

# Town of Newington, NH

## PLANNING BOARD

Meeting Minutes, Monday, September 10, 2018

- Call to Order:** Chair Denis Hebert called the September 10, 2018 meeting at 6:30 p.m., followed by the pledge of allegiance.
- Present:** Chair Denis Hebert; Vice-Chair Christopher Cross; Board Member: Peter Welch; Board of Selectmen's Representative, Ken Latchaw; Planner, Gerald Coogan and Jane Kendall, Recorder
- Absent:** Bernie Christopher; Jim Weiner
- Public Guests:** Sean Hopkinson, Vice President of Farley White Property Management; Greg Mikolaities, P.E. with August Consulting, PLLC; Ken Maveageorge, Project Manager with Tighe and Bond Engineering; Michael Mates, Engineering Project Manager with Pease Development Authority; Mark Phillips, President of Storage Barn; Town engineering consultant, Eric Weinrieb, Principal PE with Altus Engineering; Deputy Fire Chief, Darin Sabin; Erica Manse

*Chair Hebert informed the applicants that only four members were in attendance for the meeting.*

**1) Public Hearing:** Continuation of Lease Line Revision and Site Plan Review for a 73,000 square foot, three-story office building regarding property located at Pease International Tradeport, 90 Arboretum Drive, Tax Map #, Lot #, following Pease Development Authority's land use regulations.

Michael Mates, Engineering Project Manager with Pease Development Authority explained that Pease Development Authority (PDA) owned all the lots in Pease except the Air National Guard. Mr. Mates added that they leased their five and ten acre lots and therefore the applicant would need a lease line revision rather than a subdivision.

Greg Mikolaities, P.E. with August Consulting stated that he had been working with Town engineering consultant, Eric Weinrieb with Altus Engineering since the Board approved the application as substantially complete at the July 2018 meeting.

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Ken Maverageorge, Project Manager with Tighe and Bond Engineering stated that they had made minor revisions to the site layout based on comments from Altus Engineering and the PDA. Mr. Maverageorge added that they had submitted their Alteration of Terrain (AoT) application, and the City of Portsmouth was reviewing the sewer and water connections, as well as coordinating with Portsmouth Fire Department.

Mr. Weinrieb stated that he had received a 92-page resubmission in the afternoon before the meeting, and he and Mr. Maverageorge had walked through the comments together over the phone before the meeting.

Mr. Weinrieb reviewed the items that had been addressed as well as outstanding items, which he suggested could be conditions of approval, including submission of the survey plan, addressing the solid berm for rip rap, reviewing the University of New Hampshire's specifications for gravel and wetlands, moving two errant subcachements, adding a signature line for the maintenances requirements, and having the City of Portsmouth review the pump calculations that were provided.

Mr. Maverageorge presented their revisions, pointing out that they had added internal islands and sidewalks, as well as created onsite loading.

Vice-Chair Cross noted that there was granite curb up the length of Arboretum Drive, but that the granite seemed to terminate at the curve on the new plan. He asked if the granite was no longer standard. Mr. Mates replied that this was the first time it had been pointed out and that the PDA usually asked tenants to replace granite curbing within the limits of the lot when it was disturbed in the right-of-way. Chair Hebert added that the concrete curbing along Arboretum Drive was broken up and should be replaced.

Mr. Maverageorge stated that he had reviewed Chair Hebert's suggestion that they consider a connection between their lot and Sig Sauer's lot, but believed that it would impact the wetlands, the grading would not lend itself well to expansion, and that it would take up the designated stormwater management area.

Mr. Maverageorge added that Sig Sauer also was required to comply with ISO security. because they were a government contractor so cross connection was not encouraged. Chair Hebert replied that he understood that Sig Sauer was a secure facility to a degree, but he had observed many using their access road as a cut through and they were not so concerned that it was gated and locked.

Chair Hebert pointed out that anyone wanting to go southbound had to take a left at the intersection, bringing them closer to the building. He stated that he would like to see a request for a special exception to the 100-foot setback, which the PDA could over-rule so that traffic could go down Sig Sauer's access road and reduce congestion at the intersection because safety was more important.

Vice-Chair Cross agreed with Chair Hebert, adding that the lack of connectivity was not compliant with the PDA's objectives. Mr. Mates stated that the entrance to Sig Sauer was private property. Vice-Chair Cross commented that Google showed that it was part of Pease Boulevard. Vice-Chair Cross commented that he didn't see a big

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elevation difference at the old access to the Tradeport, which could reduce a lot of traffic out and make the plan compliant with Pease Ordinance 506.1A. He added that traffic traveling on the road through Sig Sauer would be no closer than they would be on Pease Boulevard.

Vice-Chair Cross suggested that the road would only come in at the edge of the 100-foot setback if it came in at a 45-degree angle. Mr. Maverageorge responded that a 20-foot accessway for two-way traffic would not be sufficient, and something larger would create grading challenges. He also added that traffic would be directed to the Sig Sauer loading area of Sig Sauer and require additional drainage there too.

Vice-Chair Cross noted that Sig Sauer had applied for increase parking that could be adjusted. Mr. Mikolaitis responded that Vice-Chair Cross had made a good point, which should be included in the recommendations, but he didn't know Sig Sauer's agreement and the PDA made the final decisions.

Chair Hebert asked why they were developing a 14-acre lot instead of a 10-acre lot. Mr. Mates replied that the applicant wanted more. Sean Hopkinson, Vice President of Farley White Property Management replied that it was a good question why they would buy more land than they were using.

Vice-Chair Cross asked why the original lot had not been truncated so that all the prime wetlands could be returned and managed by the PDA instead of being controlled by multiple entities. Mr. Mates stated that although there were high quality wetlands, there were no prime wetlands designated on Pease. Chair Hebert noted that the wetlands had met the definition of prime wetlands, but that the court ruled that the PDA didn't have to accept the designation because of the Air National Guard.

Vice-Chair Cross commented that he was not sure if the PDA had an ordinance on center setbacks or not, but the new entrance placement on the southern boundary would be within 125 feet of Sig Sauer, which would create more conflict during heavy traffic. Mr. Mates said the PDA did not, but he encouraged them to make a recommendation. Chair Hebert agreed that the cross connection and keeping the curb cuts apart would resolve the issue. Mr. Maverageorge replied that he would take it into consideration.

Vice-Chair Cross asked if the hazardous fluid had been removed from the two transformers in the old trailer park that had been there 35 years before. Mr. Maverageorge replied that he didn't know, but that he would find out.

Vice-Chair Cross went on to say that he also recalled that the 30-40 trailer sites would have had gas, sewer and other utility connections and asked if there was any plan to cut and remove them. Mr. Maverageorge replied that they would be creating a gravel stormwater wetland and they planned to remove as many connections as they encountered.

Vice-Chair commented that he thought that they should locate and cap the sewer system to prevent water and possibly soil infiltration from going into the new system for the City of Portsmouth to treat. Mr. Maverageorge agreed that they should be capped.

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Discussion ensued regarding agreements on fire and police protection from Portsmouth and Newington. Chair Hebert said he knew that the PDA paid for police protection from Newington. Ken Latchaw, Board of Selectmen's representative stated that Appendix 3 detailed the patrolling responsibilities of the Newington Police force.

Chair Hebert added that he thought the Portsmouth provided fire protection, but he wanted to know if there was an agreement that the City of Portsmouth or the Town of Newington fire department was to review the plan. Mr. Mates stated that building review went to the PDA before going to Newington and that permit fees were paid to the Town of Newington for the building permit.

Chair Hebert closed the public hearing.

*Peter Welch moved to accept the lease line revision and site plan for a 73,000 square foot, three-story office building located at Pease International Tradeport, 90 Arboretum Drive, Tax Map #, Lot # following Pease Development Authority's land use regulations with the following recommendations:*

- *that the applicant work with Portsmouth and Newington fire departments*
- *that the applicant work with Portsmouth Public Works for sewer and water*
- *that the granite curbing along the entire Arboretum Drive frontage be resolved*
- *that all outstanding items brought up by Altus Engineering be resolved*
- *that expenses incurred from Altus Engineering's review be reimbursed to the Town of Newington*
- *that the distance between the two entrances on Arboretum Drive be increased*
- *that the cross connection between this lot and Sig Sauer be considered.*

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

### **II) New Business:**

- a) Discussion on amendment to approved site plan for Mark Phillips' Storage Barn self-storage facility located at 221 Woodbury Avenue, Map #, Lot #

Chair Hebert stated that the Department of Transportation (DOT) had denied digging up Woodbury Avenue for water connection because of the Town's moratorium for seven years to connect water.

Mark Phillips, President of The Storage Barn, LLC stated that electric power and sewer were all set, but now he had to deal with gas or water.

Mr. Phillips stated that he sought approval for the curb cut the previous year and had just received the signature on July 10, 2018 after which he submitted an excavation permit and received a reply that construction on that section of Woodbury Avenue was complete and that there was a moratorium on all construction at the end of August. Mr.

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Phillips said that Mr. Coogan suggested that he contact Adam Chestnut, the field contracting administrator for the Spaulding Turnpike Expansion, but he was told that this section was not under his jurisdiction, so he was waiting on an answer from Caleb Dobbins regarding an appeal.

Mr. Phillips explained that a six-inch water main was required for sprinkler fire suppression and there would not be enough pressure if he brought water up from Shattuck Way. He added that he would have to drill through six feet of ledge coming from Shattuck Way with a power ram that cost \$250 an hour, totaling \$100,000, and a public hearing that would set him back two more months. Mr. Phillips added that other alternatives such as a 75-foot water tower or cistern with a generator would also be extremely expensive. He said he talked with Newington Fire Department Chief, Andy Head who said that he would work with the FFC fire engineer to review multi codes to see if he could put up a separation firewall between the residence and storage facilities that required a sprinkler system.

Chair Hebert commented that he couldn't be certain if the entire area downhill was ledge. Mr. Weinrieb noted that the water main on Shattuck way was 440 feet away.

Mr. Latchaw asked if Mr. Phillips could tunnel under the road and Mr. Weinrieb replied that MSC Engineering had depicted the water line to be on the pavement line, but it appeared that road construction had shifted, and it was right in the middle of the raised median.

Vice-Chair Cross commented that the curb cut, and project had already been approved and that development, highways and roads evolved over time and the road would be cut up if there was a line break, so he didn't see how the request could be denied. Mr. Weinrieb responded that emergency digging was a special exception. Vice-Chair Cross replied that the approved site required water and water lines were meant to be accessed throughout their lifetime, so he thought it was appropriate for the Board to recommend access.

Mr. Phillips stated that he would need to cut the road that was concrete at one time. Chair Hebert suggested that he could dig a hole over the line and jack the rest from the side. Mr. Weinrieb noted that there might be ledge that would make that difficult.

Mr. Latchaw stated that he was not comfortable with making a recommendation until he spoke with the other Board of Selectmen as he was concerned with setting a precedent for anyone else to disregard the moratorium deadline. Mr. Weinrieb agreed with Mr. Latchaw, noting that the Town would accept ownership of Woodbury Avenue from with State on the assumption that construction would be complete without patches and that was one of the reasons for the moratorium. Chair Hebert commented that he thought part of the moratorium agreement was that there would be stiff fines for anyone that didn't follow the moratorium, but that was a Board of Selectmen's issue with the State.

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Board member, Peter Welch asked if Mr. Phillip's delay and request for an exception was precipitated by the lengthy time in receiving permit approval from DOT. Mr. Phillips stated that he had submitted his permit request last year and he was not sure when the road was paved. Chair Hebert replied that it had already been paved the previous year. Mr. Weinrieb added that DOT corrected the curb deficiency this year.

Mr. Phillips asked if he could return to the Board in two weeks after Mr. Dobbins had replied to his request for an appeal. Mr. Coogan replied that appearing before the Board would be for informational purposes only. Chair Hebert stated that it was not up to the Planning Board and suggested that Mr. Phillips petition the Board of Selectmen.

As a side note, Mr. Phillips asked the Board for their opinion on moving the stone wall with a lot line adjustment to address a drainage issue and complete the three storage buildings on Shattuck Way. Chair Hebert stated that a public hearing would be required to address the lot line adjustment. Vice-Chair Cross noted that according to the RSA, moving the stone wall would not be an issue if the lot line changed, however.

- b) Discussion with Town engineering consultant, Eric Weinrieb, Principal PE with Altus Engineering continued regarding private road construction on residential subdivisions.

Mr. Weinrieb shared his observation regarding homeowners that were living in unfinished subdivisions as discussed at last meeting.

Mr. Weinrieb wondered if the Board of Selectmen could charge a fee to the homeowner's association for municipal services including fire and police protection, trash pickup and plowing. Chair Hebert responded that emergency services would be provided, but plowing could be a liability because the contractor could accuse the Town of damage. He added that the developer was responsible to keep the road plowed for emergency services and not pass the cost on to property owners as appeared to be happening in one of the developments.

Chair Hebert went on to say that homeowners also needed to bring their trash down to the Town road unless their homeowner's association covered trash pickup. Mr. Coogan suggested the establishment of a developer's agreement with the Town.

Mr. Weinrieb also suggested that an agreement be built into the bond that a developer be responsible for the ongoing maintenance of the road. Vice-Chair Cross responded that he thought the agreement should only be for one year. Mr. Weinrieb replied that the problem was that completion of the development was going at a very slow rate, but he thought they could make the maintenance agreement for one year after the last house was constructed. Chair Hebert commented that some property owners could purchase a lot and then not build on it, so it was necessary to establish a date certain.

Vice-Chair Cross asked why the bond wouldn't be for road damage. Chair Hebert replied that the bond was to put onus on the developer to put all utility stubs in.

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Chair Hebert wondered if other towns addressed the issue. Mr. Weinrieb replied that the developments in other towns that he was familiar were larger rather than smaller developers that were working part-time and out of their own pockets.

Discussed continued on whether the Board of Selectmen would accept a development road even if it was built to Town specifications. Mr. Coogan commented that acceptance was presumed unless there was a good reason, but Chair Hebert pointed out that the RSA said that a Town didn't have to have a reason for denying acceptance.

### c) Discussion on 2019 Zoning Amendment Proposals:

*This item was delayed to take the next item out of order.* Mr. Coogan passed out amendments for the Board's consideration

### d) 2019 Planning Board Budget:

*This item was taken out of order.*

Chair Hebert recommended keeping the Board's 2019 budget the same as it was in 2018.

Chair Hebert stated that the Board hadn't updated the Capital Improvement Plan for ten years and they needed to be careful to keep the tax rates at an even keel and avoid large bumps or spend earlier whenever possible.

Chair Hebert asked if the Board of Selectmen were voting on COAST this year. Mr. Latchaw said he couldn't speak for others, but he would let the Board know if there were any changes. Chair Hebert said he would enter \$0 to keep the line item.

*Ken Latchaw moved to keep the 2019 Planning Board budget at 147,022 as it was for 2018. same. Peter Welch seconded the motion, and all were in favor.*

### e) Discussion on 2019 Zoning Amendment Proposals:

*This item was delayed to take the next item out of order.*

Mr. Coogan passed out amendments for discussion of the following items for Board's consideration.

1. Article II, Definitions to be added
  - a) Warehouse
  - b) Self-storage

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### 2. Buildings per Lot

Mr. Coogan stated that Town Administrator, Martha Roy suggested that this would allow more development of the periphery of the malls.

### 3. Area

### 4.: Integrity of an approved subdivision

Mr. Coogan commented that clearer agreements would reinforce the integrity of approved subdivision plans, noting that discussions got lost as time passed. Chair Hebert responded that subdivision regulations, conditions of approval and notices of decisions would still need to be on file and followed. Mr. Coogan suggested that a note be included in a block on the plan.

### 5. Building proximity

Chair Hebert stated that this was a result of complaints on some structures being places too close to other residential structures even though they conformed with the side setbacks. He suggested that they could consider if it was possible to increase the space to retain the rural character and privacy for existing houses and remain legal. Mr. Coogan commented that the current maximum was at 30 feet.

### 6. Industrial: Add "All uses permitted in the Waterfront Industrial and Commerce District "W" to Uses Permitted in the Industrial zone

Chair Hebert stated that this would apply to the Industrial zone, but not the other way around.

### 7. Article VIII – Air Pollution Mitigation. Federal and State authority may preempt the Town from acting on air quality and air mitigation.

Mr. Latchaw asked if this was different than air quality and if it should be addressed by the Town. Chair Hebert replied that the Town could request Air Pollution Mitigation funds for bike paths and bus stops if it was determined that a development would create increased traffic pollution. Mr. Coogan clarified that the funds could be requested with a Federal or State permit, but Town counsel, Attorney John Ratigan recommended getting rid of it as it was questionable when it could be used.



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8. Article III, Section 1 – Residential “R” description and purpose with proposed alteration of last sentence: “Any future development which does not perform a neighborhood function was not allowed.”

Chair Hebert stated that this was suggested because suggesting that the Board would make a case-by-case basis sounded wishy-washy. Mr. Coogan added that a neighborhood function was not defined.

9. Article XIV – Section 2 Permitted Home Occupation & Section 4 Permitted Home Business: Recommendation to clarify the distinction between a Home Occupation and a Home Business.

Mr. Latchaw added that home occupations could be questioned so they might want to change it to say “neighborhood character”

Mr. Latchaw noted that there were a few home businesses that included plumbers with trucks.

Chair Hebert stated that the Board still needed business people to come before the Board because uses could get out of control.

10. Article III, Section 6 – Waterfront Industry and Commerce District “W”, B Permitted Uses: Bulk material storage and distribution

Mr. Coogan stated that the concern was with intensive use for low value development.

Mr. Welch noted that most of the waterfront use was for bulk storage. Chair Hebert said he had no problem with bulk storage that supports business, but he was concerned with the impacts of heavy truck traffic going in and out for storage only.

11. Article III, Section 6 – Waterfront Industry and Commerce District “W”, B Permitted Uses: Residential uses: “The industry or business shall annually certify by April 1 that the resident is a bonafide employee serving as a watchmen, caretaker or janitor. Failure to do so shall make the residential use not permitted. “

Absent Board member, Jim Weiner submitted a suggestion to “Modify (warrant) the article on guard facilities to no longer allow sleeping quarters and use three, eight hour shifts to avoid homes being put up for families when the intent of the article was to allow security guards.”

Chair Hebert agreed and recommended removing entirely to avoid the creation of homes that would conflict with industrial uses.

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12. Article IX Wetlands Overlay District – This provision was drafted 15 years ago. Town wetlands consultant, Mark West feels there is a need for an update. Mr. West will send a memo on the subject out in the next week.

13. Article II – Building Height: A review of this item was recommended by Mr. Latchaw

Mr. Latchaw asked if the Board could consider a height average. He added that they should review pre-development and re-development because re-development could be higher if a site was built up a second time.

Chair Hebert responded that the building inspector said he liked what the Board had done because it allowed the applicant to return if the formula didn't work for their site. Mr. Latchaw responded that most communities used an average and doing so would have eliminated the issues at the Fabyan Point Road development. Chair Hebert replied that he would consider it, but first he wanted the building inspector to review it to be sure it was clear for him.

14. Zoning Map – Residential Zoning boundary along Patterson Lane

Mr. Coogan commented that there was a question if the Town would want to leave the remaining open space on the left of Patterson Lane.

Chair Hebert said they were recommending a non-build buffer zone to protect the Residential zone from industrial use. He said they could leave the article as it was, but not allow any further development.

Vice-Chair Cross asked Mr. Coogan about the Ordinance changes to non-conforming properties that he recommended in a previous meeting and Mr. Coogan replied that he would include them in the next discussion.

Mr. Coogan noted that there were ten zoning amendments in 2017, and six to seven in 2018. Chair Hebert suggested that they just put the changes on the warrant article and supply supporting background separately to avoid overwhelming the voters

Mr. Coogan said the earliest they could post changes was in November 2018. Chair Hebert added they couldn't vote on the changes until March 2019.

### **III) Other Business: Master Plan Update**

Vice-Chair Cross stated that Mr. Coogan sent out a memo from Rockingham Planning Commission (RPC) regarding changes to existing use. He said he would like to schedule a day meeting to discuss future land use and building under current and

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future rules. He added that the build out model would show impacts to infrastructure costs.

Chair Hebert suggested holding the meeting at the end of the month. Vice-Chair Cross said he would like to have another meeting to review existing conditions.

**IV) Additional Discussions:**

Chair Hebert introduced Erica Manse had expressed interest in serving on the Board. Ms. Manse said she moved to town over a year ago. She said her only experience with municipal boards on the Seacoast was as a reporter after she graduated from college. She said she currently was a spokesperson for the University of New Hampshire administration and she was used to be both diplomatic and saying no.

Chair Hebert suggested that she starting as an alternate Board member.

*Ken Latchaw moved to recommend the appointment of Erica Manse as an alternate Board member. Peter Welch second the motion and all were in favor.*

Vice-Chair Cross commented that the PDA had a stone wall and he wondered if they might like to donate it to the Newington Historical Commission. Chair Hebert suggested that Mr. Coogan call the PDA.

**Minutes:** *Peter Welch moved to approve the Minutes for the August 13, 2018 meeting with corrections as noted. Ken Latchaw seconded, and all were in favor.*

**Adjournment:** *Ken Latchaw moved to adjourn the meeting. Peter seconded the motion and the meeting adjourned at 9:36 p.m.*

**Next Meeting:** Discussion ensued regarding conflicts in scheduling a meeting in two weeks because of a Zoning Board of Adjustment Meeting that was scheduled on the evening of October 1, 2018 so it was determined to have the next meeting on Monday, October 1, 2018 at 1:30 p.m.

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

*These Minutes were approved and adopted at the October 29, 2018 Planning Board Meeting.*