

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

Meeting Minutes, Monday, January 9, 2017

- Call to Order:** Chair Denis Hebert called the January 9, 2017 meeting at 6:32 p.m., followed by the pledge of allegiance.
- Present:** Chair Denis Hebert; Vice-Chair Christopher Cross; Board Members: Bernie Christopher; Mark Phillips; Jim Weiner; Alternate Members: Ken Latchaw and Peter Welch; Board of Selectmen's Representative, Cosmas locovozzi; Planner, Gerald Coogan and Jane Kendall, Recorder
- Absent:** Jack Pare
- Public Guests:** Michael Berounsky; Katherine and Josh Blaisdell; Attorney Bernie Pelech; Joe Coronati with Jones and Beach Engineering; Attorney Tom Keen; Chris and Laura Rogers; Attorney Kevin Baum; Constantine Routetski; Ted Connors; Rick Sterns

1) **Public Hearings:** Proposal by Michael Berounsky for Subdivision regarding property at 30 Swan Island Lane, Tax Map 53, Lot 9.

*Alternate Board member, Peter Welch recused himself as abutter to the applicant.*

The applicant's counsel, Attorney Bernie Pelech stated that the last time they appeared before the Board the Roger's counsel, Attorney Tom Keen suggested that they all sit down and come up with something acceptable to all. He showed the Board what they referred to as Plan A deeding land to the Town as public right-of-way to meet the Zoning Ordinance for frontage, which everyone liked except Town counsel, Attorney John Ratigan who said the Zoning Ordinance required 200' frontage on a public right-of-way. He added that they were not saying town had to build roadway in area, it could be an open space.

Attorney Keen said his client, would go along with the plan also as it seems the fairest. He pointed out that this plan would reduce cost to the applicant, Michael Berounsky and it would have no adverse impact to his clients, Chris and Laura Rogers or the Routetski's. He urged the Board to consider the practicality and questioned whether another alternative would be legal.

Board member, Bernie Christopher asked what Attorney Ratigan's problem was with Plan A. Chair Hebert replied that the Planning Board didn't have the authority to overrule a Town ordinance. He added that the ZBA had already denied this request before and the issue would be that it would create a precedent for similar requests.

Attorney Pelech responded that Mr. Berounsky asked the ZBA to allow two dwellings on one lot as well as requesting a waiver from the requirement of frontage on the cul-de-sac, but he

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never went before the ZBA with a request for this plan. Attorney Pelech said he could go before the ZBA and make this request, however.

Mr. Berounsky clarified that his application to the ZBA was to allowed two dwellings on one lot and a shared driveway.

Attorney Keen asked if they would have to go before the ZBA anyhow considering Plan A would meet the frontage requirement on a public right-of-way if not a public street. Chair Hebert replied that Plan A had less asphalt and less environmental impact, but the Town had always considered frontage to include pavement.

Town Planner, Gerald Coogan agreed that the definition of the right-of-way implied that frontage would abut a street. He added that Attorney Ratigan commented that Plan A was a circumvention of the Ordinance and it would set a bad precedent. He added that the

Vice-Chair Cross added that Plan A allowing frontage on Town boundaries with a right-of-way would create a problem with installation and maintenance of utilities.

*(Board of Selectmen's Representative, Cosmas Locovozzi arrived at 6:36 p.m. at this point in the meeting).*

Attorney Pelech presented Plan B that would require deeding property to the Rogers and extending their driveway to accommodate a redesign of the cul-de-sac for adequate frontage for the subdivision. He said Plan B was discussed at length at the last meeting and concerned Rogers greatly. He said Attorney Ratigan also sent an email the Planning Board had authority to approve the plan.

Attorney Keen commented that the Board said the only way they would accept Plan B was if there was an agreement between the applicant and the Rogers. He said he didn't believe the plan was legal so they discussed another plan that would be in the best interest of everyone. He said accepting Plan B would create a hardship for the Rogers with no understanding on liabilities.

Attorney Pelech replied that they had discussed Plan B and were told it would be agreeable for an offer of \$50,000 based on discussions with real estate agents regarding maintenance, but Mr. Berounsky didn't feel comfortable with that so they stopped there and went forward with Plan A.

Attorney Keen encouraged Attorney Pelech to take Plan A to the ZBA.

Chair Hebert stated that the applicant was within his rights to go before the ZBA, but reiterated that the Board was not going to work around the Ordinance and the ZBA. Board member, Jim Weiner added that ZBA Chair, Matt Morton had stated at the meeting that they had never granted that type of variance before. Attorney Pelech said he read through the minutes and agreed.

Board member, Mark Phillips asked if Attorney Ratigan had suggested what would make Plan A acceptable, such as adding eighteen feet of pavement around the extension. Chair Hebert said that was a possibility, but that wasn't the current proposal and the issue was frontage on the paved road. Chair Hebert stated he didn't want to get into designing plans for applicants as it was up to them and their engineer.

Attorney Keen suggested that increasing the roadway around cul-de-sac would create frontage by creating more pavement and they could make it a condition of approval. Attorney Baum replied his client, Constantine Routetski didn't want more pavement.

Mr. Berounsky asked 'd what the difference between their proposal for two homes on a lot and the Dennett Farm condos next door with two residents on two acres. Chair Hebert

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replied that the Town had different rules when the condos were proposed, but informed Mr. Berounsky that he could build a duplex on his lot if it met Town regulations.

Chair Hebert stated that towns had the right to allow developers to request moving a town road. He said the Town engineering consultant reviewed and Plan B and it seemed to be the best plan with the exception that the Rogers didn't want to extend their driveway, but the other alternative in Plan A would make another abutter unhappy.

Attorney Keen said all abutters would be present at the Zoning Board of Adjustment (ZBA) request for approval and if that request didn't work, they would try to reach a different agreement. Chair Hebert replied that going before the ZBA implied there was a hardship because there were no other options, but there were if they considered them.

Attorney Pelech requested a continuance to give them more time to discuss alternatives further or consider going before the ZBA. Mr. Christopher commented that going before the ZBA didn't seem very promising so they should consider working out an alternative.

The applicant's daughter, Katherine Blaisdell agreed that their time had been wasted and they should have been informed that the Board wouldn't approve their plan and then they could have gone before the ZBA.

Mr. Berounsky asked if the Board would approve their proposal if the ZBA approved their request. Chair Hebert informed him that the Board could not make that statement because they hadn't seen plans for the rest of the site development to know if they met the Town's requirements.

Mr. Phillips commented that he thought the problem was that the definition in the Town's regulations didn't specify that frontage had to be on the pavement and thus the applicant was paying an engineer and attorney without getting results. Mr. Coogan agreed that frontage was not defined as well as could be, but it did refer to the right-of-way, which included all Town, State and Federal roadways and it was an understanding throughout the state that frontage was on the road. Attorney Keen commented that there were many towns that allowed frontage on the right-of-way. Chair Hebert replied that Newington had consistently required frontage to be on the public road, which set a precedent.

Discussion ensued regarding a continuation to allow enough time for the applicant to discuss alternatives or go before the ZBA.

Chair Hebert continued the meeting to March 27, 2017.

*Mr. Locovozzi left at this point in the meeting.*

### 2) **Wilcox Way:** Update

Mr. Coogan informed the Board that construction on Wilcox Way extension of Shattuck Way to Newington's wastewater treatment plant was underway, but was going slower than expected because of the cold weather. He said Denis Moulton with the Town's consultant, Altus Engineering was reviewing the project and providing preliminary reports.

Mr. Locovozzi asked if the Board had any further discussion of continuing Wilcox Way to Gosling Road. Chair Hebert replied that there would be a lot of land on Shattuck way that would be developed eventually and the Board's position in the past was to have the developers pay for improvements as needed and he didn't see the sense in having the Town pay for an extension with no businesses there.

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Mr. Iocovozzi commented that Eversource would eventually divest in the power plant and although they might lease their property out, finishing the road could encourage business development.

Mr. Iocovozzi added that the New Hampshire Department of Transportation (DOT) would be turning Woodbury Avenue over to the Town in a year and extending the industrial corridor to Gosling Road would be in the best interest of the town to keep them off Woodbury Avenue and reduce the wear and tear from trucks and make it safer for the pedestrian traffic.

Chair Hebert replied that Wilcox Way provided access to the power plant property, and connecting to Gosling Road might encourage more pedestrian cut throughs onto the industrial corridor as they were already cutting through on Piscataqua Drive and Avery Lane.

Chair Hebert said the Town offers a lot to industry, but he wasn't sure if they should do this before they had a developer ready to go in. Mr. Iocovozzi said the Board of Selectmen felt it should be completed before they had a developer. He said instead of restoring old building, he didn't see there being any problem putting a bond up. Chair Hebert said he wouldn't fight them if that's what they wanted to do

**3) Voluntary Lot Line Merger:** Request by Patterson LLC, 34 and 46 Patterson Lane, Tax Map 19, Lot 6 and Tax Map 13, Lot 11 per RSA 676:4a I (a).

Chair Hebert reminded the Board that a merger of the industrial lot and residential lot had been approved for development by the Board in 2015 and was now being offered for as either a single lot or two lots depending on who was interested in buying it. He said the tax records was still showing the property as separate lots still because the Mylar had never been brought in for signature and brought to Rockingham Country Registry of Deeds (RCRD) for recording. Vice-Chair Cross said he thought the Town tax maps showed the merger, however.

Alternate Board member, Ken Latchaw asked how that happened and Chair Hebert said the former planner left the recording of plans up to the applicants, but now the Town brought them to RCRD.

Chair Hebert said Attorney Ratigan weighed in and said the lots were merged as fact when the Board made a motion to approve during a public hearing whether they were recorded or not and the owner couldn't advertise the property as being available both ways, but they could return to the Board to request the lots be unmerged if they wanted.

Mr. Coogan stated that they could voluntarily revoke the site plan with a public hearing and notice to the abutters.

**4) Newington Master Plan:** Update, discussion and vote to proceed

Chair Hebert said Rockingham Planning Commission (RPC) presented their proposal to update the Town's Master Plan in two phases and he was looking for the Board's approval to proceed.

Mr. Latchaw said he thought their bid was expensive for a town of approximately 750 residents. Mr. Latchaw suggested the Board consider delaying the approval to put out a Request for Proposal (RFP) in professional journals for bids. Chair Hebert replied that he thought RPC's proposal was reasonable considering Pease paid \$140,000 for their industrial

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facilities. He added that RPC already had GIS maps and resources data from planning they had done for the region.

Mr. Coogan commented that he had done these kinds of bids before, didn't have the GIS mapping system they had and at a going rate of \$125,000, he knew they would underbid them.

Mr. Coogan said RPC would be attending a lot of meetings to complete Phase I of the vision statement. Mr. Weiner added that they would be doing a lot of work compiling questions and data from Survey Monkey as well.

Mr. Phillips added that an outsider might look at the town in a vacuum and not in relation to surrounding towns that RPC had already worked with.

Vice-Chair Cross and Mr. Christopher also agreed that the bid seemed reasonable for work they would be putting in.

Vice-Chair Cross added that RPC had already given the Town an 80% discount of \$8,000 on compiling a review of transportation in the region from their grants they've worked on, so the remaining cost to the Town for that would only be \$2,000.

Chair Hebert stated that the town usually tried to complete changes to the Master Plan every eight to ten years and they were already approaching seven years to begin working on a section at a time.

*Chris Cross moved to engage in Phase I of Newington's Master Plan update with the Rockingham Planning Commission for \$17,000. Bernie Christopher seconded the motion and all were in favor.*

Chair Hebert informed the Board that updating the Master Plan would require extra work sessions or a subcommittee, but he was hoping Mr. Coogan could take the lead and avoid a subcommittee.

Mr. Coogan suggested the new Master Plan would be more friendly to users with a smaller book and separating the background material into a larger document.

#### 4) **Public Hearing on Proposed Zoning Amendments**

##### A) **Accessory Dwelling Unit (ADU)** to comply with new State requirements

Mr. Coogan referenced Town counsel, Attorney Ratigan's minor comments that he emailed recommending that the entrance to the accessory dwelling unit (ADU) not be on the same side of the building as the primary residence entrance to distinguish the ADU. Mr. Weiner said he wasn't so sure about the necessity of restricting doors from the same side of the building.

Chair Hebert commented that the State statute also required a common door between the ADU and the primary dwelling. He said the intent of allowing ADU's was for in-law or workforce housing for those that could not afford a separate standing home.

Mr. Coogan noted that Attorney Ratigan also suggested that the owner of the primary dwelling needed to confirm with the Town that they still dwelled in the primary unit before April 1 of each year. Chair Hebert said he had mixed feelings on why the Town would want to track homeowners like that each year. Mr. Weiner and Mr. Christopher agreed that it was unnecessary and the tax assessor could review the property periodically.

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Vice-Chair Cross agreed except that there were concerns with claims of grandfathering of duplexes that become condos. Chair Hebert replied that the ADU could be recorded when the building permit was issued. Mr. Coogan added that the Town could create a form that would require the owner to confirm that they would be living in the primary dwelling.

Rick Stern of Shattuck Way commented that Work Force Housing implied that a rental unit would be affordable and asked who would regulate whether it was affordable to workers or not. Chair Hebert replied that the RSA required that ADU's could be considered as eligible for Work Force Housing. Vice-Chair Cross stated that Rockingham Planning Commission had said that although ADU's could be considered Work Force Housing, they wouldn't get into what was affordable. Chair Hebert added that the Town would allow ADU's so they could meet the Work Force Housing requirement, but it would be up to the owner to determine what they wanted to ask for rent.

Mr. Stern suggested that the wording be changed to say ADU's "could" be deemed Work Force Housing, not "shall".

*Chris Cross moved to recommend the changes to the ADU Zoning Amendment as discussed to comply with the New Hampshire State Statute requirements. Bernie Christopher seconded the motion and all were in favor.*

**B) Article IX, Signs** in response to Reed v Gilbert, 2015

*This item was delayed to hear the next item.*

**C) Light Manufacturing:** Addition of definition:

*This item was taken out of order.*

Mr. Coogan read through the proposed definition for light manufacturing and assembly with no outdoor storage.

Mr. Phillips suggested limiting light manufacturing to material handling facilities that used fork lifts. Mr. Latchaw wondered if size was appropriate criteria considering an engine for a diesel truck was a thousand pounds. Vice-Chair Cross said they needed to establish some size criteria, but an applicant could ask for exception. Chair Hebert suggested they say "...or as determined by Planning Board".

*Chris Cross moved to recommend adding a definition of light manufacturing to as a Zoning Amendment as discussed. Mark Phillips seconded the motion and all were in favor.*

**B) Article IX, Signs** in response to Reed v Gilbert, 2015

*This item was taken out of order.*

Mr. Coogan informed the Board that he had asked Attorney Ratigan to look at the Ordinance and made recommendation to improvement to show how could regulate signs for safety and traffic and aesthetics.

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Mr. Weiner asked about Shogun restaurant's neon lighting. Chair Hebert said their lighting was not neon, but LED lighting.

Mr. Weiner said he thought they needed to add a provision under Section 8. Mr. Coogan said former fire chief Larry Wahl added the section on wattage because a fire had been started in a local restaurant. Discussion ensued regarding voltage or lumens or nits in lighting technologies.

Chair Hebert replied that he thought it was a safety issue that should be addressed by the fire chief and thought the regulations could just should say any lit signs that duplicated neon signs. Vice-Chair Cross added that the regulation should mention LED lights or other types of lighting for display, including outlines of buildings, which shall conform with dimensional requirements of signs. Mr. Welch suggested they remove the current wording and replace it with Vice-Chair Cross' suggestion.

Vice-Chair Cross also noted that the Town had a dark sky ordinance, but there was not mention of shielding LED lighting.

*Chris Cross moved to change the wording of Section 8 to say that LED or other types of lighting for continuous or near continuous neon or decorative lighting that outlines a building, or free form shape shall conform with dimensional requirements of signs." Jim Weiner seconded the motion and all were in favor.*

Vice-Chair Cross expressed concerns with Section 3 regarding exemption of State, Federal and Town Selectmen's from requesting signs. Vice-Chair Cross said he understood the need the Department of Transportation (DOT) to put up safety signs that would include electric signs, but he didn't approve of using such signs to advertise lottery results. Chair Hebert replied that government entities could do what they wanted on their property.

Vice-Chair Cross said he had also brought up concerns at the November meeting regarding signs advertising a business off premises. Chair Hebert asked if he thought adding "temporary signs" would help to prevent such signs from being permanent and Vice-Chair Cross agreed it would. Mr. Coogan noted that off premise sign regulations were also listed in Section 6 already.

*Jim Weiner moved to accept additional changes to Sign Regulations as discussed. Chris Cross seconded and all were in favor.*

### **C) Hotel Regulations**

Chair Hebert noted that the subject of hotels had been included in the public notice, but not included on the agenda.

Chair Hebert said he didn't like the listing of hotels three stories or higher listed in the Office District and asked the Board if they thought it should be address this year.

Mr. Weiner said he thought it should because new development properties could be considered in next year.

Mr. Phillips said height limitations on buildings in other zones were listed except in the Office Zone so he thought they should add it.

Mr. Christopher stated that a 45' height limitation was reasonable. Mr. Coogan said they would need another public hearing and language would have to be in final form before the end of January of the current year.

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Vice-Chair Cross said the height limitation should be for an occupied portion because a roof put at a 45-degree angle could allow another story. Mr. Phillips suggested a maximum height of 45'.

Chair Hebert suggested the Board consider meeting at 5 p.m. on January 23, 2017.

#### 4) **Correspondence and Status Report** by Town Planner

Mr. Coogan reviewed his current project status report and work program for the year, which might include considerations of Eversource's transmission expansion project, Pease clear cutting, new developments at the Crossings strip mall, consideration of development by John DiLorenzo, a continuation of conservation easements for the Knight's Brook wildlife corridor, and the Adams Homestead along with working on the Master Plan.

Mr. Coogan said he and Chair Hebert had also discussed the Town's Capital Improvements Program (CIP), but it might be too much for 2017 along with the Master Plan changes.

Chair Hebert commented that he thought the CIP expired in 2016 and might be more important than the Master Plan. He said Mr. Coogan was currently in the office on Mondays and Thursdays, but he thought he could accomplish additional work from home without the interruption of phone and walk in inquiries.

Mr. Weiner asked if Mr. Coogan administered the Town website and Chair Hebert replied that Town Administrator, Martha Roy and Administrative Assistant, Eleanor Boy managed the website.

Mr. Latchaw mentioned that he had talked with Mr. Coogan in November regarding the need for applicants to return to the Board for approval on changes to parcels that had previously been approved in a different configuration. Mr. Coogan replied that it could be a condition of approval, but they would need to wait until after the Board had completed the Zoning changes first.

Chair Hebert noted that ordinances had to be both flexible and strong, but that he didn't like variance requests that claimed hardships after a project had been already approved in one configuration.

Mr. Phillips informed the Board that he had put the two lots next to the Beane Farm under agreement for a storage unit, and he would need a variance to combine the two lots and for two buildings to be on one lot. Mr. Phillips said he knew the Planning Board liked to review proposals before they went before the Zoning Board, but ZBA Chair, Matt Morton had also commented that his Board would like to review their applications first without influence from the Planning Board.

Chair Hebert commented that he didn't think Mr. Morton was aware that the Planning Board discouraged curb cuts on Woodbury Avenue for safety reasons. Mr. Phillips replied that he had a letter from Keith Coda at the Department of Transportation that a curb cut for the property on Woodbury Avenue would be acceptable because there was one common driveway for a house and the abutting lot, which would otherwise deny access to the other lot. Chair Hebert replied that was interesting because they had denied a curb cut on another proposal. Mr.



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Phillips said the shared driveway was moved to accommodate Haugh Storage, which had a right turn in and out that did not cross the road.

**5) Other Business and Discussions:**

Chair Hebert announced that several positions would be up since Jack Pare would be moving on and Bernie Christopher and Chris Cross were up for re-election.

Chair Hebert expressed concern if the Board was faced with a big project and they lost experienced Board members.

Chair Hebert encouraged interested parties to sign up with the Town Clerk for re-election by February 3, 2017.

**Minutes:** *Mark Philips moved to approve the Minutes for the December 12, 2016 meeting with corrections as noted. Bernie Christopher seconded, and all were in favor.*

**Adjournment:** *Bernie Christopher moved to adjourn the meeting. Jim Weiner seconded the motion and the meeting adjourned at 9:25 p.m.*

**Next Meeting:** Monday, January 23, 2017

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

*These Minutes were approved and adopted at the January 23, 2017 Planning Board Meeting.*