

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes, Monday, December 17, 2018

- Call to Order:** Chair Denis Hebert called the December 17, 2018 meeting at 6:30 p.m., followed by the pledge of allegiance.
- Present:** Chair Denis Hebert; Vice-Chair Christopher Cross; Board Members: Jim Weiner; and Peter Welch; Board of Selectmen's Representative, Ken Latchaw; Planner, Gerald Coogan and Jane Kendall, Recorder
- Absent:** Alternate Board member, Erika Mantz
- Public Guests:** Diane and Michael Donahue; Katy and Abby Hood; Town wetlands consultant, Mark West with West Environmental; Tidus with Moko Japanese

I) **Public Hearing:** Continuation of Site Review for a self-storage facility proposed by The Storage Barn, LLC regarding property located at River road and Shattuck Way, Tax Map 19, Lot 7A.

Town Planner, Gerald Coogan announced that the applicant postponed the proposal until they evaluated a different layout of the buildings. He added that the applicant's former engineer, John Lorden, P.E. left TFM Engineering to work with Tighe and Bond Engineering so John Rice, P.E. would be taking over the project.

Vice-Chair Cross stated that a pipeline had been discovered during the site walk, so he thought it was the Board's due diligence to require a letter of approval from the pipeline company prior to scheduling a hearing, acknowledging restrictions, including access, pavement, an underlayment and placement of signs and trees. Mr. Coogan responded that the applicant was notified already but would send another letter.

Chair Hebert added that the letter would need to be signed by someone in authority from the pipeline company.

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**II) New Business Public Hearings:**

- A) Request by Diane and Michael Donahue to cut trees in the Town's right-of-way adjacent to their property at 187 Little Bay Road, Map 23, Lot 1A, in accordance with New Hampshire Scenic Roads RSA 231:158.

The applicant, Michael Donahue stated that the two large bull pine trees in the right-of-way at the end of his driveway were obstructing their line of sight of traffic coming down the crest of the hill when turning onto Little Bay Road. Mr. Donahue said the obstruction required that they pulled out into the road and he was particularly concerned for visitors who were not familiar with the area.

Mr. Donahue said the trees were part of the existing conditions when they purchased their home, but they had grown too large. Board member, Jim Weiner responded that he knew that Paul Kent, the former owner had Public Service of New Hampshire cut some of the trees down 15 years earlier because there was a high probability of them toppling over during storms.

Mr. Donahue said he was not aware that Little Bay Road was a scenic road that required review until he talked to the Board of Selectmen about cutting trees in the right-of-way.

Vice-Chair Cross commented that tall pines with no lower branches were no longer as beautiful and a safety issue.

Chair Hebert stated that he was not sure who was responsible for removal, but Eversource informed the town that they would visit the Planning Board after the holidays and he thought they might be able to remove the trees.

*Chris Cross moved that the Planning Board concurred with the request by Diane and Michael Donahue to cut trees in the Town's right-of-way adjacent to their property at 187 Little Bay Road, Map 23, Lot 1A, in accordance with New Hampshire Scenic Roads RSA 231:158 for safety reasons. Jim Weiner seconded the motion, and all were in favor.*

- B) Proposals for 2019 Zoning Amendments

- 1) **Article II, Section 6**, Waterfront Industry and Commerce District "W",  
Uses Permitted: *Delete 9) Residential uses for watchman, caretaker...*

Mr. Coogan said he overlooked sending out letters of notice to property owners in advance as required but had done so since.

*Ken Latchaw moved to recommend the amendment to Article II, Section 6, Waterfront Industry and Commerce District "W", Uses Permitted: Delete 9) Residential*

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*uses for watchman, caretaker... Peter Welch seconded the motion, and all were in favor.*

- 2) Add a new provision to **Article IV General Provisions, Section 13 – Existing Residences in Nonresidential districts**

*For existing residences established in nonresidential districts as a caretaker, watchman, manager or the like for a particular business, the industry or business shall annually certify by April 1<sup>st</sup> using certified payroll that the resident is a bonafide employee of the business or industry and works as a caretaker, watchman, manager or the like. If the resident is no longer an employee of the business, the building can no longer be used as their residence.*

Discussion ensued regarding best wording for the change.

Abby Hood spoke on behalf of Haugh Storage, her family business and asked for clarification as to the requirement for employment verification if a family resided with their manager. Mr. Coogan replied that the requirement applied to their employee and not the entire family.

Ms. A. Hood asked for clarification on the certified payroll requirement. Chair Hebert replied that they were asking for verification of employment from their accountant, such as a W2.

Katy Hood, proprietor of Haugh Storage stated that she had been in business at that location since 1983 and the presence of a residential manager was a requirement of the Zoning Ordinance at the time.

Ms. K. Hood went on to say that they didn't want to supply private income information to the town when their income was none of the Town's business, however. Board member, Peter Welch replied that he thought that the dollar amount paid to the employee was not important. Board of Selectmen's representative, Ken Latchaw added that a copy of a W2 could be submitted with the payment amount blacked out.

Ms. K. Hood asked why the resident manager had to be a full-time employee as some caretakers wanted an additional job to increase their income. Chair Hebert said the concern was that someone could only work 20 hours a year and pay rent instead of being a legitimate caretaker employed to manage the business.

Mr. Weiner asked what the minimum number of hours their caretaker worked. Ms. A. Hood said some managers wanted to delegate more hours to co-workers, so they could work additional hours outside the business, so it varied. She said they might work only 10 hours in office one week, but then ended up plowing night after night in the winter. Chair Hebert responded that the number of hours was not so critical so long as they were a substantial employee year-round and it wouldn't matter if they had another job.

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Ms. A. Hood said they also wanted to be sure that their manager's family could live there as well so they could reside on site. Chair Hebert responded that the Board was proposing an amendment because they wanted to discourage caretakers living near industrial hazards. Ms. K. Hood replied that the Industrial Zone was not there when they first started. Chair Hebert responded that the Board didn't have a problem with them being there, but they were concerned with a new business using a loophole to create new residences outside of the Residential Zone. Ms. K. Hood replied that their caretaker's residence was only about 800 square feet.

Vice-Chair Cross stated that that a company wouldn't hire someone that they would be liable for if not in compliance. He suggested that the business owner certify that the caretaker was a bonded employee of the company. Chair Hebert responded that they needed to be specific on how to enforce in the same way a veteran provided their social security number to the Town clerk to verify that they were eligible for a tax abatement. Ms. K. Hood asked if they would need to leave income information with the Town clerk and Chair Hebert said they would not.

*Peter Welch moved to recommend adding a new provision to Article IV General Provisions, Section 13 – Existing Residences in Nonresidential districts as amended to say:*

*For existing residences established in nonresidential districts for a caretaker, watchperson, manager (or the like) for a business, the industry or business shall annually provide payroll certification of the caretaker, watchperson or manager's employment to the Newington Town Clerk. If employment is terminated, the resident can no longer use the building as their residence.*

*Ken Latchaw seconded the motion, and all were in favor.*

**3) Article XVI – Small Wind Energy Systems, Section 2, Procedure: A –**  
*Location: Small wind energy systems and MET towers are an accessory that are permitted in all zoning districts, except in Residential District "R".*

Chair Hebert stated that the Ordinance said permitted uses were listed items, and omission constitutes exclusion, so the Board needed to determine if they wanted to keep this as written or clarify by putting towers in a separate section.

*Jim Weiner moved to recommend Article XVI – Small Wind Energy Systems, Section 2, Procedure: A – Location: Small wind energy systems and MET towers are an accessory that are permitted in all zoning districts, except in Residential District "R" as written. Peter Welch seconded the motion, and all were in favor.*

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### 4) **Article IX Wetlands Overlay District:** Administrative changes for clarification

Town wetlands consultant, Mark West with West Environmental stated that he had met with the Conservation Commission to clarify unclear items and update references and regulations to the Wetlands Ordinance.

Mr. West reviewed and discussed the recommended administrative corrections, changes to current versions of wetlands definitions, delineations, hydraulic soil, plant species, New Hampshire Department of Environmental Services (DES) wetlands and stormwater management rules that supplanted the Shoreline Protection Act.

Chair Hebert expressed concern with monitoring and enforcement. Mr. West replied that the clarifications and listings were important for a functioning buffer that would be established for development.

Mr. West went on to discuss updates to the table in Section 7. Mr. West said he did the last wetlands inventory in 2004, and the Conservation Commission wanted to clarify their definition of contiguous surface water language to mean specifically listed priority wetlands that led to Great Bay, such as Knight's Brook, Paul Brook, Pickering Brook and McIntyre Brook for the sake of protection.

Mr. West said the Town might want to key a map and list rather than use definitions that were debatable. He said he did the prime wetlands based on unique environmental value rather than size, and they still needed to identify the streams feeding into them. He said they might not need to include ditches and swales, which would be like a taking with a 100-foot buffer which would be like a taking. Mr. Weiner added that the Conservation Commission budgeted in 2019 for Mr. West to map all streams that feed to Great Bay.

Mr. West answered Board members' questions regarding setbacks for consistency and protective buffers. He pointed out that a 100-foot setback made sense in most natural areas, but not where there was ditching and lower elevation.

Mr. Coogan asked if there were any prime wetlands in the back of Mike Patenaude's property on Nimble Hill Road and Mr. West replied that there were, but there was no connecting stream channel.

Mr. West noted that Paul Brook was on the prime wetlands tax map and had fish, but it was also in the Commercial and Industrial Zone, so a setback was questionable. Vice-Chair Cross stated that there were underground culverts that were paved over and draining into the Piscataqua River, so he wondered what the value of protection would be. He added that setbacks could limit development around the malls.

Mr. West replied that Paul Brook qualified for mention, and some might say that it was worth protection to prevent it from getting worse; but agreed that the amount of runoff degraded the quality.

Vice-Chair Cross asked if anything could be done about stormwater runoff from development. Mr. West replied that drainage ran underground from Pease underground

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to Paul's Brook, but developers would say they could build detainment ponds drainage and under parking lots.

Vice-Chair Cross asked about the prime wetlands at Pease. Mr. West replied that endangered bulbus watercress was identified in the wetlands, but Pease would not recognize the wetlands as prime.

Mr. West also pointed out that McIntyre Brook had been ditched, but it was in an undeveloped state with wetlands on both side and drained straight into Great Bay, so the Conservation Commission said they wanted to protect it.

Chair Hebert commented that the former Pease Air base was the single largest polluter due to the buildings and use of de-icers, flame retardants and fuel spills so he questioned the point of protecting McIntyre Brook. Mr. West agreed that the pollution was a serious problem but noted that the New Hampshire Department of Transportation (DOT) had re-engineered and improved Flagstone Brook when they did mitigation from the Spaulding Turnpike and so it was important to identify McIntyre Brook as a contiguous stream leading directly to Great Bay so that preventative mitigation could be done there one day as well. He added that McIntyre Brook also might be a good Aquatic Resource Mitigation funds project.

Vice-Chair Cross commented that he thought Pease had no intention of recognizing McIntyre Brook or their prime wetlands and Mr. Latchaw agreed. Mr. West replied that wetlands created a buffer for the swales to prevent runoff from being degraded further. He also noted that there were prime wetlands all the way up to Kenard Pond and that protection should occur all the way up Newington Road.

Vice-Chair Cross replied that he thought Mr. West should map the wetlands first and Mr. Latchaw concurred.

Jane Kendall spoke as a Conservation Commissioner and said she was concerned that eliminating McIntyre and Paul Brook from the list as contiguous to Great Bay would exclude their eligibility in applying for an A.R.M.'s grant. Mr. West added that the more the Town identified their wetlands resources, the more they would be treated with understanding and respect.

Chair Hebert noted that there would be mitigation funds from Eversource's "Seacoast Reliability" transmission expansion project.

Mr. Welch noted that the Air Force was taking water samples all over town and agree that McIntyre Brook should remain on the list.

Chair Hebert expressed frustration with how large government and corporate entities were given license to develop without accountability, but DES required private property owners to adhere to strict wetlands setbacks. Mr. West said he understood his frustration, but it was still important for the Town to rewrite their permitting rules for best management practices with wetland and vegetative buffers to protect the prime wetlands and contiguous wetlands that led to important environmental functions and Great Bay.

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Mr. Latchaw commented that he thought the Ordinance needed to be clearer for property owners and Mr. West replied that was the idea to clarify and define so that there would be fewer ambiguous wetlands and protection for more valuable wetlands.

*Jim Weiner recommended changes to the Article IX Wetlands Overlay District as written. Peter Welch seconded, and all were in favor.*

### III) Other Business:

- A) Discussion on letter sent by **Moko Japanese Steakhouse** regarding karaoke, trivia and live entertainment at their restaurant at 2060 Woodbury Avenue.

Moko manager, Tidus appeared before the Board to present a request for expanded use of karaoke, trivia and live entertainment to increase their business that had parking for 250.

Chair Hebert expressed concerned with attracting crowds, intoxication and driving under the influence (DUI's) that would cause problems for local police enforcement. Vice-Chair Cross stated that he didn't see any difference with the expanded entertainment and the existing serving of alcohol with or without music. Mr. Latchaw agreed with Vice-Chair Cross' comment.

Mr. Weiner commented that he liked karaoke. He said he didn't know if band would work well, but he knew that there usually weren't any issues with disc jockeys that shut down by 10:30-11 p.m. Tidus replied that some bands brought their own fans, but he could consider solo or duet performances.

Chair Hebert stated that they would need to return to the Planning Board if the use became too big or became a problem and Tidus agreed.

*Jim Weiner to approve karaoke, trivia and live solo or duet entertainment at Moko Japanese Steakhouse at their 2060 Woodbury Avenue location. Peter Welch seconded the motion, and all were in favor.*

### B) **Master Plan:** 2019 Agenda

Mr. Coogan informed the Board that there was an open-ended contract with Rockingham Planning Commission (RPC) for \$12,000 to update the Master Plan and the Board needed to decide on the scope of work and if they wanted RPC to update the transportation section. Chair Hebert stated that the Board was paying RPC by the hour, but they were asking for a payment of 50% upfront, but he wanted to pay them as they went along because he wanted to be sure that they delivered the contracted work in a timely way. Vice-Chair Cross said he thought the Board paid one-third of the contracted payment last time.

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Vice-Chair Cross responded that RPC had to budget their time for the year and their employees were paid prior to receiving payment of a 30 invoice. Mr. Weiner asked if RPC could provide their best guess on hours expected and Vice-Chair Cross said would help.

Vice-Chair Cross suggested that the Board red line the recommended changes for review instead of wasting RPC's time on that task.

### C) Discussion on **additional 2019 Zoning Ordinance amendments**

Chair Hebert stated that Mr. Coogan had consulted with Town counsel, Attorney John Ratigan regarding approaches on protecting the residents of Patterson Lane with a buffer between the Industrial Zone on one side without allowing the expansion of residential development. Mr. Coogan said that he would work on a draft amendment over next couple of weeks. Mr. Latchaw suggested that Mr. Coogan present the amendment to Attorney Ratigan for legal review first.

### C) Additional Connections between the **Crossings Mall and the Fox Run Mall**

Chair Hebert said this item was brought up in previous meetings. Vice-Chair Cross said some board members advocated five lanes of access during the 1990's when the malls expanded and removed walkways. Chair Hebert stated that mall traffic and traffic on Woodbury Avenue was less than it was in the 1990's, so evidence would need to show that an additional accessways were warranted.

Chair Hebert stated that in the meantime, further development should not be allowed until access behind the Olive Garden and the Moko Steakhouse was considered. Mr. Coogan pointed out that cooperation would be required from all property owners.

### IV) **Additional Discussions**

Chair Hebert stated that the Board did site walk at 9 a.m. on December 1, 2018 on Mark Phillip's property located at River road and Shattuck Way, Tax Map 19, Lot 7A in preparation of a site review for a self-storage facility proposed by The Storage Barn, LLC. Chair Hebert asked that Recording Secretary Jane Kendall to write up the site walk minutes to show that said the applicant, Mark Phillips, his engineer, John Lorden, P.E. with TFM Engineering at the time, Vice-Chair Cross, Erika Manze, Ken Latchaw, Jim Weiner, Peter Welch and himself were present. He said they discussed the building layouts, lack of wetlands delineation and cutting that resulted in encroachment, which would require resurveying and flags.



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**Minutes:**

*Ken Latchaw moved to approve the Minutes for the October 1, 2018 meeting. Peter Welch seconded, and all were in favor.*

*Ken Latchaw moved to approve the Minutes for the November 19, 2018 meeting with corrections as noted. Chris Cross seconded, and all were in favor.*

*Ken Latchaw moved to approve the Minutes for the November 26, 2018 meeting. Jim Weiner seconded, and all were in favor.*

**Adjournment:** *Peter Welch moved to adjourn the meeting. Jim Weiner seconded the motion and the meeting adjourned at 10:30 p.m.*

**Next Meeting:** Monday, January 14, 2019

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

*These Minutes were approved and adopted at the January 14, 2019 Planning Board Meeting.*