

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Tuesday, June 23, 2015

Call to Order: Chair Denis Hebert called the June 23, 2015 meeting at 6:30 PM.

Present: Vice-Chair Chris Cross; Bernie Christopher; Jack Pare; Mark Phillips; Jim Weiner; Alternate Member, Ken Latchlaw;; Town Administrator Martha Roy (left for half an hour and returned at 8:15 p.m.); Conservation Commissioner Ann Morton; and Jane Kendall, Recorder (arrived at 8 p.m.)

Absent: Board of Selectmen Representative, Rick Stern and Thomas Morgan, Town Planner

Public Guests: Attorney Bernie Pelech; Sharon Alley; Linda Khalsa; Laura Coleman

1) **Eversource Transmission Line Update:**
Joint meeting with Conservation Commission

This item was taken out of order after discussions with the second item on the agenda.

2) **Old Business:** Request by Sharon Alley regarding water service

Attorney Bernie Pelech said he was informed by the Portsmouth Water Department that they would permit a connection to the 12" connection for \$15,000 and \$2,500 for each connection. Board member, Jack Pare said he didn't think the water flow from the 8" water line would be that much different than the 12" line. Chair Hebert agreed that either would be better than the 24" line that had low pressure. Applicant, Sharon Alley replied that the Water Department had informed her that the 24" line was obsolete and tapping into it would harm the integrity of the line. Vice-Chair Cross said that Portsmouth had allowed Mike Mazeau to tap off the 24" line in his development as far back as ten to twelve years before. He said he could appreciate that Ms. Alley and other owners along Fox Point Road were concerned if the existing line was no longer viable.

Ms. Alley said the Mazeau development only paid \$1,900 for each tap and Vice-Chair Cross replied that the price of tapping into the 24" line would be more like \$4,000 for each tap. Ms. Laura Coleman asked why Ms. Alley should have to pay that price when no one else had to. Alternate Board member, Ken Latchlaw agreed that Portsmouth had raised the cost and that might be reason to consider the waiver.

Chair Hebert asked how much it would cost to bring the line to the property and Attorney Pelech replied that it would cost \$10,000. Chair Hebert said the Water

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Department said if the Water Department charged \$8,000 per tap, it would cost \$16,000 for two taps. He then said they were charging \$46,000 to extend the line, but were only asking the applicant to pay \$10,000 to bring the line to the property. He said they didn't state it clearly in the letter, but he assumed they were asking Newington to pay half of the remaining \$36,000. Chair Hebert said RSA:362:43 said Portsmouth was supposed to provide the same service to Newington as they did themselves and they were also supposed to upgrade Newington's lines when they upgraded their lines.

Board member, Jim Weiner said it cost him \$10,000 to hook up when he built his house and he would still pay \$15,000 to hook up.

Vice-Chair Cross said that any new lot had to hook up to the municipal water and he would also like to see an agreement that the property owner would hook up to municipal water if a line was put in, even if it were a couple years later. Board member, Jack Pare said the subdivision requirements say municipal water had to be made available, but hooking up to municipal water was not mandatory at present unless voters approved a change. Board member, Bernie Christopher agreed that the municipal water requirement didn't prevent anyone from putting in a well

Board member, Mark Phillips said he could support wells if the development was 1,000 feet away from public water, but they were offering to put in a line at the cost of \$36,000 so she would only have to pay \$10,000 to hook up. Chair Hebert agreed that it would be foolish not to take them up on their offer. Mr. Christopher added that any developer would want municipal water and without it the value of the property would drop. Ms. Alley responded that she was not developer, but Mr. Pare said technically she was.

Chair Hebert said the issue of hooking up to the line was a Board of Selectmen's issue, not a Planning Board issue. He said the Planning Board had to look at what was fair and safe and they were concerned what might have been dumped on the ground or abutting properties that could have run into the water tables and for the safety of well water.

Chair Hebert said wells cost \$6,000 to \$15,000 and if the water wasn't potable and they then asked to hook up to the municipal water line later, Portsmouth Water Department could raise the cost and the risk would not be to her benefit especially if she wanted to sell within the next few months. He said the quickest way to resolve the issue would be to get the agreement going and put the line in before winter. Ms. Alley replied that she didn't have a lot of faith that the City of Portsmouth would put the water main in quickly considering how long it took them to send out an application.

Vice-Chair Cross said it would be better for her to seek an agreement from Portsmouth without a decision on the waiver, knowing she could come back and the Board could go to the Selectmen to press on the City of Portsmouth to follow through if necessary. Attorney Pelech said this was the third month that they had requested a decision, but Chair Hebert said this time they came back with new information from the Water Department.

(Conservation Commissioner, Ann Morton said she was not able to stay any longer for the Eversource discussion and left at this point in the meeting at 8 p.m.)

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Board member, Ken Latchlaw asked what right the Board would have to overturn the regulation requirements in the future. Attorney Pelech said the purpose of the waiver was in response to a hardship, but Mr. Latchlaw replied that it would not be a hardship if they could tie into the municipal line for a \$10,000 fee, which would not cost more than putting in a well. Ms. Alley said it would be a hardship to pay \$10,000 that no one else had to pay and that it was extortionate. She added that it was also not considered an option if a property owner wanted to use well water instead of municipal water.

Mr. Weiner asked if the applicant and subsequent owners would agree not to sue the Town if they granted the waiver from the municipal water connection requirement and potable well water was not available and Attorney Pelech agreed. Mr. Christopher agreed that a well could cost the applicant a lot more, especially if the well water was bad, and he was also concerned with avoiding liability from the Town.

Ms. Alley said she asked if she could run an easement through Michael Mathes abutting lot or to run off the 8" line from Old Post Road and the Water Department has said that could be an option. Vice-Chair Cross said there were power easements, but the subdivision regulations said no water or utility easements could cross from one property to another, although doing so would serve these two lots and potentially the Mathes lots. Chair Hebert responded that they were starting to stretch the rules. Mr. Weiner said Vice-Chair Cross' original point was that all new properties should have direct tie-ins to the water lines and there was a high level of validity for maintaining the standards for future development. Town Administrator, Martha Roy added that the Master Plan recommended accepting private wells to preserve the larger water reservoir. Mr. Weiner asked how old the Master Plan recommendation was and Chair Hebert said it was written eight years prior ago as a recommendation to protect resources for the region, but this was an opportunity to connect to the municipal water line at a lower cost. Mr. Weiner added that he was concerned that Portsmouth might not allow the tap if the Board granted the waiver and Chair Hebert agreed that they might get tired of the back and forth. Mr. Christopher said the Board had spent an hour and a half on discussion and it was apparent that Ms. Alley was not going to change her mind.

Chair Hebert closed the public hearing and opened the discussion up to the Board.

Vice-Chair Cross said he would like to see all new connected with public water and Mr. Weiner agreed. Mr. Christopher said he too was in favor of the municipal water line.

Mr. Pare said he was also not opposed to connecting to the municipal water line, but he would like to the applicant have the option of putting in wells. Mr. Latchlaw said he would want a clause that protected the Town from liability if they granted a waiver to allow wells and Chair Hebert agreed.

Mr. Phillips said he was not opposed to wells, but he was concerned that Portsmouth's offer to the Town to put a line in for \$36,000 might be taken off table if they granted the waiver option. Chair Hebert agreed and said putting in wells instead of connecting to municipal water could also cost the applicant more. Mr. Christopher, Mr. Pare and Mr. Weiner all agreed. Chair Hebert suggested the applicant could review the

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various cost options before the Board took a vote. Mr. Christopher said he thought it went on long enough and Ms. Alley agreed that she wanted the Board to take a vote.

Chair Hebert said they could grant the waiver and pursue the water line connection with Portsmouth, but he recommended pursuing the waterline versus wells and have the Board have the Selectmen get the costs reduced to nothing so the applicant could get the waterline connected to sell the property and have the Town's fees reimbursed by Portsmouth.

Mr. Christopher said they could stipulate that the waiver would be null and void if Portsmouth reneged on the agreement to connect the water line for \$36,000. Mr. Weiner said it sounded good, but he was still concerned that Portsmouth would withdraw the offer. Mr. Pare added that such a statement would be a declaration of war and it was not necessary. Vice-Chair Cross agreed that Portsmouth might not be inclined to agree. Ms. Coleman said Portsmouth should follow through after 40 years of stalling.

Mr. Latchlaw commented that stalling could take years to resolve and therefore the applicant should take the current offer and then they could recoup their costs. Chair Hebert commented that they needed to consider the welfare of the general public as well. He said he was also concerned that whatever they decided might get an applicant or the Town caught in a battle. Mr. Weiner agreed that they had to consider which action would set a precedent and what would be advantageous for all the residents along Fox Point Road.

Jack Pare moved that the Newington Planning Board would urge the Newington Board of Selectmen to pursue discussions with the City of Portsmouth Water Department to approve an 8" water line extension along Fox Point Road to resolve the low pressure from the existing 24" line. Chris Cross seconded the motion and all were in favor.

Ms. Alley thanked the Board for their time. She said she understood that she could go into a financial hole, but requesting the waiver was an important stance for her. She said the City of Portsmouth should also be concerned that they could be sued as well. Ms. Coleman said she was afraid the Portsmouth Water Department would take another thirty years to extend the line.

Chair Hebert said he understood everyone had cost restrictions and the City of Portsmouth did as well so it was important to take their offer to tie in at \$10,000 or someone else would grab the funds that Portsmouth was budgeting and then the price could go up.

Chair Hebert asked Ms. Roy to write a memo to Board of Selectmen and to put the development of the water line on their agenda regarding the Alley Subdivision.

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2) **Eversource Transmission Line Update:** Joint meeting with Conservation Commission

Chair Hebert passed out a copy of all the transmission line route options that had been considered in preliminary discussions with Eversource. He said they had already determined that the lines would probably not go through Great Bay National Wildlife Refuge because there would be too many issues for Eversource to work through with the Federal government even though many people that attended the public hearing said that was their preference.

Chair Hebert said Eversource was proposing to come in from Durham, go under Great Bay, go under ground through Gundalow Landing and go through the Historic District and Hannah lane. He said he had already met with the Selectmen and the Historic Commission and the Historic Commission said they would prefer the lines be put underground and set back if possible. He said Eversource had not realized their original plan went through the Historic District, which would require them to go through the Section 106 process that would tie them up for years. He said the Town was trying to move them out of the Historic District and follow Fox Point Road where existing lines already crossed to avoid as many residents as possible, although it would be impossible to avoid all residents completely. He added that Historic District Commission Chair, Gail Pare had said some historic residential houses might be eligible for Section 106, but they were not in the Historic District so that would be hard fight. Mr. Phillips asked if the Frink Farm would be affected and Chair Hebert said it was a distribution line that ran past the Frink Farm and ISO only paid for transmission lines so that line wouldn't change.

Chair Hebert had invited the Conservation Commission for a joint meeting, but they didn't have a quorum with only Commissioner Weiner and Alternate Commissioner Jane Kendall present. Mr. Weiner said Chair Hebert had spoke at the last Commission meeting to discuss the options and the commissioners were most concerned with the Town Forest and the vernal pool and day pond in the Flynn Pit. Chair Hebert said they were not going through the Town Forest and were proposing going around the day pond. He said the Selectmen were also negotiating with the Department of Environmental Services to put 13 acres of the Flynn Pit into mitigation for Wilcox Way. He said he attended a meeting in Durham and Eversource told them that each town would receive mitigation credit for their wetlands impact as well.

Mr. Christopher asked if Eversource agreed to go around the day pond in Flynn pit. Chair Hebert said they verbally agreed, but he was wondering if would be to detriment to take such a large area of forest out. He said Eversource would have to take out 100' of trees and he wasn't sure if that would be any better than going though the day pond. Mr. Weiner said they should present a photo simulation of what it would look like. Mr. Pare asked why they would need to cut 100' of trees. Chair Hebert acknowledged that they only needed a minimum of 50' to go underground. Vice-Chair Cross said might only need 50", but they would still want a 100' corridor. He said the north and south right of way routes had been unused for twenty years, but they were resurrecting the center

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in case wanted to expand on either side in the next 50 to 100 years and clearly they would go through Newington.

Chair Hebert said their reliability plan was in case lines failed. Mr. Pare added that it was also in preparation of their selling the Newington Energy plant. Chair Hebert said Eversource said there was plenty of current, but there was not enough voltage to prevent brown outs so they were keeping the existing distribution line. He said he was also told that the feed line around Newington had been maxed out and it wouldn't be able to support Gundalow Landing.

Chair Hebert said he had also been part of discussions on the pros and cons of various poles and told the Board that although they considered wooden poles, they had determined that metal poles would be better because wood was laminated with chemicals and woodpeckers and even black bears did a great deal of damage to the poles, searching for insects due to the frequency emitted. He said the benefit of steel was its durability and longevity. He said the average height was 80' depending on topography, but they were trying to get them lower under the tree line. Chair Hebert said the lowest poles were wooden, but all the guy wires looked busier. Mr. Pare said they would not be visible in a forested area if they came up on Fox Point Road, but Chair Hebert said the residents could see them. Mr. Weiner asked if they could camouflage them like cell towers and Chair Hebert said they would use standard metal, which would rust and create a protective coating. Vice-Chair Cross asked if they would abandon the existing lines or keep beside one another. Mr. Weiner said they would need to mount the new lines on the existing higher-level poles. Chair Hebert said they might also use some of the existing poles, but here would need to be a distance between them if there were varied heights. Mr. Weiner said there was no reason not to see a visual.

Vice-Chair Cross wondered if there were different pole options for different route options. Mr. Pare asked if they had considered steel "H" poles and Chair Hebert he doubted that they would use them. Mr. Christopher said there would be an added cost to digging and the mitigation with the State involved.

Discussion ensued regarding Eversource's willingness to consider other options and the associated costs regardless of the desirability to the Town, the residents or the environment. Chair Hebert said their main objection was overall cost because they were doing even more construction in Durham, but Town counsel, Attorney Susan Geiger said that Eversource was very resistant to change and she was amazed that they were willing to consider other proposals that wouldn't add to their costs, including going around the Historic District and wetlands. He said the current people at Eversource were better to work with, but they wouldn't consider any changes without concrete savings and they were suspicious of unforeseen obstacles along other routes. Vice-Chair Cross agreed, pointing out that every plan showed the original right of way from the 1950's when Pease Air Force Base came in, which they could get for free from Pease Development Authority and provide the PDA with underground power at a shorter distance down Arboretum Drive, but they wouldn't acknowledge it.

Mr. Pare said Eversource was prepared to go underground from the beginning and there was still room to negotiate because they hadn't hit their budget. Mr. Christopher said that was because they thought the Federal Aeronautics Association

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would force them to go underground to avoid Pease flight patterns. Chair Hebert said they then objected to underground costs because of transportation restrictions for the cable required, but he suggested they bring the cable over on a barge so they wouldn't have to travel over the highways with it. He said the cost was high to transfer from below ground to above ground and back and they didn't want a splice vault, so it wouldn't cost so much if they could get cable through for a short distance.

Chair Hebert said the Town and the attorneys were meeting with Eversource again on the following Tuesday so they needed support for the best option. He said Option 2 was the same as Option 1 except that it would go underground through the Historic District to cross Fox Point Road and would be the only other option that Eversource would agree to. All Board members agreed.

Chair Hebert said they would agree on the path and find out more on where the poles would go at the Tuesday meeting.

3) **Regulations:** Pertaining to driveways crossing wetlands buffers

This item was continued to the next meeting.

4) **Planning Initiatives:**

A) Proposed zoning district for electrical generating plants

This item was continued to the next meeting.

B) Woodbury Avenue Corridor

This item was continued to the next meeting.

5) **Other Business:** Applicant Billing in Policy Letter for Temporary Planning Assistant

Chair Hebert said Board Secretary, Jane Kendall was spending some time in the Planning Office most days during the summer while Town Planner, Tom Morgan was out on leave and interim contract planner, Jerry Coogan was hired at \$85 an hour for a limit of 15 hours a week to provide direct support to applicants and the intent was to charge that cost back to the applicants as a temporary practice.

Chair Hebert said Mr. Coogan was also working on improving the application process for Board members, which had been included in their packets and also updating the Zoning Ordinance Book because some of the RSA references were outdated.

Chair Hebert asked Board members to review and provide comments to Mr. Coogan's suggestions. He reminded them keep their packets for a continuation at the next meeting and asked if Board members would be available to meet Mr. Coogan on Monday, July 13, 2015. Many members said they would be on vacation and not

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available. Mr. Pare informed the Board that he would be out of the country until mid July. It was agreed that they would meet again on Monday, June 29, 2015.

Mr. Weiner said speaking to the process on behalf of the Conservation Commission and the Board of Adjustment, he found information that came in late was a real disadvantage.

Vice-Chair Cross moved to support the temporary practice of forwarding the temporary consulting planning costs on to applicants. Mr. Weiner seconded the motion and all were in favor.

Minutes:

Jack Pare moved to approve the Minutes for the June 8, 2015 meeting with minimal corrections as discussed. Mr. Phillips seconded and all were in favor.

5) Discussions

Mr. Weiner recommended limiting the duration and temper of comments and discussions. Chair Hebert agreed, but said he also wanted to give everyone an opportunity to express their views and it was a struggle to shut friends and neighbors down in such a small community.

Adjournment: *Mark Phillips motioned to adjourn, and Chris Cross seconded. All were in favor and meeting adjourned at 9:44 p.m.*

Next Meeting: Monday, June 29, 2015

Respectfully

Submitted by: Jane K. Kendall, Recording Secretary