

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

September 11, 2012

1

1 The meeting was called to order at 6:34 p.m. by Chairman Stu Lewin. Present were
2 regular member Mark Suennen and Ex-Officio Rodney Towne. Also present were Planning
3 Coordinator Nic Strong, Planning Board Assistant Shannon Silver and Recording Clerk Valerie
4 Diaz.

5 Present in the audience for all or part of the meeting were Eric Scoville, Fire Ward,
6 Brandy Mitroff, Dan MacDonald, Fire Chief, Jay Marden, Mike Dahlberg, LLS, Ed Hunter,
7 Building Inspector/Code Enforcement Officer, Vinnie Iacozzi, Heidi Palmer and Kathy Etlinger.

8
9 **Discussion with Board of Fire Wards, re: Sprinklers and Cisterns**

10
11 Present in the audience were Eric Scoville, Fire Ward, Brandy Mitroff, Dan MacDonald,
12 Fire Chief, Jay Marden, and Mike Dahlberg, LLS.

13 The Chairman stated that the discussion would be a continuation of the last meeting's
14 discussion with the Fire Wards. He noted that the previous discussion was conducted as a closed
15 session with Town Counsel. He added that as the session was closed the Board needed to
16 decide whether or not to release the meeting minutes to the public. Mark Suennen
17 recommended that the Board review the minutes prior to making a decision. The Board agreed
18 with Mark Suennen's recommendation and agreed to make a decision on this matter at the
19 following meeting.

20 The Chairman pointed out that Dan MacDonald, Fire Chief, had been unable to attend the
21 last discussion. He explained that the general points from the discussion were:

- 22 • Any applications that were approved prior to the law change were okay as they wer pre-
23 existing.
- 24 • Leave the Building Code as it existed, which allowed for sprinkler systems as an
25 approved method to obtain the CO. He noted that the Building Code standards with
26 regard to sprinklers were under the control of the Fire Wards and Fire Inspector.
- 27 • Leave the existing Subdivision Regulations as they existed as they allowed for a cistern
28 or sprinkler system as approved methods for meeting requirements. He noted that
29 because of the change in the law the Planning Board could not accept or suggest the use
30 of sprinkler systems. He continued that any application that failed to include cisterns as a
31 way of satisfying requirements would be denied. He explained that applicants needed to
32 propose and plan cisterns in accordance with the specifications and regulations and build
33 or bond/escrow appropriately. The Chairman went on to say that if a development was
34 completed with a fire fighting water supply method that was not a cistern, once the
35 Building Inspector issued a CO, the bond for the cistern would be returned. If, partway
36 through the development the developer or his successors did not provide an acceptable
37 fire fighting water supply system, the Town could use the bond to install a cistern.

38 The Chairman asked if the points made were okay with the Fire Chief. Dan MacDonald,
39 Fire Chief, answered yes and stated that the points were discussed the previous evening with the
40 Fire Wards and it was acceptable to everyone. He asked if Town Counsel was going to do more
41 work on qualifying the bond issue. Rodney Towne answered no and stated that Town Counsel
42 was happy with it. The Coordinator added that it would be done on a case-by-case basis and as
43 applications were submitted they would be sent for legal review. Dan MacDonald, Fire Chief,

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1 **DISCUSSION RE: SPRINKLERS AND CISTERNS, cont.**

2
3 stated that the Fire Wards were completely in synch with the suggested solution.

4 The Chairman asked if Russ Boland, Fire Inspector, worked independently of the New
5 Boston Fire Department. Dan MacDonald, Fire Chief, answered that the Fire Inspector worked
6 for the New Boston Fire Department. The Chairman asked if the Fire Inspector was okay with
7 the previously discussed points. Dan MacDonald, Fire Chief, indicated that the Fire Inspector
8 was okay with the points.

9 Brandy Mitroff asked if the sprinkler systems were being left in the Subdivision
10 Regulations and the Building Code. The Chairman answered yes. Brandy Mitroff asked if
11 developers would be required to make arrangements for cisterns, i.e., identify location, bond and
12 etc. The Chairman answered yes. Brandy Mitroff noted that in the past cisterns had to be
13 installed and operational prior to the issuance of COs. The Chairman confirmed Brandy
14 Mitroff's statement. Brandy Mitroff asked if going forward developers could choose sprinkler
15 systems instead of cisterns and receive COs based on the Building Code. The Chairman noted
16 that the change was due to State law. Brandy Mitroff asked if a developer would be required to
17 install a cistern if the previous developer sold a subdivision prior to the completion of the
18 installation of sprinklers and the next developer did not want to install the sprinklers. The
19 Chairman noted that the cistern needed to be installed and the Town would be able to use the
20 bond that was in place. Brandy Mitroff stated that this change to the law would not be
21 eliminating sprinklers. The Chairman disagreed with Brandy Mitroff's statement and stated that
22 the law eliminated sprinklers as a way of satisfying the subdivision requirements and approval of
23 a plan. Brandy Mitroff agreed with the Chairman and stated that in reality sprinklers would
24 remain in play and COs could be issued without the installation of cisterns. The Chairman stated
25 that COs could be obtained as long as an applicant satisfied the requirements in the Building
26 Code. The Coordinator noted that ultimately a cistern needed to be the fire suppression system
27 option, however, it was fine if a negotiation was made and agreed upon. The Planning Board
28 Assistant further noted that any negotiations would be subject to review by legal counsel. The
29 Coordinator agreed with the Planning Board Assistant and added that any negotiation would
30 require a subdivision agreement, a note on the plan and deed restrictions. Mark Suennen read the
31 following from the Building Code, Section, NB-5.2, "The purpose of this ordinance is to provide
32 an alternative for a builder or owner wishing to install a sprinkler system in lieu of a firefighting
33 water supply". He went on to say that "firefighting water supply" was another way to describe a
34 cistern and a cistern was what was approved in a subdivision. He noted that the Building Code
35 allowed sprinkler systems as an alternative to a cistern.

36 Dan MacDonald, Fire Chief, stated that the Planning Board and Fire Department had
37 worked together in a "groundbreaking, cooperative effort" with regard to the sprinkler system
38 issue. He added that the group worked together to find the best solution for the Town of New
39 Boston. Brandy Mitroff commented that she was thrilled with the tone of the previous
40 discussions on this matter.

41 Eric Scoville, Fire Ward, asked if this matter required a vote. The Chairman answered no
42 and explained that a vote was not necessary because the Regulations were not changing. Mark
43 Suennen added that the Planning Board had been advised by Town Counsel and the Fire Wards

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1 **DISCUSSION RE: SPRINKLERS AND CISTERNS, cont.**

2
3 on how to address firefighting water supplies on future developments. Eric Scoville, Fire Ward,
4 stated that the reason he was inquiring about a vote was because in the past the Fire Wards
5 believed the Planning Board would act on a matter in one way and they had then done something
6 different. Mark Suennen stated that the records in the minutes contained sufficient detail for the
7 Planning Board on this matter. The Chairman agreed that there was a clear history in the
8 minutes.

9 Mark Suennen stated that the Planning Board appreciated the cooperation from the Fire
10 Wards to address this matter and work it out.

11
12 **MISCELLANEOUS BUSINESS AND CORRESPONDENCE FOR THE MEETING OF**
13 **SEPTEMBER 11, 2012.**

- 14
15 1. Approval of the July 24, 2012, minutes, distributed by email.

16
17 The Chairman stated that there were no minutes to approve as they were awaiting the
18 closed session minutes. The July 24th minutes had been approved at the previous meeting.

- 19
20 2. Endorsement of a Notice of Decision Cover Sheet for Alexander S. & Amy L. Rohe, The
21 Patrick & Michelle Conley Revocable Trust and Gerhard R. & Tanya L. Fox, Lot Line
22 Adjustment Plan, Tax Map/Lot #'s 6/32-19, 32-20 & 32-21, Wilson Hill Road, by the
23 Planning Board Chairman.

24
25 The Chairman stated that he would execute the above-referenced document at the close
26 of the meeting.

- 27
28 3. Endorsement of a Notice of Decision Cover Sheet for Townes Family Trust & Marilyn J.
29 Taylor, Lot Line Adjustment Plan, Tax Map/Lot #'s 13/61 & 13/64, by the Planning
30 Board Chairman.

31
32 The Chairman stated that he would execute the above-referenced document at the close
33 of the meeting.

- 34
35 4. Endorsement of a Notice of Decision Cover Sheet for James H. & Wilma M. Dane, Tax
36 Map/Lot #5/6, 2 Lots, N.H. Route 136 a/k/a Francestown Road and Pine Echo Road, by
37 the Planning Board Chairman.

38
39 The Chairman stated that he would execute the above-referenced document at the close
40 of the meeting.

- 41
42 5. Letter dated August 29, 2012, from Ray Shea, Sandford Surveying & Engineering, Inc.,
43 to the New Boston Planning Board, re: Hillman, Conditional Use Permit, request for

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1 **MISCELLANEOUS BUSINESS, cont.**

2
3 extension of the conditions precedent deadline from October 1, 2012, to October 1, 2013,
4 and the subsequent deadline of October 1, 2013, to October 1, 2014, for the Board's
5 action.

6
7 Mark Suennen **MOVED** to extend the conditions precedent deadline to October 1, 2013,
8 and conditions subsequent deadline to October 1, 2014, as requested by Ray Shea's letter
9 of 8/29/12, for the John and Ann Hillman Revocable Trust, Tax Map/Lot #2/28-2, Weare
10 Road. Rodney Towne seconded the motion and it **PASSED** unanimously.

- 11
12 10. Discussion, re: review of the Planning Board's review of the Piscataquog River
13 Management Plan update from Southern New Hampshire Planning Commission,
14 (SNHPC).

15
16 The Chairman explained that the SNHPC had requested that the Town adopt the
17 Piscataquog River Management Plan update as part of the Master Plan. He stated that he had
18 read the document and he could not locate anything that required the Planning Board to take any
19 particular action - it is an advisory document.

20 Mark Suennen commented that the document was an innocuous update to the Master
21 Plan. He stated that there were several indications that the Conservation Commission will
22 propose, encourage or push for. He noted that ultimately the recommendations would need
23 approval from the Planning Board to make any regulations.

24 The Chairman spoke on Peter Hogan's behalf in his absence and stated that the document
25 could suggest to do something that otherwise they would have not thought to do.

26 Mark Suennen stated that the Board could adopt the document to the Master Plan with
27 the caveat that the Board was not adopting any new or revised regulations or guidelines and each
28 development would continue to be evaluated on a case-by-case basis.

29 Rodney Towne agreed that the document was innocuous and questioned if the Chairman
30 believed the Board needed to adopt it. The Chairman thought that the Board should adopt the
31 Plan in order to update the existing Plan. Rodney Towne pointed out that there were not any
32 significant differences within the update. The Chairman pointed out that this document did not
33 seem to have the issues and complaints that similar products from outside sources had
34 engendered in the past and he thought it important to update the existing Piscataquog River
35 Management Plan.

36 The Coordinator advised that a public hearing needed to be noticed prior to the adoption
37 of the Plan. The Chairman requested that the hearing be noticed.

- 38
39 12a. Email from David Preece, SNHPC, to Nic Strong, Planning Coordinator, re: Broadband,
40 for the Board's information.

41
42 The Chairman acknowledged receipt of the above-referenced matter; no discussion
43 occurred.

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1 **MISCELLANEOUS BUSINESS, cont.**

2
3 12b. Announcement of Broadband Public Forum to be held September 27, 2012, 7:00 to 8:00
4 PM, at the SNHPC, for the Board's information.

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

8
9 12c. Document entitled "Key Issues and Barriers to Implementing Broadband Infrastructure
10 within the Southern New Hampshire Region", prepared by the Broadband Stakeholders
11 Group, SNHPC, June 28, 2012, for the Board's information.

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

15
16 13. Read File: Notice of Public Hearing from the Town of Goffstown, re: proposal to co-
17 locate (4) antennas on an existing cell tower.

18
19 The Chairman acknowledged receipt of the above-referenced matter; no discussion
20 occurred.

21
22 14. Endorsement of a Lot Line Adjustment Plan for Townes Family Trust and Marilyn J.
23 Taylor, Tax Map/Lot #'s 13/61 & 13/64, by the Planning Board Chairman & Secretary.

24
25 The Chairman stated that he would execute the above-referenced document at the close
26 of the meeting.

27
28 15. Site Walk for Shellenberger, Warehouse, Byam Road.

29
30 The Coordinator reminded the Board of a scheduled site walk for Wednesday, September
31 12, 2012, at 6:00 p.m. at the Shellenberger property on Byam Road.

32
33 11a. Memorandum with attachments to Nic Strong, Planning Coordinator and Stuart Lewin,
34 Planning Board Chairman, from Shannon Silver, Planning Board Assistant, re: Planning
35 Board Fee Project, for the Board's review and discussion.

36
37 11b. Memorandum dated September 5, 2012, from Nic Strong, Planning Coordinator, to Stu
38 Lewin, Chairman, & Planning Board Members, re: Planning Board Fee Project, for the
39 Board's review and discussion.

40
41 The Chairman addressed items 11a and 11b together as they were related.

42 The Chairman thanked the Planning Board Assistant for all of her research and efforts
43 with regard to the above-referenced matter.

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1 **MISCELLANEOUS BUSINESS, cont.**

2
3 The Chairman stated that it had been decided during last year's budget meeting with the
4 Finance Committee that the Planning Department's fee schedule be reviewed. He explained that
5 the review would be conducted with an eye toward seeing if there was anything that could be
6 done to receive additional money and if the correct fees were in place. He stated that the
7 Planning Board Assistant had completed research of surrounding town's fee schedules. He noted
8 that the current fees had been in place since 1995 and records could not be located prior to 1995.
9 He stated that it had been determined that the current fee amounts should not change, however,
10 additional review fees should be added to the schedule.

11 The Chairman asked the Coordinator if the Board would vote to add additional fees. The
12 Coordinator answered yes and noted that the change would affect the Rules of Procedure.

13 The Chairman asked for comments and/or questions from the Board. Mark Suennen
14 asked if the Finance Committee wanted to know if the fees did or should cover Planning
15 Department salaries; he did not believe they should. Brandy Mitroff stated that the Finance
16 Committee did not ask the question regarding salaries. She continued that the Finance
17 Committee was interested in knowing if the Planning Department was covering as much as it
18 could with the fees.

19 The Planning Board Assistant stated that there were no towns that covered staff salaries
20 through fees. She continued that New Boston's fees were on par with surrounding town's fees.
21 Mark Suennen noted that it was interesting that the fees were on par and they had not been
22 changed since 1995. The Planning Board Assistant pointed out that a bulk of the towns
23 outsourced review of plans, whereas the Coordinator did New Boston's plan reviews with the
24 exception of road and drainage plans.

25 Brandy Mitroff asked that the Planning Board Assistant provide the tables that had been
26 created as a result of the research for the Finance Committee.

27 The Planning Board Assistant noted that the applicant covered the cost for postage,
28 paper, notices, etc. Mark Suennen stated that administrative costs appeared to be standard across
29 the board.

30 The Coordinator stated that the items proposed to be added to the fee schedule were those
31 that were time consuming within the Planning Department as well as on the Planning Board
32 Agenda. She noted that it was odd that there were no fees associated with compliance hearings.
33 She continued that, for example, the Board conducted compliance hearings for subdivisions that
34 were approved five years prior that required the Planning Department to search and retrieve all
35 the necessary information for the Planning Board to review. She noted that the work that went
36 into gathering the information was significant and as a result it had been suggested that a flat fee
37 be required at a rate of \$50.00 per application for minor subdivisions and \$100.00 per application
38 in addition to the required certified letter fee.

39 The Coordinator stated that currently no fees were charged for extension requests and
40 other towns were charging fees for such requests. She did not believe that it was unreasonable to
41 charge a fee for extensions and stated that it may make applicants think a little bit before making
42 the request. She noted that a significant amount of work went into gathering information relative
43 to the requests.

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1 **MISCELLANEOUS BUSINESS, cont.**

2
3 The Coordinator noted that there had also been a suggestion for charging a fee for
4 modifications of approval to subdivisions. She cited the Forest View II Subdivision and
5 explained that the applicant would have been required to pay \$50.00 for the modifications
6 because a lot of work went into the hearing that he needed.

7 The Coordinator stated that the secretarial fee that was submitted with each application
8 covered paper, envelope costs and the time it took to process applications, however, it never
9 reflected the time for plan reviews. She continued that a suggestion had been made to charge
10 \$50.00 for minor subdivision plan review and \$100.00 for major subdivision plan review as it
11 could become complex. Mark Suennen stated that because of the complexity he did not believe
12 that a per-application fee was appropriate. He suggested that the Planning Department should bill
13 the plan review at an hourly rate. The Chairman questioned whether or not the
14 Board/Department should be determining an hourly rate. Mark Suennen believed that the
15 Planning Department should be able to come up with an amount to charge per hour to review
16 plans. He continued that the amount charged should be lower than if it was outsourced to a
17 private company. He added that the fee would represent the level of effort required to do the
18 review. The Coordinator pointed out that a problem with Mark Suennen's suggestion was that
19 fees were submitted up front. Mark Suennen clarified that an estimate would be given to the
20 applicant for the plan review. He explained that if the estimate was too high then the money
21 could be refunded. Brandy Mitroff stated that Mark Suennen's suggestion may create a lot of
22 arguments from developers. Mark Suennen stated that a solution to the arguments from
23 developers would be to send the plan to Northpoint Engineering for review. The Chairman
24 asked for Northpoint Engineering's hourly rate. Mark Suennen answered \$75.00. Rodney
25 Towne pointed out that it was difficult to provide an estimate before viewing the plans. Mark
26 Suennen stated that an applicant was not sure how much Northpoint Engineering would charge
27 until the road work was determined. The Coordinator noted that with regard to roads, a
28 developer had an option of providing a flat escrow fee that could be adjusted in amount as the
29 project progressed. The Coordinator stated that she did not want to get involved with having to
30 refund money to applicants because once the money was placed in the revenue lines it was very
31 difficult to recover. She continued that it was easier to charge a flat fee. The Planning Board
32 Assistant added that by requiring a flat fee everyone would know what to expect. Mark Suennen
33 stated that there had to be a way to scale the fees so that they would relate to the level of effort
34 being made.

35 The Chairman suggested that the Coordinator give some more thought to Mark
36 Suennen's suggestion regarding fees for plan review and the matter could be discussed at the
37 next meeting.

38 Mark Suennen stated that he was further suggesting that an hourly fee or a scaled fee be
39 applied to the plan review fees for subdivisions and non-residential site plans. He believed that
40 CUPs were straightforward and required a flat fee.

41 Mark Suennen stated that because of the current economic climate it was difficult to
42 justify a fee of \$50.00 per extension request. He suggested that a graduated scale be used, i.e.,
43 first request/\$15.00, second request/\$30.00 and continue to double with each request. The

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1 **MISCELLANEOUS BUSINESS, cont.**

2
3 Planning Board Assistant pointed out that historically the Board would not grant more than three
4 extension requests. The Chairman suggested that a fee of \$25.00 be charged for the first request
5 and \$50.00 be charged for each subsequent request. Mark Suennen agreed with the Chairman's
6 suggestion.

7 Mark Suennen referred to the proposed compliance hearing fees and questioned if there
8 was a way to relate between time of approval and compliance, noting that if the compliance was
9 coming six months after an approval it was fresher in everyone's minds than if it was a six year
10 old approval.

11 Mark Suennen commented that it was fantastic to try and recover as much cost from the
12 developer that reflected the level of effort made by the staff.

13
14 The Board took a two minute recess prior to the start of the next hearing.

15
16 **NEW ERA CF TRUST**

17 Submission of Application/Public Hearing/Major Subdivision/2 Lots

18 Location: Gregg Mill Road & Beard Roads

19 Tax Map/Lot #6/12

20 Residential-Agricultural "R-A" District

21
22 Present in the audience were Brandy Mitroff, Jay Marden, Mike Dahlberg, LLS, Ed
23 Hunter, Building Inspector/Code Enforcement Officer, Vinnie Iacozzi, Heidi Palmer and Kathy
24 Etlinger.

25 The Chairman read the public hearing notice. He indicated that the application form and
26 cover sheet had been completed and signed on August 27, 2012. He noted that a few waiver
27 requests needed to be addressed and that there were no outstanding fees. He stated that the tax
28 map scale copy of final plat was missing under items required for a completed application. Mike
29 Dahlberg, LLS, stated that he did not submit the tax map scale copy of the final plat until the
30 final lot configuration was approved. The Chairman advised that a waiver request for the tax
31 map scale copy of the final plat would be required; Mike Dahlberg, LLS, submitted a waive
32 request.

33 The Chairman stated that the plans had been reviewed and there were some outstanding
34 issues. He asked if the applicant had received and reviewed the outstanding issues. Mike
35 Dahlberg, LLS, indicated that all of the outstanding issues had been addressed.

36 Mike Dahlberg, LLS, stated that he represented Jay Marden and the New ERA C.F.
37 Trust. He referred to Tax Map/Lot #6/12 and stated that a conservation easement had been
38 granted to the Town of New Boston in March 2012 for the majority of frontage on Gregg Mill
39 Road and Beard Road. He noted that the conservation easement encompassed 9.46 acres.

40 Mike Dahlberg, LLS, advised that the home farm across the street was currently in the
41 process of going under agreement to be sold. He explained that one of the points of the sale was
42 that the 9.46 acres of Map 6/12 would go with the sale of the home farm, Map 3/9. He noted that
43 the easterly half of the lot, 11.4 acres, was not encumbered by the conservation easement and the

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1 **NEW ERA CF TRUST, cont.**

2
3 applicant wanted to retain that as a separate lot. He stated that topography and field work had
4 been completed to demonstrate to the Board that there was a suitable building envelope.

5 The Chairman asked if Tax Map/Lot #6/12 would remain under the conservation
6 easement. Mike Dahlberg, LLS, answered yes and added that it would permanently be non-
7 buildable. The Chairman asked if an easement could be undone. Mike Dahlberg, LLS,
8 answered no. He explained that the Town of New Boston was the primary holder of the
9 easement and the federal government had a secondary interest in the easement. He continued
10 that if the parties, New ERA C.F. Trust and the Town of New Boston, attempted to do anything
11 that would violate the easement the federal government could step in and enforce the easement.
12 He reiterated that the westerly half of Tax Map/Lot #6/12 was permanently non-buildable.

13 Mike Dahlberg, LLS, stated that there were two lots, one that was non-buildable and the
14 other that was 11.4 acres with a suitable building envelope of 2.98 acres and exceeded the
15 minimum requirements.

16 Mike Dahlberg, LLS, stated that because the applicant would be coming back to the
17 Board for a two lot subdivision of the 11.4 acre piece, waivers for test pits, 4K area and proposed
18 wells had been submitted. He noted that a driveway application had been submitted. The
19 Chairman asked if the driveway met the sight distance requirements. Mike Dahlberg, LLS,
20 answered yes. He noted that some brush may need to be trimmed and he would address the issue
21 with the Road Agent. He stated that a cistern on Riverdale Road was 1,800' away from the lot
22 line and as such the installation of a cistern was not required. He stated that there was a note on
23 the plan for the Stormwater Management Plan. He indicated that State Subdivision Approval
24 was not required because the lot was over 5 acres and because Subsurface would get involved
25 later because of the Shoreland Protection Area.

26 The Chairman asked for confirmation that it was the applicant's intention to subdivide
27 the buildable lot into two lots at a later time. Mike Dahlberg, LLS, answered yes.

28 The Chairman asked for questions and/or comments from the Board. Mark Suennen
29 stated that in the past the Board had required a 4K area to define it as a lot and asked if the Board
30 had done so for lots larger than 10 acres. The Coordinator answered that it had been required for
31 lots larger than 10 acres. Mike Dahlberg, LLS, stated that the soil was "Group 1" which meant
32 that it was all sand and gravel. He went on to say that the slope on the front portion was highly
33 buildable.

34 The Chairman stated that it helped the Board if waiver requests included explanations for
35 the request as the Board was required to justify their reasons for granting waivers. Mike
36 Dahlberg, LLS, asked if he could go through each waiver request verbally and follow-up with a
37 letter of explanation. The Chairman answered yes.

38 Mike Dahlberg, LLS, stated that there were no wetlands on the buildable area. He stated
39 that because no construction was planned for the future two lot subdivision it was necessary to
40 submit an Erosion Control Plan. He continued that there was no need for a HISS map because
41 the lot exceeded the minimum requirements. He indicated it was not necessary to submit the 4K
42 area and test pits at this time because the applicant intended on coming back with detailed
43 information for an application of a two lot subdivision. He noted that the one lot in question

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1 **NEW ERA CF TRUST, cont.**

2
3 presented no impacts that would necessitate the submission of Fiscal, Traffic and Environmental
4 Impact Studies. He noted that a front boundary marker was a drill hole which had been set at the
5 time of the easement survey and the bound was already placed. He noted that a watershed
6 outline drainage was not needed as there was no new construction being proposed. Mark
7 Suennen also pointed out that the entire area was located within the Piscataquog River
8 Watershed. Mike Dahlberg, LLS, indicated that the tax map scale copy of final plat would be
9 submitted following plan approval.

10 Rodney Towne believed that the waiver request for the test pits was inappropriate based
11 on how the Board historically required them. He added that the test pits had been required for
12 larger lots with good soil and when the applicant had no intention on building. Mark Suennen
13 agreed with Rodney Towne.

14
15 Mark Suennen **MOVED** to accept the Stormwater Management and Erosion Control
16 Plan waiver request for New Era C.F. Trust, Location: Gregg Mill & Beard Roads,
17 Tax Map/Lot #6/12, Residential-Agricultural "R-A" District, with the understanding that
18 any further subdivision would require a Stormwater Management and Erosion Control
19 Plan in accordance with DES Regulations. Rodney Towne seconded the motion and it
20 **PASSED** unanimously.

21
22 Mark Suennen **MOVED** to accept the Tax Map Scale Copy of the Final Plat waiver
23 request for New Era C.F. Trust, Location: Gregg Mill & Beard Roads, Tax Map/Lot
24 #6/12, Residential-Agricultural "R-A" District, however, it would be a requirement
25 of final approval. Rodney Towne seconded the motion and it **PASSED** unanimously.

26
27 Mark Suennen **MOVED** to accept the application of New Era C.F. Trust, Location:
28 Gregg Mill & Beard Roads, Tax Map/Lot #6/12, Residential-Agricultural "R-A" District,
29 as complete, with the understanding that the items that had been identified in the waiver
30 approvals would be acted on at some future time. Rodney Towne seconded the motion
31 and it **PASSED** unanimously.

32
33 The Chairman indicated that the deadline for Board action was November 15, 2012. A
34 site walk was scheduled for Wednesday, September 19, 2012, at 5:00 p.m.

35 The Chairman asked for comments from the Board regarding the waiver of the soils map.
36 Mark Suennen commented that the plan had adequate information for soils.

37 The Chairman asked for comments from the Board relative to the well waiver request.
38 Mark Suennen was confident that water could be found on the property as it was 10 acres in size
39 and located adjacent to a river.

40 Mike Dahlberg, LLS, withdrew his waiver request for the test pits and indicated that he
41 would complete the requirements.

42 The Chairman stated that the Board would vote on the remaining waivers following the
43 site walk.

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1 **NEW ERA CF TRUST, cont.**

2
3 Mark Suennen **MOVED** to adjourn the application of New Era C.F. Trust, Location:
4 Gregg Mill & Beard Roads, Tax Map/Lot #6/12, Residential-Agricultural "R-A"
5 District, to September 25, 2012, at 8:15 p.m. Rodney Towne seconded the motion
6 and it **PASSED** unanimously.
7

8 6a. Letter dated August 29, 2012, from Shannon Silver, Planning Board Assistant to Vincent
9 Iacozzi, Thibeault Corporation, re: Conditions Precedent Deadline, Gravel Pit, Tax
10 Map/Lot #6/14, Parker Road, for the Board's information.
11

12 6b. Email received August 30, 2012, from Vincent Iacozzi, to Shannon Silver, re: above
13 letter and request to attend next meeting, for the Board's information.
14

15 6c. Continued discussion, re: Conditions Precedent deadline of August 1, 2012, for Gravel
16 Pit located on Tax Map/Lot #6/14, Parker Road, Thibeault Corporation. (AOT Permit
17 outstanding) Vincent Iacozzi to be present.
18

19 6d. Continued discussion, re: Outstanding Gravel Permit Applications for Gravel Pits located
20 on Tax Map/Lot #3/57, Parker Road and Tax Map/Lot #6/45, River Road, owned by
21 Thibeault Corporation. (see copies of Notice of Intent To Excavate and Report of
22 Excavated Materials from 2011, 2012 & 2013) Vincent Iacozzi to be present.
23

24 Present in the audience were Vinnie Iacozzi, Heidi Palmer, Kathy Etlinger, Ed Hunter,
25 Building Inspector/Code Enforcement Officer and Brandy Mitroff.

26 The Chairman addressed 6a, 6b, 6c and 6d together as they were related. He stated that
27 the Town of New Boston had redone their ordinances and procedures regarding supervision of
28 gravel pits and the Planning Board was now responsible for the process. He indicated that a
29 Town wide process for annual permitting had been undertaken in 2011 and early 2012. He noted
30 that Thibeault had submitted an application for a gravel pit permit for Tax Map/Lot #6/14 on
31 December 22, 2011. He continued that a public hearing had been held on the matter on January
32 10, 2012, and the application was approved with conditions precedent. He pointed out that there
33 had been no mention of grandfathered status or an application submitted for the same at this
34 time. He stated that the applicant had agreed to the conditions precedent deadline of June 1,
35 2012. He indicated that there had been numerous emails between the applicant and Planning
36 Department with regard to an extension request and there had been no mention of the
37 grandfathered status. He went on to say that a written request had been submitted by the
38 applicant on May 16, 2012, to extend the conditions precedent by 60 days and had subsequently
39 been approved by the Planning Board on May 22, 2012. He added that the new deadline for
40 Board action was August 1, 2012, and that the Board had stated that they were disinclined to
41 grant further extension requests. He stated that the conditions precedent had not been met by the
42 August 1, 2012, deadline and an extension request had not been submitted. He explained that on
43 August 24, 2012, the Planning Board agreed to advise the applicant that the conditions precedent

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12

1 **MISCELLANEOUS BUSINESS, cont.**

2
3 deadline had passed and the application had become null and void. He continued that the
4 Planning Department had received an email from the applicant on August 30, 2012, that claimed
5 the applicant was eligible for grandfathered status and requested to meet with the Board at the
6 next meeting.

7 The Chairman asked the applicant if the aforementioned history of the application was
8 correct. Vinnie Iacozzi agreed with the Chairman's history of the application.

9 The Chairman stated that he questioned the validity of the applicant's claim of
10 grandfathered status as it had not been previously raised. He continued that if in fact that
11 applicant believed they were grandfathered, there was a procedure in place for him to follow.
12 Vinnie Iacozzi stated that the reason the extensions had been requested was because there were
13 delays in receiving information from Aggregate Industries. He explained that Aggregate
14 Industries had owned the property in question prior to the applicant and the individual that had
15 held the permits had been out of the country until recently. He indicated that he had spoken with
16 the individual from Aggregate Industries regarding the status of the property prior to 2006 as
17 well as the estate of Cronin's, the owner prior to Aggregate Industries. He added that Fish and
18 Game had been inspecting the property since 1974 as endangered species had been identified on
19 the property. He stated that they had a package to provide to the Town of the history of the
20 property.

21 Vinnie Iacozzi indicated that the AOT Permit for the north pit had been transferred to the
22 applicant at the time the property been taken over in 2007. He noted that the name change had
23 been done in February of 2011 and the AOT Permit was still active. He stated that the reason
24 Aggregate Industries had not applied for an AOT Permit for the south pit was because it had
25 grandfathered status. He explained that it had taken him almost a year to gather all the
26 information and pointed out that all the pertinent records from DES had been destroyed in a fire
27 that occurred in 1980. He noted that he was able to recover two inspection records from Fish
28 and Game that dated back to 1974.

29 The Chairman referenced Section 6, Appendix I, of the Earth Removal Regulations, and
30 advised that it contained the process for applying for grandfathered status. The Planning Board
31 Assistant stated that she would email the the referenced section to the applicant in the morning.

32 The Chairman asked if currently anything was being done in the pit. Vinnie Iacozzi
33 answered that very little was being done in the pit. He stated that everyone agreed that some sort
34 of conservation easement should be in place with regard to the property adjacent to the river. He
35 continued that Fish and Game had given the applicant two or three names of agencies that were
36 interested in taking the property rights to the area in question. He explained that the applicant
37 was willing to grant an easement but not property rights. He asked if the Planning Board or
38 Conservation Commission had a mechanism that allowed them to hold a conservation easement.
39 Rodney Towne answered that the Conservation Commission could hold the easement. The
40 Chairman noted that the Planning Board could not hold a conservation easement.

41 The Chairman stated that theoretically the applicant had a gravel pit without an approval.
42 Vinnie Iacozzi pointed out that he had been paying the gravel tax and State permit fees right
43 along. The Chairman clarified that from the Town's point of view the application that had been

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13

1 **MISCELLANEOUS BUSINESS, cont.**

2
3 submitted had expired. Vinnie Iacozzi agreed with the Chairman. The Chairman pointed out
4 that an application for grandfathered status had not been submitted. Mark Suennen stated that
5 the applicant was not permitted to legally dig as they did not have an AOT Permit. Vinnie
6 Iacozzi clarified that he was not required to have an AOT Permit because DES had determined
7 that he had a grandfathered status.

8 The Chairman asked the Coordinator when the application for grandfathered status
9 needed to be submitted in order to be discussed at the next meeting. The Coordinator answered
10 that the application would have needed to be submitted already to be heard at the next meeting.
11 She advised that the application needed to be submitted by September 24, 2012, to be discussed
12 at the October 9, 2012.

13 The Chairman asked the Coordinator if the applicant was allowed to remove material
14 from their gravel pit. The Coordinator answered no. She explained that the Town of New
15 Boston had a set of Earth Removal Regulations that included information on obtaining a
16 grandfathered status. She noted that the only gravel pit in Town to be granted grandfathered
17 status was the Granite State pit.

18 The Chairman advised that applicant that removal of material from the pit was not
19 permitted. He added that an application for grandfathered status needed to be submitted to the
20 Board for a determination. Vinnie Iacozzi indicated that he understood the Chairman's
21 statement, however, he pointed out that all required information, with the exception of the AOT
22 Permit, had been submitted. He noted that it had been determined that the AOT Permit was not
23 required. The Chairman stated that the applicant had not met deadlines and had been notified
24 numerous times about the deadlines and as a result the application was no longer valid. He
25 reiterated that the applicant did not have the required approval to remove material from the pit.

26 The Chairman referenced 6d, of the Miscellaneous Business, and asked the Coordinator
27 to give an explanation of the matter. The Coordinator stated that Thibeault Corporation owned
28 two additional gravel pits, one located on Parker Road and one located on River Road. She
29 explained that the required Earth Removal Permits had not been submitted for the two
30 aforementioned gravel pits. She noted that there had been enough material trickling out of the
31 pits that they may not be able to be deemed abandoned.

32 The Chairman informed the applicant that they had been removing material from the pits
33 without the required Earth Removal Permits and explained that either an Earth Removal Permit
34 Application or a grandfathered status application needed to be submitted. Vinnie Iacozzi pointed
35 out that the material removed for Tax Map/Lot #3/57 was under the minimum amount that
36 required an excavation permit. He went on to say that the amount of material removed was
37 enough to keep the AOT Permit and Gravel Tax Certificate active. He informed the Board that
38 the gravel pit located at Tax Map/Lot #6/45 was inactive and currently the Town was in
39 negotiations with the applicant for purchase of the property.

40 The Chairman indicated that the Coordinator was looking into the amount of material
41 being removed from Tax Map/Lot #3/57. He asked the applicant for an explanation of why he
42 believed he did not need to apply for an Earth Removal Permit for #6/45. Vinnie Iacozzi stated
43 that with the exception of the material located under the existing building, they considered the pit

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14

1 **MISCELLANEOUS BUSINESS, cont.**

2
3 almost depleted. He indicated that a tentative reclamation plan had been submitted in the late
4 1990s. He went on to say that the Town was in negotiations with the Board of Selectmen to do
5 something with the entire property. The Chairman asked for confirmation that there were no
6 plans to remove any more material from the property. Vinnie Iacozzi confirmed that there were
7 no plans to remove material from the property.

8 The Coordinator asked what was left to be removed from the north pit. Vinnie Iacozzi
9 answered that there was not much marketable material left to be removed from the pit. He
10 continued that there were layers of clay and small layers of gravel. She inquired why the
11 property was being kept as a gravel pit. Vinnie Iacozzi answered that it was easier to keep the pit
12 dormant than it was to start all over again. The Coordinator pointed out that the Town had two
13 exemptions for not requiring an Earth Removal Permit, 1) removing less than 5K cubic yards for
14 the life of the pit; or 2) removing between 5K and 10K yards for the life of the pit. She also
15 suggested that the applicant either determine that they would no longer have a gravel pit and
16 reclaim it or go through the application process.

17 The Chairman referenced Tax Map/Lot #6/45 and noted that the applicant was currently
18 in negotiations with the Town with regard to the sale of the property and was not removing any
19 material from the pit. Mark Suennen stated that the applicant was not permitted to remove
20 material from the pit until an Earth Removal application was submitted and approved. The
21 Chairman agreed with Mark Suennen. The Coordinator added that State law allowed the Town
22 to declare the pit abandoned if a certain amount of material was not removed within two years.
23 Mark Suennen asked if the two year period would begin this evening or begin at the time the
24 regulation was enacted. The Board determined that the two year period would be begin on
25 August 1, 2011, which was the date that all pits were supposed to have submitted their
26 applications following adoption of the new regulations. The Chairman stated that by August 1,
27 2013, the applicant had to either close the gravel pits or apply for an Earth Removal Permit. He
28 noted that if one of the two options was not done the Planning Board would advise the Board of
29 Selectmen that the pit was abandoned. The Chairman asked that a letter be sent to the applicant
30 that clearly outlined the requirements as discussed at the meeting this evening for the pits on Tax
31 Map/Lot #3/57 and 6/45.

32 The Chairman commented that the Earth Removal Application process was not very
33 difficult and all the other gravel pit owners in Town had gone through the process. Vinnie
34 Iacozzi noted that Chairman's statement was very broad and stated that he had incurred \$90K in
35 engineering costs for the project and it was not as simple of a process as the Chairman had
36 indicated. The Chairman questioned why the applicant had not completed the conditions
37 precedent after sinking money into the project. Vinnie Iacozzi answered that there were a
38 different set of regulations for grandfathered status and it changed the entire configuration of all
39 the information that had previously been submitted. He continued that they had to "eat" the
40 \$22K fee that was paid to the State and no longer required.

41 Vinnie Iacozzi stated that he would look into finishing off the north pit.

42 The Chairman asked for further comments and/or questions; there were no further
43 comments or questions.

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15

1 **MISCELLANEOUS BUSINESS, cont.**

2
3 8a. Letter dated August 29, 2012, from Shannon Silver, Planning Board Assistant, to Kathy
4 Etlinger, re: Antique Shop, Tax Map/Lot #16/13, 2 Mont Vernon Road.
5 (Kathy Etlinger & Heidi Palmer (Owner) will be present to discuss)

6
7 8b. Letter copy from Ed Hunter, New Boston Code Enforcement Officer, to Heidi Palmer, re:
8 Antique Store, 2 Mont Vernon Road, for the Board's information.

9
10 8c. Memorandum received September 6, 2012, to New Boston Planning Board, from Ed
11 Hunter, New Boston Code Enforcement Officer, re: Palmer Property, 2 Mont Vernon
12 Road, for the Board's information.

13
14 Present in the audience were Kathy Etlinger, Heidi Palmer, Brandy Mitroff and Ed
15 Hunter, Building Inspector/Code Enforcement Officer.

16 The Chairman addressed 8a, 8b, and 8c together as they were related. He stated that the
17 Planning Board approved the site plan for the Heidi Palmer Real Estate Office in 1995. He
18 explained that during the next 17 years numerous changes had been made to the Site Plan
19 Regulations and Zoning Ordinances. He pointed out that any grandfathering that would apply to
20 the property would only apply to the original approved use, i.e., an office. He explained that the
21 Site Plan Regulations stated that any modifications to a site plan, including changing the use, and
22 in this case changing a real estate office to a retail use, required a plan change.

23 The Chairman indicated that during the summer of 2012 an antique store began operating
24 at the former real estate office location and noted that the new use was permitted by Zoning. He
25 stated that the change in use was discussed at the August 28, 2012, Planning Board meeting and
26 the Board had requested that the owner/applicant appear before the Board to discuss the changes.

27 The Chairman stated that the owner/applicant had received two letters from the Building
28 Department that advised the new business was opened without proper approvals from all the
29 Town Departments and also advised of the changes to the Town's regulations, specifically, a
30 prohibition regarding backing out onto Town roads.

31 Heidi Palmer stated that when the building was constructed, Bo Strong, had suggested
32 that it be built the way it currently existed. She stated that she had been backing in and out of the
33 driveway onto Clark Hill Road for the past five days and she believed that was the safest way to
34 enter and exit the driveway. She explained that by backing out she could see up and down Clark
35 Hill Road and the visibility was second to none. She stated that she did not understand why
36 there needed to be a change when other buildings were doing the same thing. She indicated that
37 she did not have the money to make the changes. Heidi Palmer added that she did not see a
38 problem with the parking and she had been a good neighbor for the last thirty-eight years. She
39 went on to say that it was a testimonial to the Master Plan to be cohesive with regard to business
40 endeavors. She continued that the driveway worked as it currently existed and noted that Skip
41 Gomes would continue to plow her driveway in the winter. She stated that the driveway was
42 safe and it did not make sense to change it. The Chairman explained that the regulations had
43 changed because it had been determined that it was not safe to back out onto roads.

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16

1 **MISCELLANEOUS BUSINESS, cont.**
2

3 Kathy Etlinger stated that she did not understand the difference between zoned
4 commercial and retail. She noted that retail was zoned commercial. The Chairman pointed out
5 that the Board was not disagreeing that retail was zoned commercial and explained that the use
6 had been changed. He stated that a real estate office was different from a retail space. The
7 Planning Board Assistant explained that the applicant did not understand what the Site Plan
8 Regulations were asking them to do. Kathy Etlinger informed the Board that she had kept
9 everything identical. The Chairman pointed out that the one thing that was not kept identical
10 was the use. Heidi Palmer believed that she had been an example to the Town of what a business
11 should look like. She went on to say that she had done a lot for the Town and had given a lot to
12 the Town. She wanted the Board to know that she was not making any money from the business
13 and she felt that it would enhance the downtown area.

14 The Coordinator asked if there were enough parking spaces available at the rear of the
15 building to be able to not use the parking on the side. Heidi Palmer stated that during the winter
16 Skip Gomes plowed her driveway. The Coordinator pointed out that surrounding businesses that
17 had more up-to-date site plans met the parking requirements by removing snow from their
18 parking areas.

19 The Chairman reiterated that the use changed from a real estate office to a retail store and
20 the regulations were different and changed. He continued that the change required that the plan
21 be updated and meet all current regulations.

22 The Coordinator suggested that a possible solution to the parking issue would be to block
23 off the parking spaces that could be used to back out onto to Clark Hill Road, use the parking
24 spaces in the rear of the building and remove snow to ensure that spaces were available to
25 customers. Heidi Palmer stated that she would not be able to make the changes.

26 Kathy Etlinger asked if the only change that needed to be made was relative to the
27 parking. The Coordinator answered that in addition to the parking the Planning Board was
28 entitled to require a new, fully engineered site plan, however, the Board reviewed the existing
29 site plan and because there were no other changes other than the use and parking had agreed to
30 allow the applicant to submit of a sketch of the parking. Heidi Palmer asked how the parking
31 spaces could be blocked off. The Coordinator answered that there were many ways and offered
32 the suggestion of using chains and buckets to block the parking spaces.

33 The Chairman reiterated that the applicant needed to submit a sketch of the parking area
34 to meet the current parking regulations. Rodney Towne pointed out that another alternative was
35 that the existing parking spaces could be re-configured and used without the need to back out
36 onto Clark Hill Road. The Coordinator agreed and noted that applicant would need to bring in a
37 proposal for the parking and ensure that backing out onto Clark Hill Road would not occur.
38 Brandy Mitroff suggested that parallel parking be utilized. Mark Suennen suggested that the
39 applicant meet with the Road Agent to discuss the parking issues.

40 The Coordinator informed the applicant that the next meeting would be on September 25,
41 2012. She suggested that the applicant provide any information to the Board a week prior to the
42 meeting to ensure that the Board had an opportunity to review it prior to the meeting.

43 Brandy Mitroff asked if the applicant would be able to open her business after the hearing

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17

1 **MISCELLANEOUS BUSINESS, cont.**

2
3 on September 25, 2012. The Coordinator explained that the Planning Board had previously
4 determined that there was no need to hold a hearing as there was no impact to abutters as the
5 parking was decreasing. She noted that the matter would be handled under Miscellaneous
6 Business. She added that the applicant could not operate the business until all the necessary
7 approvals had been granted.

8
9 9. Memorandum received September 6, 2012, to New Boston Planning Board, from Ed
10 Hunter, New Boston Code Enforcement Officer, re: suggestion to discuss yard sale
11 regulations, for the Board's review and discussion.

12
13 Present in the audience were Ed Hunter, Building Inspector/Code Enforcement Officer,
14 and Brandy Mitroff.

15 Mark Suennen asked what complaint had recently been made regarding yard sales. Ed
16 Hunter, Building Inspector/Code Enforcement Officer, answered that complaints had been made
17 with regard to a residence located on Parker Road. He explained that the homeowner was
18 operating under the guise of a yard sale, however, he had determined that a retail operation was
19 taking place. He continued that the homeowner had explained to him that he received
20 merchandise that he purchased from storage unit auctions and then resold.

21 Ed Hunter, Building Inspector/Code Enforcement Officer, indicated that he had spoken
22 with Town Counsel regarding this matter as the Zoning Ordinance was silent on accessory sales
23 at a home. Ed Hunter, Building Inspector/Code Enforcement Officer, advised that he had issued
24 a cease and desist order, however, the homeowner had continued to operate the business. He
25 noted that a reminder letter had been mailed today and the Police Department was also aware of
26 the matter.

27 Ed Hunter, Building Inspector/Code Enforcement Officer, noted that this matter could be
28 an isolated incident but wanted to speak to the Board to determine if there was any interest in
29 establishing a defining line between a yard sale and a business.

30 Rodney Towne informed the Board that the Board of Selectmen had discussed this issue
31 and believed that it was not necessary to create a regulation based on one irritant. He indicated
32 that the Police Department was aware of the traffic issues.

33 The Coordinator stated she was aware of a couple of towns that had a definition of a yard
34 sale in their regulations and noted that anything other than the defined yard sale was considered
35 retail. She offered to gather some of the definitions used by other towns. The Chairman asked
36 where the definition would be located. The Coordinator answered that it would be located in the
37 Zoning Ordinance.

38
39 Ed Hunter, Building Inspector/Code Enforcement Officer, referred to the previous
40 discussion under Miscellaneous Business items #8a, 8b and 8c. He indicated that the applicant
41 would be required to have at least one handicapped parking space. He also informed the Board
42 that he had spoken with the applicant regarding accessibility.

43

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18

1 **MISCELLANEOUS BUSINESS, cont.**

2

3 7. Continued discussion, re: Mixed Use (see copies from 8/28/2012 meeting)

4

5 It being late, the Chairman noted that this discussion would be postponed to the next
6 meeting.

7 The Coordinator asked if the Board had reviewed the proposed article for the New Boston
8 Bulletin and Town website. Mark Suennen stated that he had read the article and he did not have
9 any issues with it.

10 The Coordinator handed out a draft of the proposed agenda for the October public
11 session. Mark Suennen asked if the SNHPC had reviewed the agenda. The Coordinator
12 answered that the SNHPC had not seen the proposed agenda, however, she intended on
13 discussing it with them.

14

15 Mark Suennen **MOVED** to adjourn the meeting at 9:09 p.m. Rodney Towne
16 seconded the motion and it **PASSED** unanimously.

17

18

19 Respectfully Submitted,
20 Valerie Diaz, Recording Clerk

Minutes Approved:
10/09/2012