

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes, Monday, October 26, 2015

**Call to Order:** Chair Denis Hebert called the October 26, 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; Town Planner, Tom Morgan; Planning Consultant, Jerry Coogan and Jane Kendall, Recorder

**Public Guests:** City of Portsmouth Attorney Jane Ferrini; Newington Town counsel, Attorney John Ratigan; Sea-3 counsel, Attorney Alec McEachren; Sea-3 Operations Manager, Paul Bogan; Jeff McMenemy with the Portsmouth Herald; Mike Berounsky, Joshua and Katherine Blaisdell; Ted Connors; John Liatsis

### 1) Old Business

#### A) Sea-3

Chair Hebert referenced the eight Sea-3 Safety Studies that were passed out to Board members for review after the Superior Court remanded the Board's decision back to determine if updates to the safety study were administrative in nature or not. Chair Hebert said he didn't see any requirement for further public hearings relating to the updating of these studies, but asked for comments from the Board.

Board member, Jack Pare said his readings further re-enforced that Federal and local experts were to review and codify the safety requirements and that was the reason for Planning Board's Condition of Approval #5, to be sure they would also review updates.

Board member, Bernie Christopher agreed and said the Board would not be responsible for analyzing the safety studies that it required in approval condition #5.

Board member, Jim Weiner said he was relatively new and was not on the Board at the time of their review of Sea-3, but said he read the report that said the safety studies would be reviewed by Federal Fire Marshals, OSHA, the U.S. Coast Guard, and other agencies that were listed in the report.

Vice-Chair Chris Cross said the Board hired a safety expert to work with the Board and the fire chief to address the statutes and requirements when Sea-3 first

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes, Monday, October 26, 2015

applied to the Board in the 1990's, and he didn't feel there were any dangers that hadn't been addressed.

Chair Hebert said the "H" study for the 160,000-barrel tank that was done in 1995 was not something that this project was touching. He said Sea-3's counsel, Attorney Alec McEachern stated in his letter that they were only attaching pipes to the tank, but were not doing anything to the tank itself. He said he was not in favor of doing that study again because it would be repetitive. Vice-Chair Cross added that the Board requested that study on that particular tank based on concerns for risks.

*Chris Cross moved that having reviewed the safety studies that were submitted to the Board by SEA-3 along with Attorney McEachern's October 16, 2015 letter and the Board determined that studies A-G as identified in Attorney McEachern's letter were prepared for purposes of complying with Federal laws and regulations, and that the updating of these studies was administrative in nature, that the Planning Board does not regulate these issues, as indicated in the studies. The studies A-G have been updated to reflect the improvements authorized by the Planning Board's approval, but it was clear that study H did not have to be updated, as it related only to the 160,000-barrel tank on the premises, and that tank was not changing as a result of the Board's approval. Rick Stern seconded the motion and all were in favor. (Alternate Board member, Ken Latchlaw did not vote.)*

Attorney Ratigan left at 6:51 p.m. and the Board continued with the other items on the agenda.

Town Planner, Tom Morgan arrived at the meeting at 6:53 p.m.

### **Announcements and Discussions:**

Chair Hebert announced that Town counsel, Attorney Ratigan and Attorney Susan Geiger and the Board of Selectmen had decided to bring in Attorney Beth Bopell who specializes in the 106 processes in evaluating Eversource crossing historic properties for their transmission lines.

Chair Hebert said he had a letter from someone else at U.S. Fish and Wildlife that said they were the responsible party and yet Great Bay National Wildlife Manager, Bill Peterson had said he was in charge of carrying out decisions on what was done on and to the Refuge. Chair Hebert said Attorney Geiger said she was going to talk to Senator Ayotte and Shaheen's offices to see if anything could be done in regard to making the give land back to the Town to allow Eversource to put their transmission lines through the refuge.

Chair Hebert said the building inspector couldn't reach the property owners regarding questions on the ordinance for utilities on the new construction on Edna Mosher's subdivision on Nimble Hill Road so he advised Eversource to put the pole at the end of the road and once the decision was made, it couldn't be moved again. Mr. Pare said the ordinance had always been to connect to the nearest point of electric service and not to put another pole above ground unless there was an exception. Chair

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes, Monday, October 26, 2015

Hebert said most poles were all on the same side, but there were some that required crossing the road.

Chair Hebert said there were mixed feelings about the expense of putting utilities underground to avoid historic structures. Chair Hebert said there could be cases where it would cost just as much to put service in for a single lot as it would for a 10-lot subdivision. Mr. Weiner said he would be in favor of preventing additional poles, but if it was more expensive for a single lot, then that was cost of development.

Vice-Chair Cross said he would prefer seeing poles closer to the edge of properties in the right-of-way of public roads for ease of service, better alignment than back and forth, and so fewer trees would need to be cut.

Chair Hebert acknowledged Mr. Mike Berounsky of Swan Island Road who was in the audience and informed him that he was not on the agenda. Mr. Berounsky replied that he had called the Town office and was told that the next meeting was on this date. Mr. Morgan said he tried to find his phone number online and called two weeks before to remind him that he was on the agenda, but was only able to reach his son's home and left a message with his daughter-in-law. Chair Hebert added that Mr. Morgan was the only staff member that scheduled meetings.

### B) Final discussion on proposed revisions to the Newington Zoning Ordinance (NZO)

Planning consultant, Jerry Coogan made sure everyone had the latest revisions and the Board discussed the Zoning Ordinance that they had been working on together. Board member, Mark Phillips expressed concern that changing the occupancy of a bed and breakfast from eight to four guests would not allow an operator an ability to make a living. Chair Hebert said the intention was that it would only be for a supplemental income. Board of Selectmen Representative, Rick Stern said the number could also be altered by decision of the Board. Chair Hebert agreed that they could grant a conditional use. Mr. Pare reminded them that it was important that the operation require owner occupation and Mr. Phillips agreed that 24-hour management needed to be present.

Board members discussed counting accessory apartments toward the intent of SB145 Work Force Housing law compared to duplexes, which wouldn't count unless they were below a certain value. Mr. Morgan said they couldn't have a separate definition for accessory or duplexes and suggested they list a requirement of 80,000 to 120,000 of uplands for all because any single dwelling lot could go turn into a duplex if the legislation went through.

Both Mr. Coogan and Mr. Morgan agreed that lot sizes were established for environmental reasons and consideration of neighbors, so good reason needed to be made for exceptions. Mr. Morgan said the practical difficulty of rendering most of the town non-conforming was in establishing good reasons for exceptions. Vice-Chair Cross said septic and well water requirements were part of the justification for a 2-acre requirement, but they would be hard pressed to require 3-acres when septic systems were engineered to function on small lots

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes, Monday, October 26, 2015

Mr. Weiner said his reason was to avoid having every home turn into a duplex. The Board continued to discuss larger lot size for dual family dwellings with double sized septic and separate wells.

Mr. Latchlaw asked if owners interested in building accessory apartments would be required to go before the Planning Board. Mr. Coogan said they would only need to go before the building inspector, but Chair Hebert said he felt they should still go before the Planning Board. Vice-Chair Cross agreed that there should be constraints so the building inspector would be sure the septic could support the additional dwelling use.

Mr. Coogan said he and Mr. Morgan and Chair Hebert had discussed a change to the structural setback to wetlands. Mr. Morgan said addressing the wetlands would be more effective in addressing development up to wetlands. He said it was never well defined and zoning should be clear so there wouldn't be two different setbacks for contiguous and non-contiguous wetlands. Mr. Coogan said the University of New Hampshire (UNH) put out a booklet that suggested 100 feet as justifiable.

Chair Hebert said he would like a simpler standard because there had been much debate over interpretations even among wetland scientists. Mr. Morgan said they preserved a distinction between wetlands greater than 5,000 square feet.

Vice-Chair Cross said originally the setback from wetlands was 50' and then the Conservation Commission argued strongly for a 100' setback, but he argued that a large wetlands area, including wetlands on a neighboring lot, could wipe out a good portion of a 2-acre lot.

Mr. Weiner agreed with Mr. Morgan that 5,000 square feet was reasonable and didn't see the difference between wetlands and vernal pools. Mr. Pare said the definition of a vernal pool was a seasonal wet area used for amphibian spawning each spring that frequently went away later in the year. Mr. Phillips said salamanders often had a single week each year to spawn and they could do so in the print of a boot left on a gravel road. Chair Hebert said he didn't think many vernal pools were 5,000 square feet. Mr. Phillips said they could be 2", but were seldom 6'. Chair Hebert said he still didn't think developers should build on vernal pools and Mr. Phillips said Walt Disney world built Disney World on a worthless mangrove swamp in Florida.

Mr. John Liatsis of Nimble Hill Road expressed concern that an increase from 50 feet to 100 feet on streams running through culverts under 10' driveways would be prohibitive. Chair Hebert said they would no longer have to go before the Zoning Board of Adjustment to request a Special Exception, but could instead petition the Planning Board to grant a Conditional Use Permit for access through wetlands.

Mr. Liatsis said he owned a 14-acre parcel and he was concerned that it would be rendered useless if they changed the upland requirements as well as the setback requirement. Chair Hebert said 50' wasn't much of a setback from a large swamp, but Vice-Chair Cross disagreed and said it would have affected many lots that had already been built.

Mr. Latchlaw said drainage was interrupted a quarter of a mile away when Home Depot, TJ Maxx and Wal-Mart were built in Dover and created water that was no longer drinkable and needed to be treated. He said they couldn't be sure how far away abutting properties would be affected when building close to wetlands. Chair Hebert said there

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes, Monday, October 26, 2015

was a similar problem with Hodgson Lane and the same thing could happen with developments at Fabyan Lane or other lots in town where most of the prime land had been sold and developers were trying to build on marginal lots. Vice-Chair Cross said nearly all of Portsmouth was built up and Chair Hebert replied that he hoped to prevent Newington from being the same as Portsmouth in the next 50 years.

Mr. Pare suggested compromising with a 75' setback and Mr. Latchlaw agreed. Mr. Weiner said he would prefer a 100' setback and Mr. Christopher agreed and suggested 3,000 square feet of wetland area. Mr. Latchlaw said he thought it would be a good idea to say 75-100' contingent on the slope of the land. Chair Hebert suggested they discuss it further at the public hearing.

Chair Hebert said they would need another warrant article #10 for a date certain public hearing if they were to make the changes. Mr. Morgan said they would need three weeks to meet the statutory deadline for zoning amendment changes.

*Ken Latchlaw moved to post the changes to the proposed revisions to the Newington Zoning Ordinance as discussed. Jim Weiner seconded the motion and all were in favor.*

### 2) **New Business:** General discussion of updates to the Town's Subdivision Regulations and Site Plan Review Regulations

Mr. Coogan passed out his recent memo regarding subdivision regulations. Chair Hebert said the regulations only needed Board review for a vote and wouldn't need to go to Town for vote.

Discussion ensued regarding the pros and cons of Design Review. Chair Hebert said he was afraid a problem could be created if there was a slip up and preferred the current Preliminary Review process to avoid getting locked in by a technicality. Mr. Weiner wondered about notifying abutters early and Chair Hebert said that was costly.

*Chris Cross recommended option 1 of updates to the Town's Subdivision Regulations and Site Plan Review Regulations without the Design Review phase.*

### 3) **Public Hearing:** Proposed revision to the Driveway Regulations so as to specify stone size in stabilized construction exits.

Chair Hebert said thought he thought they already had a public hearing on this item and Mr. Morgan said the Board liked the proposal, but it hadn't been noticed for a public hearing until this point.

Chair Hebert said the purpose was to protect the town by requiring cleanup of construction debris off public roads.

Mr. Phillips asked who would enforce the regulation and Chair Hebert replied that it would be the building inspector and the Board of Selectmen.

Chair Hebert closed the public hearing and called for a motion.

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes, Monday, October 26, 2015

*Chris Cross moved to add the proposed revision to the Driveway Regulations to specify stone size in stabilized construction exits. Rick Stern seconded the motion and all were in favor.*

#### 4) Planning Initiatives:

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

Chair Hebert said the New Hampshire Department of Transportation (DOT) and the Town were in negotiations so he recommended that the Board not take a vote until the Board of Selectmen advised them further.

*Chris Cross moved to defer a vote on the Woodbury Avenue and Corridor Streetscape Design until they received word from the Board of Selectmen. Bernie Christopher seconded the motion and all were in favor.*

B) Proposed zoning district for electrical generating plants: Discussion

Chair Hebert said he and Mr. Morgan had discussed land and the existing power plants being sold by Eversource. He said they discussed separate zoning and he thought it might seem like spot zoning, but Town counsel said he thought it would be alright; however, Chair Hebert said he was afraid a zoning change might restrict other good business proposals. Mr. Morgan said he thought it was a timely topic and he would like to see the Board engage in planning sessions to envision what might happen on the waterfront. He said any adjustments to the zoning would be straightforward once the Board met consensus.

Mr. Morgan said the former Rollins Farm property took up 40 acres and two large electric generating plants took up the other half of the along Shattuck Way, but the Board needed to acknowledge that it would change and make the best of it. He said Eversource owned the land, but the State would be ordering them to get out of the generating business so they would divest and put Newington Station on the market, only no one would buy it. Mr. Coogan asked if the plant was gas or coal and Mr. Morgan replied that it was gas.

Chair Hebert said Eversource just bought the old Mobil tank site and the Rollins Farm lot. He said the area could be considered for solar, but it didn't do as well in this region as it did in the south. He said it was the only water port in the State, and as Mr. Morgan had said, there was a lot of land available and they needed to determine what they wanted to do. Mr. Phillips said the worst case scenario was that Granite State and Mineral could buy the land and create a larger salt pile. Mr. Morgan agreed that it could turn into a white elephant.

Chair Hebert said they might want to consider an adjustment to the zoning district considering SEA -3 was in two different zones. He said he talked to someone who pre-

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes, Monday, October 26, 2015

certified trade ports for different uses and advised shipping industries what ports were user friendly. He said he thought that would be worth checking into.

Mr. Weiner suggested they consider the area as a site for work force housing. Chair Hebert said the Industrial Waterfront zone was not zoned for residents and Mr. Weiner suggested rezoning just for work force housing. Mr. Stern said their only access would be by boat.

### C) Spaulding Turnpike – Transportation and Utilities

Chair Hebert suggested holding off on extensive discussion of this item until the Board was less busy.

Vice-Chair Cross advocated a new zone as a government interest corridor that would include the Spaulding Turnpike, DOT's laydown area and other properties, utility lines, noise prevention walls, drainage ponds and holding areas for 100-year storms.

Chair Hebert asked what would be the benefit of adding another zone and Vice-Chair Cross said it would be a designated area for infrastructure that could also allow wayfinding signage. Chair Hebert said the State controlled signage along the Spaulding Turnpike and Vice-Chair Cross said the control would be appropriate for the zone and would not permit billboards.

### 5) **Procedural Issues:** Application Deadlines

Chair Hebert stated that this item needed updating and Mr. Morgan said he would work on it with Mr. Coogan.

Chair Hebert said an issue regarding conceptual or preliminary meetings could be left up to the planner to allow time to get on an agenda. Mr. Morgan said applicants typically asked for deadlines and he wanted to know if the Chair wanted them to be flexible or have a set deadline. Chair Hebert said the Chair should have the authority to work with the planner on concepts. Mr. Coogan said conceptual meetings would not need to adhere to a set schedule.

Mr. Liatsis said he put in a request to make a presentation before the Board, but he had been pushed off. Chair Hebert said the Board had been very busy. Mr. Liatsis said he was trying to work with familiar locals and needed time to schedule them in. Chair Hebert said he looked at the conceptual plan and only saw a lot lines and wetlands, but Mr. Morgan would review it more. He said except for the Planning staff, the Board was all-volunteer and there were many applicants that came in unprepared so they were trying to improve the process. Mr. Liatsis said he shouldn't need a professional engineer and he was being penalized because Board members were tired. Chair Hebert clarified that all plans did require a professional engineer's PE stamp to show they met requirements.

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes, Monday, October 26, 2015

### 6) Planner's Report:

Mr. Morgan reported that he was recently visited by someone who wanted to build a wood pellet operation on the former Rollins Farm property that would have less green house emissions than coal. He asked if a ship would bring the wood chips in to the waterfront and the interested party said they would not so they didn't go any further. He noted that said years ago Public Service wanted to build a nuclear power plant on the Rollins Farm property. Chair Hebert commented that wood pellet operations were a very dirty and noisy business.

Mr. Morgan stated that he met with Jim Teetzle of Wilcox Industries and they would return to the Technical Review Committee (TRC) on upcoming Thursday, November 16, 2015 to review their proposed expansion, but they were still held up at the New Hampshire Department of Environmental Services (DES) for their dredge fill permit.

Mr. Morgan noted that the Newington Waste Water Treatment Plant went before the TRC the previous week to review their nine-million-dollar upgrade and would appear before the Planning Board in the next week.

Mr. Morgan said the TRC also gave Mr. Savinelli some technical comments regarding his Fabyan Point subdivision proposal, but Jones and Beech returned with new plans that he would send out soon.

Mr. Morgan said he met with Stoneface Brewery recently who was hoping to expand their business with a pub serving beer and food at the Adelman property on Shattuck way, but he advised them that the Planning Board wouldn't support the change of use so they were considering another location.

Mr. Weiner asked if they were advised of any alternatives and Mr. Morgan said they could go to the Zoning Board of Adjustment, but the ZBA usually didn't grant use variances.

Chair Hebert said they would like to be near the Spaulding Turnpike so they could compete with nearby Redhook Brewery, but he would be most concerned for abutters and the quality of life for nearby residents; however, the Board shouldn't prejudge before hearing the presentation.

Mr. Weiner said he thought it would be good to keep the business and wondered if they could go somewhere else in town.

Vice-Chair Cross said they also wanted to construct a silo at their current site and suggested swapping their current site on Shattuck Way with Habitat for Humanity's ReUse center near Wal-Mart on Woodbury Avenue.



# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes, Monday, October 26, 2015

### **Additional Announcements:**

Chair Hebert announced that Mr. Morgan would be out on medical leave for a few weeks and that planning consultant, Jerry Coogan would fill in and Board secretary, Jane Kendall would assist.

**Minutes:** *Jim Weiner moved to approve the Minutes for the October 13, 2015 meeting with changes as discussed. Bernie Christopher seconded, and all were in favor.*

**Adjournment:** *Chris Cross motioned to adjourn, and Jim Weiner seconded. All were in favor and meeting adjourned at 9:20 p.m.*

**Next Meeting:** Monday, November 9, 2015

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

*These Minutes were approved and adopted at the 11/9/15 Planning Board Meeting.*