

**TOWN OF NEW BOSTON
NEW BOSTON PLANNING BOARD
Minutes of 2012 Meetings**

June 26, 2012

1

1 The meeting was called to order at 6:30 p.m. by Chairman Stu Lewin. Present were
2 regular member Don Duhaim, Peter Hogan and Mark Suennen, alternate member David
3 Litwinovich and Ex-Officio Christine Quirk. Also present were Planning Coordinator Nic
4 Strong, Planning Board Assistant Shannon Silver and Recording Clerk Valerie Diaz.

5
6 Present in the audience for all or part of the meeting were Dan MacDonald, Fire Chief,
7 Dan Teague, Wayne Blassberg, Eric Scoville, Russ Boland, Fire Inspector, Brandy Mitroff, and
8 Rodney Towne, Selectman.

9
10 **Meeting with Fire Wards to discuss the impact of recent legislative changes to the Town's**
11 **Sprinkler Regulations**

12
13 Present in the audience were Dan MacDonald, Fire Chief, Dan Teague, Wayne
14 Blassberg, Eric Scoville, Russ Boland, Fire Inspector, Brandy Mitroff, and Rodney Towne,
15 Selectman.

16 Dan MacDonald, Fire Chief, stated that he would defer to Dan Teague with regard to the
17 above-referenced discussion.

18 Dan Teague introduced himself to the Board and stated that he and Wayne Blassberg had
19 taken the lead on this. He explained that when it came to problem solving it was necessary to
20 identify the problem and then come up with solutions. He stated that they identified the problem
21 as the impact created by the passage of HB 109 and SB 91. He went on to say that the real
22 problem was if a developer chose not to install sprinklers that they had previously agreed to
23 install in lieu of installing a cistern. He noted that if the matter were brought before a court,
24 Town Counsel was not confident that the Town would prevail. The Chairman asked if the Fire
25 Wards disagreed with Town Counsel's opinion. Dan Teague answered that they disagreed with
26 Town Counsel's opinion. Dan MacDonald, Fire Chief, added that at the end of Town Counsel's
27 letter it had stated that he had probably added more confusion to the matter. He continued that
28 Town Counsel never rendered an opinion. Dan Teague noted that the difference of opinion was
29 also based on information from other folks. The Chairman asked for the "other folks" to be
30 identified. Dan Teague answered that the "other folks" were different legislators, the State Fire
31 Marshall and the City of Nashua Fire Marshall. He explained that he had spoken with legislators
32 that were on the committee that had sat through HB 109. He noted that the intent of HB 109 was
33 to allow existing regulations to remain in effect. He pointed out that he had not spoken with any
34 senators with regard to SB 91. Peter Hogan asked confirmation that Dan Teague believed that
35 the legislature thought that it was okay to allow towns to continue to require sprinklers if the
36 regulations were in place and it was not okay for sprinklers to be enforced in those towns that did
37 not have existing sprinkler regulations. Dan Teague confirmed Peter Hogan's question. Peter
38 Hogan commented that he did not buy it for a second. Dan Teague pointed out that the solutions
39 the Fire Wards had come up with did not pertain to this item and as such no further discussion on
40 it was required.

41 Dan Teague stated that the first proposed solution was to continue to keep doing business
42 as usual and fight the good fight if it was necessary. He continued that the Fire Wards felt that
43 sprinklers were a valuable part of future safety and were consistent with the Town's risk

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1 **SPRINKLER REGULATION DISCUSSION, cont.**

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3 reduction plan. He went on to say that the Fire Wards believed that the Town's regulations were
4 defensible in court and a good attorney would be able to win. He further stated that the
5 evidence was clear to the Fire Wards that the intent of HB 109 was to allow previously adopted
6 regulations and/or ordinances to remain in effect. He pointed out that the ordinance existed in
7 the Building Code that had been voted on by the Town. He stated that the cost of a court battle
8 and the benefit it would provide was debatable. He noted, however, that a developer would have
9 to weigh the cost of installing a sprinkler system versus the cost of a legal battle should he try
10 and pull a fast one.

11 Dan Teague stated that the second proposed solution was to rescind the regulation and
12 require cisterns for all major subdivisions.

13 Dan Teague indicated that the third proposed solution was to have the Planning Board
14 include the following language in their subdivision approvals, "firefighting water supply systems
15 that meet the requirements of the New Boston Subdivision Regulations, V-F, and shall be in
16 place and operational prior to the issuance of any occupancy permits". He explained that this
17 proposed solution provided developers an opportunity to use sprinklers in lieu of cisterns but it
18 would not leave the Town open to litigation. He explained that this requirement had nothing to
19 do with the subdivision approval which would be consistent with HB 109 and SB 91. He
20 commented that this solution seemed to provide a win/win situation for everyone. Peter Hogan
21 questioned how it would be handled if a developer chose to install sprinkler systems in the first
22 three houses of a subdivision but not in the last four houses. Dan Teague answered that the
23 occupancy permits would not be provided for the last four houses as the fire fighting water
24 systems were not in place and operational. Peter Hogan did not believe proposed solution three
25 was enforceable. He went on to give an example of a hypothetical situation in which a
26 subdivision was sold to a different developer and that developer did not wish to move forward
27 with sprinklers but instead wanted to install a cistern. Dan Teague stated that the proposed
28 solutions had been brought to the Planning Board because the Fire Wards were not aware of all
29 the ins and outs. Peter Hogan pointed out that this had been an issue with regard to requiring fire
30 cisterns. He explained that the Town could not require a cistern at the fifth lot because the
31 danger was associated with all the houses, not just the fifth. He stated that Bill Drescher, Esq.,
32 had given this opinion to the Town a while ago. Dan Teague asked how that problem was
33 solved. Peter Hogan answered that the Board cannot require fire cisterns to be installed at the
34 fifth lot. Dan Teague asked how the Board was currently enforcing cisterns on other
35 developments. Peter Hogan answered that it was not based on the fifth lot. The Coordinator
36 explained that the cistern regulation was still in place and everything was still calculated based
37 on the 1978 tax maps up to the fifth lot. Peter Hogan disagreed with the Coordinator and stated
38 that the Town had received legal counsel on that issue. The Coordinator pointed out that the
39 legal counsel was relative to taking fees for future cisterns, which was not allowed. Peter Hogan
40 noted that the legal counsel also dealt with the enforceability of making the fifth guy in have to
41 pay. Dan Teague agreed that the fifth guy in should not have to pay for the entire cistern. He
42 asked if cisterns were required for any subdivision capable of supporting five lots. Peter Hogan
43 answered that if cisterns were required for any lots that were beyond the required travel distance.

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1 **SPRINKLER REGULATIONS DISCUSSION, cont.**

2
3 Christine Quirk clarified that currently sprinklers or cisterns were required. Peter Hogan pointed
4 out that the opinion of Town Counsel was that the Town could no longer require sprinklers and
5 could only require cisterns. Dan Teague commented that there were going to be a lot of angry
6 developers when they are required to install a cistern for one house that could, hypothetically, be
7 located 2,200' from an existing cistern.

8 Eric Scoville asked if the Board did not like the option of adding sprinkler systems. Peter
9 Hogan answered that sprinkler systems were an unenforceable option. He commented that he
10 was pro-sprinklers and did not have a problem enforcing them.

11 Dan Teague asked if it was the opinion of the Board that there was no way to create legal
12 language to make proposed solution three enforceable. The Chairman asked that proposed
13 solution three be read again; Dan Teague reread the solution. Christine Quirk pointed out that
14 proposed solution three would give developers the choice of either installing sprinklers or
15 cisterns. Dan Teague suggested that the Building Code, Section 5.3, be referenced in proposed
16 solution three as it pertained to sprinklers. Peter Hogan stated that just because someone did not
17 call an elephant, an elephant, it was still an elephant. Dan Teague agreed but did not believe the
18 Town would face any litigation with proposed solution three.

19 Russ Boland, Fire Inspector, stated that it was his understanding that if a town had an
20 ordinance in place it could stay in place; however, if a town did not have the ordinance then they
21 could not put it in place. He went on to say that he found it to be discriminatory. Peter Hogan
22 asked if the law stated that the ordinance could not be enforced. Dan Teague answered that the
23 word "enforced" had been removed from HB 109 and SB 91. He referred to an article from the
24 NHLGC and read the following, "...the Senate deleted the same words for the same reasons, to
25 allow municipalities with set regulations to continue to enforce them".

26 Peter Hogan asked for the Fire Wards' thoughts on the Board allowing someone to
27 voluntarily install sprinklers. Dan Teague stated that they could not allow for someone to
28 voluntarily install sprinklers and noted that it had to meet the regulations.

29 Peter Hogan gave an example of a hypothetical situation in which a developer
30 volunteered to install sprinklers in his ten lot subdivision. He continued that the first three
31 houses were built with sprinklers and then the builder sold the remaining lots to a developer who
32 was not willing to install sprinklers or a fire cistern. He questioned whether or not the Town
33 would have been better off requiring the installation of the fire cistern and not allowing the
34 developer to volunteer to install sprinklers. Dan MacDonald, Fire Chief, stated that the
35 precedent had already been set. Christine Quirk added that if someone purchased a lot they
36 would need to look back at what the Planning Board had required and when they did they would
37 see that sprinklers were required. She continued that if the sprinklers were not installed then the
38 owner would not receive occupancy permits. Dan Teague stated that the Planning Board would
39 be requiring an operational fire fighting system. The Chairman asked what the choices were for
40 fire fighting systems. Mark Suennen stated that according to the Subdivision Regulations a
41 cistern or sprinkler system were the only options. He pointed out that the Building Code, Section
42 5.2, could also be referenced as it says the same thing. Mark Suennen read the following from
43 the Building Code, Section 5.2, "The purpose of this ordinance is to provide an alternative for a

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1 **SPRINKLER REGULATIONS DISCUSSION, cont.**

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3 builder or owner wishing to install a sprinkler system in lieu of a required fire fighting water
4 supply”. He went on to say that it was his understanding that generically a fire fighting water
5 supply was not defined but the purpose of Section 5.2, was to allow the use of sprinklers in lieu
6 of some other system. He noted that the only other fire fighting system that the Town allowed
7 was a fire cistern. Dan Teague agreed that the only two fire fighting systems the Town allowed
8 were sprinklers and cisterns. Mark Suennen pointed out that according to the legislation the
9 Town was no longer allowed to require sprinklers. He stated that by generically stating “shall
10 provide an operational fire fighting water supply system prior to obtaining a certificate of
11 occupancy” in proposed solution three, they were saying you have to install a cistern but we will
12 allow you to install sprinklers. Dan Teague answered yes and noted that it was just one of the
13 options that the Fire Wards had created. He noted that the option would need to be reviewed by
14 Town Counsel to determine if they could be allowed.

15 Peter Hogan believed that proposed solution three could work if a builder built all the
16 houses but only if all the Cos were contingent upon installation. He commented that the law
17 needed to be fixed so that sprinkler systems could continue to be required. He further added that
18 the Fire Wards did not need to sell him on the benefits of sprinkler systems.

19 Dan Teague indicated that proposed solution one and proposed solution three were the
20 favored options. He stated that proposed solution two was to rescind the regulations and just get
21 cisterns, although, from what Peter Hogan had said, it seemed as if the Town could not get
22 cisterns either. Peter Hogan agreed and added that it certain circumstances it could be pretty
23 difficult to get them cisterns. He clarified that all major subdivisions would be required to install
24 cisterns.

25 Dan Teague began a discussion on lightweight building construction. Peter Hogan asked
26 for the definition of a lightweight building. The Planning Board Assistant explained that
27 lightweight building construction referred to trusses. Russ Boland further explained that
28 lightweight construction was done using manufactured wood, i.e., wood chips glued together.
29 Mark Suennen asked for the reference 13D to be explained. Dan Teague answered that 13D was
30 the residential sprinkler requirements in the NFPA rules. His point was that the use of sprinklers
31 under 13D made the use of lightweight construction permissible and without the option of
32 requiring sprinklers he thought the use of this type of construction should be banned. He
33 indicated that he wanted to research the issue further and come back to the Board with his
34 findings and look into adopting stricter building codes. Christine Quirk asked if Dan Teague
35 would be looking to adopt stricter codes for all construction or only lightweight. Dan Teague
36 answered that it would just affect lightweight construction. Eric Scoville explained that there
37 were provisions that allowed towns to adopt stricter guidelines than the State. The Chairman
38 asked if they were looking to prohibit lightweight construction. Dan Teague answered that they
39 were looking to prohibit lightweight construction. Dan MacDonald, Fire Chief, pointed out that
40 sprinklers had complimented lightweight construction. Dan Teague added that if a fire spread
41 from a compartment into a structure the structure would fail within five minutes and noted that
42 not only would the structure be a complete loss but there was also the risk for loss of life; usually
43 firemen. Peter Hogan asked if this would be a Planning Board matter. The Coordinator

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1 **SPRINKLER REGULATIONS DISCUSSION, cont.**

2
3 explained that it would need to come before the Planning Board for a public hearing in order to
4 be presented to the Town to be changed in the Building Code. She explained that Dan Teague
5 needed to coordinate with the Building and Fire Inspectors so that something could be presented
6 to the Planning Board and placed on the Town ballot. Peter Hogan suggested the following
7 language, “lightweight building will be prohibited”. He added that if the Town could not enforce
8 the installation of sprinklers there was no reason to have lightweight buildings installed. Peter
9 Hogan indicated that he would support a regulation that prohibited lightweight construction.

10 Dan MacDonald, Fire Chief, referenced the earlier conversation regarding HB 109 and
11 SB 91, and stated that a lot of preparatory work had been completed by the NB Fire Department
12 for the Fire Marshall’s office. He noted that he completed a lot of research which included
13 speaking with the Scottsdale, Arizona, Fire Inspector who had had sprinklers since the early
14 1980’s and never lost a life with sprinklers. He added that he spoke with the Fire Inspector from
15 Prince George Maryland and noted that they had never lost a life in a structure with sprinklers.
16 Peter Hogan stated that it sounded as though the Fire Department was trying to convince the
17 Planning Board of the advantages of sprinklers. Dan MacDonald, Fire Chief, stated that he was
18 trying to show how good New Boston was with regard to fire fighting water supply. He
19 continued that Channel 9 News could have chosen any town in New Hampshire to do a story
20 about sprinklers and water supplies and they chose New Boston. He explained that New Boston
21 had led the State and the country in rural water supply relative to cisterns and sprinklers. Peter
22 Hogan stated that the Fire Department continued to try and sell the sprinklers to the Planning
23 Board and there was no need to sell them. Dan MacDonald, Fire Chief, disagreed and stated that
24 he was trying to show how good all the Town Departments were. Peter Hogan stated that it was
25 not necessary and that he did not have a problem with the sprinklers. He continued that he had
26 problem with what the legislature had done.

27 The Chairman reiterated that the Fire Wards disagreed with Town Counsel’s analysis
28 regarding the enforcement of sprinklers and that they believed it was the intent of the legislature
29 to leave towns with existing regulations. He restated the three proposed solutions. He asked if
30 the preferred solutions were solution one or solution three. Dan Teague stated that any of the
31 solutions would work and further stated that cisterns were fine. He added that they would love to
32 have sprinklers. Peter Hogan noted that sprinklers contributed to saving lives. Christine Quirk
33 agreed with Peter Hogan. Dan Teague added that sprinklers also saved on time and manpower.
34 He stated that a residential fire suppression system worked 97% of the time in extinguishing
35 fires. Mark Suennen added that there was a caveat that the homeowner maintained the system.
36 He pointed out that the Fire Inspector had informed the Board that maintenance of the sprinkler
37 systems had been a problem. Russ Boland indicated that Mark Suennen was correct but pointed
38 out that maintenance of sprinkler systems was not a problem unique to New Boston.

39 The Chairman stated that proposed solution two was how Town Counsel suggested the
40 Town act moving forward. Dan Teague agreed.

41 Mark Suennen stated that the point of this evening’s discussion was to do what was best
42 for the Town. Dan Teague agreed. Mark Suennen stated that the discussion involved lives and
43 money and who would pay and be responsible for certain things. He continued that Peter Hogan

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1 **SPRINKLER REGULATIONS DISCUSSION, cont.**

2
3 was correct with regard to developer's short term interest. He commented that the Fire
4 Department was interested in the long term and wanted to make sure that the structures existed in
5 100 years. He stated that the installation of a cistern was the developer's capital cost and the
6 Town's maintenance cost. He questioned the amount of the costs as well as the benefits of those
7 costs. Dan MacDonald, Fire Chief, noted that the Fire Department budgeted about \$200.00 per
8 year for 32 cisterns. He added that currently they had grants that covered the daytime crews that,
9 among many other duties, maintained the cisterns, for example, weed whacking and checking
10 water levels. He noted that if the cisterns were used for a fire there would be a cost to refill
11 them. Mark Suennen asked for the cost to refill the cisterns. Dan MacDonald, Fire Chief,
12 answered that the filling of the cisterns was hired out and cost about \$2,000.00. Peter Hogan
13 asked if the cost to refill a cistern could be billed to the homeowner. Dan MacDonald, Fire
14 Chief, answered that they had never tried to bill the cost to refill a cistern but noted they could
15 look into it. Mark Suennen wanted point out the potential cost for requiring all subdivisions to
16 have cisterns. Peter Hogan believed that the Fire Department's preferred method of fire
17 suppression was sprinklers because they allowed for a volunteer fire department which may not
18 have the quickest response time compared to a full-time department, to go into a house without
19 risking their lives to the extent that they would in a house without sprinklers. Dan MacDonald,
20 Fire Chief, agreed and noted that sprinklers were proactive. He added that with regard to the
21 Inkberry Road fire it had taken twelve minutes for fire fighters to arrive at the scene and fourteen
22 minutes for the roof to cave in. Dan Teague pointed out that the Inkberry Road home was
23 constructed of lightweight materials.

24 The Chairman asked who would approve and fund the cost if the Town decided to move
25 forward with proposed solution one and a developer challenged the Town requiring sprinklers.
26 Dan MacDonald, Fire Chief, indicated that the Board of Selectmen would be tasked with the
27 decision. Christine Quirk believed that there was one line item in the budget for legal fees and it
28 covered the entire Town. Rodney Towne added that it would be a Town expense.

29 Dan Teague asked if the Planning Board could require the installation of cisterns. Mark
30 Suennen answered yes. Don Duhaime, asked if the Planning Board could require cisterns and
31 the Building Inspector could require sprinklers, could the Planning Board create a paragraph that
32 tied the two ideas together. The Coordinator clarified that the Building Code offered an option
33 that was in lieu of what was described in the Subdivision Regulations. Peter Hogan noted that
34 the issue was enforcing the sprinkler requirement if a developer decided after the fact that he/she
35 did not want to do it. Don Duhaime asked if the Code Enforcement Officer could enforce what
36 was on the plan. Dan MacDonald, Fire Chief, stated that proposed solution three required an
37 approved water supply. Dan Teague commented that more bullet proof language would need to
38 be created than what was currently proposed.

39 Rodney Towne asked if his understanding was correct that there were no requirements
40 for sprinkler systems. The Chairman answered that they was an option but noted that when a
41 plan was approved there was a specific selection made. Rodney Towne stated that if the
42 Planning Board made required sprinklers then it was a requirement and if the developer chose to
43 install the sprinkler systems it was not a requirement. Mark Suennen stated that the type of

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1 **SPRINKLER REGULATIONS DISCUSSION, cont.**

2
3 system to be used must be chosen by the applicant and agreed to by the Planning Board,
4 following recommendation by the Fire Wards. Rodney Towne indicated that he saw issues with
5 regard to concessions to a developer, i.e., approval of a cul-de-sac in lieu of density. Peter
6 Hogan believed that it was no longer an option once it had been chosen. Rodney Towne stated
7 that the Planning Board no longer would have the ability to give applicants concessions based
8 upon that option. Peter Hogan agreed with Rodney Towne but stated that once the choice was
9 made it was on record and therefore, the choice was made. Rodney Towne disagreed.

10 The Chairman recapped the discussion and noted that the summary would be to ask Bill
11 Drescher, Esq., to explore option #3 in the Fire Wards' letter and then plan to get back together
12 when Town Counsel's response had been received. He noted that he was not able to calculate the
13 financial ramifications of option #1 and the Board of Selectmen should comment on that if the
14 Board decided to continue with operations as usual. Dan Teague agreed that any option other
15 than #2 would need the Board of Selectmen to be aware of the discussion because of the
16 potential for litigation. He stated that the last thing he would want to do was cost the Town
17 hundreds of thousands of dollars for sprinklers and as such he would much rather have cisterns.
18 He added that cisterns could be maintained for a few hundred dollars at a time.

19 The Chairman thanked the Fire Wards for attending the meeting. Dan MacDonald, Fire
20 Chief, thanked the Board for a great meeting.

21
22 **DANE, JAMES H. & WIIMA M.**

23 Submission of Application/Public Hearing/Minor Subdivision/2 Lots

24 Location: 184 Francestown Road (NH Route 136) & Pine Echo Road

25 Tax Map/Lot #5/6

26 Residential-Agricultural "R-A" District

27
28 Present in the audience were Sam Dane, Rick Kohler, CWS, Ken Bevacqua and Rodney
29 Towne, Selectman.

30 The Chairman read the public hearing notice. He noted that the application form and
31 cover sheet had been completed and signed and that some waivers had been submitted. He
32 stated that the application was submitted and processed as a minor subdivision. However, due to
33 the further subdivision potential of Lot #5/6-2, it was, in fact, a major subdivision. He indicated
34 that the Board needed to discuss this matter further.

35 Rick Kohler, CWS, stated that he was present as a friend of the Dane family. He noted
36 that he was at a bit of a disadvantage as this had been a collaborative effort. He explained that
37 Ben Dane who worked for Todd Land Use Consultants was a member of the Dane family did the
38 surveying, Earl Sandford, LLS, put the plan together, and finally, Rick Kohler, CWS, did the
39 wetland mapping and test pits.

40 Rick Kohler, CWS, referred to the plan and noted that it was Tax Map/Lot #5/6 and the
41 total lot area was 14.25 acres. He noted that it was located on Route 136, just west of Tucker
42 Mill Road. He pointed to the location of the existing residence where the applicants resided. He
43 added that there was frontage along Pine Echo Road and pointed to the location of an existing

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1 **DANE, JAMES & WILMA, cont.**

2
3 sap house and barn.

4 Rick Kohler, CWS, indicated that the applicants were preparing their estate and proposed
5 to subdivide a 2.00 acre portion of their property that surrounded their existing home, well, septic
6 system and improvements. He stated that the remainder of the lot would remain in its current
7 state, i.e., thickly wooded with the exception of the areas around the sap house and barn. He
8 noted that there were no immediate or imminent plans for further development or subdivision of
9 the remainder of the property which was why there were so many waivers that had been
10 submitted.

11 Rick Kohler, CWS, informed the Board that he had delineated the wetlands on the two
12 acre portion of land and completed a test pit in the area north of the EDA in order to prove a
13 septic reserve area. He stated that the well radius was within the lot and topography was
14 surveyed on the ground. He noted that soils had been identified throughout the entire property
15 and he pointed to their location on the plan.

16 The Chairman explained that because a lot was being created it was necessary to prove
17 that it was a buildable lot. He noted that two recent subdivisions had to go through the same
18 process. Rick Kohler, CWS, stated that it was his experience while working on the
19 Stevens/Luedke subdivision that the Board only required that the wetlands and septic reserve
20 area be shown. The Chairman explained that detailed mapping only usually had to be done in
21 the area where the house would be situated. Rick Kohler, CWS, asked what items needed to be
22 shown. The Coordinator answered 1.5 acres upland, 0.5 acre suitable building envelope, well
23 radius, septic reserve and driveway. She added that mapping the edge of the wetland and
24 showing 1.5 acres of dry land met the requirement. Rick Kohler, CWS, asked if the Board
25 preferred the previously listed requirements to be done with the 200' building square. The
26 Coordinator clarified that the 200' building square was a frontage requirement and did not have
27 to be the building site. Mark Suennen noted that the buildable area needed to be accessible to the
28 roadway.

29 The Chairman advised that there were no driveway permits for the existing driveways for
30 the sap house and barn; he asked if an application could be filled out in order to record the
31 driveways. Rick Kohler, CWS, indicated that it was more than likely that the area selected for
32 the driveway for the new lot would be the current access to the barn and as such a permit would
33 be filed.

34 The Chairman noted that the waivers submitted for the State and Town Driveway Permits
35 were no longer necessary as the permits were going to be obtained.

36 The Chairman addressed the waiver for the three copies of the Certified Erosion and
37 Sediment Control Plan. The Coordinator pointed out that because the applicant was going to be
38 showing the 0.5 acre suitable building envelope the waiver was no longer necessary.

39 The Chairman addressed the waiver for the three paper print copies of soils map. The
40 Coordinator stated that because the applicant would be providing 1.5 acres of contiguous upland
41 the waiver was no longer necessary.

42 The Chairman noted that the remaining waivers were for the Environmental, Fiscal and
43 Traffic Impact Studies. He asked the Coordinator if the application needed to be adjourned to

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1 **DANE, JAMES & WILMA, cont.**

2
3 the next meeting as the Board could not accept it as complete with the outstanding waivers. The
4 Coordinator stated that if the Board was comfortable with those things coming in later they could
5 accept the application as complete pending those things being submitted. Christine Quirk stated
6 that she had no objections to accepting the application as complete contingent on the required
7 items being submitted. Mark Suennen suggested that the Board table the matter in the event that
8 the applicant does not wish to proceed with a new plan in which case the Board would be
9 required to deny the application.

10 Rick Kohler, CWS, asked for the Board's thoughts on whether or not they would require
11 the Environmental, Fiscal and Traffic Impact Studies. The Chairman stated that Board could
12 offer the applicant an informal, non-binding consensus. He asked the Board members for their
13 opinions. Mark Suennen stated that unless there was a hidden wetland issue he would not vote to
14 require the studies. It was the consensus of the Board that they would grant the waiver requests
15 for the Environmental, Fiscal and Traffic Impact Studies.

16 The Chairman and David Litwinovich expressed an interest in attending a site walk; it
17 was scheduled for Thursday, July 12, 2012, at 6:00 p.m.

18 The Chairman asked for comments and/or questions from abutters in the audience. Ken
19 Bevacqua of 20 Pine Echo asked if there were any immediate plans for development. Rick
20 Kohler, CWS, noted that there were no future plans for any development or further subdivision.
21 Mark Suennen added that the proposed subdivision was for the purposes of estate planning.

22 The Chairman asked for further comments and/or questions; there were no further
23 comments and/or questions.

24
25 Mark Suennen **MOVED** to adjourn James H. & Wilma M. Dane, Submission of
26 Application/Public Hearing/Minor Subdivision/2 Lots, Location: 184 Frankestown Road
27 (NH Route 136) & Pine Echo Road, Tax Map/Lot #5/6, Residential-Agricultural "R-A"
28 District, to July 24, 2012, at 7:30 p.m. Peter Hogan seconded the motion and it **PASSED**
29 unanimously.

30
31 **MISCELLANEOUS BUSINESS AND CORRESPONDENCE FOR THE MEETING OF**
32 **JUNE 26, 2012.**

- 33
34
35 1. Approval of the May 22, 2012, minutes, distributed by email.

36
37 David Litwinovich **MOVED** to approve the minutes of May 22, 2012, as written.
38 Christine Quirk seconded the motion and it **PASSED**.

39 AYE – David Litwinovich, Christine Quirk, Peter Hogan and Don Duhaime.
40 ABSTAINED – Mark Suennen.

- 41
42 3. Distribution of the June 12, 2012, minutes for approval at the June 24, 2012, meeting.

43

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1 **MISCELLANEOUS BUSINESS, cont.**

2
3 The Chairman acknowledged receipt of the above-referenced matter; no discussion
4 occurred.

5
6 The Board took a five minute recess prior to the start of the next hearing

7
8 **LAMBERT PROPERTY MANAGEMENT, LLC**
9 **JOINT HEARING WITH THE ZONING BOARD OF ADJUSTMENT**
10 **Special Exception and Non-Residential Site Plan Review**

11 *Proposal: to allow vehicular sales and service in the Small Scale Planned Commercial*
12 *“COM” District and to amend the existing Non-Residential Site Plan as such.*

13 Location: 42 Hemlock Drive & NH Route 114 a/k/a North Mast Road

14 Tax Map/Lot #3/52-26

15 Small Scale Planned Commercial “COM” District

16
17 Present in the audience were the ZBA Board Members: David Craig, Chairman, Bud
18 Piper, Bob Todd, Phil Consolini and Laura Todd; and the applicants' representative, Michael
19 Dahlberg, LLS. The Chairman read the public hearing notice. He explained that the ZBA would
20 conduct their meeting first and the Planning Board would follow.

21 The Planning Board members suspended their meeting and sat in the audience while the
22 ZBA conducted their meeting. (See separate ZBA minutes.)

23
24 Following the ZBA's approval of the Special Exception application they adjourned their
25 meeting and the Planning Board Chairman resumed the public hearing. He stated that the
26 application form had been completed and signed on June 8, 2012, and there were no application
27 fees. He indicated that a site plan to construct a commercial building for equipment storage and
28 repair involving the previously approved landscape/material supply business was approved on
29 September 9, 2009, and a site plan for a landscaping/material supply business was approved on
30 January 10, 2006. He noted that everything required for a completed application had been
31 submitted.

32
33 Peter Hogan **MOVED** to accept the application for Lambert Property Management, LLC,
34 Location: 42 Hemlock Drive & NH Route 114 a/k/a North Mast Road, Tax Map/Lot
35 #3/52-26, Small Scale Planned Commercial “COM” District, as complete. Mark
36 Suennen seconded the motion and it **PASSED** unanimously.

37
38 The Chairman stated that the application had been determined to be complete and the
39 deadline for Board action was August 30, 2012.

40 The Chairman asked if there were any changes to the hours of operation or lighting.
41 Michael Dahlberg, LLS, answered no. The Chairman advised that any changes to signage
42 needed to be done through the Code Enforcement Officer.

43 The Chairman asked for confirmation that the existing building would not be used for

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1 **LAMBERT PROPERTY MANAGEMENT, LLC, cont.**

2
3 vehicular sales. Michael Dahlberg, LLS, confirmed that the existing building would not be used
4 for vehicular sales.

5 The Chairman asked for a description of where the cars would be displayed. Michael
6 Dahlberg, LLS, explained that the applicant was proposing to display cars on a lower, grassy
7 area as well as on the crest of the hill. The Chairman asked if there would be display spaces.
8 Michael Dahlberg, LLS, answered yes. The Chairman asked how the spaces would be marked.
9 Michael Dahlberg, LLS, indicated that the spaces would be marked with landscape timbers.

10 The Chairman asked for confirmation that the drainage easement area shown on the map
11 was going to be used as the display area. Michael Dahlberg, LLS, confirmed that the easement
12 was not being used for drainage. He went on to explain the drainage pattern that existed on the
13 other side of Hemlock Drive and pointed to the location on the plan.

14 Peter Hogan questioned the need for the applicant to delineate parking for the display of
15 the vehicles for sale. The Planning Board Assistant explained that area had been calculated for
16 the use. Peter Hogan stated that he did not care if the parking area was delineated or not. He
17 reasoned that no one but the owner of property would be parking the cars. The Planning Board
18 Assistant questioned how the limitation of ten parking spaces would be tracked if they were not
19 delineated. The Chairman added that the ZBA had requested that the cars be neatly parked and
20 not parked haphazardly around the lot. Michael Dahlberg, LLS, commented that the cars would
21 need to be parked neatly and the lot maintained in order to sell the vehicles. The Chairman
22 stated that the parking may not need to be delineated but somewhere on the plan the parking
23 needed to be shown and that would be where the vehicles would park. Peter Hogan noted that
24 the parking display areas were shown on the plan. He pointed out that the point of the parking
25 delineation was so that persons unfamiliar with a site would know where to park their vehicles.
26 He continued that the owner would be parking all ten vehicles on this lot. Michael Dahlberg,
27 LLS, added that customer parking was delineated.

28 The Chairman asked for further opinions on this matter. Mark Suennen stated that the
29 only time this issue would come up was if there was a complaint. He asked if the display area
30 included rental equipment as well as vehicles for a total of ten display spaces. Michael
31 Dahlberg, LLS, answered no and clarified that the display area was for both types of vehicle and
32 ten cars could be displayed at any one time. He pointed to the locations where the rental
33 equipment was stored. The Chairman stated that the applicant was allowed to display a total of
34 five vehicles and/or rental equipment in the lower display area and the applicant was allowed to
35 display vehicles in the upper display area that did not exceed the maximum of ten vehicles being
36 displayed at one time, for example, four vehicles in the lower display area and six vehicles in the
37 upper display area. Michael Dahlberg, LLS, agreed to the Chairman's statement.

38 The Coordinator pointed out that the original site plan did not include an approved
39 display area in the drainage easement area. She explained that when the as-built site plan had
40 been submitted for the display area a note was placed on the plan informally and without
41 discussion from the Planning Board. She asked that the area in question be formalized as an
42 approved display area and not a drainage easement area. Michael Dahlberg, LLS, agreed to add
43 a note about the display area.

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1 **LAMBERT PROPERTY MANAGEMENT, LLC, cont.**

2
3 Mark Suennen **MOVED** to approve the Amended Major Non-Residential Site Plan
4 Application for Lambert Property Management, LLC, to allow vehicular sales and
5 limited service from the existing landscaping/material supply business/building on Tax
6 Map/Lot #3/52-26, 42 Hemlock Drive & N.H. Route 114 a/k/a North Mast Road,
7 recognizing that they got a Special Exception from the Zoning Board of Adjustment
8 earlier in this meeting, subject to:
9

10 **CONDITIONS PRECEDENT:**

- 11 1. Submission of a minimum of four (4) revised site plans that include all of the
12 checklist corrections and any corrections as noted at this hearing;
13 2. Execution of an amended Site Review Agreement.

14 The deadline for complying with the conditions precedent shall be **July 26, 2012**,
15 the confirmation of which shall be an administrative act, not requiring further action by
16 the Board. Should compliance not be confirmed by the deadline date, and a written
17 request for extension is not submitted prior to that date, the applicant is hereby put on
18 notice that the Planning Board may convene a hearing pursuant to RSA 676:4-a to revoke
19 the approval.

20 Don Duhaime seconded the motion and it **PASSED** unanimously.
21

22 **MISCELLANEOUS BUSINESS AND CORRESPONDENCE FOR THE MEETING OF**
23 **JUNE 26, 2012, Cont.**

- 24
25 2a. Confidential & Privileged letter dated June 21, 2012, from William R. Drescher,
26 Drescher & Dokmo, P.A., to Nic Strong, Planning Coordinator, re: Vesting
27 Determination (s) – Existing Approved Subdivisions for the Board’s review and
28 discussion.
29

30 The Chairman asked for the Board’s position on releasing the above-referenced letter to
31 the public. Peter Hogan commented that it looked fine to him to release.
32

33 Peter Hogan **MOVED** release the Confidential & Privileged letter dated June 21, 2012,
34 from William R. Drescher, Drescher & Dokmo, P.A., to Nic Strong, Planning
35 Coordinator, re: Vesting Determination (s) – Existing Approved Subdivisions. Mark
36 Suennen seconded the motion and it **PASSED** unanimously.
37

38 Mark Suennen asked if anyone had expressed an interest in reading the above-referenced
39 letter. The Coordinator answered no.

40 The Coordinator explained that Town Counsel’s letter directed the Board to not do
41 anything because trying to track all of the outstanding subdivisions, bearing in mind that some
42 have deadlines that have not come up yet because changes to the Town’s regulations in the
43 intervening years were unknown. She continued that the Planning Board could end up getting

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1 **MISCELLANEOUS BUSINESS, cont.**

2
3 into more trouble by trying to be helpful than it was worth. She stated that other towns put the
4 applicant on notice through due diligence and having conditions as part of the subdivision
5 approval. She continued that if conditions were set by the Planning Board that described active
6 and substantial and substantial completion of improvements the applicant was then aware of
7 what needed to be completed within the two deadlines. She advised that if those two things were
8 not specified then the applicant automatically received the active and substantial length of time
9 to start and then they may or may not be vested at the end of the time period. She indicated that
10 an applicant's vesting status would be determined at the time he/she applies for a building permit
11 from the Building Inspector. She explained that the Building Inspector would have kept track of
12 deadlines for completion and would require that a plan be submitted to him with the building
13 permit that would meet current requirements. She stated that an applicant would either submit
14 the permit application and plan that met current requirements or would claim to be vested and the
15 investigation would begin.

16 The Coordinator stated that the Planning Office could remind applicants of their active
17 and substantial deadlines for those approvals that had conditions specified.

18 The Chairman stated that he would like the Planning Department to continue tracking the
19 matter in order to bring a memo to the Board's attention when subdivisions were at their
20 deadlines and so that the same could be forwarded to the Building Inspector.

21 The Coordinator explained that if an applicant were denied a building permit because
22 they did not meet the current regulations, there were remedies for that through the appeal process
23 or through a variance. Christine Quirk asked if the subdivision lot was still considered a lot. The
24 Coordinator answered yes. Mark Suennen asked if there was still the possibility that a lot that
25 was approved eight years prior may not be considered a buildable lot under new regulations.
26 The Coordinator answered yes. Mark Suennen commented that it would be on the lot owner to
27 pursue how to make it a buildable lot. The Coordinator answered yes. Mark Suennen stated that
28 Dana Moody was an exception to this as he had come in and said that he had his building permit
29 and he was vested. The Coordinator clarified that Dana Moody had not applied for a building
30 permit and did not intend to apply for a building permit. She explained that Dana Moody
31 believed that the person who purchased a lot from him would need to apply for a building permit.
32 Mark Suennen stated that the Board would now, if approached by an applicant regarding their
33 vesting status the Board would not determine it; he questioned if Town Counsel was okay with
34 that process. The Coordinator answered yes and noted that each matter had to be handled on a
35 case-by-case basis.

36 Christine Quirk asked if a lot could be considered vested if an applicant showed
37 improvements that had been completed. The Coordinator answered no and went on to say that
38 Town Counsel had advised that the Town should not get into a situation where they were trying
39 to put a condition on the plan that was not there at the time of approval. Mark Suennen asked if
40 the Building Inspector could make the determination on whether something was substantially
41 completed. The Coordinator answered no and explained that the Building Inspector would
42 require a building permit with plans that met current regulations. She continued that if the
43 applicant believed that they were vested the Building Inspector would review the subdivision

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1 **MISCELLANEOUS BUSINESS, cont.**

2

3 plan. She went on to say that if the lot was vacant and it was clear that the applicant had not
4 done anything the Building Inspector would require that the lot meet current regulations. She
5 added that if the applicant disagreed with the Building Inspector or was denied a building permit
6 then a variance could be requested to [make the condition right] or the denial could be appealed
7 to the ZBA.

8 The Coordinator noted that the subdivisions between 2005 and 2009 did not have
9 conditions. Mark Suennen asked if the Building Inspector had any leeway in deciding that an
10 applicant had completed substantial work and could be considered vested. The Coordinator
11 answered no. Christine Quirk commented that even if you put a driveway in you would be out of
12 luck.

13

14 2b. Letter dated June 21, 2012, from Stuart Lewin, Planning Board Chairman, to Dana
15 Moody, re: Clark Hill Road, Tax Map/Lot #8/122-1 & 2, for the Board's information.

16

17 The Chairman indicated that the above-referenced letter was sent in response to Dana
18 Moody's original letter to the Board.

19

20 The Chairman noted that the next meeting would take place on July 24, 2012.

21

22 Peter Hogan **MOVED** to adjourn the meeting at 8:56 p.m. Mark Suennen seconded the
23 motion and it **PASSED** unanimously.

24

25

26 Respectfully Submitted,
27 Valerie Diaz, Recording Clerk

Minutes Approved:
07/24/2012