

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

February 14, 2012

1

1 The meeting was called to order at 6:40 p.m. by Chairman Stu Lewin. Present were
2 regular members Mark Suennen and Peter Hogan, and alternate David Litwinovich. Also
3 present were Planning Coordinator Nic Strong, Planning Board Assistant Shannon Silver and
4 Recording Clerk Valerie Diaz.

5
6 Present in the audience for all or part of the meeting were Ken Clinton, LLS, Peter
7 Shellenberger, Gail and Jon Stout, Angela and Ron Maas, Ivan Byam, Bob Waller, Keith Diaz,
8 Esq.

9
10 **Discussion, re: Planning Board Goals for 2012**

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12 Mark Suennen asked if the high-level, mid-level and low-level priorities listed in the
13 memorandum, "Goals of 2012", dated February 9, 2012, could be characterized as follows: high-
14 level priority suggested that the Board should really consider the item and low-level priority
15 suggested that the item did not matter this year. He asked where the mid-level priority fell. The
16 Coordinator answered that the mid-level priority fell in the middle of the high-level and low-
17 level priorities.

18 Peter Hogan asked if cul-de-sacs were high-level priority. The Coordinator answered
19 yes. Peter Hogan pointed out that the level of priority may drop after a new police chief was
20 hired. Mark Suennen commented that the Board should hear the new police chief's perspective
21 relative to cul-de-sacs before any action was taken. Peter Hogan agreed and added that like the
22 rest of the world the new police chief may not care about the cul-de-sac issue. He added that he
23 believed the way cul-de-sac waivers were handled now was really good. He stated that there was
24 probably more information that said cul-de-sacs were good designs than information that said
25 they were bad designs. The Chairman stated that he understood waiting for the new police chief
26 to provide more input on the matter, however, he did believe that the matter should remain as a
27 high-level priority and that a position statement should be completed by the end of the year. He
28 continued that the Board could choose to do nothing and that was okay but an agreement should
29 be made by the Board regarding a position. The Chairman went on to say that the Board may
30 want to add language to the Subdivision Regulations to include requirements to be made if a cul-
31 de-sac was to exceed a certain length, for example. Peter Hogan did not think that was a good
32 idea and stated that the Board did not want to tie their hands. He added that the more specific the
33 regulation the less leniency it gave the Board. He stated that the Board could always just say no
34 to cul-de-sac lengths longer than 1,000' based on the current regulations.

35 The Chairman asked for David Litwinovich's opinion on the cul-de-sac matter and asked
36 if he had attended any of the meetings regarding cul-de-sacs. David Litwinovich indicated that
37 he was not on the Board when the cul-de-sac meetings had taken place. David Litwinovich
38 stated that he had gotten the vibe over the last year that the Fire Department and Highway
39 Department had some issues with cul-de-sacs. Peter Hogan believed that it was just as easy to
40 plow a cul-de-sac as it was to stop and back-up and turn around at a dead-end. David
41 Litwinovich recalled an abutter from a home business public hearing informing the Board that he
42 moved to a cul-de-sac because it made him feel safe.

43 The Chairman stated that the Board would wait to conclude this matter until input was

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1 **PLANNING BOARD GOALS 2012, cont.**

2
3 received from the new police chief. He reiterated that the Board should do something with this
4 issue by the end of the year even if it was to do nothing. Peter Hogan suggested that the Board
5 state that they had reviewed their policy regarding cul-de-sac length waivers and they stood by it.
6 The Chairman commented that a lot of work had already been done on this matter and it should
7 be left as high-level priority.

8 The Chairman advised that an update to the Rules of Procedure had been listed on the
9 2011 Planning Board Goals for consideration and he had started to go through them to document
10 things that the Board was doing that were not included . He stated that he could provide his
11 notes to the Coordinator. He asked for the date of the last update. The Coordinator informed the
12 Board that the last update to the Rules of Procedure had been completed in 2007. The Chairman
13 stated that the Rules of Procedure could remain at mid-level priority and added that some update
14 could be completed by the end of the year. Mark Suennen commented that it would be
15 interesting to go through the Chairman's notes on this matter as a Board.

16 The Chairman referred to the Board's goal relative to letter of credit and performance
17 bond language. He indicated that there had been issues with bonds expiring. Mark Suennen
18 asked for confirmation that the Planning Board Assistant had been working on this matter. The
19 Coordinator answered yes and pointed out that a memo had been handed out and was included
20 with the Miscellaneous Business materials at this evening's meeting. The Chairman believed
21 that this goal could be met by the end of the year, if not sooner. He asked that the discussion of
22 this goal be placed on the next meeting's agenda. He suggested that the Board wait to send the
23 proposed language to Town Counsel until after the discussion. Peter Hogan suggested that Town
24 Counsel be asked to advise how other towns handled this matter. The Coordinator stated that the
25 Planning Office had already researched how other towns handled letter of credit and
26 performance bonds and included the information in the attached memo. She noted that it was
27 less costly to have the Planning Office research the matter than Town Counsel. She added that
28 she agreed with the Chairman that the Board should review the memo and determine what they
29 wanted to do afterwards. She explained that the memo contained three different options that
30 dealt with the issue of expiration dates. The Chairman proposed that the letter of credit and
31 performance bond language be left as an item to be completed this year.

32 Mark Suennen referred to the goal that addressed Workforce/Multi-Family Housing and
33 stated that there were enough vacant housing units in New Boston and the matter was not worth
34 looking at until after the legislature was done in June 2012. The Chairman asked if the
35 legislature was considering changing the statute relative to Workforce/Multi-Family Housing this
36 year. Mark Suennen believed that the legislature had made minor changes last year with regard
37 to extending dates and did not believe there were any active changes currently. The Coordinator
38 also did not believe there were any pending changes. The Board agreed to leave the item listed
39 as a low-level priority and to take definite action by the middle of year. Mark Suennen
40 suggested that the matter be discussed at the July 2012 Planning Board meeting.

41 The Chairman referred to the Planning Board goal relative to the creation of a Mixed
42 Use/Village District. Peter Hogan believed that such district should exist in the center of Town.
43 He noted that one applicant had been able to get relief by going to the ZBA. Mark Suennen read

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1 **PLANNING BOARD GOALS 2012, cont.**

2
3 the following statement from the Coordinator's memo "...the Board of Selectmen wants the
4 Planning Board to be aware of staffing in the department when making decisions on the things to
5 include...", and went on to say that the memo indicated that research and drafting could be
6 accomplished in-house. He asked the Coordinator if she believed that researching and drafting
7 could be accomplished in-house. The Chairman additionally asked if the Coordinator believed
8 that research and drafting could technically be accomplished in-house and if it could be
9 accomplished by the end of the year based on its priority level and the rest of the workload.
10 Peter Hogan stated that the Mixed Use/Village District goal deserved far more attention than the
11 goal to update the Master Plan. He reasoned that by completing the Mixed Use/Village District
12 goal they would be making the Town a better place and updating the Master Plan most likely
13 would not.

14 The Chairman listed the goals with regard to priority and/or completion date:

- 15 • #1, Rules of Procedure – could be completed before the end of the year.
- 16 • #2, Letter of Credit/Performance Bond Language – high-level priority.
- 17 • #3, Workforce/Multi-Family Housing – defer for further action.
- 18 • #5, Cul-de-sacs – complete by the end of year.

19 The Chairman asked for a determination from the Board of how to prioritize the
20 remaining goals #4, Mixed Use/ Village District; #6, Water Resources Management Plan; #7,
21 Master Plan; and #8, Other Zoning Districts, in order of importance. Peter Hogan stated that he
22 would list the goals in the following order of importance:

- 23 • #4, Mixed Use/ Village District, and #8, Other Zoning Districts, most important
- 24 • #6, Water Resources Management Plan, #7, Master Plan, least important.

25 Mark Suennen agreed that goal #4, Mixed Use/ Village District, was more important than
26 the other goals listed but was not willing to say that the Master Plan was bunk and did not need
27 some effort. David Litwinovich also agreed that goal #4, Mixed Use/Village District had the
28 highest priority and added that much like the Master Plan the Board needed to be realistic in
29 thinking about whether it was something they could handle.

30 The Chairman referred back to Mark Suennen's question to the Coordinator that asked
31 whether or not she believed that researching and drafting could be accomplished in-house for
32 the Mixed Use/Village District. The Coordinator answered yes and explained that the goals
33 regarding bonds and cul-de-sacs were firmly in the Planning Board's court and the Rules of
34 Procedure only needed to be tweaked. She noted that there could be financial constraint as a
35 result of review needed in the end by outside sources as well as the need for public input and
36 staffed meetings with the major players. Mark Suennen asked for the major players to be
37 identified. The Coordinator answered business and residence owners in the district. She noted
38 that the Board needed to determine where they wanted to have an overlay district. She indicated
39 that review would be completed by Town Counsel and the Planning Commission and could
40 become costly. The Chairman asked if the cost for the Planning Commission review was an
41 extra cost or if it was considered part of the Town's Commission dues. The Coordinator
42 answered that it depended on the work being completed whether or not the services would be
43 covered by the dues paid to the Planning Commission. She added that the worst case scenario

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1 **PLANNING BOARD GOALS 2012, cont.**

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3 would be that the project would take two years and the Board could ask for the item to be placed
4 on next year's budget with a completion date of 2014. Mark Suennen commented that the
5 Coordinator's suggestion provided a realistic time frame and he believed the Board should do as
6 much as they could and decide in November if further funding was required.

7 The Chairman asked for the Coordinator to prepare a plan of how the Board should
8 proceed with the Mixed Use/Village District goal during the year, for discussion at the next
9 meeting. Mark Suennen asked if the Chairman was requesting for a checklist to be prepared for
10 the Board that included dates for completion of specific items. The Chairman answered yes and
11 added that the checklist would help the Board succeed.

12 The Chairman summarized that there were two options for proceeding with the Mixed
13 Use/Village District, the first was to complete the goal this year and place it on the 2013 ballot
14 or the second, the project took two years to complete. He stated that regardless of which option
15 the Board moved forward with he wanted to accomplish goals set forth for the 2012 year.

16 The Board agreed to keep goal #6, Water Resources Management Plan on the list but
17 bump it out in terms of priority. The Chairman indicated that goal #7, Master Plan, and #8,
18 Other Zoning Districts, would also be moved down.

19 The Chairman asked if the Board had moved goal #7, Master Plan, from the 2011 goals
20 to the 2012 goals with the intention of completing the update in 2012. The Coordinator
21 answered that as a rule of thumb the Master Plan should be updated every five to ten years. She
22 explained that the Town's population had probably changed enough to get different answers to
23 the questions that were asked during the preparation of the Master Plan. She added that the
24 issue with the update over the last year was due to budgetary constraints. Mark Suennen asked
25 if the last update to the Master Plan was completed in 2002. The Coordinator answered that the
26 last update to the Master Plan was completed in 2006. Mark Suennen stated that they were still
27 with the five to ten year time frame and there were no statutory reasons that an update had to be
28 completed. He read from RSA 674:3 II, "revisions of the plan are recommended every five to
29 ten years". He commented that they had not reached the ten year update mark and as such the
30 goal could be pushed off for another year. He added that the only revisions that could be added
31 now were relative to recently published census information. The Chairman asked if a
32 wholesale update was required. The Coordinator answered no and stated that the Board could
33 complete the update in any way they wanted. She went on to say that in her opinion the most
34 important point was not to update the statistics but to update the input. She explained that no
35 matter what people thought of the Master Plan it was the guiding document for a town and its
36 future planning. She continued that the Master Plan should be up to date with what the
37 townspeople say, those people who show up to the input sessions and hearings, as, legally
38 speaking, it was the basis of everything that the Board did. She noted that towns were
39 frequently shot down if they willy-nilly threw zoning articles together that had no rational
40 relationship to their Master Plan. She indicated that one of the most important parts to the
41 update was some kind of community input sessions. She noted that the community input
42 sessions could become costly as the Town did not have any trained facilitators.

43 The Chairman asked if a suitably detailed plan was available for the master plan update

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1 **PLANNING BOARD GOALS 2012, cont.**

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3 that would allow costing it. The Coordinator answered that it had been done a year and a half
4 ago by the Planning Commission and at the time the Board was not willing to ask for the
5 funding.

6 The Chairman stated that the Master Plan update could be discussed in the fall with the
7 potential for updating the tables and determine. Mark Suennen stated that having a scope of
8 work and a cost estimate was valid. He questioned if there would be support from the public,
9 Selectmen and/or Finance Committee at the time the Board would need to determine cost for
10 placement on the ballot for next year. It was Mark Suennen's opinion that funding would not be
11 supported for next year's ballot either. The Chairman stated that he did not necessarily disagree
12 with Mark Suennen, however, he was unsure if the Board had enough work to keep themselves
13 occupied for the entire year. Mark Suennen stated that he was not worried about having enough
14 work and stated that Boards should not go looking for work to keep themselves busy. He
15 continued that the Board had more than enough projects available to work on. The Chairman
16 asked for Mark Suennen to specify the available work. Mark Suennen stated that the Board was
17 working on an update to the Rules of Procedure, letter of credit/performance bond language, a
18 Mixed Use/Village District, the cul-de-sac issue as well as the week to week efforts. He
19 suggested that goals be added to the list if the Board reached July and they were twiddling their
20 fingers trying to find something to do. The Chairman agreed with Mark Suennen's suggestion.

21 The Chairman stated that goals, #1, Rules of Procedure, #2, Letter of Credit/Performance
22 Bond Language, #3, Workforce/Multi-Family Housing, #5, Cul-de-sacs were being reviewed
23 and would be completed by the end of the year. He noted goal #4, Mixed Use/Village District,
24 was the big project to start working on and goals #6, #7, and #8, would remain on the goals list
25 as options to be worked on should the Board run out of things to do.

26 David Litwinovich asked if the Board could revise the Master Plan on a chapter by
27 chapter basis as opposed to a grand full revision that would cost a lot of money. The
28 Coordinator answered yes and noted that it had been done that way between the years of 1989
29 and 1997. David Litwinovich asked if there was always an external cost associated with
30 updating the Master Plan and asked if the Board could make revisions and present them to the
31 public. The Coordinator questioned how much revision would be done without first getting
32 public input. She stated that updates could be made to the tables and numbers because none of
33 the goals or objectives would have been changed, negating the need to rewrite a chapter. It was
34 Mark Suennen's understanding from the previous explanation by the Coordinator that the real
35 meat of the Master Plan was the goal and objectives. He continued that the goals and objectives
36 were the things that the people of New Boston believed in and wanted the town to look like in a
37 dozen years. He noted that those goals and objectives were the key to the Master Plan and the
38 Board could not update them willy-nilly without knowing what the Town really wanted. Peter
39 Hogan stated that the Board never knew what the Town wanted because a sub-committee
40 comprised of the most diehard, agenda-driven people that met for three or four months and then
41 presented their opinions. He stated that he would argue that the sub-committee's opinions were
42 no different from Mark Suennen's opinion. The Coordinator clarified that the last Master Plan
43 Committee met following the completion of the Community Profile in 2004. She advised that

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1 **PLANNING BOARD GOALS 2012, cont.**

2
3 approximately 174 people participated in a weekend long event that generated Town wide
4 suggestions for projects that people wanted to work on; one of those projects was the Master
5 Plan. She informed the Board that the Master Plan Committee worked for two years during
6 which time about 500 questionnaires were delivered to all property owners in New Boston. She
7 noted that there had been about a 25% response rate which was good for a survey of that kind.
8 She stated that a second public session was held that boiled down all the information gathered
9 into various sections and that was what was put into the Master Plan and presented to the
10 Planning Board. She added that the Master Plan Committee was not a sub-committee of four
11 people but rather it was a sub-committee of ten to twelve people who worked for two years
12 based on three methods of gathering public input. She emphasized that the Master Plan
13 Committee and their updates were not thrown together with single people's opinions and that
14 the information gathered was done so as much possible through those willing to participate in
15 the process. Peter Hogan disagreed with the Coordinator's use of the word willing and stated
16 that it should be substituted with able. The Coordinator stated that it was a process whereby
17 information was gathered from the people who were there to give you the information.

18 The Chairman asked if the process the Coordinator spoke of was an update or the
19 original. The Coordinator answered that it had been an update because 1987 was the first one,
20 chapter amendments had been completed through 1997 and 2006 was a complete overhaul.

21 Mark Suennen asked if different forms of public input were now available that had not
22 been available in 2004 through 2006. He further asked if the Town had sufficient skilled web
23 resources to accomplish public input. The Coordinator answered that surveys could be
24 answered online, however, they would still be tabulated and the information handled the same
25 way as a mailed survey. Mark Suennen asked if the Town had the capabilities to conduct an
26 online survey. The Coordinator answered that the Town could conduct a survey through the
27 Town website.

28 The Chairman closed the discussion by saying that the Board had a bunch of little things
29 to look at, one big thing to look into and nothing struck the Planning Office as being outside the
30 scope of being able to be accomplished by the end of the year. He asked the Coordinator to
31 remind him to send along his notes relative to the Rules of Procedure if he had not sent them in
32 a couple of days.

33
34 **Discussion, re: Potential Changes to Conditional Use Permit Procedures**

35
36 Present in the audience were Peter Shellenberger, and Ken Clinton, LLS.

37 The Chairman asked the Board if there were any comments regarding the potential
38 changes to the Conditional Use Permit Procedures. Mark Suennen stated that an application
39 form had been included in the potential changes package and asked if it should be updated. The
40 Coordinator pointed out that the questions on the application form could not be updated as they
41 were pulled directly from the zoning. She indicated that the application form was included
42 merely to show the Board what it looked like currently and a proposed new form was also
43 included.

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1 **CONDITIONAL USE PERMIT PROCEDURES, cont.**

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3 Mark Suennen noted that he had not reviewed the potential changes in their entirety and
4 requested that the discussion be held over to another meeting. The Chairman acknowledged
5 Mark Suennen's request and agreed that the discussion would need to be scheduled at another
6 meeting.

7 The Chairman stated that the proposed changes would take what was currently
8 documented, which was missing a lot of procedural things that the Board did and put into a set of
9 procedures. He asked that the Board members consider the questions listed on page two the
10 Conditional Use Permit Procedures Memorandum, dated February 10, 2012, prior to the next
11 discussion. He noted that an additional change was not requiring a compliance site walk and
12 compliance hearing for every permit. The Coordinator answered yes and explained that instead
13 the wetland crossing installation would be certified by someone and the Board would reserve the
14 right to hold a hearing. The Chairman added that the issue had been discussed at a previous
15 meeting and the consensus of the Board was to make the proposed change. Mark Suennen stated
16 the change would require certification from a professional engineer that a crossing was installed
17 correctly.

18 The Chairman requested that this discussion be placed on the next meeting's
19 Miscellaneous Business as item #1. He asked if Town Counsel would need to review the
20 proposed changes following the discussion. The Coordinator answered that the proposed
21 changes probably should be reviewed by Town Counsel.

22
23 **SHELLENBERGER, PETER M. & SUSAN L.**

24 Submission of Application/Preliminary Hearing/Design Review/NRSPR/Warehouse

25 Location: Byam Road

26 Tax Map/Lot #6/40-1-1

27 Residential-Agricultural "R-A" District & Small Scale Planned Commercial "COM" District

28
29 Present in the audience were Peter Shellenberger, Ken Clinton, LLS, Angela and Ron
30 Maas, Gail & Jon Stout, Ivan Byam, Bob Waller,

31 The Chairman read the public hearing notice. He stated that an informational session had
32 taken place in December 2011 and the applicant was now appearing before the Board for a
33 design review.

34 The Chairman noted that this preliminary hearing on the application was for the purpose
35 of listening to the applicant's proposal, discussing ideas that may require further consideration,
36 better understanding what was being proposed, and for the applicant to understand the concerns
37 of the Board, abutters and the general public. He stated that the end result of the hearing was
38 review of the project and the final design could then be prepared with the all the appropriate
39 input. He continued that a site walk should be held within 30 days from this preliminary hearing
40 and the site needed to be appropriately staked and marked. He stated that following the site walk
41 the first work session would be scheduled.

42 Ken Clinton, LLS, of Meridian Land Services addressed the Board and noted that Peter
43 Shellenberger of EcoSmith Recyclers was present. He reiterated that they were present for the

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1 **SHELLENBERGER, cont.**

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3 design review for a non-residential site plan. He noted that they were going to look at where
4 they were in the design process and review some of their approaches and gain some input and
5 guidance from the Board and abutters.

6 Ken Clinton, LLS, stated that the goal for the applicant was quite simple, he wished to
7 relocate his business from its current location in Londonderry to New Boston where he resided.
8 He informed the Board that the applicant's business operation was the collection, packaging and
9 selling of used textiles. He continued that he had employees collect items from drop boxes and
10 then package those materials inside warehouse space for pick-up by trucks for distribution
11 around the world.

12 Ken Clinton, LLS, stated that at the informational session they had shown an informal
13 design which was effectively the same design presented this evening, however, it was much
14 further along in the design process. He noted that the building location, accesses and gravel
15 parking lot location had not changed and that items such as utilities and storm water had been
16 added.

17 Ken Clinton, LLS, indicated that the property was located at the corner of Byam Road
18 and Route 13, a/k/a River Road. He stated that the property had frontage on Byam Road as well
19 as on River Road. He noted that the overall acreage of the property was 5.64 acres and it was
20 split zoned Residential-Agricultural and Commercial. He explained that the use of the
21 applicant's warehouse was not specifically allowed in the Commercial District and he had
22 obtained a special exception through the ZBA.

23 Ken Clinton, LLS, addressed the topography of the property and pointed out that it was
24 fairly flat and was a reclaimed gravel pit. He noted that it sloped slightly from the west toward
25 the road, towards the east where a wetlands and a brook existed. He pointed out the location of a
26 small rise on the plan that shed water slightly to the south towards the river. He identified the
27 location of the property that was subject to the Shoreland Protection zone, i.e., 250' from the
28 edge of the river. He added that the applicant had no intention of developing the area within the
29 Shoreland Protection zone.

30 Ken Clinton, LLS, pointed to the southern lot line of the property and identified a 50'
31 wide residential strip that was intended to be a road, however, it had not been pursued or
32 approved. He continued that because it was intended to be a right-of-way he had marked a 50'
33 setback to it on the plan. He noted that the 50' strip also marked the line between the
34 Residential-Agricultural district and the Commercial district. He pointed out the residential
35 property owned by the Maas's and explained that although they were not direct abutters the
36 applicant had made a commitment during the last discussion to notify them of the hearings so
37 that they may be present. He added that he took the notification he had received from the
38 Planning Office, copied it and sent it via US mail to the Maas family.

39 Ken Clinton, LLS, stated that overall the property was not well vegetated and stated that
40 intermittent shrubs and trees of various size and quality were scattered along the frontage.

41 The Chairman asked for the 50' right-of-way to be pointed out on the plan. Ken Clinton,
42 LLS, pointed to the area in question and advised that it was technically a lot and know as Tax
43 Map/Lot #6/40-2, a/k/a, the Vista Road, LLC, property. The Chairman asked for the property

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1 **SHELLENBERGER, cont.**

2
3 line to be identified on the plan. Ken Clinton, LLS, identified the location of the property line on
4 the plan between the applicant's property and the 50' wide strip. He explained that because the
5 50' strip had been a proposed road land conveyances had been completed and 25' slope
6 easements had been reserved on both sides of the proposed road.

7 Ken Clinton, LLS, showed a plan for the warehouse that he stated was similar, if not
8 identical, to the design presented at the informational session. He noted that the proposed
9 warehouse was 54' wide x 96' long and was roughly located in the center of the property relative
10 to the frontage. He advised that the applicant was proposing to build a Morton Building which
11 was a pre-fabricated building that would be delivered in pieces and put together onsite. Peter
12 Shellenberger added that the frame of the building would be made of laminated wood with a
13 steel skin. Ken Clinton, LLS, advised that he would provide more information on the building
14 materials once they were at that point. He explained that the construction of the building was
15 fairly simplistic and the design was typical for the area with some barn like features.

16 Ken Clinton, LLS, pointed to the access for the property on the plan and noted that it was
17 the gravel driveway that was currently used by the Byams to access their home. He stated that
18 the Byams often parked a trailer on their property near the property line. He said that the access
19 area would need to be widened, as it was fairly narrow, to accommodate the proper turning
20 radius. He stated that they were proposing to have a paved apron that would be substantially
21 improved to allow for safe access in and out of the property. He pointed out that the area after
22 the paved area would be gravel. He explained that the trucks would drive into the property, steer
23 into a turnout area and be able to back up to the three loading dock doors. He noted that due to
24 the grades in the property some level of excavation would be required but because of the slope
25 difference between the front of the building and the back it lent itself to a natural loading dock
26 situation.

27 Ken Clinton, LLS, stated that there were twelve available parking spaces for employees
28 and the occasional visitor to the property. He reminded the Board that he had previously asked
29 for clarification or guidance with regard to the number of required parking spaces. He explained
30 that the Town's regulation did not have specific requirements for the number of required parking
31 spaces for a warehouse use. He went on to say that based on employees, trucks on site and the
32 rare and occasional buyer of goods they were proposing one parking space for every 475 s.f.

33 Ken Clinton, LLS, identified the proposed location of a well on the plan and noted that it
34 was located substantially away from the protected well radius. He also pointed out the proposed
35 location of the leach field and indicated that it would be a pipe and stone septic system as it was
36 more than adequate to serve the proposed use. He stated that most people believed that a
37 commercial enterprise would be a heavy water user but it was not the case for the proposed
38 business. He explained that the applicant's water usage per day would be way under what was
39 used in a four bedroom residence, specifically he believed the business would use 300 gallons
40 per day. The Chairman asked if the proposed business would use water other than for bathroom
41 facilities. Peter Shellenberger answered that no water was used relative to processing. Ken
42 Clinton, LLS, added that they would provide the interior layout; he pointed out the location of
43 the proposed septic. He indicated that the test pit was excellent as there was no seasonal high

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1 **SHELLENBERGER, cont.**

2
3 water table found or ledge over 80”.

4 Ken Clinton, LLS, advised that the overhead utilities would consist of a pole located
5 directly across the street and would run to the peak of the front of the building.

6 Ken Clinton, LLS, proposed to address drainage by utilizing a bio-retention pond, a/k/a, a
7 rain garden. He pointed out the location of the proposed pond on the plan and explained that it
8 would be kidney or peanut shaped, was designed for a 50 year storm and was shallow in depth.
9 He explained that the pond would receive the sheetflow runoff from both the building and gravel
10 parking lot. He noted that the gravel would absorb some water but during a 50 year storm event
11 some would run off. He pointed to the area on the plan where all the drainage would be handled
12 and flow and explained that the area would be planted with certain wetland species that helped
13 with silts and/or any suspended items in the runoff. He stated that he would provide the Board
14 with a package that further explained the proposed bio-retention pond. The Chairman asked if
15 the runoff would go down towards River Road. Ken Clinton, LLS, answered that River Road
16 was down gradient and but the amount of runoff expected and the nature of the materials onsite
17 made it highly unlikely that the water would reach River Road.

18 Ken Clinton, LLS, stated that the lighting was fairly simplistic and would exist over the
19 three loading dock doors and a side overhead door. He noted that the lighting would be wall
20 pack lights that would shed light down at the door locations. He indicated that they would likely
21 use a 60 watt light bulb to light the man door. He identified a corner of the building where a
22 proposed security light would be located and activated by motion detectors. He stated that the
23 motion light would cast away from the residential area and into the parking and loading area for
24 the purposes of deterring burglars or mischief makers. He suggested that one light may be on a
25 timer but noted that the issue was open to negotiation as the light did not need to be on all night.

26 Ken Clinton, LLS, noted that during the last discussion with the Board he had asked if
27 they had full jurisdiction with regard to location, density, etc., relative to landscaping. He
28 explained that after he read the zoning ordinance he came to the conclusion that the 25’ adjacent
29 to the residential property needed to be maintained as a buffer and the property around the
30 Byam’s Commercial property required a 15’ buffer. He stated that the applicant would comply
31 with the previously stated buffers. He advised that they were not permitted to do any planting
32 within the easements. It was Ken Clinton, LLS’s belief that the Board had the jurisdiction to
33 determine further landscaping locations that would protect the residents of the Town. He
34 advised that after the last discussion he had spoken with Angela and Ron Maas and Gail Stout
35 and asked them if they would be willing to consider planting closer to their house. He explained
36 that the Maas property was at a higher grade than the proposed building site and it made sense to
37 consider whether planting could be done on their land to better buffer their view of the building.
38 He advised that Angela and Ron Maas were agreeable to planting be done on their land and as
39 such they had looked into the grade differentials, the types of plants being used and the location.
40 He continued that unfortunately they determined that it was not the best solution for the applicant
41 or the abutters to have planting done on their land. He explained that the Maas residence did not
42 have a first floor window overlooking the property but instead had a cellar type window. He
43 indicated that there would be a direct view of the proposed property from the Maas deck and a

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11

1 **SHELLENBERGER, cont.**

2
3 15' high shrub would be needed just to bring it to eye level. He further explained that there
4 would be an issue with who would be responsible with the maintenance of any trees or shrubs
5 that were planted and issues with regard to liability in the event that any trees fell down on the
6 Maas home. He stated that after consideration he believed that landscaping should be done
7 tighter to the proposed building as it would ultimately provide better buffering towards the
8 residential use.

9 Ken Clinton, LLS, presented a profile plan of the proposed landscaping. He stated the
10 graphical view started at the Maas deck elevation, ran along the proposed road, up the side slope
11 of the proposed road, across the road, down the side slope of the road to the easement location, to
12 the peak of the proposed building, back down to the ground and over to the Byam house. He
13 advised that the existing vegetation was illustrated in green and pointed to the proposed
14 landscape locations that the applicant would be responsible for adding to the site. He stated that
15 the most important and critical one was the view line from the Maas deck. He continued that the
16 service end of the building was the most important to block and as such they had obtained a list
17 of plant species from DES that would be suitable for the location. He noted that the bio-retention
18 pond also contained vegetation and noted that the tallest bush in that location would be a high
19 bush blueberry that would grow to be about 4' to 5' tall. He indicated a location on the plan
20 where he was proposing to add landscaping to soften the view for people coming down Byam
21 Road. He stated that they would look into extending the white pines that currently existed along
22 the Byam house property line to offer more of a buffer.

23 Ken Clinton, LLS, provided the Board with a photograph of the applicant's tractor trailer
24 that would most frequently be parked in the most southerly bay of the loading docks as well as
25 two of his three trucks.

26 Ken Clinton, LLS, showed the Board a picture of the proposed building and noted that
27 the building's siding would be red and the roof would be beige. He stated that the proposed
28 building would have a cupola located on the middle of the roof and a porch on the front of the
29 building. The Chairman asked if the porch on the front of the building faced Byam Road. Ken
30 Clinton, LLS, answered yes. He described the interior of the building as open concept that
31 contained three small rooms as well as an area for packaging.

32 Ken Clinton, LLS, advised that he had staked the four corners of the building with yellow
33 flags and marked the driveway entrance/sight distance with white flags. He provided pictures of
34 the view from the property from Byam Road as well as the view from the proposed building
35 looking towards the Maas property.

36 Ken Clinton, LLS, advised that all truck traffic to and from the proposed building would
37 enter and exit from River Road.

38 Ken Clinton, LLS, stated that the critical issues that needed to be discussed were relative
39 to parking space calculations and the general layout of the proposed landscaping. He noted that
40 once the landscape buffers were set he would be able to determine what types of trees would do
41 best in those specific locations.

42 Ken Clinton, LLS, asked if the Board wished to have Mr. Shellenberger comment on the
43 business operations. The Chairman asked Mr. Shellenberger to briefly comment on the business

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12

1 **SHELLENBERGER, cont.**

2
3 operations. Peter Shellenberger explained that one truck left the business everyday and picked
4 up items from various charities and collection bins. He continued that that the items were
5 brought back to the business and made into 1,000 lb bales. He stated that they did not do any
6 grading or sorting of the collected materials. He showed a picture of his baler to the Board. He
7 went on to explain that once they had 44,000 lbs bailed he would call for a container to be
8 delivered. He further explained that the container was driven up from New Jersey, backed up to
9 his loading dock, loaded with the 44,000 lbs of bailed material and within two hours was on its
10 way back to New Jersey. He advised that the previously explained process generally occurred
11 once per week and added that he had only sent out 48 loads last year.

12 Peter Shellenberger stated that he was proposing to have a wide open building similar to
13 his current location. He noted that the proposed floor plan showed the location of the baler. He
14 advised that the design of the building was done with the Maas' in mind. He indicated that it
15 was unlikely that the baler would be heard from the outside of the building as the building would
16 be super insulated and noted that the location of the stored bales would also absorb any sound.
17 Ken Clinton, LLS, added that the bales would be located on the southerly side of the building
18 and the baler would be located on the opposite side of the building. Peter Shellenberger stated
19 that the baler would run less than ten minutes per hour at full operation. He explained the
20 process of loading the baler, filling it and running for one and half minute cycles. He noted that
21 the trucks for the business were diesel, had back-up alarms and were similar to the trucks that
22 Mr. Byam had on his property. He stated that the view would look similar to what was already
23 there with the addition of the proposed building. He pointed out that one of the things that
24 Angela and Ron Maas had mentioned to him was that they wanted to be able to continue to see
25 the horses located at the Byam property. He advised that the proposed building location would
26 not obstruct their view of the horses.

27 Peter Hogan stated that in summary the baler was about as loud as a garbage disposal.
28 Peter Shellenberger agreed with Peter Hogan's summary and added that it was a hydraulic unit
29 and ran less than 20% of the total time that someone would be doing the bailing. He added that
30 generally six bales were made per day. He advised that he owned an electric forklift that did not
31 make any noise.

32 Peter Shellenberger informed the Board that he currently had eight employees, three that
33 were full-time and five that were part-time. Peter Hogan stated that the applicant could have a
34 diesel forklift and the federally required back-up alarm was going to be what people heard. Peter
35 Shellenberger noted that the truck that left the building in the mornings was always backed up to
36 the loading docks the previous day at 3:00 p.m. so there would be no alarms heard in the
37 morning when the truck left the site. He stated that his employees did the bailing in the
38 afternoon and were generally done after four or five hours. He pointed out that the operational
39 part of the business took place inside the building. He noted that he was placing windows on the
40 southerly side of the building merely to make the building appear more barn like as they were
41 not required to operate his business. He commented that the relocation of his business to the
42 proposed location would be a win-win situation for New Boston as they would receive over
43 \$6,000 in truck registrations as well as the taxes from the property.

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13

1 **SHELLENBERGER, cont.**

2
3 Peter Hogan indicated that the ordinance did not require that the proposed building had to
4 be invisible. He continued that the applicant was required to have a buffer and make the
5 property look nice. Ken Clinton, LLS, acknowledged Peter Hogan's point.

6 The Chairman asked for comments and/or questions from the public. Gail Stout of 119
7 Old Coach Road handed out a letter to the Board that documented Angela and Ron Maas's
8 concerns regarding the proposed business. She also shared pictures from the deck of the Maas
9 residence looking out to the proposed building site. She noted that the entire building would be
10 visible from their deck and from their back yard. She further noted that the pictures showed the
11 limited vegetation and she characterized the property as being "wide open". She advised that no
12 trees existed between the two properties and that no protection was provided by the few shrubs
13 that existed.

14 Gail Stout indicated that Angela and Ron Maas were interested in having the buffer
15 placed on their property as they believed it would serve the best protection. She emphasized that
16 the building would be staring the Maas residence in the face as there was no protection. Peter
17 Hogan stated that he would say no to having the buffer being placed on the Maas property for the
18 reasons that had already been stated. Mark Suennen agreed with Peter Hogan and further
19 commented that it would set a bad precedent to have applicants installing and maintaining
20 vegetation on someone else's property. He went on to say that Mr. Shellenberger appeared to be
21 a nice guy and he was sure he would take care of the trees but there were no guarantees that he
22 would own the building forever. Gail Stout advised that the Maas's would be willing to do the
23 required maintenance and suggested that a waiver be offered that would release Mr.
24 Shellenberger from the responsibility. Mark Suennen reiterated that the Board was not willing to
25 set the precedent requiring a landowner to install vegetation on someone else's land with all the
26 liability that it entailed.

27 Peter Hogan referenced the letter handed out by Gail Stout and her question relative to
28 the Planning Board having discretion when determining appropriate screening of the building.
29 He answered that the Board did have discretion to determine the appropriate screening. He
30 stated that the Board was trying to determine what an effective buffer would look like as the
31 building would be located in the middle of a sand pit. He explained that if a berm was created
32 for the purpose of planting trees it would surely blow over. Gail Stout clarified that a grouping
33 of trees would need to be planted to support one and other. Peter Hogan stated that the grouping
34 of trees would also blow over. He stated that the Board was open to suggestions on how to
35 accomplish the effective screening. He added that he did not know what the answer was but
36 believed it would involve a berm.

37 Gail Stout asked if a minimum calculation of every 300 s.f. of required landscape area
38 shrubs and trees were planted had been determined. Ken Clinton, LLS, answered that the
39 calculation could not be completed until the appropriate locations were determined. He noted
40 that planting could not be done within the previously described easements. He believed that the
41 natural state of the 25' strip was suitable to satisfy the ordinance. He continued that the
42 landscape buffers would be placed closer to the building. Peter Hogan stated that he wanted to
43 view the property to get a better understanding and determine what had worked in the past and

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14

1 **SHELLENBERGER, cont.**

2
3 what had not worked. Gail Stout questioned if the determination was not as specific as it
4 appeared in the Zoning Ordinance, i.e., 25' along the residential area multiplied by 15' along the
5 commercial area to determine the square footage area and then divide by 300. Peter Hogan
6 stated that he would need to read the ordinance prior to answering the question. Ken Clinton,
7 LLS, noted that Gail Stout was referencing Section 320 of the Zoning Ordinance. He stated that
8 this over simplified what they believed the situation might be. He continued that if they had this
9 area available they would be dictated to plant a specific tree size every so many feet through it.
10 It was Ken Clinton, LLS's understanding of Section 320.4, that it was adequate to leave
11 undisturbed as a natural buffer and the Planning Board had the discretion to approve other
12 landscaping and buffers within the site. He advised that until a location was determined he could
13 not select the vegetation type to suit the goal.

14 Gail Stout asked for the height of the structure. Ken Clinton, LLS, answered that the
15 height of the structure was 26', walls were 16' high and the roof pitch dictated a 10' roof .

16 Gail Stout asked if existing trees and shrubs would be deducted from the calculation that
17 was used to determine how many trees and shrubs would be planted. Mark Suennen stated that
18 Ms. Stout asked a fair question but believed the Board should view the site prior to answering.
19 He added that based on the pictures there was very little that could be considered existing
20 vegetation. Gail Stout pointed out that there was existing vegetation that existed on the other
21 side of the property. Mark Suennen stated that the Board was going to reserve judgment until
22 after the site walk.

23 Gail Stout asked if there was only one truck coming to the property why there was a need
24 for three loading dock doors. Peter Shellenberger answered that one trailer would always be
25 backed-up to a door. He noted that his straight job trucks were considerably shorter than his
26 trailer and would not be visible from the Maas home. He noted that his two other trucks would
27 be parked at the docks at various times.

28 Gail Stout reiterated that it was very important to Angela and Ron Maas to screen the
29 structure. She pointed out that the ordinance required that the structure and loading area be
30 screened. She noted that she was not asking that the building be invisible but that it was
31 appropriately screened. Peter Shellenberger asked if Ms. Stout was suggesting that 26' trees be
32 planted. Gail Stout answered no and stated that she was asking for it to be appropriately
33 screened from the abutters as there was an obligation to do so. Peter Shellenberger agreed and
34 added that they had suggested to do so.

35 Gail Stout stated that Angela and Ron Maas had concerns about standing water relative to
36 the proposed bio-retention pond and the threat of mosquitoes, EEE and the West Nile Virus.
37 Peter Hogan asked for an explanation of the bio-retention pond. Peter Shellenberger pointed to
38 the Town's design guidelines that had been provided to him and explained that this Low Impact
39 Development technique used bio trenches and rain gardens as suggested . Ken Clinton, LLS,
40 added that bio-retention basins or rain gardens were landscaped areas constructed as shallow
41 depressions, a minimum of 6", to accept storm water runoff on paved or impervious areas. He
42 continued that the basins contain an 18" filter media composed of a layer of mulch on top of
43 sandy loam. He further explained that the basins were planted with a variety of shrubs and

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15

1 **SHELLENBERGER, cont.**

2
3 perennials whose roots assisted with pollutant uptake. He stated that in this particular case if a
4 50 year storm event occurred for a period of time there would be some level of water in the rain
5 garden, however, he noted that the soils were excessively well drained soils. Peter Hogan
6 commented that the area could not be made to hold water.

7 Peter Hogan asked how long it had been since the property had been an operational sand
8 pit. Ivan Byam answered that the area had been a sand pit about 20 – 25 years ago. He added
9 that most of the area was not actual a gravel pit but was mostly an old field. He stated that the
10 location for the proposed building had been backfilled with stone and sand. He commented that
11 if a cup of coffee was dropped in the area in question it would be sucked right through.

12 Peter Hogan asked if the point of the Town's Design Guidelines regarding bio-retention
13 ponds was to help filter roof and parking lot runoff. Ken Clinton, LLS, answered that it filtered
14 runoff from impervious areas.

15 Gail Stout stated that once they reviewed a more detailed plan they would be able to
16 discuss other issues.

17 Angela Maas asked when the hours of operation would be discussed. Peter Hogan
18 believed that the hours had previously been discussed and added that they would be discussed
19 again. He asked for the current hours of operation. Peter Shellenberger answered that his
20 proposed hours of operation would be 5:00 a.m. to 9:00 p.m. Peter Hogan asked for Angela and
21 Ron Maas's concerns with the proposed hours of operation. Ron Maas asked if it would be loud
22 or if all of the lights would be on during the hours of operation and added that he had children.
23 Peter Hogan advised that the applicant's light at his building was not allowed to extend beyond
24 his area. He explained that a down facing light would be used and it should not pollute the
25 surrounding properties. Ron Maas asked about lights from the trucks. Peter Shellenberger said
26 that the drove to the property earlier in the evening and advised that with his high beams on,
27 pointed at the Maas property, the light did not illuminate their cellar. Ron Maas stated that he
28 would be able to see the proposed building out of his front window. Peter Hogan commented
29 that it was always the thrill of living on top of a hill. Peter Shellenberger stated that that he could
30 not make light go anywhere on the Maas's property.

31 Peter Hogan assumed that another concern of Angela and Ron Maas was the potential for
32 hearing a truck start at 5:00 a.m. and having to listen to it idle for 45 minutes. Peter
33 Shellenberger stated that he did not allow his truck drivers to let trucks idle for 45 minutes. He
34 stated that his trucks were diesel and were plugged in all night. He explained that the driver
35 would leave the site within five to ten minutes of starting the truck. He pointed out that his truck
36 starting up would be the same as Mr. Byam starting his truck and the trucks at the industrial lot
37 across the street. Peter Hogan stated that if he were an abutter he would want to know why the
38 hours of operation were 5:00 a.m. to 9:00 p.m. if the employees only worked eight hours per day.
39 Peter Shellenberger answered that his truck driver worked ten hour days. Peter Hogan pointed
40 out that the truck driver worked off site and asked for the question to be answered to put the
41 Angela and Ron Maas at ease. Peter Shellenberger stated that some days it took his driver
42 twelve hours to finish a pick-up and some days it only took him five hours to complete the pick-
43 up. He continued that at the last pick-up location the driver sent a text message to an employee

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16

1 **SHELLENBERGER, cont.**

2
3 letting them know that he would be returning to the site and the employee would meet him
4 there. Ken Clinton, LLS, commented that it was like having two shifts, the first is the collection
5 shift and the second is the packaging shift that comes in and stays later. Peter Hogan asked what
6 the expectation of traffic would be during those hours. Peter Shellenberger answered that
7 between 5:00 a.m. and 8:00 a.m. one vehicle would enter the site, leave their vehicle on site and
8 exit the site in the collection truck. He continued that from 8:00 a.m. to 8:00 p.m. two or three
9 employees may show-up in their vehicles, do their work and leave. He stated that the hours of
10 operation needed to be flexible because he could not predict when or how the materials would come
11 in or if he needed to meet a deadline. Peter Hogan stated that if it rained out the driver could be
12 running one hour behind or if it snowed out the driver could be running two hours behind. Peter
13 Shellenberger agreed with Peter Hogan's statement. Peter Hogan noted that the constant would
14 be that the driver would return. Ron Maas asked if there were operational hours on Saturday and
15 Sunday. Peter Shellenberger answered that the business operated on Saturday and Sunday. He
16 went on to say that some of his employees were college students and they worked when they
17 could fit it in. He added that he was willing to listen to suggestions regarding hours of operation.
18 Peter Hogan stated that the specific constraint that existed was that there were not an infinite
19 number of trucks coming in and specifically they were waiting for the truck to come back in
20 order for the baling to be done. Ken Clinton, LLS, identified the location of the employee
21 parking and pointed out that it was located on the opposite side of Maas property and as such the
22 employees would not adversely impact them.

23 Gail Stout asked when the balers were run. Peter Hogan said that the baler was located in
24 the building. Peter Shellenberger stated that someone would need to have a "super microphone
25 receiver" in order to hear the baler running. Gail Stout asked if the baler could be heard if the
26 doors of the building were open. Peter Shellenberger believed that even with the doors open the
27 baler could not be heard from the Maas's property. Peter Hogan noted that hearing protection
28 was not required for the use of balers. Peter Shellenberger added that conversations could be
29 held while the baler was running and he suggested speaking to the man who runs the baler at the
30 New Boston Transfer Station while it was running.

31 Peter Hogan asked if Angela Maas's question had been answered and her concerns
32 alleviated. Angela Maas answered that she was unsure and stated that it was hard to imagine
33 something going on next to your house. Peter Hogan stated that she needed to keep in mind how
34 many trucks Mr. Shellenberger owned and his traffic was dependent on how quickly the driver
35 could fill his truck. He pointed out that if the driver arrived at boxes that were not very full, his
36 route would end up being longer. He continued that it was possible that the truck may not be
37 filled for fourteen hours on some days and that it may be filled in four hours on other days. He
38 noted that the applicant was requesting that two trucks enter the site over a long period of hours
39 and not a fleet of trucks that would cause potential traffic issues.

40 Peter Hogan addressed the noise concerns and stated that if for instance the applicant was
41 running a crusher of the type that were permitted in the gravel pit located across the street from
42 the Maas property, than the noise consideration would be dramatically different as they were
43 insanely loud. He continued that the unit the applicant proposed to run was quiet. He believed

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17

1 **SHELLENBERGER, cont.**

2
3 that the only thing that may be heard would be the hook-up to the trailer and truck back-up
4 alarm. He stated that the back-up alarm was a safety issue and the Board could not request that it
5 be removed as it would be against the law.

6 The Chairman noted that the hearing had run well over the scheduled time and asked for
7 any further specific comments. Peter Hogan welcomed Ron and Angela Maas to make
8 suggestions relative to the buffer.

9 The Board scheduled a site walk for Saturday, February 18, 2012, at 8:00 a.m.. Peter
10 Shellenberger gave permission for interested parties to attend the site walk.

11 The Coordinator stated that the plans had been sent out to the departments and she had
12 not heard back from them. She went on to say that she had talked with the Fire Inspector and he
13 had mentioned that the Fire Wards liked to have full access around buildings. She suggested that
14 the applicant contact them to determine if they had any requirements that needed to be met. Ken
15 Clinton, LLS, stated that he would contact the Fire Inspector.

16
17 Mark Suennen **MOVED** to adjourn the [preliminary hearing] of Peter & Susan
18 Shellenberger, Location: Byam Road, Tax Map/Lot #6/40-1-1, Residential-Agricultural
19 "R-A" District & Small Scale Planned Commercial "COM" District, to February 28,
20 2012, at 8:00 p.m. Peter Hogan seconded the motion and it **PASSED** unanimously.

21
22 The Chairman seated David Litwinovich as a full voting member in Don Duhaime's absence.

23
24 **LINDQUIST, AL (Owner)**

25 **WALLER, ROBERT (Applicant) Adjourned from January 10, 2012**

26 Submission of Application/Public Hearing Non-Residential Site Plan Review/Auto Restoration
27 Home Business

28 Location: 236 Meadow Road

29 Tax Map/Lot #14/80

30 Residential-Agricultural "R-A" District

31
32 Present in the audience were Bob Waller and Keith Diaz, Esq.

33 The Chairman read the public hearing notice. He stated that an application had been
34 submitted but had not yet been determined to be complete. He noted that there were some issues
35 with the plan review. He welcomed the applicant to address the Board and provide a status
36 update.

37 Bob Waller noted that he had brought a revised plan on a larger scale and a foot print of
38 the shop that had been requested by Peter Hogan.

39 Bob Waller indicated that he added a note to the plan that stated that the business shall
40 not employ more than one family onsite employee as well as a note that identified that two
41 parking spaces were available.

42 Bob Waller stated that there was a question on the review that asked if the driveway was
43 bypass style. He answered that he did not have a bypass driveway and explained that he had an

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18

1 **LINDQUIST/WALLER, cont.**

2
3 11' 6" driveway with a substantial green area and paved turning area.

4 Bob Waller noted that the building footprint included two interior partitions, one was a 4'
5 opening that led into another room and the other was a 3' door that led into a cold storage area.
6 He indicated that he had a 9' overhead door on the outside and a 3' door coming in from the shop
7 area. He pointed out an 8' door on the plan and noted that coming into the addition there was
8 16' overhead door, a 3' man door and 10' overhead door in the back.

9 Bob Waller informed the Board that in addition to a Fire Inspection completed by Russ
10 Boland he also had Tri-State assess the shop and was told that he had three times the required
11 number of fire extinguishers. He continued that it had been suggested that he use an A label
12 Halotron extinguisher.

13 Bob Waller addressed the storage containers that he had on his property and noted that
14 the Building Inspector had made him aware that the containers were considered structures. He
15 indicated that he had no long term plans to keep the containers and advised that once spring
16 allowed for the containers to be slid he would do so. He advised that he had plans to reduce the
17 number of containers and would remove the first one within 60-90 days, the second one within
18 90-150 days and the third within 150-180 days. Peter Hogan asked if all of the containers were
19 located too close to the property line. Bob Waller answered no and clarified that only the first
20 three were located too close to the property line.

21 Bob Waller stated that the stipulation in Zoning relative to the definition of a structure
22 was vague. He went on to say that he had worked in construction for 30 years and he had never
23 considered a container a structure. Peter Hogan pointed out that if the containers had not been
24 considered structures they would have been considered storage and a home business was not
25 allowed to have exterior storage. Bob Waller stated that he intended to add a permanent addition
26 in the future. The Chairman asked if it would take the applicant six months to remove the three
27 containers that were too close to the property line. Bob Waller answered that the Building
28 Inspector had asked the site plan be addressed first, followed by a plan to eliminate the
29 containers and obtain any necessary permits. The Chairman asked if all six containers would be
30 removed. Bob Waller answered that ultimately all six containers would be removed. The
31 Chairman asked how long it would take to remove all six containers. Bob Waller answered that
32 they would probably be removed by the end of year one. He noted that the initial concern was
33 that three of them were too close to the property line but as the property skewed off the third,
34 fourth and sixth container were not located in the setback.

35 Bob Waller noted that he was asked to show the square footage of the area on the plan
36 and he had listed the square footage of the shop as 1,792 s.f., cold area 420 s.f. for a total of
37 2,212 s.f.

38
39 Peter Hogan **MOVED** to accept the application of Al Lindquist, (Owner) and Robert
40 Waller, (Applicant), Auto Restoration Business, Location: 236 Meadow Road, Tax
41 Map/Lot #14/80, Residential-Agricultural "R-A" District, as complete. Mark Suennen
42 seconded the motion and it **PASSED** unanimously.

43

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19

1 **LINDQUIST/WALLER, cont.**

2
3 The Chairman advised that the deadline for Board action was April 19, 2012.

4 The Chairman asked if there was any onsite signage. Bob Waller answered yes and
5 stated that he had a 16" x 19" sign for which he had already submitted a permit application. He
6 further noted that there was an existing 3' x 4' sign on the building to identify the shop.

7 Mark Suennen asked how parking was delineated. Peter Hogan stated that it had been
8 blatantly obvious at the site walk where to park. He also noted that the area flared out so there
9 was no problem turning around and heading out.

10 The Chairman asked the hours of operation. Bob Waller replied that they were Monday
11 to Friday 8:00 a.m. to 7:00 p.m. and Saturday 9:00 a.m. to 4:30 p.m. by appointment only. He
12 noted that he had a security gate on the driveway that he closed if he was not expecting anyone.

13 The Chairman asked about lighting and Bob Waller indicated all the locations on the
14 plan, noting which were motion detector lights. The Chairman asked about traffic to the site and
15 Bob Waller indicated that he had fewer than five customers a month.

16 The Chairman recapped the plan for storage container removal, noting that three
17 containers would be removed within 180 days. In response to a question from Mark Suennen,
18 Bob Waller stated that the 180 days would be from when he could move the first container
19 because they were frozen to the ground. Mark Suennen suggested April 15th and Bob Waller
20 agreed. He noted that the first container would be removed in 90 days, by 7/15/12; the second in
21 150 days, by 9/15/12; and the third in 180 days, by 10/15/12. The Chairman pointed out that
22 removing the second set of three containers would not work on that schedule because they would
23 be frozen to the ground again. Bob Waller stated that he was trying to get the property back in
24 his name at which time he would remove all the storage containers and build an addition to
25 house his business. The Chairman noted that he needed details for approval of this plan. Bob
26 Waller suggested starting the following April to remove the next set of three containers, although
27 he did not know that moving the last three would be part of the site plan.

28 Mark Suennen noted that Ed Hunter, Building Inspector and Code Enforcement Official,
29 was declaring the containers to be structures, in which case, he wondered, were they any
30 different from sheds and would Mr. Waller be required to get rid of them.

31 The Coordinator noted that the Board should think about the definition of home business
32 which allowed a business in a dwelling or accessory structure. She noted that an accessory
33 structure was a building subordinate and customarily incidental to a dwelling and asked the
34 Board if they considered metal storage containers to meet that definition. Peter Hogan stated that
35 he did. Mark Suennen asked how many outside sheds could be approved as part of a home
36 business. Peter Hogan stated that he did not think the Board should accept the three structures
37 that were in the setback and they were a compliance issue for the Building Inspector/Code
38 Enforcement Official to make sure were removed. He noted that the three that were in the right
39 place would be considered as the basis of the footprint of Bob Waller's approved shop and could
40 be removed when Mr. Waller regained ownership of the property. Peter Hogan noted that it was
41 possible that Mr. Waller would have to come back to the Board for a site plan if he built a
42 building as opposed to the storage containers.

43 Mark Suennen suggested that Mr. Waller hold onto his original site plan to mark up the

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20

1 **LINDQUIST/WALLER, cont.**

2
3 same as an as-built when the storage containers were removed.

4
5 Peter Hogan **MOVED** to approve the site plan for Robert Waller, to operate an auto
6 restoration home business from 3,172 s.f. of the existing accessory building/garage and
7 three storage container structures at 236 Meadow Road, Tax Map/Lot #14/80, subject to:

8
9 **CONDITION(S) PRECEDENT:**

- 10 1. Submission of a minimum of three (3) copies of the revised site plan that include
11 all checklist corrections and any agreed-upon conditions from this hearing;
12 2. Execution of a Site Review Agreement regarding the condition(s) subsequent;
13 3. Payment of any outstanding fees related to the site plan application.

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

21
22 **CONDITION(S) SUBSEQUENT:**

- 23 1. The applicant stated during the hearings for conditional approval of this
24 application that his intention is empty the three storage container structures that
25 do not currently comply with setback requirements at 90, 150 and 180 day
26 intervals from 4/15/12, therefore being 7/15/12, 09/15/12 & 10/15/12 and remove
27 same as each one is emptied. The other three storage container structures to
28 remain. The Board hereby incorporates this intention into the approval of the site
29 plan and asks the Building Inspector/Code Enforcement Officer to issue a
30 temporary Permit to Operate or Certificate of Occupancy, or both, for this
31 business until such time as the three storage container structures have been
32 removed.
- 33 2. The Town of New Boston Planning Department shall be notified by the applicant
34 that the three storage container structures have been removed, and the site is ready
35 for final inspection. The Board will schedule a time for an inspection either as a
36 Board or individually prior to determining compliance as an administrative matter
37 not requiring further hearing by the Board.
- 38 3. An as-built plan showing removal of the three storage container structures along
39 with any outstanding fees related to the site plan compliance shall be submitted
40 prior to releasing the hold on the issuance of a permanent Permit to Operate or
41 Certificate of Occupancy, or both.

42
43 The deadline for complying with the Conditions Subsequent shall be **November 15,**

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21

1 **LINDQUIST/WALLER, cont.**

2
3 **2012**, the confirmation of which shall be determined administratively by the Board as
4 described in item 2 above.

5
6 Mark Suennen seconded the motion and it **PASSED** unanimously.

7
8 **MISCELLANEOUS BUSINESS AND CORRESPONDENCE FOR THE MEETING OF**
9 **FEBRUARY 14, 2012.**

- 10
11 4. Letter with Notice of Decision attachment received via email February 8, 2012, from
12 Keith F. Diaz, Esq., Bussiere & Bussiere, to Shannon Silver, re: Tax Map/Lot #9/21-5,
13 Wilson Hill Road, for the Board's review and discussion. (Keith F. Diaz, Esq., to be
14 present)

15
16
17 Keith Diaz, Esq., identified himself and noted that he represented Tim Leclair of
18 Woodland Development, LLC. He went on to say that Victor Lemay had received a conditional
19 approval of a subdivision of his Lot #9/21-5, had built his own house on what would be a lot in
20 this subdivision, and now wanted to transfer the rest of the subdivision to Mr. Leclair. Keith
21 Diaz, Esq., noted that paragraph 12 of the Notice of Decision required all conditions precedent to
22 be fulfilled before the subdivision plan was recorded. He noted that without a recorded
23 subdivision plan the lots could not be transferred.

24 Keith Diaz, Esq., went on to say that his client was asking for an amendment to
25 paragraph 12 to allow recording of the subdivision plan without bond conditions being satisfied.

26 Keith Diaz, Esq., asked the Board what the significance was of having everything in
27 place when there was no intent to sell the lots to the public but simply to take the lots from Mr.
28 Lemay into the LLC's ownership.

29 The Chairman noted that the decision was made in the way the Board always did and the
30 applicant had had time to review it so there were no surprises. Keith Diaz, Esq., stated that he
31 had not been involved at that time and it was his understanding now that the project had been on
32 hold and extensions granted by the Board. The Chairman suggested that another extension may
33 be granted and noted that the Board was understanding of the current times and the economy.
34 Keith Diaz, Esq., stated that he was not asking to change the substance of the Board's approval,
35 merely the order in which the conditions had to be completed.

36 The Chairman asked if any construction was planned. Keith Diaz, Esq., stated that Mr.
37 Lemay had a 50% ownership in the LLC and the land was his capital contribution to the
38 company. He noted that Mr. Lemay had recently approached Mr. Leclair and wanted to sell his
39 interest and the only way to do so was to transfer the land into the LLC and sell his shares to Mr.
40 Leclair. Keith Diaz, Esq., stated that this could not happen until the plan was recorded.

41 The Chairman asked the Coordinator if the applicant of the Popple/Highland subdivision
42 completed the conditions precedent in order to have the plan recorded and subsequently sold.
43 The Coordinator answered that the applicant of the Popple/Highland subdivision or any other

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22

1 **MISCELLANEOUS BUSINESS, cont.**

2
3 subdivision could sell the whole thing to a new owner as one piece prior to the recording because
4 it would still be one piece before the subdivision was recorded at the registry. Keith Diaz, Esq.,
5 pointed out that in this particular case when Mr. Lemay purchased the land he built his house
6 prior to the installation of the proper infrastructure. The Chairman commented that he recalled
7 the subdivision and that there were a lot of issues with regard to the driveway. Mark Suennen
8 stated that Mr. Lemay had built the home without the proper infrastructure at his risk and not at
9 the direction or interest of the Board.

10 The Chairman asked what the downside or risk to the Town would be in reversing the
11 order or changing the way that it was handled. Keith Diaz, Esq., answered that there were no
12 risks to the Town as the status quo remained the same. The Chairman asked the Coordinator
13 what risks there were to the Town in reversing the order or changing the way it was handled.
14 Shannon Silver stated that by approving the applicant's request a precedent would be set. The
15 Coordinator added that the precedent would allow for anyone to say that they did not have their
16 money for construction inspection escrow and request to have the plan recorded for the purposes
17 of selling one or two lots to obtain the money for the construction escrow to be deposited into the
18 bank for completion of the remaining lots. She noted that in this instance the situation had been
19 explained to the Board, however, she stated that the Board would be unsure of how the next
20 person may attempt to use it to get around the fact. She stated that this question had never been
21 asked before a plan had been recorded and conditions had been fulfilled for the purpose of
22 transferring ownership.

23 Keith Diaz, Esq., asked that if at the outset Mr. Lemay had the foresight and came to
24 the Board and stated that paragraph 12 as proposed did not allow the flexibility to record that he
25 needed and asked for it to be conditioned on paragraphs 1,2,3 and 4 being met to the satisfaction
26 of the Board so that recording could take place, would the Board have said "fine, yes I don't see
27 an issue with that". The Coordinator stated that the Board would have said to come back with a
28 one lot subdivision. The Chairman stated no because it would have set a precedent with regard
29 to the approval and the way it was typically done. Shannon Silver stated that this was always a
30 series of events to an approval, i.e., bonding, construction monitoring fees. Keith F. Diaz, Esq.,
31 stated that he understood the way the Board typically handled the approval and noted that he was
32 sure there was a good reason for doing so. He asked the Board why they handled the approvals
33 in this manner. The Chairman stated that the Board did not typically, but always handled the
34 approvals in this manner and always had done so. Keith Diaz, Esq., asked if the Board knew
35 why the approvals were handled in the manner they were. Peter Hogan commented that it built a
36 lot of protection in for the Town. Keith Diaz, Esq., asked what protection was provided. Mark
37 Suennen answered that the Board was provided the leverage of preventing subdivisions from
38 being recorded and any property transactions from occurring until such a time that they were
39 convinced that the conditions for approval had been met. Peter Hogan agreed with Mark
40 Suennen and added that if the conditions precedent were not important to the Town they would
41 have been listed as conditions subsequent.

42 Keith Diaz, Esq., stated that he understood the Board could create conditions and asked
43 what it was about these conditions precedent in particular that were important. Mark Suennen

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23

1 **MISCELLANEOUS BUSINESS, cont.**

2
3 answered that the particular issue regarding the recording at the Registry of Deeds was the
4 leverage the Board had that prevented the applicant from moving forward with any other legal
5 transactions before the conditions were met. He stated that Mr. Diaz's client's partner could not
6 make the legal transaction that he wished to make by selling his interest in the work until the
7 plan was recorded and that was the leverage the Board was alluding to. Peter Hogan agreed
8 with Mark Suennen's statement. Mark Suennen commented that the leverage he spoke of was to
9 the dismay of Mr. Diaz's client, however, in other cases it was absolutely to the Board's and
10 Town's best interest. Keith Diaz, Esq., asked why. Peter Hogan stated that if the Board had
11 waived all the conditions precedent and then the applicant decided not to submit them and began
12 construction the Board would be faced with the burden of revoking the plan. He continued that
13 by requiring the conditions precedent to be completed the Board made sure they got everything.
14 It was Peter Hogan's opinion that conditions precedent were the things that the Board was
15 willing to let an applicant slide on for an approval and ideally the Board preferred to see very
16 few conditions precedent. He noted that an organized applicant had fewer conditions precedent
17 and the applicants that had two or three pages of conditions precedent were always a problem.
18 He explained that the conditions precedent were all the items the Board wanted for approval,
19 however, they had not been completed for approval and so became conditions precedent. He
20 stated that every one of the conditions listed could have been completed prior to approval but
21 were not. He pointed out that the applicant knew that the conditions were not completed before
22 the approval and now the Board was being asked to let him record the plan and then the
23 conditions would be met. He noted that the applicant had not completed the conditions and
24 questioned how many years had passed since the application was approved with conditions. He
25 stated that he would not even entertain the request and in fact he did not even want to have
26 anymore discussion on it.

27 Mark Suennen referred back to Mr. Diaz's question relative to the importance of the
28 Board's leverage and asked hypothetically if the owners could do any legal transactions to the
29 property prior to submitting the bond once it was recorded. Keith Diaz, Esq., answered yes.
30 Mark Suennen stated that the legal transactions could include selling the property to a company
31 or corporation that would not be in the best interest of the Town for that company to own that
32 piece of property. Keith Diaz, Esq., pointed out that the Board could restrict such a transaction.

33 Mark Suennen asked how the Board could restrict such a transaction. Keith Diaz, Esq.,
34 answered that the Board could make the restriction a condition. Mark Suennen stated that the
35 Board's leverage was not allowing the plan to be recorded, therefore, not allowing any legal
36 transactions. He added that this was done intentionally. Peter Hogan added that it was done by
37 design. Keith Diaz, Esq., stated that he understood and would see if his client wanted him to
38 look further into the issue. He noted that he foresaw what the Board's position would be.

39 Mark Suennen advised if the applicant wished to pursue this issue further it was his
40 opinion that the Board would need to have their own legal interpretation completed at the
41 applicant's expense. Peter Hogan agreed with Mark Suennen. The Chairman indicated that
42 because the Board was answering off the cuff as questions were asked he agreed with Peter
43 Hogan and Mark Suennen. He noted that a discussion had taken place and to pursue the matter

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24

1 **MISCELLANEOUS BUSINESS, cont.**

2
3 any further he wanted more time to spend thinking about it as well as advice from Town Counsel
4 regarding the pros and cons. He noted that by allowing the request it would be the first of a
5 precedent and he believed that there were a lot of issues with that making it not such a good idea.

6 Keith Diaz, Esq., thanked the Board for their time.

- 7
8 1. Approval of the January 10, 2012, minutes, distributed by email.

9
10 Mark Suennen **MOVED** to approve the minutes of January 10, 2012, as written. Peter
11 Hogan seconded the motion and it **PASSED** unanimously.

- 12
13 2. Distribution of January 24, 2012, minutes, for approval at the meeting of February 28,
14 2012, distributed by email.

15
16 The Chairman acknowledged receipt of the above-referenced matter; no discussion
17 occurred.

- 18
19 5. Letter copy received January 31, 2012, to Mr. David Mann & Jerri Stanford, from Russ
20 Boland, New Boston Fire Department Inspector, re: 3 River Road, for the Board's
21 information.

22
23 The Chairman acknowledged receipt of the above-referenced matter; no discussion
24 occurred.

- 25
26 6. Letter received January 26, 2012, from Jillian Harris, Southern New Hampshire Planning
27 Commission and Eric Halter, Project Manager, CLF Ventures, to Nicola Strong, Planning
28 Coordinator, re: Energy Technical Assistance & Planning for New Hampshire
29 Communities (ETAP) program, for the Board's information.

30
31 The Chairman acknowledged receipt of the above-referenced matter; no discussion
32 occurred.

- 33
34 8. Endorsement of Driveway Permits for Townes Family Trust, for existing gravel pits
35 located on Lyndeborough Road and 2nd NH Turnpike, Tax Map/Lot #'s 13/6, 13/31 &
36 10/73, by the Planning Board Chairman.

37
38 The Chairman indicated that he would execute the above-referenced document at the
39 close of the meeting.

- 40
41 9. Report received February 10, 2012, from Timothy J. White, AICP, Senior Transportation
42 Planner, to Technical Advisory Committee (TAC) and Southern New Hampshire
43 Planning Commission (SNHPC), re: SNHPC Recruitment – Update, for the Board's

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25

1 **MISCELLANEOUS BUSINESS, cont.**

2
3 information.

4
5 Mark Suennen asked if recruitment with regard to the above-referenced matter had been
6 made. The Coordinator answered no and explained that someone was needed to attend the TAC
7 meetings. She noted that she was going to suggest that the Road Agent attend the TAC
8 meetings.
9

10 11a. As-Built Plan Review Comments received via email February 14, 2012, from Kevin
11 Leonard, P.E., Northpoint Engineering LLC, to Nicola Strong, Town of New Boston,
12 Planning Coordinator, re: Karen M. Morin Trust (Daylily Lane & Greenfield Road), for
13 the Board's information.
14

15 The Chairman acknowledged receipt of the above-referenced matter; no discussion
16 occurred.
17

18 11b. Outstanding Items Summary received via email February 14, 2012, from Kevin Leonard,
19 P.E., Northpoint Engineering, LLC, to Nicola Strong, Town of New Boston, Planning
20 Coordinator re: Karen M. Morin Trust (Daylily Lane & Greenfield Road), for the Board's
21 information.
22

23 The Chairman acknowledged receipt of the above-referenced matter; no discussion
24 occurred.
25

26 11c. Construction Services Reports dated January 25th, 26th, 30th and February 2nd, from
27 Northpoint Engineering, LLC, for Karen M. Morin Revocable Trust (Daylily Lane &
28 Greenfield Road), for the Board's information.
29

30 Mark Suennen asked if it was only his opinion that there were a lot of things wrong with
31 the As-Built plans on a relatively small subdivision. The Coordinator stated that
32 there were a couple of things installed without the proper inspections, for example, the catch
33 basin in the cul-de-sac, and there were issues with the centerline of both roads.

34 Peter Hogan indicated that the Board had spent months talking about the subdivision with
35 regard to trees, walls and keeping a crook in the road. He added that the Highway Department
36 had said nothing. He stated that as soon as approval was granted the first thing the Road Agent
37 did was clear cut the right-of-way on Greenfield Road which negated every single aspect that the
38 Board had discussed for months.

39 Mark Suennen asked if Peter Hogan was referring to the previous Road Agent. Peter
40 Hogan answered yes.
41

42 3. Letter received February 7, 2012, from Michael P. Griffin, to Nic Strong, Planning
43 Coordinator, re: Commercial Aquaponics Business, for the Board's review and

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26

1 **MISCELLANEOUS BUSINESS, cont.**

2
3 discussion.

4
5 The Chairman asked if the above-referenced business needed to have a site plan. The
6 Coordinator answered that the requirement of a plan depended upon the standard requirements
7 to be exempt from obtaining a plan, i.e., no signage, no employees, no customers and no
8 outside storage. She explained that if the business did not have the four items previously listed, a
9 letter was sent to the owner advising that a site plan was not required. She pointed out that the
10 letter also advised if anything changed and the business did have any of the four items they were
11 required to apply for a site plan.

12 Peter Hogan asked where the tank would be located that would be used to grow plants
13 and fish. The Coordinator answered that a greenhouse addition would be constructed.

14 The Coordinator advised that she was unclear whether or not customers would visit the
15 property to pick-up fish and vegetables as the letter only indicated that the owner would “supply
16 fish and vegetables”. Peter Hogan commented that the business sounded like a farm.

17 Mark Suennen asked if the Planning Office used a standard letter advising potential
18 home businesses about the requirements for a site plan. The Coordinator answered yes.

19 The Planning Board Assistant stated that Mr. Griffin had gone to the Building
20 Department regarding permitting and was sent to the Planning Office. She explained that she
21 had asked Mr. Griffin to put his intentions of the aquaponics business in writing for the Board’s
22 discussion and decision on requiring a site plan.

23 Mark Suennen asked if Mr. Griffin’s residence was located in the “R-A” District. The
24 Planning Board Assistant answered yes. Mark Suennen recommended that the standard letter be
25 sent to Mr. Griffin that stated as long as he was not doing things that would qualify him as a
26 different classification, have at it and good luck. The Board agreed with Mark Suennen’s
27 recommendation.

28
29 7. Letter received February 13, 2012, from Charles A. Peak, Manager, Townes Family
30 Trust, to New Boston Planning Board, re: request to extend the conditions precedent
31 deadline from February 24, 2012, to April 30, 2012, for the Board’s action.

32
33 The Coordinator explained that due to the maturation date of the CDs for the gravel pits
34 in question the applicant was asking for an extension to fulfilling the conditions until after the
35 last such maturation date. At that time he would bring the Town three checks and the Town
36 would close the existing accounts and return those monies to him. She indicated that everything
37 should be accomplished prior to April 30, 2012. The Chairman asked for confirmation that this
38 was consistent with what had been discussed with the applicant. The Coordinator answered yes.

39
40 Mark Suennen **MOVED** to extend the conditions precedent deadline for Townes Family
41 Trust, for the three Earth Removal operations on Tax Map/Lot #s 10/73, 13/6 and 13/31,
42 from February 24, 2012, to April 30, 2012. Peter Hogan seconded the motion and it
43 **PASSED** unanimously.

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27

1 **MISCELLANEOUS BUSINESS, cont.**

2

3 10. Memorandum dated February 13, 2012, from Nic Strong, Planning Coordinator and
4 Shannon Silver, Planning Board Assistant, to Planning Board Members, re: Bonds and
5 Securities, for the Board's review and discussion at the next meeting.

6

7 The Chairman acknowledged receipt of the above-referenced matter and stated that it
8 would be discussed at the Board's next meeting.

9

10 Mark Suennen **MOVED** to adjourn at 9:51 p.m. Peter Hogan seconded the motion and it
11 **PASSED** unanimously.

12

13

14 Respectfully Submitted,
15 Valerie Diaz, Recording Clerk

Minutes Approved:
03/27/2012