

Town of Newington, NH

PLANNING BOARD

Meeting Minutes, Monday, February 23, 2015

Call to Order: Chair Denis Hebert called the February 23, 2015 meeting at 6:32 PM.

Present: Vice Chair, Mike Marconi; Bernie Christopher; Chris Cross; Jack Pare; Alternate Members, Peggy Lamson and Ken Latchlaw; Board of Selectmen Rep, Rick Stern; Jane Kendall, Recorder; and Thomas Morgan, Town Planner

Absent: Justin Richardson

Public Guests: Attorney Chris Mulligan, Doug LaRosa with TriTech Engineering; Mr. Bob Keating with Lordco; and Mr. Dana Lynch with Civil Works

1) Public Hearings:

A) Proposal by **Bruce C. Belanger** for 3-lot subdivision at the corner of **Nimble Hill Road and Fox Point Road, Tax Map 17, Lot 11-2.**

Attorney Chris Mulligan said they were not ready to formally change their application to a 2-lot subdivision from a 3-lot subdivision due to pending appeals with the Zoning Board of Adjustment. He said they were just going through the process and were not playing both sides of the fence, but they would drop the pending appeals and request for a 3-lot proposal if the 2-lot configuration met with the Board's approval. Attorney Mulligan said reducing the number of lots from three to two would only require two drives, but one would still require a wetlands crossing. He said they could make it a condition of approval and he would work with Town counsel, Attorney John Ratigan to put a note on the plan that the lots shall not be further subdivided.

Alternate Board member, Peggy Lamson asked if their decision was because of the decision with the ZBA or because of the decision by the Department of Environmental Services (DES). Attorney Mulligan said it was neither, but rather that his client was anxious to get moving.

Ms. Lamson asked whether the proposed leach field plans would change and Mr. Doug LaRosa with TriTech Engineering said the previously proposed reserve area for the lot near the boundary line in the 3-lot subdivision plan would remain the same and allow more reserve area for that lot.

Town Planner, Tom Morgan said abutters, Mr. Alan and Ms. Lillian Wilson were not able to attend, but had talked with him and they were concerned with houses within view of their home view and suggested the applicant would move the lot line 100' north so the houses would not be in the neighbors' view. Attorney Mulligan said there were

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setback requirements and they might not be able to move the houses further away unless there were geographic reasons for moving them that would require a variance from the setbacks.

Vice-Chair Marconi wondered if they might appease the abutters with a tree buffer. Chair Hebert said the problem there would be that many newly planted trees don't survive for long in a forested lot, though some trees were cut a few years ago.

Mr. LaRosa said he also thought the Board was more concerned that the lot would not have enough uplands. He said they were proposing that each lot would have 2.5 acres of uplands and changing the proposed location of the house would take away half of the uplands. Chair Hebert added that the lot buyer would make the final decision. Mr. LaRosa agreed, but added that he usually designed the septic system and determined the location. Mr. LaRosa said there also was a ledge there that would determine where they built. He said test pit #2 was 23" to the ledge. Chair Hebert asked about the soil on the knoll and Mr. LaRosa said it was all good soil.

Chair Hebert suggested that the applicant consider a conservation easement as mitigation when requesting their wetlands crossing to DES. Attorney Mulligan said they would want to know their proposal would be approved first. He added that the wetlands couldn't be built on anyhow. Chair Hebert said despite a condition that the lots wouldn't be further subdivided, property owners tended to push their mowers deeper toward wetlands buffers and a conservation easement would prevent that from happening. Mr. LaRosa said forested wetlands were common in New Hampshire, but they were putting metal plaques in the wetlands buffers, which he acknowledged could be removed, so he suggested they make note of the buffers in the deed.

Board member, Jack Pare said they should touch base with the Conservation Commission to see if they would accept the proposal for the conservation easement and Mr. Morgan said he would. Chair Hebert said he thought they would because they also recommended the easement on the former Beane estate.

Board member, Bernie Christopher said he thought the applicant was taking a giant step in the right direction. Chair Hebert and Vice-Chair Marconi both agreed. Ms. Lamson said she was not a proponent of subdividing in the wetlands and only wanted one lot, but she was pleased with the give and take.

Chair Hebert said Mr. Morgan had an objection with the curb cut on Nimble Hill Road, but he was afraid that two driveways or a shared driveway wouldn't work on Fox Point Road. He said the applicant could level the driveway to improve the line of sight for a curb cut coming onto Nimble Hill Road.

Mr. Morgan said he still thought that area of Nimble Hill Road was a dangerous stretch and Ms. Lamson agreed, saying she didn't like the idea of a curb cut on Nimble Hill Road across from the Town Hall entrance and the abutting condominium development at the former Beane estate. Chair Hebert said they would need two wetlands crossing permits if they put driveways in off Fox Point Road and Ms. Lamson said she didn't know what DES would say to that, but felt they had a responsibility to community safety. Mr. Morgan acknowledged that his was a minority opinion, but thought there was a time and place for a shared drive and he believed this was it. Vice-Chair Marconi said he understood Mr. Morgan's and Ms. Lamson's concerns and

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agreed that the Board had the power to make the determination where the curb cuts should be. (Board member, Chris Cross arrived at this point in the meeting at 6:49 p.m.)

Mr. LaRosa said he did site distance calculations and the curb cut met site distance requirements. Mr. Christopher said he previously had a problem with the curb cut on Nimble Hill, but had since done a site walk and no longer had a problem with it. Chair Hebert said he also understood and agreed with what Mr. Morgan said, but thought the line of site was better than they thought and was willing to compromise to avoid more wetlands crossings, plus they were talking about using a curb cut that was already granted when they did the original lot line adjustment for the previous owner.

Vice-Chair Marconi asked if the applicant would tie into the City of Portsmouth's water main. Mr. LaRosa said they had a letter saying they could tie in with the 8" water main on Nimble Hill Road. Mr. Morgan said they were talking about the water main on Fox Point Road and recommended that they follow up with Portsmouth Water Department. Chair Hebert said the U.S. Air Force put in a 24" water main in 1964, then dug up the 8" and were now telling another property owner that they didn't want them to tie in to the 24" line, but wanted them to pay for the installation of a new 8" line. He said their lawyer, Attorney Bernie Pelech was looking into the matter for them. Mr. LaRosa said they were planning on bringing the water in along the driveways and Mr. Jenkins with the Portsmouth Water Department had looked at their request and provided an email. Chair Hebert said Mr. Jenkins had passed away and Mr. Morgan suggested they speak with Mr. Jenkin's replacement, Mr. Terry Desmaris.

Mr. Morgan asked Attorney Mulligan if they would be willing to limit the lots to single family residences and Attorney Mulligan said they would not. Mr. Morgan asked if they had any development plans at this point and Mr. LaRosa said they only had plans for the lots right now.

Chair Hebert asked if the Board was good with recommending that the wetlands be put into a conservation easement and the Board all agreed. Mr. Christopher asked if they would be ready to take a vote at the next meeting and Mr. Morgan said they could assuming that the conservation easement was agreeable to the Conservation Commission, but they had just met and would not be meeting again until the second Thursday of the month, which would be two days after the Planning Board meeting. He suggested that they make the conservation easement a condition of approval. Chair Hebert wondered if the Conservation Commission could meet sooner and Mr. Morgan said he could check.

Chair Hebert continued the hearing to Monday, March 9, 2015.

B) Proposed amendment to the **Subdivision Regulations** regarding waivers.

Mr. Morgan said the State Legislature changed the RSA so that planning boards would not grant waivers without following their criteria. Mr. Morgan recommended that the Board copy the language of the RSA into the Town Subdivision Regulations verbatim. Mr. Morgan pointed out that the ZBA jurisdiction only extended to zoning and the building code, but not subdivision, site plan or driveway regulations.

Chair Hebert opened the public hearing and took comments from the Board.

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Mr. Pare noted that Board member, Justin Richardson, who was not in attendance, had provided a sample recommendation on wording of the amendment. Ms. Lamson said she went through Mr. Richardson's suggestion and didn't agree with it. She said she thought it would hold a developer hostage. Chair Hebert said Mr. Richardson had put a lot of work into the recommendation, but it was what he did for New Durham and it left too much up to board interpretation. He said simpler was better and he liked Mr. Morgan's recommendation to follow the RSA wording. Vice-Chair Marconi agreed.

Mr. Cross said someone could make a civil case out of every issue if they didn't keep it simple. He added that inconvenience and standard costs were not necessarily hardships that warranted granting a waiver.

Vice-Chair Marconi moved to grant the proposed amendment to the Subdivision Regulations regarding waivers. Mr. Christopher seconded the motion and all were in favor.

2) Preliminary Discussion: Proposal by Lordco to expand its seafood processing plant at 158 Shattuck Way, Tax Map 20, Lot 17

This item was taken out of order.

Mr. Dana Lynch with Civil Works and Mr. Bob Keating, Operations Manager at Lordco appeared before the Board for a non-binding, preliminary discussion on an addition to their building in the Waterfront District.

Mr. Lynch said they were proposing a 30' x 40' addition for an additional packing room that would be on piers for storage below, geared for their overseas shipping of their expanding business. He said the main building was built before zoning came into being and didn't conform so they would need a variance to expand the non-conforming structure.

Mr. Lynch said there would be no need to change the utilities and he didn't expect that they would add more employees at this time. Mr. Morgan asked how many employees there were and Mr. Bob Keating of Little Bay Lobster said there were 30 employees and they were all subcontractors and they had 11 offshore lobster boats.

Vice-Chair Marconi asked how high the building would be off the ground and Mr. Lynch said it would be built 6-8' over the existing pavement to allow storage.

Chair Hebert said it appeared that the property line dissected the parking lot and Mr. Lynch replied that they had an easement. Mr. Morgan said they would need another variance. Chair Hebert said he didn't see that there would be any issue.

Ms. Lamson asked if the cottages were still there and Mr. Lynch said they were and that there was a private drive to the cottages.

Mr. Cross asked where the emergency access would be on the exterior of the new area and Mr. Lynch said there would be no loading dock doors on the expansion of the new space. Mr. Cross asked if there would be loading or parking in driveway or if anyone else had access and Mr. Lynch said he didn't know.

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Mr. Cross said the Sea-3 plant was proposing a roadway outside the plant and Mr. Lynch said he didn't think anything would change. Discussion ensued regarding parking on the easement where Sea-3's fire lane would be.

Mr. Keating said they were wholesalers that did not sell retail to the public and they had changed from a crate business that had grown from 10% to 50% from a box business that could be stored in the water so they needed more storage space. He said the facility held 300,000 pounds of lobster. He said they were now doing a lot of business in Europe and they were cultivating the year-round Asian market that could continue to grow. Ms. Lamson said she was familiar with Shaftmaster since they arrived in Town and they had been good neighbors.

1) Public Hearing:

- C) Proposed **amendment** to the **Master Plan** regarding transmission lines and utility easements.

This item was taken out of order.

Mr. Pare passed out some information regarding electric lines that was published in a current copy of "Forest Notes, New Technology" that suggested that current distribution technology was cheaper than the transmission lines that PSNH was putting in up north.

(Board of Selectmen representative, Rick Stern arrived at this point in the meeting at 7:38 p.m.)

Chair Hebert said he and Mr. Morgan were working Town counselors, Attorney John Ratigan and Attorney Susan Geiger to make a case so they could go before the FCC with conditions of support. Chair Hebert said though they were involved, it not a Planning Board project, but the Board of Selectmen had asked them to be involved.

Chair Hebert said Eversource (formerly PSNH) said they were upgrading the lines, but they were replacing the existing distribution lines and replacing them with transmission lines. Mr. Stern said they were making money by reselling the distribution lines. Chair Hebert added that the costs would be passed on to the utility customers.

Chair Hebert said they also didn't do their homework because there was solid granite up north and there was clay silt along Great Bay. Mr. Pare noted that PSNH sent an outreach person to the public hearing, not an engineer.

Chair Hebert said he knew there was a growing need for energy and he was not saying against utilities coming to the Seacoast, but he wanted to do it in a way that would make less impact by following the Industrial corridor or down Arboretum Drive.

Chair Hebert said FAA representatives were not in attendance and had not approved the proposal, but there were FAA locals from Pease who were working with the Air National Guard technicians and an air traffic controller and they had no authority to speak at the hearing though they know the glide scope even though the proposed high-voltage lines would be below flight paths, which didn't make sense.

Chair Hebert said Great Bay, Great Bay National Wildlife Reserve and Pease were all Federally controlled, but NH Fish and Game had not been included in the

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discussions either. He said he would be against them putting above ground transmission lines through the Gundalow Landing development and the Darius Frink Farm that was on the National Historic Registry, slicing and dicing up the town. He said there was a disproportionate amount of utilities for a Town that was so geographically small. Ms. Lamson agreed that it was just like the U.S. Air Force base that took over so much of town properties. Mr. Stern thought it also important to mention that the proposed transmission lines would impact property values.

Mr. Cross passed out some recommendations for wording the amendment for discussion and discussion ensued. Ms. Lamson agreed that they should change the wording from Pease Development Authority to Pease International Tradeport. Chair Hebert asked Mr. Cross to email his recommendations to Mr. Morgan who would send them on to Attorney Ratigan. Ms. Lamson agreed that was the correct legal procedure.

Chris Cross moved that the Board adopt his recommendations for amending the Master Plan language to include language that all future electric utility transmission lines in the Residential District shall be placed underground, and the approved revised Master Plan language shall be forwarded to Town Counsel, Attorney John Ratigan by Town Planner, Tom Morgan. Jack Pare seconded the motion and all were in favor.

(See June 25, 2018 Minutes for referral to clarification.)

Minutes:

Vice-Chair Marconi moved to approve the Minutes for the February 3, 2015 meeting with minor changes. Peggy Lamson seconded and all were in favor.

Vice-Chair Marconi moved to approve the Minutes for the February 11, 2015 meeting with minor changes. Peggy Lamson seconded. Bernier Christopher and Peggy Lamson were absent for the meetings and did not vote. The motion passed with everyone else in favor.

Other Business:

A) Shattuck Way Extension Wetlands Mitigation

Mr. Morgan said the Town was working on extending Shattuck Way toward Gosling Road and Wilcox Industries were working with them during their expansion. He said DES was not happy that half an acre of wetlands needed to be filled, but said they would accept a wetlands mitigation contribution of 13 acres of mixed uplands and wetlands.

Mr. Morgan said Wilcox Industries had already been very generous in assisting the Town with the expansion of Shattuck Way and was tired of writing checks and the Town was fiscally conservative about paying to acquire more conservation land; however, he suggested that they recommend putting 13 acres of Town owned property

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in the former Flynn pit off Little Bay Road across from Captain's Landing. Mr. Morgan said there were 19 acres, but suggested keeping what was known as the skating pond. He said he thought the abutters would probably be supportive with the idea of putting the land into a conservation easement. He said he had Town counsel, Attorney Ratigan do a title search and he didn't find any problems.

Mr. Cross asked if bike or nature trails would be permitted through the easement and Mr. Stern said there were electric distribution lines going through the lot so they couldn't.

Mr. Morgan said it would be a conflict of interest for the Town to hold a conservation easement on their own land so they would need to have an outside party such as the Southeast Land Trust hold the easement. He suggested that the Board make a formal recommendation.

Vice-Chair Marconi moved to recommend that the Town of Newington take 13 acres of Town owned property in the former Flynn Pitt (except for the skating pond areas) for mitigation to wetlands impact on the Shattuck Way Extension project. Peggy Lamson seconded the motion. All were in favor with Rick Stern abstaining.

B) Fox Point Road **Water Mains**

Mr. Morgan said he met with Portsmouth Deputy City Manager, Dave Allen regarding the water main limitations that Portsmouth Water Department had imposed on new developers on Fox Point Road. He said Mr. Allen was not familiar with the situation until that point, but was going to make calls to the City Water Department.

Adjournment: *Jack Pare motioned to adjourn, and Mike Marconi seconded. All were in favor and meeting adjourned at 8:26 pm*

Next Meeting: Monday, March 9, 2015

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

These Minutes were revised and approved by the Board at their June 25, 2018 meeting.