

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, August 24, 2015

Call to Order: Chair Denis Hebert called the August 24, 2015 meeting at 6:30 PM.

Present: Vice-Chair Chris Cross; Mark Phillips; Jim Weiner; Alternate, Ken Latchlaw; Board of Selectmen Rep, Rick Stern; Town Planner, Thomas Morgan; Planning Consultant, Jerry Coogan; and Recording Secretary, Jane Kendall

Absent: Bernie Christopher and Jack Pare

Announcements and Discussions:

Chair Hebert announced that it was necessary to go before the Board of Selectmen to request additional funds because the budget was smaller than it had been and there wasn't enough for the additional costs that had been incurred. He said he also needed to fund the extra costs for Planning Consultant, Jerry Coogan.

Town Planner, Tom Morgan informed the Board that at the end of their packets there was a letter was letter Mr. Robert Stowell, Principal with TriTech Engineering regarding the conditions of approval for the Belanger property on the corner of Fox Point and Nimble Hill Road, which had been satisfied. He said Mr. Stowell brought Condition #6 to attention regarding the discrepancy between the motion that was made during the approval in May and the Mr. Morgan's Letter of Decision that mentioned forested plantings. Mr. Morgan said the letter was written to convey the discussions and the Planning Board's intent.

Board member, Ken Latchlaw said he recalled discussing invasive species vegetation within the setback only and Board member, Mark Phillips said he didn't recall the discussion of a forested buffer at all. Board member, Jim Weiner said he recalled the applicant voluntarily agreeing to double the setback from 15' to 30', but he didn't recall any stipulations on foresting or planting. Mr. Morgan agreed that was not in the final motion. Chair Hebert said he recalled an earlier discussion about planting, but it was not a formal agreement in the final motion. He said Mr. Belanger's counsel, Attorney Chris Mulligan came before the Board to discuss the matter in July, but there was no quorum so they were not able to make any motions. He said he informed Attorney Mulligan that if there was any debate, he would need to re-open the public hearing for a formal decision; but Attorney Mulligan said he would be satisfied so long as the term forested buffer was left open for interpretation, whether it meant plantings or simply leaving existing trees. Mr. Morgan said Mr. Stowell wrote the letter without any knowledge of Attorney Mulligan's discussion.

Vice-Chair Chris Cross said there was no doubt that there was concern from the abutters' perspective, but it was only voluntarily discussed and only the increase of 30'

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to the setback was established as a condition. He said it would be nice to curry favor with the abutters, but it was not a "no cut" zone and he did not think they could prevent the applicant from cutting trees and he was concerned with making a forested setback a condition that was not required for others. Mr. Morgan noted that the previous owner had begun clear-cutting a few years earlier so many trees had already been removed. He said time would tell whether the abutter brought up any issues. He said the abutter repeatedly said they didn't want to see houses. Vice-Chair Cross said abutters may not want to see their neighbors' houses, but they did not have rights to viewsapes. Chair Hebert said a future owner might still want to cut and so they should address the issue now instead of leaving it open and thought they might need a public hearing. Mr. Morgan said the Board could just make a motion and he could write letter of clarification.

Chris Cross moved that Condition #6 on the letter of approval for the Belanger proposal should read the same as the condition in the motion to increase the setback from 15' to 30' as approved by the Planning Board. Jim Weiner seconded and all were in favor.

Mr. Morgan informed the Board that a proposal by WSCE, non-profit community radio was having trouble with local transmission due to a competing station in Massachusetts and they were looking to install a new broadcast tower. He said the City of Portsmouth agreed to allow them to install their broadcasting tower near their water tower on Beane Hill near the Spaulding Turnpike. He said it was uncertain to what extent the Planning Board would want to take jurisdiction.

Chair Hebert said it was not a permitted use in that zone and they would need to get a variance and then they could return to the Board. He said his only concern would be regarding falling ice and safety. Mr. Morgan said he would schedule them to go before the Zoning Board of Adjustment (ZBA), but the Board had previously requested that proposals go before the Planning Board first.

Vice-Chair Cross said in the water tower was in Newington's jurisdiction. Chair Hebert said time was of essence because they were threatened with losing their frequency entirely. He believed the RSA's gave Portsmouth the right to approve the placement near their water tower, but they still needed to get Newington's permission. Mr. Morgan confirmed that the intent of RSA 674:64 on governmental use of land was to allow them to allow the use. Mr. Coogan said there was a commonly held understanding that government was exempt from local ordinances. Mr. Morgan said this proposal was a hybrid because one part was non-profit and the other was municipal. Mr. Latchlaw asked if they had already sought advise from legal counsel. Mr. Morgan said he had asked Town counsel, Attorney John Ratigan if it would be subject to the Town Zoning Ordinance. Chair Hebert said the RSA said that as soon as a proposal gets into a private concern or is pro-bono, it falls into Town jurisdiction as a non-permitted use and would require going before the ZBA.

Chair Hebert said the City of Portsmouth was saying they wanted to piggyback the radio tower for their own emergency communication system. Vice-Chair Cross said

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he thought the City of Portsmouth could put their repeaters on Newington station instead. He suggested they also consider going to Pease Development Authority (PDA) across the street and put it on a cell tower and pay the PDA rent.

Chair Hebert said they were scheduled to come before the Planning Board on Monday, September 14, 2015 and then they would go to the ZBA and would need to show a hardship.

Mr. Morgan said he was copied on an email from Town engineering consultant, Eric Weinrieb with Altus Engineering to Mr. Joe Calderola, informing him that he had not met the conditions of approval regarding erosion control and securing the site. Chair Hebert said he also asked Mr. Morgan to call Mr. Calderola regarding the bond that had not been paid, and Mr. Calderola told him that he would submit the bond to the Town when he started building the road.

Mr. Weiner asked that a sentence of explanation be added when forwarding emails and memos for the Planning Office to help him allocate his review priorities. Vice-Chair Cross said it would also be helpful to advise if the Board needed to take action and when. Mr. Morgan said he understood their request, but pointed out that some emails were self-evident on the status of a previous application without any actions or deadlines for Board members and it didn't warrant explanations. He said he was also hesitant to offer interpretations of some emails such as those from the consultants. Mr. Phillips said it was helpful that two lines were highlighted in email.

Vice-Chair Cross said he also didn't want emails regarding pending applications at last minute. Chair Hebert said have schedule.

Chair Hebert said the Board also asked Mr. Morgan to provide updates at the beginning or at the end of the meetings, but he didn't need to spend a lot of time on it.

1) **Public Hearing:** Proposal by **Great Bay Services** for a 2-lot subdivision at 2061 Woodbury Avenue, Tax Map 27, Lot 2

This item was moved to September 26, 2015.

2) **Old Business:**

A) **Newington Planning Board Rules of Procedure:** Minor changes concerning the recorder and town planner.

Chair Hebert said the Board had already approved Mr. Coogan's draft at the last meeting, but he did not recognize that the recording secretary was not in the office every day and Mr. Morgan later caught an error that listed the recording secretary as doing administrative office tasks. He said they were not in Mr. Morgan's job description, but he never had an assistant and had been doing those tasks himself for years.

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Mr. Coogan went through the changes and deletions for the recording secretaries current duties that only involved recording meetings and writing reports unless hired to do something else.

Mr. Cross asked why the administrative and clerical tasks were not listed under the town planner's heading and Mr. Coogan said many of them were. Chair Hebert added that they couldn't list everything that Mr. Morgan did in his job description, but they just wanted to clarify that the recorder did not do them.

Chris Cross moved to accept changes as presented. Ken Latchlaw seconded and all were in favor.

Mr. Morgan passed out Attorney Paul Sander's essay on expartay communications. Mr. Coogan said communication from a third party could be worked in.

B) Technical Review Committee (TRC) Minor changes concerning visiting the Planning Board before going before TRC

Chair Hebert opened the discussion on establishing a Technical Review Committee (TRC). He said there were different approaches for the review of an application, such as going directly before the TRC first and then going before the Planning Board to determine if the plan was substantially complete, or going before the Planning Board first for a preliminary review to determine if the plan is substantially complete and then going before the TRC before returning to the Planning Board for a public hearing.

Mr. Morgan said there had been a case when an applicant went before the TRC in another town before the application was substantially complete and the engineers tried to take advantage of their planning board. Mr. Coogan said most engineering firms presented most of their information to start the process.

Mr. Morgan said the RSA's gave an applicant the option if they wanted a preliminary hearing before they were scheduled for a public hearing even if the Board didn't find the application substantially complete. Mr. Coogan agreed that they couldn't an applicant to have a preliminary hearing or go before the TRC but they could advise an applicant that it was strongly encouraged.

Vice-Chair Cross asked if the applicant would meet with the planner or the chair prior to reviewing the application. Mr. Morgan said that was what they were trying to determine whether the planner or the Planning Board would be gatekeeper. Mr. Coogan said typically Mr. Morgan would act as an umpire for a conceptual consultation.

Mr. Latchlaw said there should be a review checklist. Mr. Morgan said a checklist was used. Mr. Coogan wondered if the planner should send a letter to TRC regarding upcoming applications and Mr. Morgan said that sounded like a good idea. Chair Hebert asked that the Planning Board be copied.

Chair Hebert said the TRC would consist of consultants such as the Town's building inspector, engineering consultant, fire and police department and Waste Water Treatment as necessary. Mr. Morgan said having the Portsmouth Water on TRC would

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also help engage them when applicants had difficulties. Chair Hebert said the TRC consultants would be billed to the applicant.

Mr. Coogan said TRC would be a subcommittee of the Planning Board and would require a public notice. He said no votes would be taken. Mr. Morgan added that minutes would be taken, which would be shared with the Planning Board.

Chair Hebert asked that each Planning Board member attend a TRC meeting, but separately to avoid a quorum and conflict of interest.

Chair Hebert asked Board members if they would accept Mr. Morgan making the determination and Board members confirmed that they would. Chair Hebert said they were trying to improve the process, but they could pull back if they determined that it didn't work.

3) Land Use Regulations:

A) Proposed revisions to the **Zoning Ordinance**

Mr. Coogan said he met with Chair Hebert and Mr. Morgan the previous week and went through the Ordinance for updates. The Board reviewed and discussed Mr. Coogan's recommended changes. Mr. Coogan pointed out that uses not listed as permitted would be considered prohibited and listing non-permitted uses would not be required.

Mr. Stern asked how marijuana dispensaries would be zoned and Chair Hebert said he thought they would be the same as drugstores. Mr. Morgan said Article 4 said if an item was not listed as permitted it was prohibited.

Chair Hebert asked if the mechanics were in place for billing outside consultants and Mr. Morgan said there were. Chair Hebert said they needed to consider the cost of the planning consultant so they were looking at low lying fruit, and other subjects such as Air Mitigation, Air B&B's, Condominiums and Duplexes, Great Bay Wildlife Refuge, the PDA, the Town Forest, Work Force Housing and the Master Plan were complex or contentious and would save in-depth discussions at another work session.

Mr. Coogan said he would send the changes in a memo to Chair Hebert and Mr. Morgan and then only one more work session would be required before sending the changes to a public hearing. Mr. Morgan said they would still need to go through the more contentious issues and the Master Plan.

B) Discussion pertaining to **Two-family dwellings** (aka Duplexes) and condominium development.

This item was continued to another date

C) Discussion pertaining to **driveways crossing wetland buffers**.

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This item was continued to another date

5) Planning Initiatives:

A) **Woodbury Avenue** and Corridor Streetscape Design when appropriate. Vote to recommend to the Board of Selectmen.

This item was continued to another date

B) Discussion on proposed zoning district for **electrical generating plants**.

This item was continued to another date

Minutes: *Chris Cross moved to approve the Minutes for the August 10, 2015 meeting with corrections as discussed. Ken Latchlaw seconded, and all were in favor.*

Correspondence and Discussions:

Chair Hebert said he spoke with the Board of Selectmen about improving the Town website and he also talked with Board of Selectmen Chair, Rick Stern about an intranet, which would allow the staff to share large data files, such as plans to the general public. He said it would have it's own server.

Mr. Latchlaw wondered if the amount of underground wire for the Northern Pass was open for discussion and Chair Hebert said it was still open for discussion and there would be a meeting on the following for land owners for the following Monday night.

Vice-Chair Cross said asked if residents would sign away their rights if they sold a portion of their property to Eversource. Chair Hebert said that might be the case and suggested that residents hire an attorney to represent them collectively because the Town could not advise them.

Mr. Morgan informed the Board that a resident was requesting a subdivision, but he did not have adequate frontage and so he would need to go before the ZBA.

Vice-Chair Cross announced that there would be a meeting in Dover regarding the lay down area and for the Department of Transportation to see if they could \fight Federal statutes for keeping the historic General Sullivan Bridge or if hey could replace it with a more modern structure. He said the estimate to refurbish the deck ten years ago was for ten million dollars, but that did not include regular maintenance.

Adjournment: *Jim Weiner motioned to adjourn, and Ken Latchlaw seconded. All were in favor and meeting adjourned at 9: 50 pm*

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Next Meeting: Monday, September 14, 2015

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