

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

January 11, 2011

1

1 The meeting was called to order at 6:30 p.m. by Chairman Stu Lewin. Present were
2 regular members Mark Suennen and Peter Hogan (who arrived mid-way through the Goals
3 section of the meeting); and, Ex-officio Dwight Lovejoy. Also present were Planning
4 Coordinator Nic Strong, and Planning Board Assistant Shannon Silver. Newly appointed
5 alternate Don Duhaime was also present but, not having been sworn in, was not able to act in an
6 official capacity.

7
8 Present in the audience for all or part of the meeting were Brandy Mitroff, Barbara
9 Thomson, Conservation Commission, Morgan Hollis, Esq., Brian Roy, PE, Shiv Shrestha, Dana
10 Lorden, Earl Sandford, PE, John Neville, Charles Cleary, Esq., Jed Callen, Esq., John Melito,
11 April Teshima, Larry & Riitta Nemon, Jennifer Webber.

12
13 **Public Hearing on the changes & additions to the proposed Amendments to the**
14 **Zoning Ordinance as effected by the first public hearing. SEE SEPARATE NOTICE**
15

16 The Chairman read the public hearing notice. He noted that this hearing was the second
17 hearing on the proposed amendments to the Zoning Ordinance that would be before the voters in
18 March 2011. He further noted that this hearing was to discuss the changes that had been made at
19 the first public hearing on the zoning on December 28, 2010. The Chairman noted that because
20 this was the second hearing it was not possible to make substantive changes to any of the
21 proposals because there would be no further opportunity for public comment. He said that the
22 types of changes that could be made this evening were grammatical, typographical or
23 punctuation related.

24 The Chairman noted that Proposed Amendment #1 had been stricken in its entirety.
25 Proposed Amendment #2 became #1 and was a housekeeping article. Proposed Amendment #3
26 became #2 and was related to parking. Proposed Amendment #4 became #3 and was the sign
27 ordinance and the Chairman noted that there had been no changes made at the first hearing
28 following a couple of test cases that had been reviewed against the proposed ordinance.
29 Proposed Amendment #5 became #4 and was to do with definitions. The Chairman noted that
30 legal counsel had suggested that the definition of Signs should point back to the Signs section of
31 the ordinance rather than repeating the definition and that the passage of the definition changes
32 should be contingent upon the passage of the Sign Ordinance itself or they would not be needed.

33 The Chairman asked if any members of the Board had comments based on that short
34 summary. There were none. The Chairman noted that an email had been received from Barbara
35 Thomson with some suggested changes. He noted that the typographical suggestions could be
36 discussed but pointed out that Town Counsel had reviewed all the proposals and had not
37 recommended any rewording or other substantive changes.

38 The Chairman noted that Ms. Thomson's first suggestion was to Section 318.2, to insert
39 the word "the" in the first sentence of the Normal grade definition: "Normal grade shall be used
40 as *the* reference for sign height." Mark Suennen disagreed with this suggestion, noting that the
41 original language was general enough without needing to specify the reference to what. Dwight
42 Lovejoy agreed. The Board determined to leave the language as originally proposed.

43 Ms. Thomson's next emailed suggestion was to add the word "and" to Section 318.2,D, in

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

January 11, 2011

2

1 **PUBLIC HEARING ON ZONING ORDINANCE AMENDMENTS, cont.**

2
3 the definition of Sign: "Signs directing and guiding traffic and parking on private property, but
4 bearing no advertising *and* warning signs such as "No Hunting", and "No Trespassing.". Mark
5 Suennen thought this was a good amendment. The Board agreed.

6 The Chairman noted next that Barbara Thomson suggested changing "a" to "an" in
7 Section 318.7, Signs on Town Owned Property: "The Board of Selectmen regulates signs on
8 Town of New Boston owned property and has adopted *an* ordinance for that purpose,
9 "Temporary Signs on Town Owned Property", Approved July 11, 2005, and as amended.". The
10 Board agreed with this proposal.

11 The Chairman noted that the next suggestion was to the Proposed Amendment to Section
12 204.4 but this was the amendment that was being deleted. He went on to say that Ms. Thomson
13 next suggested rewording the first two paragraphs of Section 314, Off Street Parking, to three
14 paragraphs. He noted that he had no issue with the language the way it was originally and
15 pointed out that even if the Board agreed with the proposed change it could not happen at this
16 evening's meeting anyway.

17 The Chairman noted the next suggestion that would reword slightly the second paragraph
18 of Section 318.1 and change the punctuation a little: "This ordinance is intended to provide
19 uniform regulations for the installation and use of signs in the Town of New Boston, while:
20 protecting the health, safety and welfare of the public; providing adequate business identification
21 and advertising; and, maintaining and enhancing the appearance, aesthetics and traditional
22 character of New Boston *to* preserve and maintain a rural quality of life.". Mark Suennen agreed
23 that as rewritten the paragraph was more grammatically correct. The Board agreed.

24 The Chairman asked if there were any comments or questions from the Board on the
25 changes as just discussed. There were none. He then asked if there were any questions from the
26 audience. There were none. The Chairman closed the public hearing and the Board entered into
27 deliberations. The Chairman explained that the Board needed to vote to propose the
28 amendments as presented or not to propose the amendments.

29
30 Mark Suennen **MOVED** to propose the amendments to the Town of New Boston Zoning
31 Ordinance as presented and modified at this hearing. Dwight Lovejoy seconded the
32 motion and it **PASSED** unanimously.

33
34 The Chairman suggested sending an email to Ms. Thomson thanking her for her inputs
35 and explaining that the substantive suggestions in her email could not be incorporated due to the
36 timing.

37 The Chairman suggested that the Board take a short break and some time to read items on
38 the Miscellaneous Business agenda and those received recently for the Neville hearing later in
39 the meeting.

40
41
42
43
44

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

January 11, 2011

3

1 **Discussion, re: Planning Board Goals for 2011**

2
3
4
5
6
7
8

At 7:30 p.m., the Chairman reopened the meeting with a session for the Planning Board on suggested goals for 2011. He noted that the suggestions came from the Planning Coordinator and the list could be edited, added to or have things deleted as the Board deemed appropriate. The Chairman said he would go through the list once and then go back over the items in more detail.

1	Cul-de-sacs	<u>In progress</u>	Decide upon course of action with regard to ongoing cul-de-sac issue
2	Cistern Regulations	<u>Draft Regulations ready for update</u>	Cistern regs have been updated by Northpoint with Fire Wards' input and are ready for inclusion in the Subdivision Regulations
3	Subdivision/Site Plan Review Regulations Update	<u>TBD</u>	Subdivision and Site Plan Regulations to be updated to include cistern regulations, parking standards (following successful ZO amendment), various other housekeeping items from previous yr.
4	CIP Procedures Manual	<u>TBD</u>	CIP Procedures document to be drafted, meeting with departments and committee scheduled, PB to review Master Plan, Fiscal Impact Study, etc. to determine that all appropriate items are included
5	Source Water Protection	<u>To be discussed in 2011</u>	Water Resources Management Plan update Conservation Commission to discuss assistance
6	Workforce/Multi-Family Housing	<u>TBD</u>	PB to consider other recommendations from the Workforce and Multi-Family Housing Committee
7	Mixed Use/Village District	<u>PB to review in 2011</u>	Review HCPP application/Master Plan for ideas
8	Rules of Procedure	<u>TBD</u>	Rules of Procedure need update
9	Letter of Credit/Performance Bond Language	<u>TBD</u>	Standard language to be prepared for Letters of Credit/ Performance Bonds to avoid the chasing of deadlines and to add a standard call provision
10	Other Zoning Districts	<u>TBD</u>	Review Master Plan Future Land Use Chapter for further potential zoning ordinance/regulation revisions

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

January 11, 2011

4

11	Master Plan	<u>TBD</u>	PB to start thinking about Master Plan Update for 2011
----	-------------	------------	--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

The Chairman asked the Board if they had anything to add to the list. Mark Suennen commented that there was plenty to do on this list. The Chairman asked if there was anything on the list that anyone thought did not need to be there. There were no responses.

#1 Cul-de-sacs

The Chairman asked if anyone disagreed that this matter needed closure. Don Duhaime expressed surprise that this issue was still going on, remembering that a couple of years previously the Board had changed the regulations from a 600' cul-de-sac length to 1,000'. He thought the Board should make a decision and stick to it. The Chairman acknowledged that was one approach. Mark Suennen stated that the Selectmen had indicated that there was some room for flexibility in the decision making regarding cul-de-sac length but he thought that the Planning Board should have a policy with a reason behind it and reasons listed by which waivers would be granted. In response to a question from the Chairman, Mark Suennen noted that the piece missing currently from the Board's procedures was the rationale for when the Board would exceed 1,000' and to what extent they would exceed 1,000', and what the applicant would have to do in exchange for length in excess of 1,000'. Mark Suennen went on to say that each Board member had their own ideas about what they wanted in exchange for a waiver to the length but there was nothing formal to go by. Don Duhaime thought that the Board always acted in the applicant's favor without anything in return.

The Chairman stated that he was confused by Mark Suennen's comments, noting that he thought he said that the Board should have a policy and stick to it but then he had said there should be reasons to waive. Mark Suennen explained that he considered the length of the cul-de-sac a piece of the policy on cul-de-sacs but not the whole. He noted that the guideline could be 1,000' but occasions when the applicant asked for more it should be clear what would be expected, for example, 10% increase in length with a 10% reduction in density. Don Duhaime stated that his concern was the safety of the public and that Police, Fire and Highway all had legitimate concerns to address. The Chairman agreed that Police and Fire had concerns, but noted that the Road Committee had mentioned one or two issues that could be addressed by changing the regulations so Highway may not be as set in stone as the other safety departments. The Chairman went on to say that Police and Fire did not come up with anything to help address their concerns. Dwight Lovejoy did not think that the Highway Department was not worried about the ongoing issue with cul-de-sac length. The Chairman stated that he was simply pointing out that there were things that could be done to the regulations to ameliorate the Road Committee's concerns, for example, prohibiting cross culverts at great depths. Mark Suennen added that the Road Committee had concerns with the materials used for culverts, preferring concrete over plastic. He wondered if a goal should be added to ensure that these concerns were addressed in the Subdivision Regulations. The Chairman thought that they should be adequately addressed by the Cul-de-sac goal and #3, the Subdivision and Site Plan Review Regulations update. He recapped that Mark Suennen was suggesting that if the Planning Board was to continue to operate on the premise that there may be situations in which the 1,000' length of cul-

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

January 11, 2011

5

1 **DISCUSSION OF PLANNING BOARD GOALS FOR 2011, cont.**

2
3 de-sacs would be increased, the regulations should include what the conditions were that would
4 have to be met. He noted that some kind of closure had to be attained and this issue could not
5 remain in its current status. The Chairman asked if anyone disagreed with the need to update the
6 regulations to account for the conditions that would be required if a cul-de-sac were to exceed
7 1,000'. No one disagreed.

8
9 #2 Cistern Regulations

10 The Chairman noted that the hard work on this had been done by the Fire Wards and
11 Kevin Leonard, PE, Northpoint Engineering, and it would be good to get these updated
12 regulations adopted soon. The Board agreed.

13
14 #3 Subdivision/Site Plan Review Regulations Update

15 The Chairman noted that these would be general changes and updates to the regulations
16 required by changed state laws, for example.

17
18 #4 CIP Procedures Manual

19 (Peter Hogan arrived at the meeting during this discussion.)

20 The Coordinator explained that this idea was to give everyone a better grasp of the
21 purpose and uses of the CIP Plan rather than simply handing out the worksheets each year and
22 expecting everyone to fill them out on time. She noted that it was important that everyone look
23 ahead further than the 6-year Table II and the Master Plan and Fiscal Impact Feasibility study
24 undertaken by the Southern New Hampshire Planning Commission (SNHPC) a few years ago
25 would be good starting points for all the departments to make sure that future needs were being
26 planned for. Don Duhaime noted that he did not remember the CIP Committee ever seeing the
27 Fiscal Impact Feasibility Study.

28 The Chairman asked if there would be a lot of work for the Planning Board involved in
29 this task or if the Planning Department would prepare drafts of things for the Board's review.
30 The Coordinator noted that the Department would prepare documents for the Board to look at.
31 She noted that the idea was to get this manual ready for distribution at a meeting of all the
32 Department Managers, CIP Committee and other relevant boards in May or June.

33
34 #5 Source Water Protection

35 The Chairman noted that this was to do with updating the Town's Water Resources
36 Management Plan. The Coordinator reminded the Board that they had received an estimate and
37 scope of work from the SNHPC but had determined not to ask for the money on this year's
38 ballot. She further noted that Joel Bedard, Conservation Commission Vice Chairman, had been
39 in the audience when this was discussed and was going to ask the Conservation Commission if
40 they would be interested or willing to fund or partially fund the project. Barbara Thomson,
41 Conservation Commission member, was in the audience and noted that Joel Bedard was willing
42 to be the Commission's volunteer to work with the Planning Board on the update but had
43 reported to the Commission that the Planning Board did not want any help.

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

January 11, 2011

6

1 **DISCUSSION OF PLANNING BOARD GOALS FOR 2011, cont.**

2
3 The Chairman noted that this was not the case. He pointed out that the conversation had
4 been that because there was a price tag attached to the project with the SNHPC, if the
5 Conservation Commission agreed to help out with the cost there was a greater chance of getting
6 the project done. Mark Suennen said that when Joel Bedard was at the Planning Board's meeting
7 it was discussed that the Planning Board did not have the money for the update and Joel Bedard
8 had indicated that the Conservation Commission had the money and he would discuss with the
9 Commission using some of their funds to pay for this work. He said that it was not that the
10 Planning Board did not want to do the work but that they could not afford to do the work and if
11 the Conservation Commission was willing to do it for the Town the Planning Board would be
12 happy to have it happen. The Chairman asked if the Conservation Commission was paying for
13 the work why did the SNHPC have to be the ones to do it if the end product was going to be the
14 same. Mark Suennen stated that he did not know if the Conservation Commission had the time
15 and resources and knowledge to produce the work that was supposed to be done. He said that if
16 they did and they could do the work at their own cost that would be even better. He did not,
17 however, want to put that kind of work on a volunteer group of people for something that a
18 professional would be paid a significant amount of money. The Coordinator stated that Joel
19 Bedard had indicated that he wanted to approach different consultants and the Planning Board's
20 standpoint over the years was that the SNHPC had all the background data that made the first
21 steps in any process quicker. She went on to say that the Board did not have to use the SNHPC
22 but the long history with the Commission made them a good starting point. She further noted
23 that it was certainly important to have a committee or working group of some kind put the
24 finishing touches on any document in terms of local knowledge and input. Mark Suennen noted
25 that if the Conservation Commission was going to pay for the work they could use whoever they
26 wanted to. Shannon Silver, Planning Board Assistant, noted that the last conversation she had
27 with Joel Bedard was when he contacted the office asking for an electronic copy of the Water
28 Resources Management Plan which the office did not have because the original was done in
29 1989.

30 Barbara Thomson said that her understanding was that the Conservation Commission
31 would evaluate the proposal before agreeing to pay for it. She said that Joel Bedard had
32 volunteered to work with the SNHPC on the tasks to be done so that everyone had an
33 understanding of what was to be accomplished. She noted that if the SNHPC could deliver the
34 product that the Conservation Commission was looking for that would be great, otherwise the
35 Commission would have to figure out if they wanted to use someone else. Barbara Thomson
36 also noted that if the Planning Board came up with what they wanted it might not be something
37 that the Conservation Commission was willing to fund. She noted that currently no one was
38 doing anything because her understanding was that Joel Bedard had been told he was not wanted.
39 Mark Suennen wanted to be clear for the record that the Planning Board was excited that the
40 Conservation Commission wanted to be involved in the update of the Water Resources
41 Management Plan. Barbara Thomson asked who Joel Bedard should talk to to get the project
42 moving forward. The Chairman said that Joel Bedard should speak with Nic Strong or Shannon
43 Silver in the Planning Department.

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

January 11, 2011

7

1 **DISCUSSION OF PLANNING BOARD GOALS FOR 2011, cont.**

2
3 #6 Workforce/Multi-Family Housing

4 The Chairman thought it worth at least one more meeting to look again at the list of
5 things that the committee proposed for changes or additions to the regulations. Mark Suennen
6 agreed and noted that the committee had been working when the law was new and it was not
7 certain how it would be implemented. He said that it would be interesting to see how the law
8 had been implemented in other towns and if there was a reason to continue working on
9 something in New Boston. The Chairman thought that the list of potential items from the
10 committee had included items that had to be accomplished and things that were good planning
11 practice and would be good to do even if they were not compulsory. Mark Suennen agreed that
12 good planning was important but pointed out that good planning did not unnecessarily create
13 regulation. The Chairman agreed and said it would still be worth evaluating the remaining
14 suggestions. He asked the Coordinator to get an update on the legal situation with the law and
15 how it was implemented in other towns for the Board to review at a working session at a future
16 meeting.

17 It being time for the first scheduled hearing, the Chairman asked that the rest of the goals
18 be discussed at a future meeting.

19
20 **FREDERICK K. LORDEN REVOCABLE TRUST (OWNER)**

21 **HARVEY J. DUPUIS FAMILY TRUST (OWNER) Adjourned from 12/14/10**

22 **S & R HOLDINGS, LLC (APPLICANT)**

23 Public Hearing/Major Subdivision/42 Lots

24 Location: McCurdy & Susan Roads

25 Tax Map/Lot #12/19, 96 & 93-34

26 Residential/Agricultural "R-A" District

27
28 The Chairman read the public hearing notice. Present in the audience were Morgan
29 Hollis, Esq., Brian Roy, PE, Shiv Shrestha, Dana Lorden, Brandy Mitroff, and Barbara
30 Thomson.

31 The Chairman gave a brief background to the application. He noted two recent
32 correspondences: a December 30th letter from Morgan Hollis, Esq., to Bill Drescher, Esq., with
33 legal documents for review; and, a January 5th letter from Kevin Leonard, PE, with the second
34 engineering plan review comments. He noted that the Planning Department had also completed
35 review of the plans and highlighted the issues that remained outstanding.

36 Morgan Hollis, Esq., explained his intention to go through the correspondence, comments
37 and letters he had received including Northpoint Engineering's comments, noting that Brian Roy,
38 PE, would be able to respond to those issues and that there were a few things that required a
39 Planning Board decision.

40 Morgan Hollis, Esq., began with letters from the Planning Department, one regarding
41 offsite road improvements and one regarding plan review comments. He asked to address the
42 offsite improvements first, noting that the total calculation came to \$10,350. He asked the
43 Planning Board to decide if that was the amount the applicant had to pay.

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

January 11, 2011

8

1 **LORDEN/DUPUIS/S&R HOLDINGS, LLC, cont.**

2
3 Peter Hogan **MOVED** to accept the \$10,350 number from the formula calculation as the
4 fair share number for the applicant. Mark Suennen seconded the motion and it **PASSED**
5 unanimously.

6
7 Morgan Hollis Esq., noted that one of the plan review comments from the Coordinator
8 was to do with a granite bound at a lot corner which conflicted with a stone wall. He stated that
9 the applicant's intent was to remove a section of the stone wall to put in the bound but if the
10 Planning Board preferred them to submit a waiver request to use a pin instead or an offset bound
11 they would do so. Mark Suennen asked why a drill hole would not be appropriate. Brian Roy,
12 PE, stated that a drill hole would be standard. Mark Suennen said the Board had accepted them
13 in the past instead of dismantling stone walls. Brian Roy, PE, described the stone wall as not
14 being particularly worthy of preservation in this location, noting that it was 3' high in some
15 places, double wide but that if the driveway needed it for sight distance more of the wall would
16 be removed. He noted that for a driveway, approximately 20' of stone wall would be removed;
17 for the location of a bound only enough room to access the location with a post hole driller
18 would be required. Peter Hogan said that, in general, he preferred the aesthetics of a stone wall
19 and assumed that a drill hole would be put in a boulder that was big enough that no one would be
20 able to easily move it. Brian Roy, PE, stated that drill holes could not be considered permanent
21 as the rock could be moved by something or hit with a truck. He noted that he did not want to
22 ask for another waiver and noted that a pin or drill hole would cause some small disturbance to
23 the wall anyway. Mark Suennen thought that if the wall was going to be opened up in other
24 locations for driveway accesses then it would be OK with him to allow a small portion to be
25 taken for placement of a granite bound.

26
27 Mark Suennen **MOVED** that the particular bound between Lots #12/19-39 and 12/19-40
28 adjacent to McCurdy Road shall be a granite bound and the applicant shall make
29 whatever means necessary to make as small an interruption in the wall as feasible to
30 install this bound. Peter Hogan seconded the motion and it **PASSED** unanimously.

31
32 Morgan Hollis, Esq., noted that the next issue was a series of comments from the
33 Coordinator regarding the coordination of lot development and drainage access road
34 construction. He noted that Brian Roy, PE, had explained to him that the road and drainage
35 infrastructure would be constructed first and the lots would be developed afterwards. He noted
36 that if a drainage access road was disturbed during lot development the responsible party would
37 have to fix it. He suggested that the Coordinator and Brian Roy, PE, should get together to
38 discuss these issues and work out the details and concerns. Morgan Hollis, Esq., stated that he
39 wanted to see if the Board had any questions about the potential conflicts and also see if the
40 Coordinator wanted to speak to her concerns. Mark Suennen stated that he was interested in
41 hearing the Coordinator's comments or questions.

42 The Coordinator noted that if the Board looked at the list of the lots she had raised
43 questions on, beginning with Lot #19, the drainage access road was actually the start of the lot's

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

January 11, 2011

9

1 **LORDEN/DUPUIS/S&R HOLDINGS, LLC, cont.**

2
3 driveway. She noted that the question on this lot was twofold: 1) how would the construction of
4 the access road and the driveway be coordinated; and 2) what would happen if the Town
5 damaged the driveway by taking trucks or equipment on the access road for maintenance. She
6 noted that the plans' construction sequences did not detail the steps that Morgan Hollis, Esq., had
7 alluded to or the responsibility of the various parties to fix anything if they damaged it. The
8 Coordinator noted that several of the Town's drainage access roads were in the same location as
9 the proposed driveway to the lot in question and there were some areas where the grading for the
10 driveway or lot may need to take place during the time of the road and drainage construction so
11 that there would be no disturbance during lot construction. The Chairman asked if the
12 Coordinator's concerns could be addressed with notes on the plan or if something further was
13 required. Mark Suennen thought perhaps language could be put in the deed expressing that
14 during construction of the lot in question any damage done to town facilities or easements on the
15 property should be repaired at no expense to the town. The Coordinator thought that was a better
16 solution. She noted that it was always the case that the road and drainage was done first and lot
17 development would take place over time. She noted that there was one driveway whose
18 turnaround was in the Town's slope and drainage easement area with a retaining wall and so on,
19 she noted that the grading was going to be tricky and had to be done right and the Town should
20 be assured that their improvements were not damaged in the process. Morgan Hollis, Esq.,
21 stated that this matter would be taken care of with a note on the plan and language in the deed.

22 Morgan Hollis, Esq., next noted a comment from the Coordinator regarding Lot #40 and
23 the potential use of a culvert versus the grading of the driveway that was shown on the plans. He
24 noted that a culvert had been evaluated for this location and it was determined that it would
25 affect the detention capacity of the wetland area in the vicinity. Morgan Hollis, Esq., next noted
26 Lot #42 which had a well radius that extended 5' into the McCurdy Road right-of-way. He noted
27 that the State allowed up to 50' in the right-of-way but if the Town had a concern they could pull
28 it back the 5'. He did point out that at the end of the day the house and utilities may be put in
29 different locations than those shown currently on the plan and the well may be approved with the
30 radius in the right-of-way. The Chairman asked Morgan Hollis, Esq., to have the radius moved
31 out of the right-of-way for purposes of the Planning Board approval of the plans. The Board
32 agreed.

33 Morgan Hollis, Esq., next noted the Coordinator's comments on the Operations and
34 Maintenance Manual for the project, noting that the document mentioned funding, operation and
35 maintenance of the various types of stormwater management facilities on the lots and the
36 Coordinator was asking who would draft and administer this. He noted that there were many
37 types of stormwater management systems in this subdivision, those for the Town and those on
38 individual lots. He noted that there was no homeowner's association maintaining any of the
39 drainage structures. The Coordinator noted that her question was specifically to do with the
40 language of the document that mentioned an agreement that would be drafted, distributed and
41 administered but there was no information on who would be responsible for any of this. She
42 further noted that the document specifically noted that the Town was not subject to this
43 agreement. The Coordinator went on to say that since the individual lot deeds would include

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

January 11, 2011

10

1 **LORDEN/DUPUIS/S&R HOLDINGS, LLC, cont.**

2
3 provisions making the lot owner responsible for the facilities on their lots she did not think the
4 language regarding this maintenance agreement was necessary in the Operations and
5 Maintenance Manual and recommended its deletion. Morgan Hollis, Esq., agreed.

6 Morgan Hollis, Esq., next noted that the applicant had submitted a Narrative Report with
7 regard to the Open Space Development and asked if the Board had any findings on that report.
8 The Coordinator pointed out that in a couple of locations the Narrative Report referred to the
9 Open Space Development regulations as being new in 2007. She pointed out that the Town
10 reworked the ordinance in 2007 but had, in fact, had a Cluster Residential Development
11 ordinance since 1990. Morgan Hollis, Esq., stated that the language would be changed.

12 Morgan Hollis, Esq., noted that the Coordinator had next commented on the road bond
13 estimate, something Northpoint Engineering, LLC, had also commented on. He noted that the
14 applicant had submitted a bond estimate for Phase I of the subdivision and Northpoint
15 Engineering had commented that they wanted to see the bond estimate broken down for Phase I,
16 II, and III, with the suggestion that the estimate be reviewed when development for each phase
17 began. He noted that the applicant's position was that only Phase I was relevant at this time. He
18 went on to say that they had provided an overall idea of the cost of the bond for the entire project
19 and had proposed specifically the bond for Phase I. He asked that the Board not require the
20 detailed bond calculations for Phases II and III at this time, understanding that they would have
21 to be provided prior to construction of those phases. The Chairman asked if the applicant was
22 OK with a condition of approval that would specify that when the bond estimate was done it
23 would have to use the numbers on the Town's estimate form at the time. Morgan Hollis, Esq.,
24 said that they were fine with that condition. The Coordinator explained that her confusion and,
25 she thought, Kevin Leonard, PE's confusion also, stemmed from the fact that the applicant
26 provided a Phase I bond estimate and an estimate for the total project rather than separate
27 estimates for the separate phases.

28 Morgan Hollis, Esq., moved on to discussion of Northpoint Engineering's letter noting
29 that there were seven pages of comments but only a few required Board input. The rest, he
30 explained, would be dealt with by the applicant's engineer. The Chairman reminded the
31 applicant that a response letter from his engineer should be provided with the revised plans to
32 Northpoint Engineering. Morgan Hollis, Esq., pointed out in particular numbers 6, 8 and 24 in
33 Kevin Leonard, PE's, January 5th letter, being to do with culvert design. He stated that his
34 recollection was that items such as this culvert, various retaining walls and so on would be
35 designed at the precon stage rather than during this review stage. The Coordinator took some
36 time to find the minutes at which this discussion had taken place, noting that she thought the
37 design for Phase I structures was supposed to be done now but the rest would be done at the time
38 of the precon for the phase it was in. Morgan Hollis, Esq., stated that his understanding was that
39 all of the designs would be done at the precon stage which was why they had not provided those
40 details. Mark Suennen thought that the Board's comment at the time was that the bond would
41 have to accommodate both the design and construction portion of those structures in question.
42 He pointed out that there would be additional review by the Town's engineer to review the plans
43 at the time they were submitted. He also noted that the plans should be submitted in advance so

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

January 11, 2011

11

1 **LORDEN/DUPUIS/S&R HOLDINGS, LLC, cont.**

2
3 that at the preconstruction meeting the applicant would get the go ahead for installation or they
4 may be delayed pending engineer review. Morgan Hollis, Esq., acknowledged these statements.

5 Morgan Hollis, Esq., noted that the next item was comment #10 to do with driveway
6 aprons and the design grade of the driveway aprons. He noted that the aprons had been designed
7 to a certain distance from the edge of the right-of-way and Kevin Leonard, PE, was suggesting
8 that a greater portion of the driveway be designed on what Morgan Hollis, Esq., considered the
9 private lot. He noted that the ultimate construction of the driveway and house may be different
10 than that proposed at this time. Brian Roy, PE, noted that he was confused as to what Kevin
11 Leonard, PE, was asking for with the comments regarding Lots #31 & 33. The Coordinator
12 asked if Brian Roy, PE, had spoken with Kevin Leonard, PE, about this matter. Brian Roy, PE,
13 said that he had not. The Chairman suggested that Brian Roy, PE, call Northpoint Engineering
14 to figure out this issue and decide on what to do to take care of it.

15 Morgan Hollis, Esq., noted that the next comment was to do with the cul-de-sac which
16 had been designed with a certain type of design without manholes but Kevin Leonard, PE, was
17 requesting a design with manholes because the design as presented included a 10' drop off that
18 Kevin Leonard, PE, had identified as a safety issue. He stated that they would do whatever the
19 Town engineer wanted but this was the third re-design of the cul-de-sac so they wanted to make
20 sure that it met everyone's requirements before changing it again. In response to a question from
21 the Chairman, Morgan Hollis, Esq., stated that the original cul-de-sac had been convex and the
22 last comments from Kevin Leonard, PE, had caused the design to be changed to a concave one
23 but along with the comment that the Town preferred as few manholes as possible so they had
24 designed it without manholes. The Chairman thought that a cul-de-sac with a 10' hole in it was
25 not a good idea. Morgan Hollis, Esq., agreed that the Town would have to balance the safety
26 factors against the maintenance required for manholes and associated drainage structures. The
27 Chairman suggested that the Road Committee be asked for their input at their meeting on
28 January 13, 2011.

29 Brian Roy, PE, noted that realistically, Kevin Leonard, PE's suggestion was better from a
30 safety standpoint. He stated that they were originally asked to go from a raised island to a
31 concave island and pointed out that the drop was only about 6' not 10'. He explained that using
32 the manholes allowed the depression in the cul-de-sac island to be filled in and a standard
33 headwall used and from a safety standpoint was a lot better. Mark Suennen asked how many
34 manholes were proposed for this project so far. Brian Roy, PE, noted that there were three or
35 four manholes. Mark Suennen stated that he was willing to take the extra manhole in the
36 interests of public safety, subject to the Road Committee and Highway Department agreeing with
37 that suggestion. The Chairman asked the Coordinator to ask the Road Committee that question
38 and noted that whatever answer the Road Committee gave would be what the Planning Board
39 would go with.

40 Morgan Hollis, Esq., stated that the last issue was the drainage from the site where there
41 were two minor increases in flow offsite in two locations. He noted that the calculations had
42 been performed to Northpoint Engineering's request and that Kevin Leonard, PE, agreed in his
43 letter that the increases were minor so a waiver could be granted or the applicant could have a

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

January 11, 2011

12

1 **LORDEN/DUPUIS/S&R HOLDINGS, LLC, cont.**

2
3 design for each lot to retain the water onsite.

4 The Chairman asked to postpone discussion on this matter for a few minutes. He asked
5 the Coordinator to report on what she had found in the minutes regarding design of structures at
6 the preconstruction stage. The Coordinator said that she had found mention of this issue in the
7 October 26th minutes and read the following: "Morgan Hollis, Esq., moved on to #94 regarding
8 special improvements such as large culverts or retaining walls requiring engineering at this time.
9 He noted that the Town Engineer had offered that the engineering for these structures could be
10 done prior to the preconstruction meeting for the phase of the subdivision that they would be in
11 and the applicant was agreeable to that suggestion.". Mark Suennen stated that the applicant
12 should submit a letter that listed the structures for which they were holding off on designing
13 anything until the precon stage. That way, he noted, everyone would be on board with what was
14 being done now and what would be done at a future date. Morgan Hollis, Esq., agreed.

15 The Chairman noted that outstanding issues from the Board's point of view at this time
16 were the environmental study; the question about the Open Space Narrative; drainage
17 calculations with the waiver request for an increase; Bill Drescher, Esq., was to review the legal
18 documents; driveway and road entry permits would still require action. The Chairman asked if
19 the Board wanted to act on these things now or at the next meeting.

20 Peter Hogan thought that dealing with the runoff issue would be easy because there
21 should be no increase, especially in that area of town. Morgan Hollis, Esq., submitted a revised
22 waiver request letter that conformed to the most recently completed drainage calculations. Peter
23 Hogan noted that most drainage calculations looked at the release of water over a 24 hour period
24 and asked what would happen with rain on frozen ground that caused snowmelt. He stated that a
25 small increase could, in fact, create a flood. Brian Roy, PE, noted that under frozen conditions
26 no drainage structures or stormwater management systems worked anywhere and it would not
27 matter if an area was designed with an increase or not because it would be essentially 100%
28 runoff. He noted that drainage calculations were not done based on winter conditions but on
29 what the normal conditions would be when the drainage facilities were functioning. The
30 Chairman noted that the amount of the increase in this situation was so small he wondered why
31 the applicant's engineer could not just make it zero. Peter Hogan asked what could be done to
32 make it zero. Brian Roy, PE, explained the drainage maps for the property, noting that the water
33 came from many different directions and continuing on to explain that the calculations looked at
34 the point of study at the property lines. He stated that 90 - 95% of the project worked fine. He
35 went on to say that two small drainage areas were isolated by the property line and ended up with
36 minor increases. Brian Roy, PE, pointed out that the total project had a 12 cfs decrease in the 10
37 year design storm. The two local small areas had very minor increases at the property line and at
38 the next culvert down McCurdy Road the amount was even less. In response to a question from
39 the Chairman, Morgan Hollis, Esq., indicated that the minor increases were 0.19 and 0.41 cfs.
40 He noted that to retain the water on the lots would require the construction of some kind of
41 detention pond or swale that would require long term maintenance. He stated that this was
42 certainly doable but less than desirable for future lot owners.

43 Brian Roy, PE, noted that the lots in question were Lot #40 on McCurdy Road with an

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

January 11, 2011

13

1 **LORDEN/DUPUIS/S&R HOLDINGS, LLC, cont.**

2
3 increase of 0.19 cfs towards Carriage Road that resulted in an insignificant impact to the culvert
4 there. Lot #52 was the other site of increase of 0.41 cfs that drained south through a wetland to
5 Shaky Pond which was a fractional increase with no impact. Peter Hogan stated that he thought
6 there should be no increase in this area generally. Mark Suennen agreed from a policy
7 standpoint but noted from a practical standpoint that he would be more concerned with the 0.19
8 cfs increase at McCurdy Road than the 0.41 cfs increase going to Shaky Pond. If he was forced
9 to compromise, he noted he would not be willing to do so at the McCurdy Road lot.

10 Morgan Hollis, Esq., noted that from the applicant's standpoint they thought they were
11 done having dealt with the bulk of the outstanding items. He noted that the drainage increase
12 was the last decision up in the air and he would like to have the Board make a decision to allow a
13 conditional approval so they did not have to come back to another hearing "on the clock". The
14 Chairman said he understood this but noted that the Board did not typically grant conditional
15 approvals when there were still review items pending. He noted that if everything was resolved
16 by the next meeting it may only take 5 minutes to get approval.

17 Peter Hogan stated that he liked Mark Suennen's idea and would be willing to
18 compromise by allowing the increase towards Shaky Pond but not on McCurdy Road.

19
20 Peter Hogan **MOVED** to grant the waiver for an increase in runoff on Lot #52 towards
21 Shaky Pond and accept the 0.41 cfs level of increase. Mark Suennen seconded the
22 motion.

23 DISCUSSION:

24 Mark Suennen confirmed that this meant there was no allowable increase off Lot #40 and
25 there would be a zero increase on that lot. Peter Hogan confirmed that there was no
26 waiver granted off Lot #40.

27 The Chairman called for a vote and the motion **PASSED** unanimously.

28
29 Morgan Hollis, Esq., asked that the Board consider accepting the Environmental Impact
30 Study for this property on which they had postponed discussion until this waiver issue was dealt
31 with.

32
33 Mark Suennen **MOVED** to accept the Environmental Impact Study as submitted as
34 acceptable to the Board. Peter Hogan seconded the motion and it **PASSED** unanimously.

35
36 The Board determined to discuss the Narrative Report at the next meeting. Mark
37 Suennen asked that the document be reviewed to make sure that nothing needed to be changed
38 based on the fact that the Piscataquog Land Conservancy was now going to be taking title to the
39 open space. Morgan Hollis, Esq., stated that this would be reviewed.

40
41 Peter Hogan **MOVED** to adjourn the hearing and extend the deadline for Board action
42 for Frederick K. Lorden Revocable Trust (Owner), Harvey J. Dupuis Family Trust
43 (Owner), S&R Holdings, LLC (Applicant), Public Hearing/Major Subdivision/42 Lots,

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

January 11, 2011

14

1 **LORDEN/DUPUIS/S&R HOLDINGS, LLC, cont.**

2
3 Location: McCurdy & Susan Roads, Tax Map/Lot #12/19, 96 & 93-34, Residential/
4 Agricultural "R-A" District, to February 22, 2011, at 7:30 p.m. Mark Suennen seconded
5 the motion and it **PASSED** unanimously.
6

7
8 **NEVILLE, DENISE M. & JOHN E.**

Adjourned from 12/28/10

9 Work Session/Design Review/NRSPR

10 Development of lot to accommodate commercial building.

11 Location: Whipplewill Road

12 Tax Map/Lot #3/63-24

13 Commercial "Com" District
14

15 The Chairman read the public hearing notice. Present in the audience were John Neville,
16 Earl Sandford, PE, and Charles Cleary, Esq. Also present were Jed Callen, Esq., John Melito,
17 April Teshima, Larry and Riitta Nemon, Jennifer Webber, Barbara Thomson, and Brandy
18 Mitroff.

19 The Chairman gave a brief background of the history of the application and noted that
20 recent correspondence included a letter from Town Counsel that the Board would consider
21 releasing, a letter from abutter John Melito that included a DVD, and a letter from Attorney
22 Callen. He asked the Board if everyone had had the opportunity to read the letter from Town
23 Counsel and if anyone saw any reason not to release it. Mark Suennen thought it should be
24 released as it spoke directly to some of the comments that had been made.
25

26 Mark Suennen **MOVED** to release the letter from Dwight Sowerby, Esq., dated January
27 3, 2011, to interested parties. Peter Hogan seconded the motion and it **PASSED**
28 unanimously.
29

30 The Chairman noted that this letter clarified Town Counsel's previous letter on this matter
31 and stated that if removal of earth products was deemed to be incidental to the project it would
32 not require a Special Exception.

33 Earl Sandford, PE, stated that he had provided some information for different design
34 scenarios, including calculations and rough numbers of how much material would be removed
35 for each scenario and the time frame for doing so. He noted that Version 1 with a 30' buffer was
36 basically level with the existing contractor's yard site and included a 3% slope for proper
37 drainage to provide a nice flat site with connectivity to the neighboring lot. Version 2 was the
38 same but with a 50' buffer. Version 3 brought the site up by 10' from the existing site and was as
39 high as it could be raised while still allowing access from the existing contractor's yard lot.
40 Version 4 was discarded as it brought the site up by 30' and ended up with more fill than cut.
41 Version 5 showed the site up by 24' for an approximate balance - there was still approximately
42 6,000 cy of ledge to be removed - and allowing a temporary access from the existing lot with a
43 10% driveway to the work site. He noted that access to the site would then have to be installed

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

January 11, 2011

15

1 **JOHN & DENISE NEVILLE, cont.**

2
3 at the high end of the lot and would change the dynamics of the way the lot would tie in with the
4 existing contractor's yard. He noted that he did not have the drainage designed yet. Earl
5 Sandford, PE, noted that he had sent the Board an email that included the pros and cons for each
6 approach. The Chairman acknowledged receipt of that email and commended Earl Sandford,
7 PE, on the presentation of the information therein.

8 Earl Sandford, PE, next stated that he had gone to Strong Brothers gravel pit on Riverdale
9 Road and taken sound readings of the crusher and screener working. He stated that the reading
10 was 77 decibels at 100' away. He noted that at an additional 100' away without direct sight of
11 the equipment the reading dropped to about 60 decibels lending credence to the thought that
12 having the commercial building set down further than the houses in the neighborhood would
13 keep the noise factor down.

14 Earl Sandford, PE, noted that from an engineering standpoint he would prefer to keep the
15 site as low as possible but understood that the Planning Board had to make a determination about
16 the incidental to construction nature of the material removal. He noted that the material was
17 proposed to be removed in order to design a commercial building. He went on to say that a 100'
18 x 100' building was significant commercial real estate and could include 4 x 25' bays, for
19 example, for various uses.

20 The Chairman said that he would like to take a couple of minutes to get to five or six
21 things that everyone could agree on with regard to this proposed site plan. He noted that the first
22 point was that previous activities that may have been done on this lot had no bearing on the
23 application before the Board at this time, other than possibly noise issues, and the pending
24 application had nothing to do with other town regulations or compliance. The Board agreed.

25 The Chairman noted that the next item was that the lot was zoned Commercial. The
26 Board agreed.

27 The next item was that the building and usage proposed were acceptable under the
28 Commercial regulations. The Board agreed.

29 The Chairman next noted that the lack of current tenants or a business plan was not
30 relevant as the Board approved applications all the time without people lined up to use the
31 facility. The Board agreed.

32 The Chairman next asked the abutters and others if he was correct in his interpretation of
33 what they had said that they would prefer the 100' x 100' commercial building in sight of their
34 houses with additional traffic using Whipplewill Road for access versus having the building
35 hidden from view with the trade being the noise of removal of material in the short term. Jed
36 Callen, Esq., stated that was not exactly what his clients felt. The Chairman asked Attorney
37 Callen to clarify the position. Jed Callen, Esq., said that his client's position was that they
38 believed Version 2 or 3 of the plan required an earth excavation permit. The Chairman said he
39 did not want to get into the mechanics of the application. Jed Callen, Esq., stated that was all he
40 was prepared to say and noted that a dozen assumptions would have to be made about what the
41 Planning Board may or may not do during the approval and how the Zoning Board of
42 Adjustment (ZBA) may or may not interpret the Zoning Ordinance and he was not willing to
43 theorize about those things. He pointed out that he had 15 clients involved in this matter and he

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

January 11, 2011

16

1 **NEVILLE, JOHN & DENISE, cont.**

2
3 did not know the absolute bottom line for each of them at this time. He asked that the Board
4 hear their position on how they believed the New Boston ordinances and regulations affected this
5 proposal.

6 The Chairman said that the problem he had with that approach was that meetings kept
7 being scheduled that ended up coming down to legal wrangling regarding legal interpretations of
8 things. He proposed that the abutters' attorney and town counsel try to get to a point of
9 agreement. He further noted that the question came down to two scenarios where the building
10 was either in a hole and not visible or it was up on a higher level. Jed Callen, Esq., agreed that
11 was the issue at a simplistic level. He noted that his clients had instructed him to take the
12 position that they did not believe that the proposal at the higher level would require any
13 excavation or a Special Exception. He further noted that a site plan review application for that
14 proposal would be reviewed by the abutters and their comments on the technicalities made at that
15 time. Jed Callen, Esq., went on to say that any proposal involving removal of materials would
16 need other approvals to go along with the site plan review approval.

17 Peter Hogan thought that a compromise could be reached to mitigate the concerns of the
18 neighbors. He thought that the proposal was clearly intended as construction of the building and
19 in may be better if the building was lower but there was an intent on the applicant's part
20 regarding the longevity of the project and disruption of the neighborhood and so on. He noted
21 that if the Board went with the proposal on the middle ground, and agreed that the purpose was
22 the construction of the building which was allowed in the Commercial district, the fill to be
23 removed and the amount thereof was irrelevant and the Board had been advised of that by
24 Counsel. He noted that the applicant had the risk that the decision would be appealed and the
25 Superior Court would decide.

26 Mark Suennen noted that he had a couple of questions. He stated that he assumed that
27 the applicant was in business to make money. He asked if it could be assumed that the sale of a
28 100' x 100' building at current market rates probably would not gain the applicant a \$500K
29 building. Charles Cleary, Esq., asked to address the \$500K number which had been mentioned
30 on a few occasions and which was a number that John Neville got off the top of his head when
31 asked what it would cost to excavate the whole site if done by a third party. He noted that it was
32 purely hypothetical. Mark Suennen stated that one of the Board's charges would be to determine
33 what was the primary use of the property and what was the secondary use. He noted that part of
34 that discussion could be economics and whether or not the building and site had a higher value
35 than the material removed. Charles Cleary, Esq., stated that the sale or lease of the building over
36 30 or 50 years would far outweigh the amount to be gained by the excavation. Mark Suennen
37 said he would be interested in an economic analysis that showed that because it would help him
38 determine if the excavation was incidental or the primary purpose. Charles Cleary, Esq., noted
39 that it was a factor to be considered and they could submit something as described by Mark
40 Suennen if it would help the Board. He said he would like the Board to look at the integrity and
41 intent of the applicant and what John Neville had said he was going to do; and the fact that he
42 was spending lots of money on this application and the building. Earl Sandford, PE, was
43 concerned that John Neville would be penalized somehow because he had the ability to remove

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

January 11, 2011

17

1 **NEVILLE, JOHN & DENISE, cont.**

2
3 the material more cheaply. Mark Suennen stated that if the results were that the removal and sale
4 of the material was at a greater profit than could be realized by the commercial building he
5 would consider that the primary purpose was the excavation and the subsidiary interest was the
6 building. He noted that if the sale of materials was a side effect of the construction of the
7 building and ultimately the long term health of the lot was indicated by a building being on it in a
8 hole that was different. John Neville stated that he would like the building to be closer to the
9 same level as his existing site because it did not do him any good at all to have a building 1,000'
10 away that he had to access by traveling out on the highway. He said that he had been broken into
11 a couple of times and having the new building would provide him somewhere to store the things
12 he was currently keeping in box trailers on his existing site with access from one lot to another.
13 Earl Sandford, PE, stated that once a viable design was decided upon the amount of removal
14 became irrelevant and putting amounts on things would be speculation. Mark Suennen pointed
15 out that John Neville could find out during excavation that there was unsuitable material on site
16 which would render the excavation less valuable. Peter Hogan stated that his calculations
17 indicated that assuming a rent of \$3K a month over 30 years, the applicant could make over \$1m
18 which was greater than the cost of the excavation. He noted that the applicant's proposal to
19 remove materials in his spare time was not a good idea and he was not in favor of that.

20 Mark Suennen went back to a comment that Earl Sandford, PE, had made and noted that
21 John Neville would not be penalized because he could do the excavation more conveniently or
22 cost effectively himself. He noted that just because it was John Neville's site, and he owned the
23 equipment, the business and the labor was not enough to outweigh the value of the material that
24 would be excavated. Charles Cleary, Esq., thought that this was looking at things post approval,
25 and it was really a question to the Board of the intent of the applicant and whether or not the
26 Board believed that John Neville would build the building. Don Duhaime thought that this
27 situation was similar to someone who was going to subdivide his property and who cleared the
28 trees from his 100 acres in order to utilize the land. He noted in this case the applicant was
29 proposing taking down the ledge and selling it to build the building. In his opinion, the ledge
30 removal was being done in order to create a lot suitable for his needs. Peter Hogan agreed with
31 Don Duhaime, taking the analogy further and noting that if the 100 acre property owner
32 happened to be a logger who could do the work himself at little to no cost the situation was very
33 similar. Don Duhaime stated that the money from the logging would be used to pay for the
34 installation of the road and infrastructure. He thought the Planning Board should deal with the
35 proposal as is. Peter Hogan stated that the proposal was to construct a commercial building.
36 Mark Suennen said he had no further comments. Dwight Lovejoy stated that knowing how
37 much crushed gravel cost he did not foresee John Neville retiring on the proceeds of the removal
38 of material from this lot.

39 The Chairman confirmed that what he thought he heard Jed Callen, Esq., say was that the
40 abutters/neighbors' contention was not that there was an issue taking Version 3 or that there was
41 an issue that the proposal was a viable use for the district and the site, but that the issue was that
42 specific permits or approvals would be required. Jed Callen, Esq., stated that an earth excavation
43 permit under RSA 155-E would be required for the design shown in Version 3. He further stated

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

January 11, 2011

18

1 **NEVILLE, JOHN & DENISE, cont.**

2
3 that if the Board determined that Version 3 did not require an earth excavation permit that
4 decision would be appealable. He noted that the applicant and abutters needed the Board to
5 make that kind of decision. Jed Callen, Esq., noted that the Board's determination would allow
6 the process to move forward with more certainty. The Chairman confirmed that the issue of the
7 earth excavation permit was the issue. Jed Callen, Esq., clarified that it was the only issue he
8 could have because there was no site plan review application to review and comment on.

9 The Chairman noted that Jed Callen, Esq., had submitted a letter for this evening's
10 hearing and asked if anything therein would change based on the most recent letter from Town
11 Counsel. Jed Callen, Esq., stated that there would probably not be any changes but he had not
12 had time to read and digest the letter and could not say for sure. He noted that from his brief
13 review of the letter it appeared that Town Counsel addressed the fact that a Special Exception
14 would not be needed and did not address the earth excavation permit issue which would mean
15 that the operation would need such a permit unless it was exclusively incidental. He noted that
16 there was still a hurdle in that Town Counsel and himself probably agreed that the project needed
17 an earth excavation permit. The Chairman noted that if the Board believed the excavation was
18 exclusively incidental to the building then an earth excavation permit would not be needed.
19 Peter Hogan said that would give the attorney the grounds to appeal and that was the moving on
20 that the Board would have to do.

21 Jed Callen, Esq., asked for a couple of minutes to go over a few things. He noted that
22 Mark Suennen was slightly wrong with his previous comments. Jed Callen, Esq., explained that
23 the questions regarding the cost of the excavation in order to build the building at \$500K or more
24 implied that if the excavation cost more than the building it was the "dog" and if it cost less it
25 was the "tail". He pointed out that the Batchelder case was not saying that the Board's concern
26 should be the predominant use and if the predominant use was commercial it did not need an
27 earth excavation permit. An earth excavation permit would be required unless the excavation
28 was exclusively incidental to the construction of the building. He stated that he was not accusing
29 anyone of proposing this application as a pretext for anything but noted that any potential gravel
30 pit owner could say that when the gravel was done a commercial building would be constructed
31 which could be 10 years later and that would eviscerate the whole statute. He said the test was
32 simple, and the Court said it; the Board should examine the purpose behind the excavation and
33 compare that to the purpose of what would be done with the material - an examination of the
34 relationship between the excavation activity and the primary use for which the removed earth
35 will be used. Secondly, the Board should determine if the excavation is exclusively incidental to
36 and subordinate to the proposed use. Jed Callen, Esq., said that if the Board determined that the
37 amount of earth removed was truly subordinate to the purpose that was one thing. He said that
38 the numbers submitted showed that the Board would not be able to find this proposal exclusively
39 incidental to the building. He suggested that the large quantity of material and the value of it on
40 the small site in question meant it was not exclusively incidental to the construction of the
41 building.

42 Peter Hogan noted that the next step was that the applicant needed to submit a formal
43 application to the Board. Earl Sandford, PE, asked if the Board could get to the point of

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

January 11, 2011

19

1 **NEVILLE, JOHN & DENISE, cont.**

2
3 determining if the excavation proposed was exclusively incidental to the project. Peter Hogan
4 stated that he felt the site as shown in Version 3 at 10' above the grade of the existing site was
5 exclusively incidental. He thought the primary use of the site was the building and the applicant
6 had the right to develop his property. The Chairman asked the other Planning Board members
7 for their opinion on this matter. Dwight Lovejoy said the applicant should move forward as
8 Peter Hogan suggested. Earl Sandford, PE, noted that he would like to have it clear in the
9 minutes that the applicant was leaving with a certain baseline of expectations and some kind of
10 consensus regarding the incidental to construction issue. The Chairman thought that a motion
11 would be the preferable route to take. Mark Suennen said that he had gone over the advice
12 received from Town Counsel and had two primary issues. He went back to the October 25,
13 2010, letter and asked does the proposed excavation meet the definition of removal of earth
14 products under the current Zoning Ordinance? He noted that meant was the removal of earth
15 products for sale in commercial quantities or for use in another location? If so, a Special
16 Exception would be needed but a site plan could be approved subject to the need for the Special
17 Exception. Mark Suennen went on to say that he could not do anything but argue that the
18 material was for sale in commercial quantities, even up to Version 5. He went on to say that
19 Town Counsel's January 3, 2011, letter explained that a Special Exception would be required if
20 the excavation was the principal use but if a permitted use in the Commercial District was the
21 principal use and that use resulted in the removal of earth products as incidental then no Special
22 Exception would be required. Mark Suennen ended by saying that he was not willing to say that
23 the excavation was exclusively incidental to the building even up to Version 5 of the plan. The
24 Chairman noted to the applicant that they clearly would not get a consensus. Earl Sandford, PE,
25 said the two main things were the principal use and the incidental removal of material and if they
26 could be included in the motion it would be great. Peter Hogan thought the Chairman should get
27 Don Duhaime's opinion as well. The Chairman noted that he could not because he was not a
28 member. Peter Hogan said that as alternate Don Duhaime would not be part of the vote but he
29 thought it was the Board's responsibility knowing that he would be member of the Board in the
30 near future to find out what he thought. The Chairman stated that legally he did not agree with
31 Peter Hogan and noted that Don Duhaime was not a member of the Board. He said that currently
32 he had the same standing as everybody else and if and when an application was submitted and he
33 was a member at that point and was seated then he would be able to do something. He stated
34 that if the applicant wanted to know Don Duhaime's opinion, he should ask him out in the hall.

35 Earl Sandford, PE, stated that he was more interested to know at what point Mark
36 Suennen would think the excavation to be incidental to the construction. Mark Suennen stated
37 that he did not think he had that answer. He stated that he knew the material had value and he
38 knew that the applicant had begun to excavate material with some kind of intent that did not
39 include building a building. Dwight Lovejoy pointed out that Mark Suennen was not supposed
40 to go back to discuss that. The Chairman noted that Mark Suennen was back to the intent of the
41 applicant which was something he was not sure the Board should discuss. Charles Cleary, Esq.,
42 stated that the Board should look at the intent of the applicant and if Mark Suennen was of the
43 opinion that John Neville had an intent different than what he is saying he is entitled to that

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

January 11, 2011

20

1 **NEVILLE, JOHN & DENISE, cont.**

2
3 opinion. He said they were looking for the Board's consensus and would deal with the legal
4 issues as they proceeded through the application process. The Chairman said that there was not
5 going to be consensus. He noted that a majority vote would be achievable but not consensus. He
6 noted that it was clear that even just scraping 6" of material off the site would probably not
7 satisfy Mark Suennen as to the incidental factor. Earl Sandford, PE, asked if it was clear that the
8 principal use of the lot was the commercial building.
9

10 Peter Hogan **MOVED** to bring Version 3 forward for a major site plan review. The
11 Chairman asked if Peter Hogan agreed with the following: "and that the construction of
12 the building is the primary or principal use of the site and excavation associated with
13 getting to that point is incidental." Peter Hogan stated that was obvious because the
14 Board was considering an application for design review for development of a lot for a
15 commercial building Dwight Lovejoy seconded the motion and it **PASSED** with Peter
16 Hogan and Dwight Lovejoy voting AYE and Mark Suennen voting NAY.
17

18 In response to a question from Peter Hogan, the Chairman noted that he would agree with
19 the motion as is. Peter Hogan did not think that the motion made any kind of determination;
20 simply advised the applicant to bring Version 3 forward for site plan review. He noted that a
21 poll of the Board would indicate that Peter Hogan, Dwight Lovejoy and the Chairman believed
22 the main use of the property to be commercial and Mark Suennen believed it to be excavation.
23

24 Earl Sandford, PE, asked if this application would be tabled or if a new submittal was
25 required. The Chairman stated that a new application was required with notice to all abutters and
26 so on.

27 Brandy Mitroff asked for clarification of the amounts of material removal for the various
28 versions of the plan. Jed Callen, Esq., provided her with a copy of the letter and chart that
29 included those details.

30 **MISCELLANEOUS BUSINESS AND CORRESPONDENCE FOR THE MEETING OF**
31 **JANUARY 11, 2011**

- 32
- 33 1. The minutes of December 14, 2010, were distributed for approval at the January 25,
34 2011, meeting. (Distributed by email).
35
 - 36 2. Endorsement of a Corrective Lot Line Adjustment Plan for C.V.I. Development, Inc. &
37 Timothy & Suzanne O'Brien, Tax Map/Lot #'s 8/62-7 & 8/62-8, Fraser Drive, by the
38 Planning Board Chairman and Secretary.
39

40 Due to the fact that Peter Hogan, Secretary, had left the meeting, this item was adjourned
41 to the next meeting.
42

- 43 3. Letter dated January 3, 2011, from Stuart Lewin, Planning Board Chairman, to Ed

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

January 11, 2011

21

1 **MISCELLANEOUS BUSINESS, cont.**

2
3 DiPietro, re: Your letter of December 3, 2010, for the Board's information.

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

7
8 4. Letter copy received January 4, 2011, from Burton Reynolds, Town Administrator, to
9 Donald Duhaime, re: Planning Board Appointment, for the Board's information.

10
11 The Chairman acknowledged receipt of the above-referenced matter; no discussion
12 occurred.

13
14 5. Memorandum dated December 21, 2010, from the Board of Selectmen to All Town
15 Departments and the School Board, re: Cul-de-Sacs, for the Board's review and
16 discussion.

17
18 The Chairman noted that this matter had been discussed during the discussion of
19 Planning Board goals earlier in the meeting.

20
21 7. **Reminder** - The Road Committee will be meeting on Thursday, January 13, 2011, at
22 7:00 PM in the Town Hall Conference Room to discuss the waiver request for the road
23 grade at intersection of Twin Bridge Land Management, LLC.

24
25 The Chairman noted that the Road Committee would also be asked the question from this
26 evening's meeting regarding manholes and the cul-de-sac island for the Lorden/Dupuis/S&R
27 Holdings application.

28
29 8. **Read File:** Notice of Public Hearing from the City of Manchester, re: installation of a
30 telecommunication cell tower.

31
32 9. Notice of Decision for Locus Field, LLC, Tax Map/Lot #13/15-6, Kettle Lane, for the
33 Planning Board Chairman's signature.

34
35 The Chairman signed the Notice of Decision cover sheet for recording purposes.

36
37 10. Email from Southern New Hampshire Planning Commission dated January 11, 2011, re:
38 Telecommunication Planning.

39
40 The Chairman noted that the Planning Commission was looking for a town to be a guinea
41 pig for a pilot project to write a chapter for the Master Plan on broadband and telecommunication
42 planning. He asked the Board if they would be interested in offering to be the test community
43 for this program. The Board decided that they would not be interested in being the first

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

January 11, 2011

22

1 **MISCELLANEOUS BUSINESS, cont.**

2

3 community that the Planning Commission worked with on this topic but would be interested in
4 the finished product when it was available.

5

6 6. Memorandum dated January 10, 2011, from Nic Strong, Planning Coordinator, to Stu
7 Lewin, Planning Board Chairman, re: Driveway Issue, Tax Map/Lot #8/9, Briar Hill
8 Road, for the Board's review and discussion.

9

10 The Chairman noted the lateness of the hour and suggested putting this item back on
11 Miscellaneous Business for the next meeting for an intelligent and timely discussion. Dwight
12 Lovejoy noted that he had been in contact with the contractor for the owner of this lot regarding
13 the driveway and would report back to the Board at the next meeting regarding this driveway
14 issue.

15

16 Mark Suennen **MOVED** to adjourn the meeting at 9:35 p.m. Dwight Lovejoy seconded
17 the motion and it **PASSED** unanimously.

18

19 Respectfully Submitted,

20

21 Nic Strong

22 Planning Coordinator

Minutes Approved:
02/08/11 as written