

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes, Thursday, May 14, 2015

**Call to Order:** Chair Denis Hebert called the May 14, 2015 meeting at 6:30 PM.

**Present:** Vice-Chair Chris Cross; Jack Pare; Mark Phillips; Thomas Morgan, Town Planner and Jane Kendall, Recorder

**Absent:** Bernie Christopher; Alternate Member, Ken Latchlaw; Board of Selectmen Rep, Rick Stern

**Public Guests:** Attorney John Bosen; Attorney Chris Mulligan; Robert Stowell and Doug LaRosa from TriTech Engineering; Bruce Belanger; Madeline Mills; Lorna Watson; Justin Richardson; Jim Weiner; Dana Lynch with Civil Works; Bob Keating with Lordco; Jarrad Savinelli; Joe Cornardi with Beech Engineers; John Newick; Mr. and Mrs. Don Philbrick

### 1) Public Hearings:

A) Proposal by **Bruce C. Belanger** for a 2-lot subdivision at the corner of **Nimble Hill Road and Fox Point Road, Tax Map 17, Lot 11-2.**

Attorney Chris Mulligan said they had updated their plans with a number of changes that had not been included at the last meeting and had an updated report from Altus Engineering.

Mr. Doug LaRosa with TriTech Engineering said they had addressed all of the concerns expressed by Altus Engineering and they had received a report from Mr. Mark West of West Environmental regarding treatment of invasive species on the property. He said it was recommended that they adopt Mr. West's recommendations to spray during the dry season in July or August.

Chairman Hebert commented that Board of Selectmen's representative, Rick Stern pointed out that the ordinance required proper erosion control during construction with riprap along the road. Mr. LaRosa said that was included on the plan.

Mr. LaRosa said Town Planner, Tom Morgan had discussed concerns regarding the proposed dwelling on southerly Lot #2 being so close to the abutters along Nimble Hill Road, though they had not heard similar concerns expressed by other abutters. He said they had not provided building envelopes as discussed, but would agree with to a stipulation to double the setback to 30' from the required 15.

Chair Hebert said abutters were notified for so they could express concerns for their privacy and although building envelopes had not yet been provided, abutters

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needed to remember that property owners had the right to build within the perimeters of setbacks and the applicant was offering to increase the buffer to 30'.

Ms. Lorna Watson of Nimble Hill Road expressed concern with runoff to her property and Mr. LaRosa provided a large scale aerial photo to show the proximity of the lots to abutters with 240' and 160' to the Wilson home on Nimble Hill Road and 240' to the late Dorothy Watson's former home and both lots had over 4,500 s.f. of uplands.

Ms. Watson said her mother-in-law had told her that they were sitting on an earthquake fault and no one knew what kind of disasters might happen so she wished neighbors would work together. Vice-Chair Cross agreed that disasters could happen and he understood that people felt entitled to their viewscapes, but new owners had the same rights that were listed in the Ordinance and regulations and neighbors were only entitled to setbacks unless former owners reserved rights. He said the Board dealt with ownership and the use of lands following guidelines established by the community and the State and the applicant had offered to increase the setback.

Mr. LaRosa discussed water service along the edge of pavement from Nimble Hill Road to the corner lot and showed where a well could be placed in lieu of coming up Fox Point Road. Chair Hebert replied that just as had been done for the Alley subdivision, as a condition of approval, they needed to go to the City of Portsmouth Water Department and obtain a letter stating whether they could get approval for water service or not.

Mr. LaRosa said a well would be an alternative solution to the water connection requirement and Chair Hebert replied that the placement of wells on the lot created additional complications in relations to septic proximity, especially if duplexes or condominiums were built. Mr. LaRosa said he did lot loading calculations showing that one to two wells could go in uplands outside of septic systems.

Chair Hebert said there was precedence with 38 other people that were already connected to City water on Fox Point Road and the applicant already told them over a year before that they would provide connection so they could hold them legally responsible. Mr. LaRosa said he submitted plans to Portsmouth Water Department, proposing to bring water in from the Fox Point right of way on the south side of the intersection. Chair Hebert said the Board would need to discuss the right of way for a water line going down Fox Point Road as a precedent had been set. Attorney John Bosen said they would do an easement.

Chair Hebert said the Board might make a condition that approval was only for a single residence per lot because of the water situation and they would also require them to return if the plan changed to a condominium or duplex. Mr. Stowell said he would have to come back for a condominium, but not for a duplex. Vice-Chair Cross said he thought the Board should only approve a single-family dwelling per lot until septic plans for each side of two-family dwellings were presented with pipes that didn't cross.

Mr. Richardson said he was concerned if the plan was approved without addressing the possibility of duplexes on the lots because they would trigger expanded area requirements. He said he was concerned that duplexes would be an overly intensive use of the land because of wetlands, setbacks, water and septic requirements. Vice-Chair Cross said he was not ready to approve more than single-family lots and the

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Board could turn down duplexes, but they had not been proposed. Attorney Bosen said they didn't know what kinds of homes would be built, but they wanted to reserve their right to build what was permitted. Attorney Mulligan said they could attach conditions, but it sounded like the Board was trying to rezone the parcel with more stringent requirements and say they would multi-family dwellings without site review, which was not in the Ordinance. He said septic calculations had been done for 22 and 23 bedrooms for multiple dwellings on the site, but they would have to return if they wanted to propose condominiums.

Chair Hebert said he was also concerned putting basements below the water tables even in uplands of one lot. Vice-Chair Cross agreed that he would like to know how the buildings would be built because the dwellings on the easterly corner lot along Fox Point were so close to the wetlands that they would require fill, but he was concerned that topsoil sediment would run into wetlands. Mr. LaRosa said Altus Engineering first report said the lot was suited for development. Vice-Chair Cross said he didn't discount the comment, but he was concerned with the runoff from a large dwelling and was impressed with the gravity drain proposed for the basement of the condos. Mr. Robert Stowell with TriTech Engineering said it was a different owner developer that did a site review across the street. He said currently this was a lot of record where a building permit could be pulled without the subdivision, but there was no way of knowing what kinds of homes would be built once the subdivision was approved and the lots sold.

Vice-Chair Cross suggested that there be a 4-1 slope to assure there wouldn't be a steep grade with erosion going into wetlands. Mr. Stowell said the State required a 3-1 slope and a 4-1 would be contrary to septic regulations. Vice-Chair Cross said he mainly want to be assured would it would work and a 4-1 slope would be drivable with a mower. Board member, Jack Pare said 3-1 would be adequate for mowing so long as the fill was not too fine which would erode. Vice-Chair Cross reminded that fertilizers used on lawns would erode too. Chair Hebert agreed that they wouldn't want a steep slope prone to erosion running into the wetlands, but the DES wetland criteria was enforceable. Chair Hebert said it would have to be 1' above the high water mark for septic. Mr. LaRosa said they estimated that they were 4' above the water table and that most septic systems were raised a bit too. Mr. Richardson said he didn't think they should just go by the water table, but by soil type as well. He said they might require large mounds giving the appearance of a helicopter landing pad in each lot.

Chair Hebert asked if the culvert easement had been shared with Town counsel, Attorney John Ratigan and Attorney Mulligan said they had not, but forwarded it to Mr. Morgan to review with Attorney Ratigan. He said the easement proposal was basically plagiarized from the Mazeau subdivision. Chair Hebert said Attorney Ratigan also looked at the easement for the Dennett Farm subdivision and condos across the street, which had been done extremely well and reminded them that they should return if they were to propose a duplex or condominium.

Ms. Madeline Mills of Old Post Road said she wouldn't like seeing three houses when looking out her window and she also wondered if they received approval from the State to put driveways over wetlands. Ms. Mills said the original surveyor for the lot line

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adjustment still agreed that the lot was too wet for more than a single-family residence on the lot and that she didn't see how a well with wetlands and septic would work.

Chair Hebert said crossing wetlands to get to buildable uplands with a Special Exception was adopted by the Town and although the applicant had appealed the Special Exception, they would still need to obtain a variance.

Conservation Commissioner and Zoning Board member, Jim Weiner spoke on behalf of the Conservation Commission, stating that they had reviewed the applicant's request for a recommendation to the Department of Environmental Services (DES) for the multiple lot proposal with two out of three drives crossing wetlands, noting that the Commission had previously not recommended subdivision of the prior single lot. Mr. Weiner said the Commission did not recommend the driveways crossing wetlands because they believe there were alternatives to two wetlands crossings. Chair Hebert said he was still not sure how the lots could be subdivided without any wetlands crossings. Mr. Weiner said they were still waiting to hear from DES whether the crossings had been approved, but the Commission concluded that it could still be a buildable single lot. Chair Hebert said the Planning Board was familiar with the single lot line adjustment request by former owner Mr. Mike Mathes who was not agreeable to a stipulation to keep it a single lot because he was concerned that might limit the potential for selling the property.

Mr. Justin Richardson of Old Post Road said he was a previous Planning Board member when the lot line adjustment was approved and agreed that the Board did not impose the condition to limit to development to a single-family lot, nonetheless, there were too many wetlands on the lot configuration to approve two to three lots. Chair Hebert recalled that the Board had suggested that the current applicant approach an abutting owner to increase the lot line further, but the abutter was not willing.

Mr. Richardson said the Zoning Ordinance still didn't allow such configurations and passed out a review of Article 6 in the Wetlands Buffer Provisions and Section 4E of the Subdivision Regulation Requirements that stated proposed subdivisions shall conform to the Ordinance, the Master Plan, State and local laws and could not vary without approval of the ZBA. He went on to say that said the intent was to protect wetlands, limiting the location of structures, including driveways that would destroy wetlands. He added that they must also comply with the Master Plan Policy that refers to the wetlands buffer provision in Chapter 8, page 52 unless they requested a Special Exception or variance.

Mr. Richardson said connecting to local water supply was required as described under Section 6 of the Subdivision Regulations unless waived and potential well placement near driveways that would have salt runoff as well as the increased impact of multiple residences that could have four septic systems nearby were regulated. Vice-Chair Cross said except for the current connection circumstances with Portsmouth Water, the Town indicated that lots needed connection to the local water system and some residents connected, but others chose not to connect. Mr. Richardson agreed that the lot sizes presupposed public water connection.

Board member, Mark Phillips said on the plan showed six potential septic fields, and asked if the soils had passed and if the applicant had applied to the State for

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subdivision approval. Mr. LaRosa replied that the soils had passed for three lots and the subdivision approval was pending the approval of their wetlands permit.

Chair Hebert said the Board had discussed egress and Mr. Morgan did not like the curb cut across from the Town Hall entrance on Nimble Hill Road, but other options off Fox Point Road would require another wetlands crossings. He said they also talked about shared driveways, but they were not allowed in the Town Ordinance without a Special Exception. Ms Mills wondered how sharing a driveway for a duplex or condo would work if shared driveways were not allowed. Chair Hebert said the shared driveway would be for a single structure, not for multiple structures.

Vice-Chair Cross again recalled that the curb cut off Nimble Hill road had been granted with the previous owner's lot line adjustment. Chair Hebert said he understood, but the Board should listen to what the Town Planner had to say. Vice-Chair Cross said the objections were essentially a traffic issue and asked if the elevation issues had been addressed. Mr. LaRosa said they had and Altus Engineering had approved. Chair Hebert said he didn't think the previous plan was safe going down a hill with water sheeting over and freezing.

Mr. Weiner said they had discussed a 3-lot and 2-lot subdivision, but they had not discussed the possibility of a single lot if the others were turned down. Chair Hebert said it could be turned down, but the applicant claimed to have met the requirements for a 2-lot or 3-lot subdivision. Mr. Phillips said he had gone through this process on the other side of table during his 40-year career and commended the applicant for reducing the lot size proposal from three to two lots.

Mr. Richardson said the applicant had the right to do what the Ordinance allowed, so long as it also followed the criteria listed in the Subdivision Requirements. He went on to say that Section 4 of the Subdivision Regulations said the Planning Board could reserve the right to avoid scattered subdivisions that would create a lack of drainage and multi-family developments in larger buildings, sitting up against buffers would probably increase such drainage problems as well. Mr. Stowell said the Town engineering consultant reviewed the application in contemplation of duplexes. Mr. Richardson replied the Board had not completed their review, however. Chair Hebert said he was especially concerned with the safety of a well in close proximity to septic systems.

Chair Hebert said Mr. Morgan was available at Town Hall all week and asked if there was anything missing. Mr. Morgan said the most confusing issue was the issue of the drives because historically the 25' buffer had not been enforced by the Board, but the Board had shifted their interpretation in the last twelve months, which was fine, except the lack of consistency gave him a bit of concern. Mr. Richardson said the Petersons and the Bairds on Newington Road both requested Special Exceptions for wetlands crossings as did Ms. Sharon Alley for her Fox Point Road subdivision. Mr. Weiner said the subject hadn't been brought up with the Conservation Commission Mr. Morgan said there had been many examples of driveways going over wetlands to get to uplands, but the interpretation of the Ordinance had changed over time so the Planning Board clarified the Special Exception requirement in the Ordinance over the last twelve months and it was voted on at the last Town Meeting and adopted.

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Chair Hebert said the Board had already made a determination that approval would be conditional on going to the Zoning Board of Adjustment (ZBA) for a variance, scheduled for June 1, 2015. Mr. Richardson asked what would happen with the approval if they appealed the Board's condition for a variance. Chair Hebert said they already appealed the Special Exception requirement for three lots with two wetland crossings and had requested the right to maintain the three lot subdivision application if the two lot variance was not approved, but a variance was still a condition, along with water issues. Mr. Morgan said the deadline would be on Monday, May 18, 2015 and they would need to modify their application. Attorney Mulligan said they were aware and they would not get on the June 1, 2015 ZBA agenda. Chair Hebert closed the public hearing.

***Vice-Chair Cross moved to approve the proposal by Bruce C. Belanger for a 2-lot subdivision at the corner of Nimble Hill Road and Fox Point Road, Tax Map 17, Lot 11-2 with conditions.***

Discussion ensued and a slope grade of 3-1 was agreed upon. Mr. Phillip said the slope could also be terraced to and Vice-Chair Cross agreed.

Chair Hebert said it was still not certain where the water would come in. Vice-Chair Cross said he didn't think they should approve without access to public water and the waterlines should not cross other properties. He said they would need to provide a letter from the Portsmouth City Water Department saying they would not provide water access if they were to put wells in. Chair Hebert said there was a chance that they might not be able to get water access, but he still thought there was a precedent. Chair Hebert said he wanted the culvert and water easements to be reviewed by the attorneys.

Vice-Chair Cross said he had never seen a proposal to run such a long line as 450' down a public road before. Mr. Phillips said there was a 900' 1.5" diameter copper line that ran down the street to his house. Vice-Chair Cross said pumps were not that expensive for homeowners to install if necessary.

Chair Hebert said it would be a congested lot and for safety purposes, they needed to define the septic and water lay out if the lots were to be used for duplexes or condos.

Mr. Morgan said the application had changed from one lot to three and two since it was first proposed in January 2014 and suggested a stipulation that the 3-lot subdivision be denied to avoid confusion.

Attorney Mulligan's asked to reopen the hearing to address the question and the Board approved. Attorney Mulligan said they understood only one application could be heard at a time, but he was concerned that a denial of the 3-lot subdivision would trigger the appeal period. Mr. Pare said the application before the Board was for a 2-lot subdivision and therefore a 3-lot application was a moot point. Mr. Morgan agreed that every application gets modified as this one and the 3-lot sub was abandoned and there was only one application before the Board. Chair Hebert agreed and said Attorney Ratigan also agreed. Attorney Mulligan said he and Attorney Ratigan had agreed that the application for a 2-lot subdivision would be reviewed without prejudice to a 3-lot

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subdivision. Chair Hebert said they could reapply for a 3-lot subdivision if the 2-lot subdivision was denied.

***The board agreed on the following conditions for approval:***

1. The Nimble Hill Road curb cut would conform to the stipulations of the former Mathes curb cut approval, including clearing trees from the line of site.
2. Driveway contours would be placed on the Subdivision plan S2.
3. The plan will include culvert cleaning maintenance for the drives on Nimble Hill and Fox Point Roads
4. Obtain NH DES dredge/fill permit approval for the Fox Point Road driveway crossing
5. Obtain a variance for the 25" wetlands buffer crossing
6. The southerly lot line setback on Lot 11-2 would be changed from the 15' requirement to 30'
7. Fill the slope grade to 3-1 or shallower, or terrace to provide erosion control on northerly Lot 11-2-1.
8. Adopt and implement environmental consultant, Mark West's recommendations for invasive removal
9. Provide confirmation that public water access will be made available without crossing other properties
10. Establish a 10-foot wide easement for a public water line along Fox Point Road for Lot 11-2-1
11. The 10' water easement and culvert easement will be reviewed by Town counsel.
12. The lots would be limited to single-family dwellings unless the owner returned to the Board for approval of duplex or condominium plans confirming separate septic systems

***Mr. Pare seconded the motion with the conditions proposed and all were in favor.***

B) Proposal by **Lordco** to expand its seafood processing plant at **158 Shattuck Way, Tax Map 20, Lot 6 and 7.**

Mr. Dana Lynch with Civil Works and Mr. Bob Keating with Lordco appeared before the Board and presented a brief overview of their plans to expand the facility to make their operation more efficient.

Mr. Lynch said they received a variance for the dimensional requirements and to expand a non-conforming property in April. Mr. Lynch said they also received DES approval.

Mr. Lynch said the applicant had a 50' access easement across Georgia-Pacific's property to allow access to Shattuck Way and to the pier. Mr. Lynch said they were also stripping the parking area to make it more efficient for employees. Vice-Chair Cross

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asked how they would keep drivers off the buffer along the access and Mr. Lynch said that would be an enforcement issue because they didn't want to impede snow removal.

Mr. Lynch said they didn't go through storm water analysis because they were not making any changes that would affect the runoff. Chair Hebert said he didn't see any problem with the storm water waiver.

Mr. Morgan reminded the Board that this was the first public hearing and that the application had not been formerly accepted. Vice-Chair Cross asked Mr. Morgan if he had reviewed the plans. Mr. Morgan said the plans were in the packet with only a few minor items missing.

*Jack Pare moved that the proposal by Lordco to expand its seafood processing plant at 158 Shattuck Way, Tax Map 20, Lot 6 and 7 was substantially complete. Mark Phillips seconded the motion and all were in favor.*

Chair Hebert said the Ordinance asked that lighting be updated on new projected so that lighting would not shine outside of facilities. Mr. Lynch said most of the lights were aimed around the site, the parking lot and pier for the safety of employees and fork lifts. Mr. Keating said they were on timers, but the most intense lighting was the lights required for the boats. Chair Hebert said he understood ships had different criteria.

Mr. Pare asked if they were seeking a waiver and Mr. Lynch said they were not.

*Jack Pare moved to waive the Storm water analysis under Section G, the Landscaping plan requirement under Section 7, the Lighting plan requirement under Section 8, and the Signage plan for the proposal by Lordco to expand its seafood processing plant at 158 Shattuck Way, Tax Map 20, Lot 6 and 7. Mark Phillips seconded the motion and all were in favor.*

*Mark Phillips moved to approve the proposal by Lordco to expand its seafood processing plant at 158 Shattuck Way, Tax Map 20, Lot 6 and 7. Jack Pare seconded the motion and all were in favor.*

**2) Preliminary Discussion: Proposal by Mr. Jarrad Savinelli for a 7-lot subdivision along Fabyan Point Road, Tax Map 47, Lots 6 and 7.**

Mr. Joe Cornardi with Beech engineers presented a conceptual plan for subdivision. Mr. Savinelli resided on Lot 47-7 and was proposing to consolidate the lots and resubdivide into seven conforming lots with 200' frontage.

Mr. Cornardi said they talked with the fire chief who said he would want two additional fire hydrants added to the one on Newington Road and that they intended to upgrade the road to Town standards and build a 60' radius cul-de-sac instead of a 80' radius cul-de-sac. Chair Hebert said the snow plow crew preferred larger cul-de-sac. Mr. Morgan said the assistant fire chief dropped off a letter rejecting the proposed cul-de-sac. Mr. Pare said they might not need an 80' radius if they left the center grassed or for a rain garden. Vice-Chair Cross asked if the bus went down Fabyan Point and Mr. Savinelli

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said it did not. Vice-Chair Cross said they needed to consider the fire department and snowplows, but the school buses were the most stringent. He asked what the Board would think of a three point ending at Lot 3 with a 30-50' "T" to allow more places to push snow. Chair Hebert said the school bus would not want to backup at the risk of hitting kids. Mr. Pare added that a "T" would also be hard with the Town truck.

Vice-Chair Cross asked how the other abutters felt. Mr. John Newick said all the other residents were on board for Fabyan Point to become a Town Road. Mr. Phillips asked if they had considered extending the road to the end and Mr. Savinelli said discussed it, but it would cost too much. Mr. Phillips said Mr. Newick would need a waiver to end the road at his property.

Chair Hebert said it made sense to build to Town standards for safety purposes. He said would need clear title to the road and asked who would own the road. Mr. Savinelli said he did a deed research and the road would be owned down to lot 47-6. Vice-Chair Cross agreed that it would be good to have a Town road to allow every lot access to Town services.

Chair Hebert instructed the applicant that he would need to provide an application fee, professional plans in a timely manner and place a bond in escrow. He said he considering having future applicants go before a technical review committee. Mr. Cornardi said they would dig test pits in a couple of months, Mr. Morgan advised him to pay close attention to Town regulations and time lines and to make arrangements with him for the building inspector and Rockingham County to witness the test pits.

Discussion ensued regarding right of way easements to avoid two cul-de-sacs should there be another developments in abutting properties in the future. Mr. Newick said a 50' easement would go through the Drinkwater house. Vice-Chair Cross asked if he might approach the Thomas' to see if they would consider a cul-de-sac on a portion of their property for another future subdivision. Chair Hebert said he didn't know how could make a deal to work with other property owners for the possibility of a future subdivision. Mr. Morgan said he applauded Vice-Chair Cross for considering the future, but the Thomas property had been previously discussed in the Master Plan as a possibility for conservation. Chair Hebert agreed that would be more valuable to the Town. Mr. Don Philbrick of Newington Road said the Beal family had sold property to the government and the government had also looked at the Thomas lot, but he didn't believe Mr. Alan Thomas was interested in selling or seeing the property developed. Mr. Morgan said if the Thomas' would also need to extend a drive from Newington Road or offer Mr. John Newick an offer to make a shorter access to Fabyan Point.

### **3) Proposed Transmission Lines:**

Chair Hebert said Town counsel recommended a clear vote from all Town Boards.

Mr. Morgan said he emailed various routes to the Chair, but he didn't if he wanted to distribute them to Board members. Chair Hebert said there were several considerations for alternate routes from Gundalow Landing including going down

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Nimble Hill Road to Arboretum Drive, or behind the old transfer station and McIntyre Road, going underground to avoid the Historic District and residential areas, instead of in a straight line through Hannah Lane. He said there were additional considerations of going through Pease, the Town Forest or through Great Bay National Wildlife Refuge, but he didn't think Eversource would be inclined to go through a Federal process to go through the refuge. He said the airbase could not allow access for security reasons before, but that issue has gone away since Pease closed

*Jack Pare moved to accept Chair Hebert's discussion regarding proposals for alternative routes to avoid the transmission lines going above ground and through residential areas. Vice-Chair Cross seconded the motion and all were in favor.*

Vice-Chair Cross said PSNH had a deeded right of way through the Town Forest, the Khalsa property and the former Flynn Pit. Chair Hebert said the attorneys should research titles. He asked Vice-Chair Cross to forward the information.

### **Other Business: Alternate** for BoA

Chair Hebert said Mr. Jim Weiner, a member of the Zoning Board of Adjustment had shown interest in serving on the Board and he thought he would be a welcome addition. He said the Board would need to vote to have Mr. Weiner serve as a representative on the ZBA, but they needed to keep in mind that he would need to step down from voting if there was an administrative appeal, though he could still represent the Planning Board.

*Vice-Chair Cross moved to invite Mr. Weiner to join the Planning Board. Jack Pare seconded the motion and all were in favor.*

**Adjournment:** *Jack Pare motioned to adjourn, and Mark Phillips seconded. All were in favor and meeting adjourned at 10:06 p.m.*

**Next Meeting:** Monday, June 8, 2015

**Respectfully**

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

*These minutes were adopted by the Planning Board on June 8, 2015.*