

**Town of Newington, NH**  
**PLANNING BOARD**

Meeting Minutes, Monday, January 8, 2018

**Call to Order:** Chair Denis Hebert called the January 8, 2018 meeting at 6:30 p.m., followed by the pledge of allegiance.

**Present:** Chair Denis Hebert; Vice-Chair Christopher Cross; Board Members: Bernie Christopher; Jim Weiner; Alternate Members: Ken Latchaw; Rick Stern and Peter Welch; Board of Selectmen's Representative, Mike Marconi; Planner, Gerald Coogan and Jane Kendall, Recorder

**Public Guests:** Eric Weinrieb with Altus Engineering; Michael and Robin Patenaude; Chris Berry with Berry Engineering; Cindy Balcius with Stoney Ridge Environmental; Robert Byrnes; Craig Daigle; Cindy Lyons; Guy Young; Steve Haight and Paige Dickie with Civil Works New England; Dan Watton with Eversource Energy; Steve Raymond with GCA Services; Alexandra Jacuch; Brian Short and Tory Bianchi with Custom Pools

**l) Public Hearings:**

A) Continuation of Site Review request by The Storage Barn of Newington, LLC for a self-storage facility with a manager residence at 2211 Woodbury Avenue, Tax Map 19, Lots 9-1 and 12.

*Chair Hebert announced that this item would be continued to the next meeting on Monday, January 22, 2018.*

B) Conditional Use proposal by Michael and Robin Patenaude regarding impacts to jurisdictional wetlands and buffers in the development of property located at 65 Nimble Hill Road, Tax Map 12, Lot 10B.

Christopher Berry with Berry Surveying appeared before the Board to present the applicant's request for driveway access to the building lot as well as discuss a proposed wildlife pond.

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Mr. Berry stated that the 2010 subdivision was grandfathered and the applicants, Michael and Robin Patenaude purchased the property in November 2017 after the former owner, Thomas Backowies started the Wetlands Permit process. He added that they had gone before the Newington Conservation Commission and their wetlands scientist, Cindy Balcius had reviewed the site and wetlands delineations with Town wetlands consultant, Mark West and then the Commission approved their Minimum Impact Permit for the Department of Environmental Services (DES). Mr. Berry went on to say that they thought that they were now applying for a Conditional Use for their driveway access because of storm water impacts.

Mr. Berry said he had received comments from Town engineering consultant, Eric Weinrieb with Altus Engineering who reviewed their plan and thought it best to hear the response of the Board and abutters' before proceeding.

Chair Hebert opened for comment from abutters

Keith Frizzell of 24 Fox Point Road, direct abutter on two sides. He said he was not concerned with whole project, but he was concerned with the placement of the pond 15 feet off his lot line and how it would impact his property, changing wetland setbacks on his property.

Direct abutter, Robert Byrnes of 95 Nimble Hill Road commented that he hadn't realized that the applicant was proposing a second garage close to road with a second septic system that could impact value of his property with six to eight inches of water in one place always, which was not considered a marginal wetland. Mr. Byrnes said he said he had no issue with a land owner's right to access their property, but he noted that he had been strictly held to regulations and ordinances with wetlands setbacks, house placement and style, footings, drainage and moving the utility pole when he built on his lot that was a part of Edna Mosher's subdivision approval.

Guy Young of 92 Nimble Hill Road, who also grew up and ran his business across the street from the applicant at 72 Nimble Hill Road said he was concerned if whether water would drain onto Mr. Byrnes' property and run into the culvert that ran under the Nimble Hill and onto his property to the seasonal spring on his property.

Cindy Lyons of 49 Nimble Hill Road stated that she was unfamiliar with plan, but she was concerned that changing water patterns could cause drainage to shift to her property that abutted the back of the applicant's lot. She said there needed to be guarantee that there would be no additional drainage onto abutters' properties.

Craig Daigle of 62 Nimble Hill Road asked if there would be any fill brought in to raise the house and create elevation changes. He also asked why the applicant was proposing a second septic system for the second garage.

Mr. Weinrieb reviewed issues of concern, beginning with the driveway proposal that was within 15 feet of the abutter's property line on the eastern side, which should be set back so that the grading wouldn't affect the abutter.

Chair Hebert asked Mr. Berry why they were not complying with the driveway regulations and Mr. Berry replied that they wanted the driveway as far from their

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wetlands as possible. The applicant, Mike Patenaude replied that they would request a waiver from the regulations. Mr. Weinrieb commented that he would be concerned with ponding in the swale by the drive, which would encumber more wetlands for the abutter. Chair Hebert added that he didn't think a waiving the setbacks for a driveway to be closer to an abutter had ever been granted.

Alternate Board member, Rick Stern asked where the curb cut had been placed during the original subdivision approval. Chair Hebert replied that he would have Mr. Coogan review the original approval plan, but he was not sure if a curb cut had been established at that time. Vice-Chair Cross commented that the Board had not approved a curb cut for this lot at the time of the subdivision, but a temp construction entrance had been authorized at the western boundary of lot where wetlands were filled and then removed once the tree cutting was completed ten years earlier.

Board member, Jim Weiner commented that the applicant had cut trees and cleared an area of the lot before the wetlands delineations were updated. He stated that the Conservation Commission had taken no action because no permanent damage had been done and the area would grow back and restore itself. He asked Mr. Weinrieb if they would need to wait until spring to update the delineations further. Mr. Weinrieb replied that he was not a wetlands scientist, but the applicant's wetland scientist had worked with Mark West, the Town's wetlands consultant and they had to already agreed upon the wetlands delineations.

Mr. Weinrieb went on to add that regardless of the driveway's placement, the flare should be within the applicant's property rather than in front of abutter's property to avoid an increase in the impact to their wetlands permit. Mr. Berry replied that he disagreed that DES would encourage an additional impact.

Cindy Balcus with Stoney Ridge Environmental stated that their wetlands application had already been submitted and, so they would need an amendment, so they wouldn't need to return to the Conservation Commission. She asked if the Board would be willing to write a letter that they would not approve the waiver to allow the driveway within the 15-foot setback. Mr. Weinrieb replied that the Minutes would reflect that the Board would not approve the waiver.

Mr. Patenaude commented that he wasn't sure if they would still be in the wetlands buffer if they moved the driveway, but they could consider making the driveway narrower and create gravel shoulders.

Mr. Weiner noted that the proposal included wells, but it was his understanding that a connection to municipal water was a requirement for subdivisions. Chair Hebert stated that it was a precaution to avoid PFO contamination to wells from Pease. Mr. Berry replied that the wells were an oversight.

Mr. Weinrieb stated that he wanted clarification that test pits during seasonal high water would be witnessed. Mr. Berry replied that he wasn't aware that they needed to be witnessed for a single-family home. Mr. Weinrieb replied that everything would be reviewed because of impacts to wetlands.

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Mr. Weinrieb commented that although the Town had a stipulation that test pits were not allowed at certain times, soil indicators had already been done and he thought they could be done now. Town Planner, Gerald Coogan added that Rockingham County usually did the test pits. Mr. Berry replied they would do new test pits in the spring. Chair Hebert stated the Board could make the test pits a condition of final approval.

Mr. Weinrieb asked if there were intentions of creating an accessory dwelling unit with the 1,200-square foot garage and separate septic system. Mr. Berry replied that the separate septic system was to accommodate an office in the garage.

Chair Hebert pointed out that for the past 25 years only one principal dwelling per building was allowed on a single standard lot and only one septic system could serve a single-family dwelling. Mr. Patenaude stated that he was not aware of that and he thought auxiliary dwelling units (ADU) had been allowed according to State law. Chair Hebert replied that ADU's were allowed, but the current Town Ordinance specified that they had to be attached to the primary residence and shared a single septic system. Chair Hebert stated that the Town only allowed one septic system per lot for a single-family dwelling and a separate system was not allowed because it could be used for the development of an apartment in the future, which was not allowed without prior approval.

Mr. Weinrieb reminded the applicant that the large 4,800 square feet footprint would need to be included in additional drainage computations to address concerns.

Mr. Weinrieb requested more information on the driveway culverts. He expressed concern that the culverts could not crush and fail under the construction vehicles and heave under the frost.

Chair Hebert noted that the maintenance of culverts was the responsibility of property owners, but the Town was typically granted an emergency maintenance easement to prevent flooding if an owner failed to keep the culvert clear and could not be contacted.

Mr. Weinrieb noted that clarification was needed regarding seeding in the restoration area as seeding didn't make sense in wetlands. Ms. Balcius replied that they had included their planting plan along with the pond construction sequence for their DES application.

Chair Hebert asked where water would go if the pond took on more water than it could hold. Ms. Balcius replied that she could put together a buffer plan showing the existing natural wetlands for Mr. Frizzell's lot and that there would be no change.

Ms. Balcius stated that in response to a request from David Price with DES, she had showed the Conservation Commission that the topography and water flow that went back to the prime wetlands. She added that the pond design was dug in at the existing elevation as preferred by DES to avoid overflow from damming.

Board of Selectmen's representative, Mike Marconi asked where the prime wetlands flowed and Ms. Balcius replied that they connected to ditches at the back.

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Chair Hebert asked if drainage would flow toward wetlands onto Mr. Byrnes property. Ms. Balcius replied that it would not. Chair Hebert asked to include drainage information in their package for Mr. Coogan to pass on to the Board.

Mr. Coogan asked how much fill from the pond there would be and what would be done with it. Mr. Patenaude replied that there was an 18-inch seasonal high-water table and they intended to use the loam to build landscaping around the house when they were ready to landscape to avoid trucking soil over Town roads.

Alternate Board member, Peter Welch asked how high from the existing grade the top of house would be. Mr. Berry said the footing would be at the existing grade and Mr. Patenaude stated that the top of foundation would be 9 feet above the existing grade and the finished grade of the single-story ranch style home would be 17 feet to the ridge of the roof.

Mr. Weinrieb commented that the Board might want to consider limiting the substantial grading that they were around the site. He added that they might want to consider a retaining wall or allowing the area within the buffers to return to their natural state with buffer plaques. Mr. Berry replied that they were not showing any grading within the 25 foot no disturbance buffer outside the impacts at the entrance. Mr. Weinrieb added that they might consider an increase to the buffer to avoid the use of fertilizer, herbicide and pesticide uses leaching into the wetlands from a lawn. could consider.

Chair Hebert opened comments back up to the public.

Abutter, Bob Byrnes expressed concern that sheeting water from an undersized eight to ten-inch culvert would flow in his direction. Chair Hebert replied that representatives for the applicant were say that water would flow in the opposite direction, but he agreed that he was not sure if the pipe would be large enough through acceleration.

Guy Young replied that having lived and worked across the street for the past 55 years he had observed ice crossing the road despite statements on topography and water flowing to the back of the applicant's lot. Mr. Patenaude agreed that water also flowed down Nimble Hill and agreed that he needed to show that his construction wouldn't increase the flow, but he added that he was not obligated to fix the existing flow either.

Vice Chair Cross summarized key requirements discussed:

1. That new test pits be witnessed by a Town representative in accordance with the Zoning Ordinance.
2. That the driveway structure be moved outside the 15-foot setback and that a driveway application be submitted.
3. That the proposed second septic system be deleted as only one septic service for the principal residence would be allowed according to the Zoning Ordinance.

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4. That a revised drainage analysis would be required to show no increased impact onto abutting properties for surface and subsurface wetland water flow and be approved by NHDES and the Planning Board.

Chair Hebert continued the hearing to Monday, February 12, 2018.

Mr. Berry stated that they would redesign their proposal with consideration to comments made. Mr. Coogan suggested that Mr. Berry work with Mr. Weinrieb. Chair Hebert asked that he be sure to copy Mr. Coogan on any changes.

**C) 2018 Zoning Amendment Proposals**

This item was delayed hearing the following item next.

**II) New Business:** Informal discussion on proposed parking and landscape upgrade at Great Bay Marine, 61 Beane Lane, Tax Map 6, Lot 9.

Mr. Weinrieb informed the Board and the public that Altus Engineering worked with the Griffin family corporation that owned Great Bay Marine. Chair Hebert asked Mr. Weinrieb if Altus Engineering was designing this proposal and Mr. Weinrieb said they were not. Chair Hebert asked if anyone had an issue and no one did.

Steve Haight with Civil Works New England appeared before the Board to present Great Bay Marine's proposal to remove some pavement and increase the pavilion area for boaters. He stated that they would be going before the Conservation Commission later in the week to request a recommendation to DES for a Wetlands Permit because they were working within the 100-foot tidal buffer.

Mr. Marconi asked if they were changing traffic flow to reduce congestion. Mr. Haight replied that that was the purpose and they would also restripe the parking lot.

Mr. Stern commented that the change to porous pavement would also be an improvement.

Chair Hebert asked where patrons for Lexi's Café would park and if there would be handicapped parking. Mr. Haight showed the change and noted that there would be ADA parking.

Mr. Coogan asked if the Board was satisfied with the presentation or if they required a formal site plan review. Mr. Weinrieb noted that a full review would be costlier and would require that the plan be recorded at Rockingham Registry of Deeds. Chair Hebert stated that they only needed to get the changes to parking and traffic plan to get on record.

**III) Other Business:**

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- A) **Zoning Compliance:** Regarding Eversource property use located at 325 Gosling Road, Tax Map 28, Lot 5

*This item was taken out of order.*

Chair Hebert stated that Eversource had recently asked Mr. Coogan to sign off on the storage of hazardous materials at the old Mobil site on Gosling Road. Chair Hebert stated that this was a non-approved use and, so they had asked a representative to attend the meeting to discuss the matter further.

Dan Watton with Eversource Energy stated that he oversaw demolition of the Portsmouth site. He told the Board that the low-pressure turbines used mercury vapor in the 1920's and 1930's. He stated that the use was decommissioned in the late 1960's and the mercury and asbestos cover was pulled out, but there was still residual mercury in the demolition steel. He went on to say that although it was not a money maker, their board of directors agreed with the Public Utility Commission's recommendation that it would be due diligence to remove the decommissioned mercury boiler for the upcoming sale to eliminate risk to the community.

Mr. Watton explained that the packing and hazardous waste that had been allowed on the Portsmouth site went into containers that were being stored at the former Mobil site on the Newington side and by law had to be removed every 90 days. He said he expected the project to continue to late 2018 or early 2019.

Chair Hebert asked what happened to the liquid mercury and Steve Raymond with GCA Services replied that there was no liquid mercury, only the steel that it came in contact with and it was stored in five-gallon pails and 55-gallon drums and was then stored at the old Mobil site waiting to be shipped to Alabama.

Mr. Watton stated that they had received a permit, so the State was aware of their activities. Mr. Raymond added that the site in Newington and Portsmouth was considered a contiguous parcel.

Mr. Coogan stated that Newington's Board of Selectmen hadn't been informed of the hazardous waste storage until he had received a call from attorney Luker who was representing the buyer, Granite State Power and they were requesting a compliance letter for the investors. Mr. Watton stated that they had notified both Portsmouth and Newington fire and police departments and were not aware that they needed to notify the Selectmen as well.

Mr. Coogan said he spoke with Town counsel, Attorney John Ratigan who advised him that it was not up to him, but up to the seller to write a zoning compliance letter, however, they should still talk with the Selectmen.

Chair Hebert commented that the concern was with the sale of the former Mobil station on the Newington side. Mr. Watton agreed that it would be best to move the materials over to Portsmouth. He said the sale was closing the next day by midnight, but Eversource would assume responsibility, not Granite State Power.

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Chair Hebert said biggest issue was that the new applicant was looking at the Mobil site as a hazardous waste processing and storage site, which was incorrect, and the Town could not allow it to go on. He said the storage of hazardous waste had not been a part of the Planning Board's site review and it would be on record that they were told to clear the storage as of October 15, 2017 before the sale per Attorney Ratigan. Chair Hebert went on to say that they were in violation of zoning ordinances RSA 67:717 and the fine for the first offense was \$275 and \$175 for each day that the offense continued. He said the Planning Board needed to consider liability and establish a date certain. He suggested recommending to the Selectmen that the accrual of \$37,605 in daily fines be put aside, then returned once the hazardous waste was cleared out properly, or the Town would have to pursue legal recourse if it was not cleared out.

*Ken Latchaw moved to recommend determination of Eversource's cleanup of hazardous material at the former Mobil property located at 325 Gosling Road, Tax Map 28, Lot 5 to the Board of Selectmen. Jim Weiner seconded the motion, and all were in favor with Mike Marconi abstaining.*

Mr. Marconi commented that as the Vice-Chair of the Board of Selectmen, he was disappointed that he was not made aware of the issue until it was put on the amended agenda.

**1) Public Hearings:**

**C) 2018 Zoning Amendment Proposals**

*This item was delayed hearing the previous items.*

- 3) Amendment #8, Newington Building Code, Section 9, **Swimming Pools**, to add: ..." or a swimming pool with a power safety cover complying with ASTM F 1346 as an authorized exception".

*This item was taken out of order.*

Chair Hebert informed the Board that they would be asked to consider whether they wanted to recommend the petition to allow an automatic pool to cover in place of a fence around pools in town.

The Newington property owner that wrote the petition stated that she wrote the petition after the building inspector informed her that Town regulations required a four-foot fence around pools. She said she had researched the subject for two years and thought it was a non-issue because other towns accepted pool covers in lieu of fences



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and a change to State law was before the Legislature as well. She said she also considered applying for a variance, but realized it would be unlikely to be granted because it wouldn't meet the hardship criteria.

Mr. Latchaw commented that most homeowner's insurances required fences. The Custom Pools representative replied that he had run into the same problem regarding the installment of a cover without a fence around the pool at his home, so he changed his insurance carrier with an increased premium and a stipulation that he install a motion detector alarm on the doors that led to the back yard.

Board member, Bernie Christopher said he put a fence up to fulfill his obligation and he never worried about neighbor kids because he kept his gate closed, but he worried for kids at his house. Mr. Christopher said he would still be concerned about the liability of neighbor kids falling in if the cover was not closed. The representative replied that his insurance would not find him liable if he left the cover open.

The representative stated that the cover was not automatic, but a key opened, closed and sealed the pool so that children could play near the pool when it was closed. Chair Hebert said he was relieved to know that they were strong enough to hold a child.

Chair Hebert commented that they couldn't guarantee that anyone wouldn't forget and leave the pool open. The representative agreed, but said the same could be said about leaving a fence open. The resident added that many municipalities adapted safety covers because it removed the lure of open water.

Mr. Christopher asked what the average cost of the cover was, and the representative said they cost between \$15,000 and \$20,000 with an additional \$10,000 for the motor. Mr. Weiner commented that anyone investing in the expense of this type of system was very aware of how it worked, or they wouldn't install it, but the argument was that a fence was permanent, and the cover depended on manual opening and closing.

Vice-Chair Cross commented that a fence with a gate could be locked simply, but the cover required closing with a key. He said he looked at the Ordinance that required a locked fence and it didn't say anything about an automatic fence. He said this change might be just as good because it also required an act to close the pool off, but he also suggested that the Board consider amending the ordinance regarding fences.

Mr. Stern asked if they had to put a generator in the house. The representative replied that there was a crank manual override, but he agreed that a secondary power source would be beneficial.

The resident suggested that the Board could add a condition that a generator would be required. Chair Hebert said he didn't think the Board could change the exact wording of the petition presented. Mr. Stern replied that he thought the petition could be brought to the town for discussion before the vote.

Vice-Chair Cross asked if a town vote was required to amend a regulation and Mr. Coogan said it was not.

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The Custom Pool representative stated that they were using the language of the proposal before the State Legislature and it would most likely will be accepted and adopted into law and then additional regulations would go to each town. He went on to say that California and Florida had adopted this provision from the 2015 International Building Code, but the State of New Hampshire hadn't adopted it yet. He said he would provide Mr. Coogan and the Board with a copy of the code.

Chair Hebert commented that there were serious issues of liability because, so many children have drowned in pools. He said the town would need to consider the liability, especially if the town voted on the petition and the State didn't pass the law. He asked that the Board and Mr. Coogan receive more information on the covers before deciding on whether they would endorse the petition. The representative said he would send the video link on [www.custompool.com](http://www.custompool.com) to Mr. Coogan

Chair Hebert continued the Discussion to the January 22, 2018 meeting.

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*Mr. Coogan informed the Board that Town Building Inspector, Kevin Kelly recommended that the Board consider changes on the following items:*

- 1) Amendment #6: Article VI, **Non-Conforming Property**, Section 1 – **Expansion**

Discussion ensued regarding wording for improved clarity of expanding non-conforming properties.

Mr. Stern commented that the proposed change suggested that he would not be able to expand his conforming house. Chair Hebert replied that the Board that the intent of the change was to be sure that an expansion to a duplex could only occur if a lot was large enough and met the setback requirements.

Alternate Board member, Ken Latchaw pointed out that the wording would need to clarify on whether the footprint or the structure of a non-conforming structure could be changed. Mr. Christopher commented that he didn't see an issue in alterations so long as the non-conformity was not increased.

Vice-Chair Cross passed out a suggestion for the following change:

“Exception: Otherwise conforming uses and conforming structures on land smaller than the minimum lot specified in Table VI-1 may be enlarged subject to meeting all other ordinance requirements.”

*Chris Cross moved to recommend clarification for Amendment #6: Article VI, Non-Conforming Property, Section 1 – Expansion to go to Town Meeting as a warrant article. Jim Weiner seconded the motion, and all were in favor with Alternate Rick Stern abstaining.*

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- 2) Amendment #7: Article IV, General Provisions, addition of Section 12 – **Land Disturbance**: For any land disturbance such as building construction, redevelopment, excavation, earth removal, filling of land, disturbance of wetlands, and the like, the applicant and/or property owner shall ensure that there will be no water runoff on to any abutting properties. This provision will be a condition of subdivision and site plan approval and a building permit.

Mr. Coogan informed the Board that Building Inspector Kelly requested the addition so that there would be explicit language stating that runoff from one property wouldn't go to another abutting property as a basic concept of land development. Mr. Welch commented that it should say that there would be no increase in water runoff from existing conditions, not "no water runoff".

*Mike Marconi moved to recommend Amendment #7: Article IV, General Provisions, addition of Section 12 – Land Disturbance: For any land disturbance such as building construction, redevelopment, excavation, earth removal, filling of land, disturbance of wetlands, and the like, the applicant and/or property owner shall ensure that there will be no increase in water runoff on to any abutting properties. This provision will be a condition of subdivision and site plan approval and a building permit. Peter Welch seconded the motion and the motion passed (with Ken Latchaw abstaining).*

**B) Master Plan: Update on**

Vice-Chair Cross said a summary would eventually be placed on the website and Glenn Greenwood, Rockingham Planning Commission's Assistant Director would incorporate some of the of the summary into the Vision section.

Mr. Latchaw suggested it would be helpful for residents to put the information online prior to Town Meeting which would be good for residents.

**C) Appointment to the Board**

Chair Hebert asked if Board members wanted to vote to appoint a replacement for Mark Phillips and Jack Pare's positions or if they wanted to wait until elections to decide. Mr. Marconi said he thought they could wait until elections and the Board agreed.

**D) Updates: Town Planner Report**

Mr. Coogan passed out his 2017 Annual Planning Board Report for Board members to review.

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**E) Additional Discussions:**

Mr. Marconi informed Board members that the Economic Development Committee (EDC) had done a video of town to be shown to potential developers. He said they were also sending a copy to the Governor's office.

Mr. Marconi announced that the EDC was planning a meeting with Peter Loughlin, Portsmouth's representative to Pease Development Authority (PDA) and Newington's representative, Margaret Lamson to discuss different ways to encourage developers to come to town.

Mr. Weiner asked Mr. Marconi why the EDA would think the PDA, who was a business competitor would share anything with Newington. Mr. Marconi replied that this was Selectmen, Ted Connors idea and he and Mr. Connors had known and worked with Attorney Loughlin for years. He said both Mr. Loughlin and Ms. Lamson were their town representatives, not adversaries and they were completely transparent. He said they were both concerned with how businesses were doing poorly at the malls and they hoped they might be able to work together to acquire businesses that would work better for Newington and its Waterfront Industrial area that could improve business in the region.

**Minutes:** *Mike Marconi moved to approve the Minutes for the December 11, 2017 meeting. Jim Weiner seconded the motion, and all were in favor.*

**Adjournment:** *Mike Marconi moved to adjourn the meeting. Bernie Christopher seconded the motion and the meeting adjourned at 9:35 p.m.*

**Next Meeting:** Monday, January 22, 2018

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