

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, October 19, 2015

Call to Order: Chair Denis Hebert called the October 19, 2015 meeting at 6:30 PM.

Present: Vice-Chair Chris Cross; Bernie Christopher; Jack Pare; Mark Phillips; Jim Weiner; Alternate Member, Ken Latchlaw; Board of Selectmen Representative, Rick Stern; Thomas Morgan, Town Planner; Planning Consultant, Jerry Coogan and Jane Kendall, Recorder

Public Guests: Great Bay National Wildlife Refuge Manager, Bill Peterson; Attorney John Ratigan; Attorney Steve Roberts for Anthony DiLorenzo; City of Portsmouth Attorney Jane Ferrini; Attorney Alec McEachran; Paul Bogan with Sea-3; WMUR Reporter Mike Cronin and Cameraman Steve Shannon; Peggy Lamson

1) **Great Bay National Wildlife Refuge:** Meeting with Refuge Manager, Bill Peterson

This item was delayed out of order to allow more time following the next item.

2) **Old Business:** Review of the Sea-3 court decision.

This item was taken out of order by executive decision.

City of Portsmouth Attorney, Jane Ferrini passed out a letter to Board members regarding the New Hampshire Superior Court's remand of Sea-3's site review approval to determine whether the fifth condition that referred to the safety studies to be followed in the event of an LPG incident, was administrative in nature or whether the Board should have reviewed the study further.

Chair Hebert asked Board members to take packets on the Sea-3 decision for review and determine if the safety plans were administrative in nature or if the Board wanted more information to review and have more public hearings. He asked that the Board provide comments for the next meeting on Monday, October 26, 2015.

Town counsel, Attorney John Ratigan confirmed that the judge had remanded the decision to the Board to determine if the safety studies were administrative in nature or if further public hearings were required. He said he had received the letter from Attorney Ferrini on this date and that the Board could reconvene next week.

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1) **Great Bay National Wildlife Refuge:** Meeting with Refuge Manager, Bill Peterson

Chair Hebert stated that Great Bay National Wildlife Refuge Manager, Bill Peterson had been invited to discuss projects on the refuge, but also so the Board could discuss the possibility of Eversource's transmission lines going through the Refuge.

Mr. Peterson said he was the administrator out of Parker River Refuge in Newburyport, Massachusetts that oversaw Great Bay Wildlife Refuge (GBWR), Wapak Refuge in Nashua, and Thatcher Refuge in Rockport, Massachusetts. He said most of the staff worked out of Newburyport, but there were two regional Fish and Wildlife staff that worked at GBWR and a few interns that lived at the refuge.

Mr. Peterson said one of the projects they were working on in partnership with New Hampshire Fish and Game was rearing New England Cottontail rabbits at the old munitions containment area that were born at Roger Williams Zoo in Rhode Island as a transitional stage with supplemental feeding before they were released at Bellamy River Wildlife Refuge in Dover.

Mr. Peterson said this year was the first year that their captive born had young at the refuge and they needed them to become more vigilant to avoid predators so they were increasing the rabbit's area from one acre to seven acres.

Chair Hebert asked if any of the rabbits got loose and Mr. Peterson said the pen was resistant to escape, but they still had problems with fishers and raptures getting in to prey on the rabbits. He pointed out that the Eastern Cottontail was not endangered, ranged freely and was not distinguishable by the eye from the New England Cottontail.

Mr. Peterson said GBWR was also working with The Nature Conservancy to restore oyster beds near Nanny's Island, bringing in shells that had been discarded from local restaurants by barge, and dumping them over four acres to seed the oysters. Ms. Peggy Lamson of Little Bay Road said she had oystered around Nanny's Island for years and complimented Mr. Peterson on how well the program was going.

Mr. Peterson said they were also working with the University of New Hampshire on the river herring run in Stubbs Pond that would have implications throughout the country. He said they were capturing adults, allowing them to spawn in captivity, and inoculating them with tetracycline to mark them for age identification. He added that they had to keep close watch on the eels and beaver dams to keep the fish ladder open at all times.

Mr. Peterson said they also had their first pair of nesting bald eagles out on Fabyan Point along Great Bay.

Mr. Peterson went on to discuss their program to provide habitat and studies for the northern long-eared bat species that was still quite common at GBWR, but had been on the endangered species list as a result of white nose syndrome, a fungus that irritates and wakens the bat during hibernation, which leads to starvation. He said bats were always considered quite common in the past so no one had paid any attention to bats studies until their populations dropped drastically.

Mr. Peterson said they were also working with Pease regarding tree cutting. Chair Hebert asked if the bats preferred older trees. Mr. Peterson said the bats that ranged south to the Carolinas and west to the Dakotas did not roost in old tree cavities,

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but rather under flaking bark and the females left their nesting young under the bark when they went out foraging. Chair Hebert commented that there was a lot of shag bark hickory in Newington and Mr. Peterson said that was what the bats used in this region, but used cottonwood and pine in other parts of the country. He said the bats had migrated to caves in warmer regions now that the weather was colder.

Mr. Peterson said the boardwalk to Pevery Pond and the Ferber trail to the Bay were open from dawn to dusk, but they had several tours to encourage people to see the entire refuge. He added that they just received Federal Highway funding to improve Arboretum Drive and the parking lot that also included \$60,000 for the City of Portsmouth to rehabilitate Arboretum Drive outside of the refuge. Vice-Chair Cross asked if there was any bike access to the refuge and Mr. Peterson replied that there were some bike tours on existing roads to the refuge, but there were no public bike paths in the refuge.

Chair Hebert asked what was happening with the old munitions buildings and tower on the site and Mr. Peterson said the bunkers were being used by Fish and Game for storage and the cost of removing them would not be worthwhile. He said the tower was the National Guard's responsibility, which they would remove, however Fish and Wildlife hired a private contractor to remove the asbestos materials and other contaminants in the buildings out on Fabyan Point. He said his main goal this winter was to get rid of the buildings that were a public hazard. Ms. Lamson asked about the old Margeson Estate on the way to Woodman's Point and Mr. Peterson replied that it would be removed. Chair Hebert said the building used to be the old Sportsmen's' club when the Air Force Base was in operation.

Board member, Jim Weiner asked how the expansion of the New England Cottontail had been funded and Mr. Peterson said the State received funding specifically for the restoration of the New England Cottontail.

Mr. Weiner asked if funding for the herring run or the oyster rehabilitation in Great Bay were still open and Mr. Peterson said the herring run was inexpensive and UNH's oyster restoration was receiving Federal grants and grants from The Nature Conservancy.

Vice-Chair Cross asked if there was any issue with the quality of the water coming in from the airbase to the ponds. Mr. Peterson replied that there had been issues with the use of de-icers on the planes and runways, but there was nothing new. Ms. Lamson said she was the Town representative for the Pease Development Authority board and McIntyre Brook was cleaned on a yearly basis and tested.

Vice-Chair Cross asked if the Town's spraying for mosquitoes larvae had any affect on the bats and Mr. Peterson said he didn't know what the Town was using for chemicals, but the bats flew around the area and it could affect them if it was toxic.

Vice-Chair Cross asked if they were looking to expand the refuge and Mr. Peterson said there might be a few areas around Great Bay, but not a lot.

Chair Hebert asked if GBWR had a master plan and Mr. Peterson replied that they were working with the Piscataqua Regional Estuarine Partnership and other partners around Great Bay to promote water quality and habitat restoration. He said they did a comprehensive plan three years ago they had fifteen-year management goals

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and objectives. Board member, Mark Phillips suggested a link to the GBWR be added to the Town website.

Chair Hebert said he also wanted to discuss if there would be any wildlife benefit for GBWR to allow Eversource to put their transmission lines through the refuge to avoid an impact on residential property owners in town. He said the right of way proposal for the transmission lines would go through several residents' backyards no matter which route in town they took, and several residents had suggested that they go through the refuge instead. Mr. Morgan projected an overview of the transmission line right of way and alternate routes along the northern and southern sides of the refuge for illustration of the discussion.

Chair Hebert suggested that running the transmission lines along the red line at the edge of the residential zone line would not make that much of an impact on the refuge. He added that they might do some kind of mitigation with towers for osprey nesting sites or there might be other opportunities for other areas of mitigation as well, perhaps in putting the property abutting Fabyan point into conservation to increase the wildlife corridor. Mr. Peterson replied that the Thomas property was private and Mr. Thomas had not expressed any interest in selling the property. Chair Hebert said the Thomas fields would be beneficial for the rabbits, but Mr. Peterson replied that New England cottontails were easier prey once they were released than were the dominant Eastern cottontails in the area, so their habitat was being monitored carefully.

Mr. Phillips asked if there was any intent to put a boat launch on the refuge for public access. Mr. Peterson said there was an old boat launch channel, but it was not for commercial or motorized use. Mr. Phillips said his concern was for emergency access if someone was drowning out there. Mr. Peterson replied that fire and rescue had keys to the gate and were welcome to go in if there was a need.

Mr. Peterson said although he hoped the disturbance of the cables cutting through Great Bay was minimal, that was not something within his control. He added that the area along the red line was the least intrusive than the yellow line, but it was still going through wildlife habitat. He said as manager of the refuge he was charged with its protection and he would not want the degradation of cutting through the refuge for transmission lines, whether above or below ground, nor would he want the spread of invasives and the maintenance that would be required.

Vice-Chair Cross said the Board's proposal would provide diversity of environment for the refuge and would build a buffer for people's homes from the transmission lines. He said Eversource could save half a million dollars if they went above ground along the orange line instead of underground following the red line. He said many people had lobbied to put the refuge land into conservation years ago and now U.S. Fish and Wildlife wouldn't allow the Town to use any of the property. Ms. Lamson said The Nature Conservancy had purchased the property initially and Chair Hebert said he believed the Board had discussed the proposal with The Nature Conservancy initially.

Mr. Phillips asked Mr. Peterson if he didn't support mixed use doctrine of the forest service. Mr. Peterson said he might for a different agency, but the purpose of the refuge was to protect and support wildlife first and not multi-use.

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Mr. Peterson replied that it was his duty to protect land owned by the U.S. Fish and Wildlife and he could not make sacrifices in one area for gains in another area.

Chair Hebert asked Mr. Peterson if this was his decision or if it came from a higher level and Mr. Peterson said it was his decision, but his guidance was clear. Chair Hebert said he understood that it was not just his decision, but that it was his duty. He said the lines were not absolute at this point, but he wanted the Board to have an opportunity to share in the discussion he had with Mr. Peterson in the summer.

3) **Preliminary Discussion:** Proposal by Anthony DiLorenzo to construct a hotel, restaurant, and retail store at 2025 and 2061 Woodbury Avenue

Attorney Steve Roberts said he was representing the applicant who had a preliminary contract to purchase the property and was looking for guidance from the Board on the development of a hotel, restaurant and possibly retail store. Attorney Roberts presented a preliminary plan, which was not finalized or recorded.

Attorney Roberts said the lot under review was the site of Great Bay services that included three buildings. He said they were proposing to add another entity to the purchase agreement and subdivide the property somewhere in the middle. He added that the lot had an easement with Eversource and they were working with them to see if it could be relocated.

Attorney Roberts said the lot was in the Office, not the Commercial zone. He said hotels were permitted in the Office zone, but only non -public dining was allowed as an accessory use, so whether the Board was going to change the Ordinance to allow a hotel with a restaurant was the question. Chair Hebert said it was not an allowed use and asked him where he got that impression. Attorney Roberts replied that the Board had discussed the possibility at their August 21, 2015 meeting. Chair Hebert stated that the Board then agreed not to allow the use. Attorney Roberts responded that a hotel with a restaurant for guests only might or might not work, but the goal was to work with the Town. He asked why there was a restaurant on that side of Woodbury Avenue and Chair Hebert replied that it was grandfathered. Board member, Jack Pare said many chains offered free breakfasts. Attorney Roberts said it would depend on the grade of hotel.

Attorney Roberts said Mr. DiLorenzo intended to remove the current Key Auto building that was in disrepair, but keep the Key Auto Collision Center. Board of Selectmen Representative, Rick Stern asked if they would also have an auto body shop there and Attorney Roberts said it would go to the auto center in Portsmouth.

Attorney Roberts said he was not sure what other business they might put there in the Commercial zone, but the use and the Woodbury Avenue streetscape would be improved by eliminating the older building. He said a feasibility study indicated that the location was well suited to a hotel with a restaurant and they would like to remove the old Great Bay Service building and replace it with another new structure. He added that a development of this size would significantly increase tax revenues for the Town, as there were none for the non-profit at this time. Mr. Phillips asked what would happen to

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Great Bay Services and Attorney Roberts replied that they were moving by their own choice.

Mr. Phillips said he thought some of the property in that area had been donated at one time, which would prohibit the use. Attorney Roberts said he did a title search and didn't find any restrictions.

Vice-Chair Cross said any business could be said to increase the tax base so long as they were not non-profit or military. He said they still needed to look at traffic as he would be concerned with traffic access for a hotel. Attorney Roberts said he wasn't familiar with hotel traffic studies, but knew that auto dealerships were most active during the evenings and weekends. Vice-Chair Cross said Woodbury Avenue was being expanded by the State and would eventually be turned over to the Town. He said there might be a need for a center island and was concerned that additional traffic might create a need for another traffic light. He added that it might be a great opportunity to consider putting in another road for efficient and safe traffic. Vice-Chair Cross suggested they consider walkable access with sidewalks as well. Attorney Roberts said he could have the engineers take it into consideration. Vice-Chair Cross said they would need a traffic study and thanked former Board member, Peggy Lamson for the suggestion.

Alternate Board member, Ken Latchlaw suggested they consider swapping lots with TD Bank to make the traffic in and out of the bank safer and keep their development lots together. Mr. Weiner said putting in another road could also give the bank a front and rear access point. Attorney Roberts agreed that the current location of the bank was a tough spot to get in and out without the assistance of a traffic signal.

Vice-Chair Cross pointed out that it would be important to consider the wetlands that were the primary drainage for the malls, perhaps terracing to take care of erosion, instead of pushing dirt into the wetlands as had been done for years.

Attorney Roberts said it didn't sound as if they would get a recommendation from the Board for rezoning, so they might consider going to the Zoning Board of Adjustment. Vice-Chair Cross said the Board might be interested if there was a significant enhancement of the area that would help traffic flow with a mix of developments that would make a good transition between the zones. Chair Hebert agreed that the development proposal sounded interesting, as did the reorganizing of the area for the bank, but he was not sure he would embrace rezoning because it would be in line with Simplex and Tyco so he would like to review the Master Plan and think about it more. Vice-Chair Cross agreed and said it would take something significant from the bank and community to keep a balance of what they might gain in one area and lose in another. Board members all agreed.

Mr. Morgan asked if they wanted to go to the ZBA for a change of use or if they wanted to go before the Planning Board first. Attorney Roberts said they would do a preliminary plan for the Board first and then receive direction to go to the ZBA. Chair Hebert advised that they would need an application and fee payment if a lot of time and costs came up.

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Correspondence and Discussions:

Mr. Morgan handed out the agenda for the following week and additional documents. He said he had just received the zoning updates that planning consultant, Jerry Coogan and Vice-Chair Cross had been working on so he hadn't had an opportunity for review.

Chair Hebert said the changes had to be done before January 2016 so there was not a lot of time left. Mr. Coogan said he intended to have a public hearing in December 2015, with public information on the website and perhaps a handout in Town Hall. Chair Hebert said there was not a lot of time to incorporate feedback unless they did a survey and they didn't have time. Mr. Stern expressed concern that so many changes might be overwhelming for voters. Mr. Weiner suggested sending out a two-sided summary letter in layman's terms might be helpful. Mr. Morgan said the "Newington Neighbor" issued an inquiry on ordinance changes and warrant articles every year and he would provide them with the documentation, which would be printed verbatim. He said the publication went out to half the households in town and was available at the Langdon Library and Town Hall for review.

Chair Hebert said Mr. Morgan had recently discovered the need for clarification of the definition of a "common wall" between connected dwellings. Mr. Morgan said he discussed the issue with the building inspector who was looking at definitions. Mr. Morgan said the current policy came from the former building inspector who was now working for another Town that was having the issue.

Mr. Coogan said State law also allowed site reviews which were more detailed and required notification of abutters, but suggested the Board consider holding design reviews with maps rather than have applicants do preliminary discussions, go to the ZBA and then return to the Board for public hearings. He said another option would be to have consultations rather than going before the Boards. Mr. Morgan responded that design reviews were appealing at first glance appealing, but the City of Portsmouth had discovered there was a hook in the RSA that vested the developer as soon as they filed for review. Mr. Coogan replied that they could start and end on a certain date, but Mr. Morgan said the problem was that being vested meant they could be immune from zoning changes that occurred during the design review before the Board could get through the final review and hearing. Mr. Morgan said he still liked the idea of preliminary discussions. Mr. Coogan said they could put an open and end date into the regulations that would only vest the applicant for a month or two. Mr. Morgan said Portsmouth had done that, but design review had locked them into some undesired developments and he viewed that as a dangerous process. Chair Hebert agreed that design review made him uneasy and could also involve legal fees, considering a conceptual design could become vested. He said the preliminary review was a good process for a small town like Newington.

A brief follow-up discussion of Eversource's transmission line expansion ensued. Mr. Latchlaw asked how close the proposal was to residential properties and Vice-Chair Cross said it was in the backyards of some 1.8-acre lots. Chair Hebert said it was

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frustrating because no matter what route they took, someone would be impacted and some residents were more concerned about their own properties than anyone else's. Mr. Pare asked about going down Little Bay Road and Chair Hebert replied that there were residents that didn't want that either.

Planner's Report:

Mr. Morgan reviewed several items that had come before him during the week, which included concerns with the proximity of the Belanger water installation to the 24" water main. He said they responded with more detail showing where they were putting in their water service. He said he had met with Portsmouth Deputy City Manager, Dave Allen to be sure that the connection was done properly and to allow the installation of a new 8" main. Chair Hebert said he also asked Mr. Belanger to consider a stub that would end at their driveway.

Mr. Morgan said he met with ten people, including attorneys and Eversource regarding the utility pole for Edna Mosher's subdivision on Nimble Hill Road and unfortunately, there was a discrepancy in the interpretation of underground utility connections, whether it meant under the road to the nearest pole or so many feet from the edge of the road. He said now there were two poles next to one another on the other side of the road. Mr. Morgan suggested the Board consider tightening up the definition in the ordinance.

Chair Hebert said the underground connection was supposed to be from the nearest pole, but they put the pole on their side of the road instead of crossing to the existing pole. He said because a site review was not required and the building inspector did not understand the ordinance, he only had them move the pole 100' from the property line. He said Eversource, the building inspector and the Board of Selectmen now knew that it was a mistake in interpretation, but he wanted it in the minutes that it was not to be taken as precedence. He said the applicant agreed to plant 6-8' trees around the pole.

Chair Hebert said another problem was that the ordinance said the subdivision applicant had to put the utility pole in, but it should say the applicant or the party assigned to the developer. Vice-Chair Cross said there were numerous other lots that had been subdivided before the ordinance change as well. Chair Hebert said the correction should apply to any lot. Mr. Pare said the ordinance should read that the connection must be made to the existing point of presence.

Mr. Pare said they needed to be aware that there was a similar circumstance and topology at the Belanger property. Chair Hebert said Eversource had been put on notice. Chair Hebert said the same thing happened on Beane Lane.

Mr. Phillips commented that the main entrance to Newington off the southbound Spaulding turnpike hadn't been mowed all year and looked like an overgrown, shabby shantytown. He said Joe Mitchell's Gulf store and the Portsmouth Sign Company were located across the street to make a living and their corner was a dumping ground with

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DOT infrastructure. Chair Hebert suggested they speak with the Board of Selectmen to address the problem.

Vice-Chair Cross asked if there were to be any further discussion on the design of Woodbury Avenue and Mr. Coogan said he had suggested having a workshop before making a presentation to DOT. Chair Hebert said the agendas were pretty full at this time and they still needed to talk about electrical generating plants, a utility zone and transportation.

Mr. Stern said Altus Engineering was working on the plan for Woodbury Avenue and he would be sure that Planning Board received a copy.

Chair Hebert said there had also been discussion about the City of Portsmouth making improvements to Gosling Drive Mr. Morgan replied that they had only sent out request for bids to engineering firms, but there was no design concept yet. Chair Hebert said the Board of Selectmen would want the Planning Board to be consulted on that as well.

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

Next Meeting: Monday, October 26, 2015

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