

**TOWN OF NEW BOSTON
NEW BOSTON PLANNING BOARD
Minutes of 2011 Meetings**

November 8, 2011

1

1 The meeting was called to order at 6:37 p.m. by Chairman Stu Lewin. Present were
2 alternate member David Litwinovich, and Ex-officio Dwight Lovejoy. Also present were
3 Planning Coordinator Nic Strong, Planning Assistant Board Shannon Silver and Recording Clerk
4 Valerie Diaz.

5 Present in the audience for all or part of the meeting were Jillian Harris, SNHPC, Susan
6 Carr, Energy Commission Chair, Cathy Morrissey, Energy Commission, Eric Dubowik, Megan
7 Winslow, Glenn Given, Guy Tino, Gregg Gelinias, Brandy Mitroff, Willard Dodge, Dave Elliott
8 and Shiv Shrestha.

9
10 The Chairman seated David Litwinovich as a full-voting member in Peter Hogan's
11 absence.

12
13 **Public input session to discuss draft Energy Chapter for the Master Plan.**

14
15 Present in the audience were Jillian Harris, SNHPC, Susan Carr, Energy Commission
16 Chair, Cathy Morrissey, Energy Commission, Eric Dubowik, Megan Winslow, Glenn Given,
17 Brandy Mitroff and Gregg Gelinias.

18 Jillian Harris, SNHPC, referred the Board to a power point presentation that she provided
19 along with information from the Innovative Land Use Techniques Handbook. She stated that
20 there were three different ordinance components that could be adopted dependent upon the
21 availability of building inspection and code enforcement personnel. She continued that the more
22 comprehensive the regulatory approach, the greater level of staff capability would be required.
23 She stated that the most effective way for a community to generate change and achieve positive
24 results with their energy efficiency regulations was to adopt a combination of all three regulatory
25 approaches as follows:

- 26 1. Incorporate provisions related to construction orientation and building siting into
- 27 site plan and subdivision regulations as part of design standards.
- 28 2. Adopt more stringent building codes than state codes to produce greater energy
- 29 savings.
- 30 3. Adopt a comprehensive zoning ordinance that provides incentives to developers
- 31 in exchange for meeting a number of energy efficiency performance standards.

32 Jillian Harris, SNHPC, stated that for each of the approaches listed above there was
33 model language and guidance for implementation as follows:

- 34 1. Incorporate provisions related to construction orientation and building siting into
- 35 site plan and subdivision regulations as part of design standards.

36
37 Jillian Harris, SNHPC, noted the following example language which could be part of a
38 regulation.

- 39 I. Energy Efficiency
- 40 All buildings are to be sited and developed in such a way as to maximize the
- 41 benefits of the site for solar heating and passive cooling through the following:
- 42 A. Buildings are to be oriented on the site to optimize passive solar heating and
- 43 cooling opportunities.

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1 **MASTER PLAN ENERGY CHAPTER, cont.**

- 2
- 3 B. Buildings are to be oriented so as to minimize wind loads on the structure.
- 4 C. Windows are to be placed, and appropriately shaded, to maximize solar
- 5 penetration during the winter months and minimize solar penetration during the
- 6 summer months.
- 7 D. Landscaping is to be designed to provide shading and cooling during the summer
- 8 months while minimizing reduction of solar heat penetration during the winter
- 9 months.
- 10 E. Landscaping is to be environmentally sensitive and should include native drought
- 11 resistant plants and designs and a reduced need for chemical fertilizer and pest
- 12 control.
- 13 F. Building design features are to discourage pest infestation, such as sloped roofs to
- 14 minimize pigeons roosting.

15 Jillian Harris, SNHPC, noted that the above-referenced language suggestions could be

16 used to encourage energy efficiency rather than mandate it.

17

- 18 2. Adopt more stringent building codes than state codes to produce greater energy
- 19 savings.

20 Suggestions for language were as follows:

- 21 A. A minimum of 50 percent of all non-hazardous construction or demolition debris
- 22 materials must be either recycled or salvaged.
- 23 B. A minimum of 5 percent of the total project material costs must be for salvaged,
- 24 refurbished or reused materials. Additionally, another 5 percent of the total
- 25 material costs must be for products with post-consumer recycled content.
- 26
- 27 3. Adopt a comprehensive zoning ordinance that provides incentives to developers
- 28 in exchange for meeting a number of energy efficiency performance standards.
- 29 A. The purpose of this Article is to encourage and provide for energy efficient
- 30 development within the community for both new and substantially improved
- 31 buildings. It is intended to reduce energy consumption and promote the use of
- 32 alternative fuel sources. This Article was established in order to meet the goals
- 33 related to energy efficiency set forth in the community Master Plan.
- 34 B. All applicants for new construction and substantial improvements are encouraged
- 35 to meet energy efficiency standards and to be certified as an energy efficient
- 36 building with the incentive of an added 15% density bonus for doing so.

37 Jillian Harris, SNHPC, stated that she had provided case study information on towns that

38 were similar in size to New Boston. She started with the case study on Epping, New Hampshire,

39 and noted that it had a population of around 6,000 and was largely a residential community, with

40 an increasing amount of commercial development at the intersection of Routes 101 and 125. She

41 stated that Article 22 was passed at a Town Meeting in March of 2007. She explained that its

42 purpose was to get developers to think about energy efficiency at the pre-design stage. She

43 continued that the LEED accreditation program and the NH OEP's energy efficiency model

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1 **MASTER PLAN ENERGY CHAPTER, cont.**

2
3 ordinance were both used to create an ordinance that would work for Epping. She stated that the
4 ordinance required that all non-residential development receive a certain number of points
5 depending on the square footage of the development. She went on to say that the larger the
6 square footage, the more points the building needed. She noted that the green points were
7 separated into two categories, Energy Production (EP) and Sustainable Design (SD). She
8 explained that several of the ways to earn green points required post development inspection and
9 in those situations, the onus of proving compliance of those measures was on the developer. She
10 indicated that prior to receiving a certificate of occupancy the developer was required to submit a
11 filing to the Planning Board to ensure the measures were achieved to the Board's satisfaction.
12 She noted that the Epping case study was an example of a mandatory regulation.

13 Jillian Harris, SNHPC, moved on to a case study of Franklin, New Hampshire, and noted
14 that it was an example of encouraging energy efficiency using incentives. She stated that
15 Franklin, New Hampshire, had a Downtown Revitalization District. She explained that it
16 encouraged efforts to redevelop the existing mill buildings and other buildings within the district
17 so as to promote energy efficiency, the use of sustainable resources and intelligent use of the
18 land and associated natural resources. She continued that they provided for density bonuses of
19 up to 20% of allowed residential units by special permit for projects designed and constructed to
20 be eligible for at least 45 LEED-NC points for new construction and 55 LEED-EB points for
21 renovations. She added that the use of energy efficient lighting fixtures for all outdoor
22 application was also encouraged.

23 Jillian Harris, SNHPC, provided an example of a community in Greenwich, New Jersey,
24 where energy efficiency was encouraged and was not mandated and did not offer incentives. She
25 stated that site planning and subdivision layouts used natural factors to their advantage to reduce
26 energy demand by 20%. She continued that they suggested orienting structures toward southern
27 exposures, limiting window openings on northern exposures, adding evergreen windbreaks on
28 northern exposures, and using deciduous trees on western exposures.

29 The Chairman asked if the dates included in the handout referred to the date when the
30 ordinance was passed or the date of the current version. Jillian Harris, SNHPC, answered that
31 the date referred to the date of the current ordinance.

32 Jillian Harris, SNHPC, asked if there were any questions or comments with regard to
33 energy efficient development that she had gone over for the chapter. The Chairman asked for the
34 next step in the creation of the Energy Chapter process. Jillian Harris, SNHPC, explained that
35 she intended on finalizing the chapter and scheduling a public hearing for adoption at the next
36 meeting.

37 Jillian Harris, SNHPC, asked Susan Carr, Energy Commission Chair, to address a
38 question from the previous meeting regarding the energy inventory tool. The Chairman asked if
39 the inputs were based on information that the Town gets anyway. Susan Carr, Energy
40 Commission Chair, explained that the billing information for each building was used. She
41 continued that there were different ways in which to aggregate the information, for example, by
42 month or type of fuel. She pointed to a handout provided to the Board that contained
43 information from the inventory tool that created a way to target cost and consumption. The

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1 **MASTER PLAN ENERGY CHAPTER, cont.**

2
3 Chairman asked if the collection of the information was onerous. Susan Carr, Energy
4 Commission Chair, answered no and noted that it was now part of the procedure to record the
5 information during the billing process. Jillian Harris, SNHPC, added that the information was
6 entered into an excel spreadsheet and then uploaded into the inventory tool. She asked for
7 further questions with regard to the inventory tool; there were none.

8 Jillian Harris, SNHPC, stated that at the last meeting there had been a question regarding
9 a couple of the graphs included in the chapter that were on pages 5 and 6. She indicated that she
10 had addressed the questions on inconsistencies with Chris Skoglund from DES who put the
11 information together. She noted that the graphs remained different, however, she added the
12 reason for the differences in figure 1.3 which indicated that the difference was because the
13 update of CO2 by forests or carbon sequestration was subtracted from the emissions in Figure
14 1.3. She noted that she had requested an updated graph so that the two graphs would make sense
15 together but added the note in the interim.

16 The Chairman invited the Energy Commission to share comments regarding the Energy
17 Chapter with the Board. Susan Carr, Energy Commission Chair, indicated that the Commission
18 had been part of the process and was comfortable with what had been presented.

19 Jillian Harris, SNHPC, pointed out that since the last meeting an Action Plan had been
20 added which included the "who", "when" and "how" of the recommendations. She asked if there
21 were any comments relative to the Action Plan. The Chairman stated that almost all of the
22 "how" items listed were funded through the Town operating budget. He asked if the Town
23 operating budget would be increased. Jillian Harris, SNHPC, explained that she had listed the
24 Town operating budget for the funding source as most of the recommendations required Town
25 staff time. The Chairman stated that listing Town staff assumed that there was staff available
26 that had time available to perform the recommended actions. He added that he was unsure if
27 there was no cost, as listed, associated with the Town staff actions. He also commented that he
28 was unsure if the Planning Board fell under the Town operating budget. Jillian Harris, SNHPC,
29 suggested replacing Town operating budget for some of the items with "N/A".

30 Dwight Lovejoy stated that Gerry Cornett at the Transfer Station came up with a new
31 design to power the compactor and the new design resulted in a one-third decrease in the
32 electricity required.

33 The Chairman asked if the example that Dwight Lovejoy gave about the Transfer Station
34 was an example of things that could be included under Action Plan #1 f. Jillian Harris, SNHPC,
35 answered yes and noted that the plan recommended that further action could be taken by the
36 department heads by reviewing what projects were being done in other departments for
37 consideration of doing those projects in their own departments.

38 The Chairman invited comments or questions from the audience. Brandy Mitroff stated
39 that the CIP Committee had placed a project on the schedule for Town Hall to raise funding for
40 an insulation of the boiler. She explained that there was concern of insulation being done "too
41 tight" as there was a risk for creating a hostile environment upstairs. Jillian Harris, SNHPC,
42 noted that this recommendation was probably included in the building assessment.

43 The Chairman revisited his concern with regard to listing funding for the

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1 **MASTER PLAN ENERGY CHAPTER, cont.**

2
3 recommendations included in the Energy Chapter and suggested that a better way be found to
4 express this. Jillian Harris, SNHPC, suggested replacing it with "staff time". Cathy Morrissey,
5 Energy Commission, suggested replacing "funding" with "resources". She went on to say that
6 some of the items listed required little time and created a positive to the budget.

7 The Chairman asked what other towns were having an Energy Chapter created by
8 SNHPC. Jillian Harris, SNHPC, answered that SNHPC was creating Energy Chapters for the
9 Towns of Chester, Hooksett, Goffstown, Auburn and Candia.

10 The Chairman stated that he believed that the Master Plan was more strategic or nebulous
11 in nature and he was concerned with listing specific dates for implementation as it would
12 ultimately be out of date. He noted that there were also annual cost savings listed with specific
13 amounts that could change significantly within one year. He stated that he was unsure how it
14 could be changed but he felt that those tables were out of place in a Master Plan. Jillian Harris,
15 SNHPC, stated that the tables were a snapshot of where things were at currently.

16 The Chairman asked Jillian Harris, SNHPC, what she would say to convince him that the
17 Energy Chapter should be adopted. Jillian Harris, SNHPC, referred to the Purpose of the Energy
18 Chapter and stated that energy efficiency had become a key issue to communities, as energy
19 costs continued to increase and concern grew over the environmental and health costs of major
20 forms of energy production. She continued that the purpose of the chapter was to provide
21 guidance and tools and to identify strategies, policies and actions, as well as a vision for
22 achieving energy efficiency and conservation in the Town of New Boston. She went on to say
23 that promoting and incorporating energy efficient measures in town buildings, activities and
24 ordinances had many benefits to the town, including reducing operating costs and cutting carbon
25 emissions.

26 Jillian Harris, SNPC, welcomed final revisions or changes via email as she recognized
27 three Board members were absent for the discussion. The Coordinator noted that to be in
28 compliance with the contract for the work on the chapter the Board had to hold a public hearing
29 at the next meeting of November 22nd.

30 David Litwinovich asked if it was realistic by April to appoint a responsible party for
31 energy management of Town facilities as listed in the New Boston Action Plan, item 1d. The
32 Chairman asked if the Action Plan was the Planning Board presenting recommendations of what
33 they thought ought to be done. Jillian Harris, SNHPC, answered that they were a list of
34 recommendations supported by the Planning Board.

35 David Litwinovich was concerned with where the funding for some of the
36 recommendations on the Action Plan would come from and how implementing the
37 recommendations would affect staff responsibilities and possibly make somebody's life
38 miserable. Susan Carr, Energy Commission Chair, noted that some of the recommendations had
39 been in the works for a couple of years and had been part of the thinking and practices of the
40 Board of Selectmen. She continued that the Energy Chapter listed description of how the Town
41 operated with energy issues. David Litwinovich asked if things listed as "on-going" were
42 already in place. Susan Carr, Energy Commission, stated that not everything was in place. She
43 continued that the recommendations were a starting place to give life to the document. David

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1 **MASTER PLAN ENERGY CHAPTER, cont.**

2
3 Litwinovich asked if by adopting 1d, was the Board forcing the Board of Selectmen to come up
4 with funding to pay someone to follow through with the actions. The Chairman answered no and
5 stated that the Board was only making recommendations to the Board of Selectmen.

6 The Chairman stated that he agreed with all the recommendations included on the Action
7 Plan with the exception of 1d. Susan Carr, Energy Commission Chair, stated that discussion had
8 previously taken place with regard to that matter with the Town Administrator. She stated that
9 different people were already doing the action, however, they were lacking coordination and as a
10 result the Town was losing money. Cathy Morrissey, Energy Commission, pointed out that staff
11 already existed that were doing the functions listed and the Action Plan listed whose
12 responsibility it would be. Susan Carr, Energy Commission, stated that the decision was
13 ultimately with the Board of Selectmen and the Planning Board was only saying that they
14 supported the idea and believed it was useful to the Town. The Chairman requested that the
15 language be added to 1d as follows, "Explore, encourage or consider appointing a responsible
16 party..." . He also requested that the dates be changed on the Action Plan to read "April 2012"
17 instead of "April-12".

18 Jillian Harris, SNHPC, asked that comments for final revisions be sent to her within one
19 week.

20 The Chairman asked that the Coordinator out the extra handouts of this evening's
21 discussion in the bins for absent Board members. The Coordinator said she would.

22
23 **Proposed Zoning Ordinance/Building Code Amendments and continued mixed-use**
24 **discussion.**

25
26 Present in the audience were Brandy Mitroff, Glenn Given, Gregg Gelinas, Megan
27 Winslow and Eric Dubowik.

28 The Chairman stated that proposed amendment #1 of the Zoning Ordinance was to
29 amend Section 208.2, A, and clarify front yard requirements for corner lots and noted that the
30 Building Inspector/Code Enforcement Officer was given final determination for any question or
31 disagreement.

32 The Chairman asked for comments or questions. David Litwinovich commented that the
33 proposed amendment seemed reasonable and was fine with him.

34 The Chairman indicated that proposed amendment #2 of the Zoning Ordinance proposed
35 to delete Section 307, Yards on Corner Lots, in its entirety.

36 The Chairman asked for comments or questions; there were no comments or questions.

37 The Chairman stated that proposed amendment #1 of the Building Code addressed
38 Chapter NB-2.0, Administrative, Section NB-2.5, Right to Appeal, and explained that the
39 amendment would delete Section NB-2.5, Right of Appeal, in its entirety and replace it with the
40 following language, "Pursuant to RSA 673:1, the New Boston Zoning Board of Adjustment shall
41 serve as the Building Code Board of Appeals until such time as a separate Building Code Board
42 of Appeals is created by the legislative body".

43 The Chairman asked for comments or questions. David Litwinovich asked if an appeal

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ZONING ORDINANCE/BUILDING CODE AMENDMENTS, cont.

could be made to the New Boston Zoning Board if someone was having an issue with the judgment of the Code Enforcement Officer. The Coordinator pointed out that proposed amendment #2 dealt with building permit/structural issues and there was already a mechanism in place to allow for appeals of administrative decision made by the Building Inspector/Code Enforcement Officer or the Planning Board.

The Chairman indicated that proposed amendment #2 of the Building Code proposed to amend Section NB-2.8, Plans, to include septic systems and wells in the list of required items to be on plans submitted to the Building Inspector.

The Chairman asked for comments or questions; there were no comments or questions.

The Chairman stated that proposed amendment #3 of the Building Code proposed to amend Chapter NB-3.0, Definitions, to delete the definitions listed and refer to the International Code Council definitions.

The Chairman asked if all the terms listed in proposed amendment #3 were listed in the International Code Council definitions. The Coordinator answered that either they were or they were not needed anyway. She pointed out that a couple of the definitions in the Building Code could only be found in the definitions section and were not used anywhere else in the rest of the text. She continued that the Building Inspector/Code Enforcement Officer wanted to be able to refer to his code book that included accurate definitions. The Chairman asked how he could go about obtaining a list of the definitions. The Coordinator answered that the Building Department would be able to assist him with obtaining definitions.

The Chairman stated that a public hearing would be scheduled in December. Brandy Mitroff asked for the date of the meeting. The Coordinator answered December 20th and noted that it would be the only Planning Board meeting for the month of December.

The Coordinator stated that she had sent the memo from the last meeting regarding a Mixed-Use District to SNHPC to verify that she had not missed any information; it was confirmed that she did not miss any information. She continued that she had asked the question that Peter Hogan had brought up at the last meeting about adding a residential use to the Commercial District. She explained that if all the Commercial Districts incorporated residential then the potential existed for the Commercial District to be lost. She stated that it was important to create an ordinance to limit the size or make a correlation between the two districts mixing together. She noted that the Board could list this matter as a goal for next year if they wished.

Brandy Mitroff asked if the Mixed-Use District would be on the March 2012 ballot. The Coordinator answered no. The Chairman pointed out that there was a lot of information to go through and it was not feasible to put something together within the next two weeks to meet the deadline for the March 2012 ballot. Brandy Mitroff commented that it was too bad the matter would not be placed on the March 2012 ballot as there was such a need for a Mixed-Use District.

**MISCELLANEOUS BUSINESS AND CORRESPONDENCE FOR THE MEETING OF
NOVEMBER 8, 2011.**

1. Distribution of October 11, 2011, minutes, for approval at the meeting of November 22,

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1 **MISCELLANEOUS BUSINESS, cont.**

2
3 2011, distributed by email.

4
5 The Chairman acknowledged the receipt of the above-referenced matter; no discussion
6 occurred.

- 7
8 7. **Read File:** Notice of Public Hearing received November 4, 2011, from the Town of
9 Lyndeborough, re: Public Hearing for Granite State Concrete Co., Inc., Salisbury Road,
10 Tax Map/Lot #213/006, excavation renewal permit.

11
12 The Chairman acknowledged the receipt of the above-referenced matter; no discussion
13 occurred.

- 14
15 9. Construction Services Reports dated October 25th, 26th, 31st and November 2nd, 3rd and
16 6th, from Northpoint Engineering, LLC, for Karen M. Morin Revocable Trust, Reggie
17 Houle, Daylily Lane, for the Board's information.

18
19 The Chairman asked for any pertinent information from the reports that the Board should
20 be aware of. The Coordinator advised that the owner had been trying to pave Daylily Lane and
21 finish and the Town Engineer had pointed out that the weather should be observed as certain
22 conditions were required regarding temperature and other conditions.

- 23
24 10. Construction Services Reports dated October 20th, 24th, 26th, 27th and 31st, from
25 Northpoint Engineering, LLC, for SIB Trust, Indian Falls and Susan Road Connection for
26 the Board's information.

27
28 The Coordinator advised that the applicant was working on the issues that the Town
29 Engineer had requested be addressed with regard to stabilization.

- 30
31 2. Endorsement of a Lot Line Adjustment Plan for Brian M. & Beth E. Stevens, Tax
32 Map/Lot #'s 11/9-3 & 10, Hooper Hill Road & NH Route 13 a/k/a Mont Vernon Road,
33 by the Planning Board Chairman & Secretary.

34
35 The Chairman indicated that he would execute the above-referenced plan at the close of
36 the meeting. The Coordinator stated that she would email the Secretary, Don Duhaime, to stop
37 by the Planning Office to execute the above-referenced document.

- 38
39 3. Endorsement of an Earth Removal Plan for Carolyn J., Nathan P. & Nicola Strong, Tax
40 Map/Lot #11/1, Lyndeborough Road, by the Planning Board Chairman and Secretary.

41
42 The Chairman indicated that he would execute the above-referenced plan at the close of
43

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1 **MISCELLANEOUS BUSINESS, cont.**

2
3 the meeting. The Coordinator stated that she would email the Secretary, Don Duhaime, to stop
4 by the Planning Office to execute the above-referenced document.

5
6 **DUBOWIK, ERIC J. & WINSLOW, MEGAN M.**

7 Submission of Application/Public Hearing/NRSPR/Federally licensed firearms sales home
8 business

9 Location: 10B Kettle Lane

10 Tax Map/Lot #13/15-6B

11 Residential-Agricultural "R-A" District

12
13 Present in the audience were Eric Dubowik, Megan Winslow, Brandy Mitroff, Glenn
14 Given, Guy Tino, Gregg Gelinias, Willard Dodge and Dave Elliott.

15 The Chairman read the public hearing notice. He noted that the application form had
16 been received on October 24, 2011, as well as an email dated October 25, 2011, from the Board
17 of Fire Wards that indicated there were no concerns with the request to operate the firearms sales
18 business. He stated that the applicant had submitted a waiver request for signage as he proposed
19 not to display on-site signage. He advised that the proposed hours of operation were Monday
20 through Saturday, 9:00 a.m. – 7:00, p.m., by appointment only.

21 The Chairman invited the applicant to address the Board. Eric Dubowik stated that he
22 was transferring his business from Nashua to New Boston. He explained that he operated a
23 small business, noting that it was not full-time and was more of a hobby. He stated that his
24 business had been operating during the last ten months and he had only sold one gun a month.
25 He noted that he did not have any intentions to grow the business, however, if the business did
26 grow he would relocate to a different location. He advised that he did not have retail stock at his
27 home. He explained that customers would call him to make gun orders, he would order the guns
28 and have the customer come to his business as required by federal law to fill out paperwork and
29 have a background check conducted. He went on to say that once the background check was
30 "cleared" the customer would receive their item and leave. He asked the Board for any
31 questions.

32 The Chairman invited questions or comments from the audience. Gregg Gelinias of 8A
33 Kettle Lane pointed out that he lived next door to the applicants and stated that he did not have
34 problem with the proposed business. He indicated that he was familiar with some of the
35 applicant's customers and noted that his wife had purchased a firearm from Mr. Dubowik. He
36 continued that the applicant had brought his wife to Pointers in Bedford, NH, to use the gun and
37 go over proper safety. He added that he has had no complaints, did not have any complaints and
38 was all for the approval of the business. The Chairman acknowledged Gregg Gelinias's
39 comments.

40 Guy Tino of 10A Kettle Lane stated that he was concerned with what would come next if
41 the home business was approved. He noted that he did not have a problem with the applicants
42 but he was concerned with the potential for increased traffic and kids as there were kids in the
43 neighborhood. He noted that he "carried" and did not have an issue with firearms. Eric

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1 **DUBOWIK, ERIC, cont.**

2
3 Dubowik pointed out that he did not have a website or advertisements for his business and did
4 not intend to as he wanted to keep the business small. He continued that he generated business
5 by word of mouth and his customers were primarily friends and family. He reiterated that if his
6 business did grow he would move it to a different location.

7 Glenn Given of 7B Kettle Lane stated that he was present at the hearing not only for
8 himself but also on the behalf of Elaine Drolette of 7A Kettle Lane. He noted that Elaine
9 Drolette had previously submitted an objection to the Board with regard to approval of the home
10 business. He stated that he and his wife, Jennifer, were not interested in the opening of the
11 proposed firearms business. He explained that they were opposed to the firearms business
12 because a firearms accident had already occurred in their neighborhood and they were concerned
13 with more potential accidents. He continued that they were also concerned about the property
14 values of the neighborhood decreasing due to the business. He went on to say that they were
15 also concerned with potential damage to Salisbury Road due to increased traffic as it was a dirt
16 road. He pointed out that there were a number of small children who resided in the
17 neighborhood and played outside and any inclusion of more weaponry was not good. He stated
18 that the number of customers could fluctuate month to month and there was no way to monitor
19 the number. He stated that according to the condo bylaws the business was not allowed. The
20 Chairman asked if Mr. Given was referring to the following statement included in the email from
21 Elaine Drolette, "No nuisances shall be allowed on the property, nor should any use or practice
22 be allowed which is an annoyance or interferes with the peaceful possession or property use of
23 the condominium by others." Glenn Given answered that he believed the statement read by the
24 Chairman was from the condo bylaws. He added that there had been noise complaints lodged
25 against the applicants as well as an instance where the police had been involved to shutdown
26 fireworks and bonfires. He did not feel persons involved in the aforementioned instances could
27 be responsible firearms retailers.

28 Eric Dubowik stated that there was no "shutting down" as represented by Mr. Given and
29 that there was no improper use of fireworks and that the bonfire was legal. Megan Winslow
30 added that Eric Dubowik was a firefighter and as such would not allow things that were unsafe.
31 She added that she was aware of the young children in the neighborhood and pointed out that
32 Eric Dubowik did not carry any stock and he also did not sell ammunition to customers. She
33 stated that a gun that was not loaded would not do anything. She went on to say that during the
34 ten months that the business had operated they had only sold to nine people. She explained that
35 the only reason an application for a home business was being pursued was due to requirements
36 from the ATF and FBI that mandated that customers come to their house to fill out paperwork.
37 She indicated that the customers were not "hanging around" and looking at stock, they were at
38 the house to pick up their firearm and leave.

39 Megan Winslow addressed Mr. Given's statement with regard to increased traffic on
40 Salisbury Road and potential damages by pointing out that there would be more potential risk for
41 damage if she decided to have 10 friends visit her in a one month period than one customer per
42 month. She stated that she did not see how the proposed business could affect any of their
43 neighbors.

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1 **DUBOWIK, ERIC, cont.**

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3 Gregg Gelinias pointed out that the only association that existed between the
4 condominiums was relative to the two houses that were adjoined and not to the entire
5 neighborhood of Kettle Lane. He pointed out that the only association with the applicants' home
6 at 10B Kettle Lane was with Guy Tino at 10A Kettle Lane. Megan Winslow added that the
7 Kettle Lane subdivision in its entirety did not belong to a homeowners' association.

8 Dwight Lovejoy asked if most of the business was conducted over the phone, with the
9 subsequent delivery made by UPS. Megan Winslow answered yes and added that Mr. Dubowik
10 was the only person authorized to sign for the deliveries.

11 The Chairman asked the applicants if they had an issue with their letter dated October 19,
12 2011, which gave a brief summary outline of the proposed home business, being attached as part
13 of the approval. The applicants had no objection.

14 Gregg Gelinias asked if the objection that was emailed could be shared with abutters. The
15 Chairman answered yes and noted Mr. Given had stated what was contained in the objection. He
16 welcomed Mr. Gelinias to view the email. Dwight Lovejoy handed Mr. Gelinias the email to
17 review.

18 The Chairman asked for clarification that the condominium bylaws only applied between
19 two units that were adjoined. Gregg Gelinias answered yes. Megan Winslow stated that there
20 was no condominium association with association fees and she explained that the only
21 association that existed was relative to external homeowners insurance.

22 Gregg Gelinias stated that he had a four year old daughter that he allowed to play at the
23 applicant's property. He continued that he had not seen a firearm being misused or fooled
24 around with.

25 Guy Tino stated that his concerns were not with the firearms but with strangers in the
26 neighborhood. He stated that knowing there was not a stock of firearms was good.

27 The Chairman asked for confirmation that a home business could not transfer to
28 subsequent homeowners. The Coordinator clarified that home businesses did not run with the
29 land and explained that if someone wanted to move into the home and operate exactly the same
30 way as a business was currently approved, they could do so but would have to sign an agreement
31 to do so and file it with the Board. She pointed out that in order to make any changes a hearing
32 with the Planning Board was required.

33 The Chairman asked for further comments or questions from the audience. Brandy
34 Mitroff of Thornton Road noted that the applicant had represented that he would not utilize a
35 website for the business and asked if this had been written as a condition of the approval. Megan
36 Winslow stated that such a condition could be added. Eric Winslow added that he agreed with
37 Mr. Tino with regard to strangers and security and he wanted to keep the business "low key".
38 The Chairman asked if the applicants were agreeable to a condition that no online advertising be
39 allowed. Megan Winslow stated that they agreed with the condition. The Chairman pointed out
40 that if the applicants wished to make any changes to items approved they were required to appear
41 before the Board and make the request.

42 Megan Winslow commented that the main reason for the business was to take advantage
43 of the wholesale prices that were offered to licensed dealers. She noted that Eric Dubowik sold

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1 **DUBOWIK, ERIC, cont.**

2
3 to Bedford Police Department, Bedford Fire Department, Bedford EMS.

4 Brandy Mitroff asked for clarification that the proposed business was not a consignment
5 business. Megan Winslow confirmed that the proposed business was not a consignment
6 business.

7 The Chairman asked if there were any proposed employees. Eric Dubowik answered no.

8 The Chairman asked if there were any existing out buildings. Eric Dubowik answered
9 no.

10 The Chairman commented that there would be more traffic in the neighborhood but it did
11 not appear that the volume of traffic would be greater than what was expected in a neighborhood,
12 i.e., an occasional UPS truck or car.

13 The Chairman asked if there was room for customer parking. Eric Dubowik answered
14 yes. Megan Winslow added that they had a two car garage as well as the driveway for parking.

15 The Chairman stated that the proposed hours of operation were Monday through Friday
16 from 9 a.m. – 7 p.m., by appointment only. Brandy Mitroff asked for clarification that the
17 business had no proposed hours of operation on Sunday. The Chairman confirmed there were no
18 proposed hours of operation on Sunday.

19 The Chairman asked if the street number of the house was obvious. Megan Winslow
20 answered yes and noted that all of the houses were new and well labeled.

21 The Chairman asked if the Board was interested in a site walk. Dwight Lovejoy
22 indicated that he had recently been to the neighborhood and commented that it was a very nice.
23 The Chairman asked David Litwinovich if he had been to the neighborhood. David Litwinovich
24 answered no. Guy Tino believed that David Litwinovich should visit the neighborhood prior to
25 making any decisions. The Chairman and David Litwinovich agreed to attend a site walk.

26 David Litwinovich asked if language relative to the number of allowed transactions per
27 month could be added to the approval and likened it to allowed trips for gravel permits. Gregg
28 Gelinis stated that the applicant was not looking to stockpile guns or ammunition and it was
29 none of his business whether the applicant chose to have friends or relatives over three times a
30 week. He stated that it did not make a difference whether or not people were traveling to the
31 applicants' home for business or pleasure. He pointed out that everyone in the neighborhood
32 used the same propane company that made numerous trips to the neighborhood and was not
33 limited to making deliveries only once a month. Megan Winslow asked if a number of allowed
34 transactions was implemented how it would be monitored. The Chairman noted that Megan
35 Winslow asked a good question and stated that a site walk would be scheduled and the hearing
36 adjourned to the next meeting.

37 A site walk was scheduled for Saturday, November 12, 2011, at 12:00 p.m. Dwight
38 Lovejoy stated that he recently conducted a road count on Salisbury Road from 6:00 a.m – 10:00
39 a.m. and he only counted four cars.

40
41 David Litwinovich **MOVED** to adjourn the public hearing of Eric Dubowik & Megan
42 Winslow, Submission of application/NRSPR/Federally licensed firearms sales home
43 business, Location: 10B Kettle Lane, Tax Map/Lot #13/15-6B, Residential-Agricultural

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13

1 **DUBOWIK, ERIC, cont.**

2
3 “R-A” District, to November 22, 2011, at 7:30 p.m. Dwight Lovejoy seconded the
4 motion and it **PASSED** unanimously.

5
6 **HILLSBOROUGH COUNTY 4H FOUNDATION (OWNER)**
7 **SANDFORD SURVEYING & ENGINEERING (APPLICANT)**

8 Submission of an Earth Removal Application/Public Hearing

9 Location: 17 Hilldale Lane a/k/a NH Route 13

10 Tax Map/Lot #8/38

11 Residential-Agricultural “R-A” District

12
13 Present in the audience were Willard Dodge and Dave Elliott.

14 The Chairman read the public hearing notice. He noted that the application form was
15 received on October 24, 2011 and the AoT Permit was issued September 4, 2007. He advised
16 that all outstanding fees had been paid and all items required for a completed application had
17 been submitted. He stated that items for a complete final approval had been submitted with the
18 exception of the Traffic and Environmental Impact Studies as waiver requests had been
19 submitted. He indicated that copies had been sent to the Conservation Commission on October
20 25, 2011.

21 The Chairman asked what issues existed with Hilldale Lane that the Town has asked to
22 not be used. Willard Dodge stated that the bridge had been built without concrete on top of the
23 asphalt. He continued that only pavement had been used and it was now broken up. He stated
24 that a decision had been made to keep heavy trucks off the bridge and reduce the weight limit to
25 ten tons. He went on to say that D&S Excavating had not been hauling out over the bridge, only
26 coming in empty, but the Town had still asked them to stop using the bridge. He noted that they
27 were now using the back road out to Depot Street both ways. Willard Dodge went on to say that
28 the end portion of the road crossed Playground Association land and was not town owned.

29 The Chairman stated that with regard to the bond a letter of credit was in place in the
30 amount of \$14, 000.00 through the Triangle Credit Union. The Chairman asked if the current
31 bond was consistent with the other Earth Removal Applications that had been submitted and
32 approved. The Coordinator answered yes.

33 The Chairman asked if the gravel pit was currently active. Willard Dodge answered that
34 there was very little traffic due to the economy but it was used on almost a daily basis. Dave
35 Elliott stated that it had been used for more than 20 years.

36 The Chairman asked if there had ever been any complaints. Dave Elliott answered that
37 he was not aware of any complaints.

38 The Chairman asked for the maximum amount of trips per day. Willard Dodge answered
39 the maximum amount of trips was 80 per day. Dave Elliott added that they had followed what
40 the Strong pit had stated with regard to traffic and asked for a great deal more than was actually
41 used. The Chairman asked if 80 trips per day meant 80 trucks going into the pit empty and
42 coming out full. The Coordinator answered yes. The Chairman asked how many trips the pit
43 had been averaging over the last two years. Dave Elliott answered eight trips per day. He added

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1 **HILLSBOROUGH COUNTY 4H FOUNDATION, cont.**

2
3 that they needed to be approved for more than eight trips in the event that something special was
4 going on in town and more trips were needed. He went on to cite an example of a special
5 occasion when more trips were needed, i.e., the recent installation of the fire cistern at the
6 school. He explained that he had three trucks hauling material that needed to be removed from
7 the school and because they were only traveling one mile round trip it only took about seven
8 minutes per truck.

9 The Chairman indicated that the end date of the pit would be November 8, 2061, the
10 applicant agreed to the end date.

11 The Chairman asked for comments or questions from the Board; there were none.

12 Willard Dodge stated that the Coordinator had indicated that more information with
13 regard to hours of operation was required and asked specifically what was needed. The
14 Coordinator directed Willard Dodge to the Earth Removal Regulations and suggested that he
15 copy the hours of operation section onto the plan that would be prepared in 2012.

16
17 David Litwinovich **MOVED** that a Groundwater Resources Conservation District
18 Conditional Use Permit was not needed for Hillsborough County 4H Foundation
19 (Owner), Sandford Surveying & Engineering (Applicant), Location: 17 Hilldale Lane
20 a/k/a NH Route 13, Tax Map/Lot #8/38, Residential-Agricultural "R-A" District. Dwight
21 Lovejoy seconded the motion and it **PASSED** unanimously.

22
23 The Chairman asked again if there had been any complaints or violations for the pit.
24 Dave Elliott answered no.

25
26 David Litwinovich **MOVED** to waive the Traffic and Environmental Impact Studies for
27 Hillsborough County 4H Foundation (Owner), Sandford Surveying & Engineering
28 (Applicant), Location: 17 Hilldale Lane a/k/a NH Route 13, Tax Map/Lot #8/38,
29 Residential-Agricultural "R-A" District. Dwight Lovejoy seconded the motion and it
30 **PASSED** unanimously.

31
32 David Litwinovich **MOVED** to approve the Earth Removal Application with associated
33 plans entitled "Gravel Excavation and Restoration Plan Hillsborough County 4H
34 Foundation Map 8/Lot 38 NH Route 13, New Boston Hillsborough County, New
35 Hampshire", 3 sheets, dated March 27, 2007, along with the supplemental information
36 provided in a two page letter entitled "Earth Removal Application - Plan Addendum", by
37 Earl Sandford, PE, dated October 21, 2011, said additional information to be attached to
38 and considered part of the approved plans, and to grant an Earth Removal Permit, to
39 include the site specific items discussed at this hearing, subject to:

40
41 **CONDITIONS SUBSEQUENT AND ONGOING:**

- 42 1. Prior to the granting of any permit, or to the removal of any topsoil or other
43 overburden material from a new area within an existing excavation site, the

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HILLSBOROUGH COUNTY 4H FOUNDATION, cont.

Applicant shall submit to the Regulator an acceptable bond with sufficient surety as determined by the Regulator. The purposes of the bond are to guarantee reclamation of the area and compliance with the permit. The surety must be phased to coincide with the phasing of work, in an amount sufficient to guarantee reclamation of the applicable section, to be released as sections are completed. Prior to a new section being opened, new securities shall be posted. The surety shall not be released until the Regulator is satisfied that all conditions of the site reclamation plan have been complied with. This shall be determined at a final site walk by the Regulator and/or its designee. Additionally, if a bond or security is already in place, the applicant is responsible for keeping said security up-to-date and submitting riders, renewals, or other documentation to the Planning Board as proof that the bond or security is in place.

2. Amendments and Renewals

Permit holders wishing to alter the size or location of the excavation, the rate of removal or the plan for reclamation shall apply for a renewal or amendment, following the same procedures as those required for the original excavation permit.

3. The Earth Removal permit is not transferable without the prior written consent of the Regulator.

4. A copy of the Earth Removal permit shall be prominently displayed at the site or the principal access to the site.

5. Inspections

The Regulator or its designee may make periodic inspections, minimally on an annual basis, of all excavation sites, both permitted and exempt, to determine if the operations are in conformance with the New Boston Earth Removal Regulations and the approved plans.

6. Hours of operation

Start up time for all machinery associated with an Earth Removal Operation shall be no earlier than 6:45 a.m. in cold weather only; in warm weather start up time for machinery shall be no earlier than 7:00 a.m.; activity of any kind, including loading and removal of material from the site shall begin no earlier than 7:00 a.m.; termination of removal of material from the site shall be no later than 5:00 p.m.; processing of materials shall begin no earlier than 7:00 a.m. and must be shut down by 5:00 p.m. These operating hours shall be for Monday through Saturday.

No operation shall take place on Sundays and major Federal holidays, as follows: New Year's Day, Memorial Day, 4th of July, Labor Day, Thanksgiving and Christmas; provided, however, that access on Sundays and holidays is permitted in the event of a town-wide emergency situation requiring use of material or equipment, for example, flooding situations, ice storms, major blizzards.

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HILLSBOROUGH COUNTY 4H FOUNDATION, cont.

7. Maximum Excavation Limit

Final excavation grade shall be not less than four feet to documented seasonal high water table, provided, however, that pursuant to RSA 155-E:11,II, an exception shall be granted if the application demonstrates to the Regulator's satisfaction that excavation below this height will not adversely affect water quality. The Regulator reserves the right to have an outside review of the information submitted as part of any proposal to excavate within four feet of the documented seasonal high water table, at the Applicant's expense. Written notice of such an exception shall be recorded in the Hillsborough County Registry of Deeds at the Applicant's expense, and one copy shall be filed with the New Hampshire Department of Environmental Services.

8. Waste Disposal

No disposal of any waste material, including solid and/or hazardous waste, septage, dredge spoils, or refuse shall be undertaken on the site without appropriate State approval under RSA 149:M, or other appropriate State regulations.

9. Tree cutting

The applicable state statutes pertaining to forestry practice and timber harvesting shall apply to the removal of vegetative cover at excavation sites.

10. Stopping of Removal/Excavation Operations

If removal/excavation operations stop for more than one year with no notice thereof provided to the Regulator and said stoppage is not in accordance with the approved excavation plan or due to bad weather, the excavation permit may be revoked and the performance bond forfeited with its proceeds used for reclaiming the land in accordance with the approved reclamation plan.

11. Applicant shall submit one copy of any plans or reports that are approved by the NH DES Alteration of Terrain Bureau within 30 days of said approval.

12. Submission of revised plans that include all checklist corrections and any corrections as noted at this hearing when the Alteration of Terrain Permit and Plans are updated with NH DES in 2012.

SITE SPECIFIC PERMIT CONDITIONS:

A. Approved routes for transportation of material

Secondary fairgrounds access Road to Depot Road then to Route 13 and Route 77/136 .

B. Number and type of vehicles to be used to transport material

Four tri-axle trucks, two dump trailer trucks (18 wheelers), two 6 wheel trucks and two 10 wheelers.

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1 **HILLSBOROUGH COUNTY 4H FOUNDATION, cont.**

2
3 C. Equipment to be used for material removal

4
5 2 loaders, 2 excavators, 2 processing units i.e., screener and crusher.

6
7 D. Requirements for material processing

8
9 East side of North Pit - daily crushing and screening.

10
11 E. Requirements for temporary stockpiling of offsite materials

12
13 East side of North Pit next to crusher and screener. Erosion controlled by
14 containment berm and seeding as needed and practical. Stockpiled material: sand,
15 gravel, stone and topsoil/loam.

16
17 F. Required plantings for reclamation

18
19 Plans show typical details for loam and seeding.

20
21 G. Other requirements

22
23 None

24
25 The Earth Removal Permit is valid until such time as the Regulator determines the Earth
26 Removal Operation is no longer in compliance with the New Boston Earth Removal
27 Regulations; or, until such time as the operation shall be deemed to be abandoned as
28 defined in the Earth Removal Regulations; or, until such time as the owner informs the
29 Regulator that they will no longer be running the Earth Removal Operation; or, until such
30 time as the operation is depleted; or, until the completion date as determined by the
31 Regulator in the regulatory process, in accordance with RSA 155-E:8, in this case
32 **November 8, 2061**, whichever first occurs.

33
34 Dwight Lovejoy seconded the motion and it **PASSED** unanimously.

35
36 **MISCELLANEOUS BUSINESS AND CORRESPONDENCE FOR THE MEETING OF**
37 **NOVEMBER 8, 2011, Cont.**

38
39 4. Email with attachment forwarded from Stu Lewin, Planning Board Chairman, to Shannon
40 Silver and Nic Strong, re: Town Economic Assets Profiles, for the Board's review and
41 discussion.

42
43 The Chairman noted that a new Town Administrator had been hired and as such the

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18

1 **MISCELLANEOUS BUSINESS, cont.**

2
3 contact information for the Town Administrator should be updated, i.e., telephone number and
4 email.

5 The Chairman stated that under the list of employers New Boston Tavern and Damian's
6 on the River were listed and should be removed as the businesses no longer existed. He also
7 pointed out that Dodge's Store was currently inactive.

8 David Litwinovich commented that he was surprised that the New Boston Air Force
9 Tracking Station only listed 5-9 employees. The Coordinator stated that those numbers did not
10 surprise her.

11 Dwight Lovejoy stated that RE Jenkins was no longer in business.

12 The Chairman asked the Coordinator to review the document and submit any changes as
13 well as the above-referenced changes to SNHPC by 11/12/11.

- 14
15 5. Email received November 2, 2011, from Ruth Trussell, Clark Hill Trust, re: extension of
16 conditions subsequent deadline, CUP, Tax Map/Lot # 8/1, Dennison Road, for the
17 Board's action.

18
19 The Chairman asked if any of the houses for the above-referenced subdivision had been
20 built. The Coordinator answered no.

21 The Chairman noted that the applicant was seeking an extension of the conditions
22 subsequent deadline, CUP, to 2018. He asked the Coordinator if the Board had ever granted an
23 extension for seven years. The Coordinator answered no relative to wetland crossings. The
24 Chairman asked if the Board granted the extension for seven years and changes were made to the
25 conditional use permits in three years would the applicant have to conform to the changes. The
26 Coordinator did not believe that active and substantial development had been specified for this
27 subdivision; she noted that she would have to check. She continued that if active and substantial
28 development had been defined then those items would have needed to be completed within 12
29 months. She noted that most likely those items, if required, were not completed. She stated that
30 extending the conditions subsequent to seven years would place the applicant outside of the four
31 year vesting period of a subdivision plan, however, if active and substantial improvements were
32 not defined then the applicant could argue what those improvements were.

33 Dwight Lovejoy asked what the norm was for extension periods. The Chairman stated
34 that the Board usually granted one or two year extensions, noting that it was not difficult to send
35 an email in two years requesting an additional extension.

36
37 David Litwinovich **MOVED** to grant the extension of the conditions subsequent
38 deadline, CUP, Tax Map/Lot #8/1, Dennison Road, to June 1, 2014. Dwight Lovejoy
39 seconded the motion and it **PASSED** unanimously.

- 40
41 6. Letter received November 3, 2011, from Kevin M. Leonard, P.E., Northpoint
42 Engineering, to Nicola Strong, New Boston Planning Coordinator, re: Twin Bridge
43 Estates, (Page Lane) – Site Inspection Observations, for the Board's review and

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19

1 **MISCELLANEOUS BUSINESS, cont.**

2
3 discussion.

4
5 The Chairman asked the Coordinator to explain the issues relative to the above-
6 referenced Site Inspection Observations. The Coordinator explained that in the area where Twin
7 Bridge Road meets Page Lane there was a large crack in the road. She continued that the Town
8 Engineer and Road Agent had viewed the area together and the Road Agent believed that crack
9 sealing would fix the crack. She stated that the suggestion was to ask the developer for a sum of
10 money towards the repair. She stated that the maintenance bond was due to be returned soon and
11 an inspection was required prior to returning the bond. She stated that the amount of money for
12 the crack sealing was too small to keep in an account as fees would be assessed. She noted that
13 the suggestion was to ask for a contribution.

14 The Planning Board Assistant pointed out that the developer may take the position that
15 the crack was not their fault as D&S built the road and the Town Engineer inspected it and
16 therefore, they were not responsible for the costs to fix it. The Chairman stated that he believed
17 that was the reason for the maintenance bond. The Coordinator stated that the problem was
18 proving that the road was defective and the costs to find out what happened would cost more
19 than the maintenance bond was worth.

20 The consensus of the Board was to send a letter to the developer and request the \$250.00
21 prior to the bond being returned and if the request was denied a formal action relative to the bond
22 release would take place at the next meeting.

- 23
24 8. Letter received November 8, 2011, from Robert Todd, LLS/LPF/CPESC, President, Todd
25 Land Use Consultants, to New Boston Planning Board, re: Robert W. & Crystal L.
26 Nadeau Subdivision, Map 4 Lot 14, Route 136, request to extend the conditions
27 precedent date to November 24, 2011, to November 24, 2012, for the Board's action.

28
29 David Litwinovich **MOVED** to grant the request to extend the conditions precedent for
30 Robert W. & Crystal L. Nadeau, Map 4 Lot 14, Route 136, from November 24, 2011, to
31 November 24, 2012. Dwight Lovejoy seconded the motion and it **PASSED**
32 unanimously.

33
34 **S&R HOLDING, LLC**

35 Public Hearing/Major Subdivision/40 Lots w/open space
36 Discussion, re: amending existing conditions to subdivision plan relative to submission of the
37 bond and the timing of active and substantial development.

38 Location: McCurdy & Susan Roads

39 Tax Map/Lot #12/19

40 Residential-Agricultural "R-A" District

41
42 Present in the audience was Shiv Shrestha.

43 The Chairman read the public hearing notice. He stated that recent correspondence had

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20

1 **S&R HOLDING, LLC, cont.**

2
3 come from the Shiv Shrestha, from S&R Holding, LLC, via an email dated October 19, 2011, in
4 which a public hearing was requested to extend the Active and Substantial Development
5 deadline by one year and to release the bond. He noted that the subdivision had been approved
6 February 22, 2011, and condition precedent #6, required submission of the security, in the
7 amount of \$593,454.40, in a form acceptable by the town, for the construction of Lorden Road,
8 Phase I. He noted that Active and Substantial Development and Building was as follows,
9 “Within 12 months after the date of approval, the following items must be completed in order to
10 constitute ‘active and substantial development or building’ pursuant to RSA 674:39, I, relative to
11 the 4-year exemption to regulation/ordinance changes: clearing, grubbing, stumping and binder
12 of Phase I roadway”. He advised that a letter of credit in the amount of \$593,454.40 was
13 received on May 17, 2011.

14 The Chairman indicated that the applicant was requesting that the letter of credit be
15 released because he was not ready to build the road now with no ability to get Certificates of
16 Occupancy until he has a second access road to the subdivision.

17 The Chairman invited the applicant to address the Board. Shiv Shrestha stated that he
18 was seeking an extension and the release of the bond as it did not make any sense because the
19 Town did not want the road to be built. The Chairman reiterated that the applicant was
20 requesting a one year extension of the Active and Substantial Development, from February 22,
21 2012, to February 22, 2013. The Coordinator explained that due to a change in law the applicant
22 had two years from the date of approval to meet the Active and Substantial Development
23 deadline and as such the request was no longer needed and the new deadline was February 22,
24 2013.

25 The Chairman stated that the request to release the bond could be granted with the
26 conditions that the bond would be released until such time as the applicant was ready to build the
27 road and would post a new Letter of Credit/bond/cash security at that time; he asked the
28 applicant if this option was acceptable. Shiv Shrestha answered yes and added that he would
29 build the road on his own and submit a bond before requesting Certificates of Occupancy. The
30 Coordinator pointed out that the bond needed to be submitted prior to applying for **building**
31 **permits** and explained that a building permit needed to be obtained prior to the construction of a
32 house and a Certificate of Occupancy needed to be obtained to allow someone to move into a
33 house. She continued that without a bond in place for the road construction the applicant would
34 not be given a building permit to construct a house. Shiv Shrestha asked if he could build Phase
35 I of binder and then get building permits. The Coordinator answered yes, when the bond was
36 submitted. Shiv Shrestha asked if he could build Phase II and get building permits. The
37 Coordinator answered that he could build to whatever phase he wanted to and everything that
38 was left over needed to be bonded.

39 The Chairman stated that the applicant would come back to the Board at some point,
40 between having nothing completed and having completed the road and at that point the amount
41 of the bond would be established in order to obtain a building permit.

42 Shiv Shrestha asked if he decided to build the through road for the first and second phase
43 he could do that and have inspections at the same time. The Coordinator stated that they would

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21

1 **S&R HOLDING, LLC, cont.**

2
3 all work together but pointed out that none of the designs for Phase II had been completed. She
4 continued that part of the approval required that all other approvals and designs needed to be
5 done at the pre-construction meeting for Phase II. Shiv Shrestha noted that this had not been
6 done for Phase I yet either. The Coordinator stated that it would be the same. She noted that in
7 order to obtain a Certificate of Occupancy the entire subdivision road needed to be built from
8 Susan to McCurdy. Shiv Shrestha stated that he did not have to build the whole road to get a
9 building permit. The Coordinator clarified that the whole road would have to be built because
10 the cul-de-sac could not be longer than 1,000' for Phase I. She stated that if the applicant
11 committed to starting Phase II he would have to finish Phase II because that provided him the
12 outlet to get the Certificate of Occupancies. Shiv Shrestha asked if he could do certain parts of
13 Phase II but only complete Phase I. He went on to ask if, for example, he could only clear and
14 grub Phase II and then stop. The Coordinator stated yes, as long as whatever was completed in
15 Phase II was stabilized and a bond was submitted for whatever remained.

16 The Chairman stated that the applicant was either going to get ready to build the road and
17 come back to post the security for the entire construction or the applicant was going to build the
18 road according to the approved plan following all the Town's construction inspection procedures
19 to some point at which time he would come back and submit a bond for the remaining items.
20 Shiv Shrestha stated that he would build Phase I to binder and then submit the bond for the rest
21 of the project. The Coordinator suggested that the Board require that "the applicant builds the
22 road according to the approved plan for Phase I and/or Phase II". The Chairman and applicant
23 agreed to the Coordinator's suggestion. The Chairman stated that all other terms and conditions
24 of the February 22, 2011, approval remained in full force and effect.

25 The Coordinator pointed out that in addition to the applicant having 24 months to
26 complete the Active and Substantial Development he also had five years to vest the project
27 instead of 4 years. Shiv Shrestha asked if extended vesting information could be documented in
28 writing. The Chairman suggested adding the language, "it is also noted for the record that based
29 on State law the new date for completion of Active and Substantial Development is two years,
30 making the new deadline February 22, 2013".

31 The Chairman asked the applicant to state his reason for requesting the release of the
32 bond. Shiv Shrestha indication that he could not get Certificates of Occupancy until abutting
33 developments were completed which was not taking place and his capital was tied up in bonding
34 a project that could not currently go forward. The Coordinator suggested that the explanation be
35 captured from the Board's standpoint. She added that the reason that was needed was why the
36 Board was willing to listen to the applicant's request and grant it and not because of his capital
37 tied up.

38 The Chairman stated that the Board considered moving to grant the applicant's request
39 because an applicant could by law build a road without a bond and the logistics of building the
40 road have made getting started on the project difficult and this allowed the applicant additional
41 creativity in getting construction started.

42
43 David Litwinovich **MOVED** to approve the request that Condition Precedent #6 from the

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22

1 **S&R HOLDING, LLC, cont.**

2
3 the Subdivision of Forest View II, McCurdy Road and Susan Road, Tax Map/Lot #12/19,
4 be released/returned to the applicant until such time as:

- 5
6 a) the applicant is ready to build the road and will post a new Letter of
7 Credit/bond/cash security at that time;
8 b) the applicant builds the road according to the approved plan, for phase I and /or
9 Phase II, following all of the Town's construction inspection procedures, through
10 some point in construction, at which time a bond/letter of credit/cash security can
11 be established for the remaining items. (NO BUILDING PERMITS WILL BE
12 ISSUED UNTIL SECURITY IS IN PLACE AGAIN. NO CERTIFICATES OF
13 OCCUPANCY WILL BE ISSUED UNTIL THE PREVIOUSLY
14 ESTABLISHED CONDITIONS REGARDING COMPLETION OF OFFSITE
15 ROADS AS WELL AS ONSITE IMPROVEMENTS HAVE BEEN
16 FULFILLED.) Said determination having been made based upon the following
17 reasons:

- 18 1. An Applicant is statutorily allowed to build a road without a bond.
19 2. The logistics of coordinating road construction with three projects has
20 made getting started difficult and this allows greater creativity in getting
21 construction started.

22 All other terms and conditions of the February 22, 2011, approval to remain in
23 full force and effect. It is also noted for the record based on State Law the new
24 date for completion of Active and Substantial Development or Building shall be
25 02/22/2013.

26
27 Dwight Lovejoy seconded the motion and it **PASSED** unanimously.

28
29 Dwight Lovejoy **MOVED** to adjourn the meeting at 8:58 p.m. David Litwinovich
30 seconded the motion and it **PASSED** unanimously.

31
32 Respectfully Submitted,
33 Valerie Diaz, Recording Clerk

Minutes Approved:
December 20, 2011