss the size of the water line and the distance of fire hydrants to assist tankers should they need to fight a fire down the long private drive. Vice-Chair Cross responded that Mr. Ross could work with Mr. Weinrieb with Altus Engineering before final approval.

Mr. Ross asked if Altus Engineering needed authority from Board to work with them. Vice-Chair Cross authorized the applicant to proceed with working with Altus Engineering and continued the application to Monday, April 22, 2019.

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(The Board took a ten-minute break at 8:22 p.m. at this point in the meeting.)

II) Preliminary consultation: Proposal for a subdivision by **John Liatsis** regarding property located at **271 Nimble Hill Road**, Tax Map 18, Lot 3A

Chair Hebert resumed chairmanship from the previous public hearing, and Mr. Cooke recused himself as an abutter.

Steve Haight with Civil Works appeared before the Board to introduce them to the applicant conceptual plan. Mr. Haight said the applicant had already done one subdivision and now wanted to do a 13-lot subdivision out of 32 acres, including his home that he had lived in for 8-9 years. He said the homes would have their own septic systems and be on Town water.

Mr. Haight said the applicant intended to build a roadway meeting standard Town specifications with a cul-de-sac which would require a waiver. He said they had already talked with the fire and police chiefs, and had reached out to the abutters.

Mr. Marconi asked what the lot sizes would be. Mr. Coogan replied that they were proposing standard 1.8 acre lots with 200 feet of frontage. Mr. Coogan asked if each lot met the requirement for contiguous uplands. Mr. Haight replied that their chart showed the conforming lot area, uplands and wetlands that Gove Environmental had delineated, along with the required setbacks except for two or three lots with small wetlands crossings for drives.

Mr. Coogan pointed out that the dead-end street was 60% longer than a standard road design that would be considered excessive for Town maintenance, and that the Town usually wanted a second emergency access for a large development. Mr. Haight replied that they would put fire hydrants on the road.

Chair Hebert asked why the Board should grant a waiver for a longer road that the Town would have maintain. Mr. Haight replied that the shape of the lot determined the shape of the road and the waiver would allow the applicant to develop 12 more lots.

Chair Hebert added that he didn't think all the lots fit the form factor requirement. Mr. Haight replied that he could do the form factor calculation, but every lot had different conditions and topography, so they might need to request another waiver.

Vice-Chair Cross commented that it might not be easy to obtain a waiver for the additional road length without good cause, and suggested that the applicant talk with neighbors to see if any of them would accept an offer to provide a second emergency exit onto Fox Point Road that would also be beneficial for the school buses. Mr. Liatsis said he had already talked with Nimble Hill property owners, Paul Harvey and Alexander O'Brien.

Vice-Chair Cross added that they would need to clearly define the setbacks as he would be concerned with development too near the high-pressure National gas pipelines along Arboretum Drive.

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Mr. Welch asked if they had talked with emergency services regarding access, and Mr. Liatsis replied that he would on the following Wednesday because fire hydrants would be a concern. He added that his home was set back enough that the fire department already had to acquire a longer hose length.

Discussion ensued regarding the steepness of the entrance and potential difficulty with the line of site, and that entrances at significant intersections needed to be spaced over 400 feet to avoid conflict. Mr. Liatsis replied that he could change the grade and the driveway to improve the line of site.

Chair Hebert recalled that the driveway was wet when visiting Randy Watson, the previous owner of the property. The applicant, John Liatsis replied that road was a right-of-way, but his driveway was further down now.

Vice-Chair Cross pointed out that the Town's wetlands consultant, Mark West of West Environmental would need to review Mr. Gove's report for wetlands setbacks considering that there might be a significant fork of Pickering Brook draining toward the Old Town Forest.

Chair Hebert opened informational session to public

Brenda Blonigan of Hannah Lane expressed concern for traffic coming together from Hannah Lane, Little Bay Road and Nimble Hill Road since a friend of hers had been rear-ended while pulling onto Hannah Lane.

Ms. Blonigan said she also had an issue with Vice-Chair Cross suggesting that the applicant inquire on obtaining property from abutters for an emergency exit. Mr. Haight replied that it was not uncommon to hear suggestions from Boards and abutters, and that was the reason for the preliminary discussion.

Maggie Cooke of Hannah Lane commented that that she had never been approached by the applicant regarding the property development, but she had a copy of a previous subdivision proposal that did not have such a long road in front of the cul-desac.

Ms. Cooke added that older roads in town were already in disrepair and that another Town owned road would add to maintenance and plowing costs, and adding more traffic to the area.

Ms. Cooke said she did not think more families needed to be added to the town, and stated that she was also concerned with a development making her dry lot wet as had happened to another house.

Ms. Blonigan stated that water ran down Nimble Hill Road and pooled, becoming a sheet of ice at the end of Hannah Lane. She added that there was a lot of wetlands from the former Maldini property drainage easement that caused more water in her basement.

Chair Hebert noted that the Town had just approved of a change to the Ordinance that water leaving property could not increase from its previous conditions. Mr. Haight noted that water ran down from the property now, but he understood that the Ordinance stated that runoff could not be increased, or had to be mitigated.

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Mr. Liatsis replied that the plan that Ms. Cooke had appeared to be a 2015 proposal from David Leedberg before they did the lot line adjustment.

Chair Hebert commented that he didn't think the length of the road to the cul-desac was necessary for two additional houses, and created a lot of infrastructure for the Town to support. Mr. Liatsis replied that he had looked into building a private road, but was advised to talk to the fire chief before considering. Mr. Liatsis said Mr. Leedberg's subdivision plan was to do this, and he had purchased the property with the intent to subdivide. Chair Hebert replied that he was not aware that the road regulations had changed since Mr. Leedberg applied for the lot line adjustment, so this proposal had always been a problem.

Mr. Liatsis asked what the Board would like to see him do differently. Chair Hebert replied that it would be a conflict of interest for the Board to design plans for applicants. Vice-Chair Cross added that the Board had listed the issues with the proposal, and the applicant could address them or request a waiver, but this was just a preliminary consultation and no decision would be made.

Mr. Liatsis asked if the Board would feel differently if he proposed a private road, and Vice-Chair Cross said they wouldn't because a private road still needed to meet Town road specifications as tax paying residents would eventually expect the same mail delivery, plowing and trash pickup as others in town.

Vice-Chair said he understood that there were challenges to be addressed on a deep, land-locked parcel, but he could adjust the plan to accommodate the current Ordinance regulations.

III) Old Business: Amended landscape plan for Storage Barn I located at 2211 Woodbury Avenue, Tax Map 19, Lot 2

Mr. Coogan stated that the applicant presented an amended landscape plan to the Conservation Commission on Thursday, March 14, 2018, and have received their approval for replacing overhanging ash trees that were blocking solar access for the abutting Sponge Jet solar roof panels.

Vice-Chair Cross asked if all the replacement plantings were low. Mark Philllips, CEO of The Storage Barn replied that all the native species were no higher than four to five feet.

Mike Marconi moved to approve the amended landscape plan for Storage Barn I located at 2211 Woodbury Avenue, Tax Map 19, Lot 2. Rus Cooke seconded the motion, and all were in favor.

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IV) Other Business:

A) Announcements:

Mr. Coogan announced the Annual Spring Planning Conference in Concord on June 1, 2019. Chair Hebert recommend that new Board members attend, and said the fee would be paid out of their Education budget.

Mr. Coogan said he would send an email for the online registration to Board members.

Chair Hebert said he would also like to invite Town counsel, Attorney John Ratigan to talk to the Board about RSA's and how they apply to Board decisions.

B) Master Plan Update:

Mr. Coogan announced that the next Master Plan Work Session would be held on Thursday, March 28, 2019 at 3:30 p.m. He said they would review the recent draft that Theresa Walker from Rockingham Planning Commission before moving on to the transportation section.

Chair Hebert said they also needed to look at Capital Improvements Plan (CIP) at some point as well.

Vice-Chair Cross commented that they need the cooperation of the Board of Selectmen and other town board chairs to discuss major expenses for the future. Chair Hebert agreed that all departments should be invited, and commented that the purpose was to keep a straight and level budget. Vice-Chair Cross added that there was no benefit to a CIP if they came up with a plan and no one bought into it.

C) Nominations:

Mike Marconi moved to reappoint Denis Hebert as chair. Peter Welch seconded the motion, and all were in favor.

Mr. Marconi moved to recommend Erika Mantz as Vice-Chair. Chris Cross seconded the motion.

Ms. Mantz agreed to accept the nomination. Chair Hebert commented that he valued Ms. Mantz's input, but he would prefer her to have more experience before taking the position. Mr. Marconi said he felt she had enough professional experience.

All were in favor with no one opposing.

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Mr. Marconi passed out a copy of House Bill 370 that was supported by the New Hampshire Municipal Association. Mr. Marconi said the bill was updated rules governing membership on planning boards, under RSA 673-7 1. "Any 2 appointed or elected members of the planning board...may also serve together on any other municipal board or commission, except that no more than one appointed or elected member of the planning board shall serve on the conservation commission, the local governing body, or a local land use board as defined in RSA 672-7."

Vice-Chair Cross said it was previously understood that a planning board member was not allowed to sit on another board because it could be seen as conflict, or affect the standing of a planning board vote. Vice-Chair Cross asked if this applied to non-voting visitors, and Mr. Marconi said he didn't know.

Minutes:

Erika Mantz moved to approve the Minutes for the March 11, 2019

meeting with corrections as noted. Peter Welch seconded, and all were in

favor.

Adjournment:

Mike Marconi moved to adjourn the meeting. Peter Welch

seconded the motion and the meeting adjourned at 9:36 p.m.

Next Meeting:

Monday, April 8, 2019

Respectfully

Submitted by:

Jane K. Kendall, Recording Secretary