

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

August 28, 2012

1

1 The meeting was called to order at 6:36 p.m. by Chairman Stu Lewin. Present were  
2 regular member Don Duhaim, alternate member David Litwinovich and Ex-Officio Rodney  
3 Towne. Also present were Planning Coordinator Nic Strong, Planning Board Assistant Shannon  
4 Silver and Recording Clerk Valerie Diaz.

5  
6 Present in the audience for all or part of the meeting were Fire Wards Wayne Blassberg,  
7 Dan Teague, Eric Scoville; Russ Boland, Fire Inspector; Dwight Sowerby, Esq. and Bill  
8 Drescher, Esq.; Raymond Shea, LLS, Patrick Conley, Dennis McKenney, LLS, and Charles  
9 Peak.

10  
11 **Consultation with Town Counsel, re: Sprinkler and Cisterns**  
12 **(Per RSA 91-A this is not a meeting and not open to the public)**

13  
14 Present in the audience for all or part of the meeting were Wayne Blassberg, Dan Teague,  
15 Eric Scoville, Russ Boland, Fire Inspector, Dwight Sowerby, Esq., and Bill Drescher, Esq.

16 The Chairman noted that the above-referenced consultation was in accordance with RSA  
17 91-A, and was not open to the public.

18 The Chairman indicated that the Fire Wards and Fire Inspector were present. He noted  
19 that the Board of Selectmen had also been invited and Rodney Towne was the only member in  
20 attendance. He added that Fire Chief Dan MacDonald had also been extended an invitation but  
21 was unable to attend.

22 The Chairman stated that 1 ½ hours had been scheduled for the consultation to discuss  
23 sprinklers and cisterns. He indicated that there had been recent legislative changes with regard to  
24 sprinklers and cisterns and as a result there had been numerous correspondence between the  
25 Board, Fire Wards and Town Counsel. He stated that the Board decided to have a discussion  
26 with Town Counsel and the Fire Wards in an attempt to come to a proactive conclusion.

27 Bill Drescher, Esq., thanked the Board for inviting himself and Dwight Sowerby, Esq., to  
28 discuss the cistern matter. He pointed out that although two attorneys were present the Town  
29 would only be billed for one. He noted that Dwight Sowerby had occasionally given advice on  
30 this matter and he and the Coordinator believed it would be a good idea to have him present for  
31 the discussion.

32 Bill Drescher, Esq., stated that what caused the cistern predicament is the fact that by  
33 taking aim at one and two family residential settings the legislature actually impeded  
34 development by effectively requiring cisterns as fire fighting water supply for subdivisions. He  
35 noted that the new legislation affects the Town because New Boston was on board with sprinkler  
36 regulations before other towns. He further noted the Town was able to use the installation of  
37 sprinklers in lieu of cisterns when negotiating with developers. He added that quite a few  
38 subdivisions in New Boston had been approved with sprinklers and the Building Code provided  
39 the details of the NFPA code to use.

40 Bill Drescher, Esq., explained that the legislation approached two places in two different  
41 bills, HB 109 and SB 91. He indicated that the Senate Bill was designed to preclude adoption of  
42 sprinkler regulations in land use regulations.

43 Bill Drescher, Esq., stated that lawyers that served municipalities were watching this

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1 **CONSULTATION WITH COUNSEL, cont.**

2  
3 issue and no one was in agreement. He said that everyone seemed to agree that it was not the  
4 intention of the legislature to affect building codes that were in effect.

5 It was Bill Drescher, Esq.'s, opinion that the Planning Board and Board of Fire Wards  
6 needed to make the legislature aware of the problems with the bills and lift the restrictions placed  
7 on developers as this was a political battle to fight.

8 Bill Drescher, Esq., stated that currently the Planning Board choices were to require  
9 cisterns or other fire fighting means, however, sprinklers could not be required. He pointed out  
10 that subdivisions approved with sprinkler requirements could not be enforced after July 1, 2012,  
11 and explained that regulations were enforced at the time of building and not at the time of  
12 approval. Bill Drescher, Esq. continued that one law directs itself to the Planning Board and the  
13 other directed the Building Code and fire safety issues. He went on to say that most of the  
14 lawyers he had spoken with were uncomfortable enforcing existing subdivision regulations even  
15 with a note on the plans and restrictive covenants because of enforcement in the future.

16 Bill Drescher, Esq., cited an opinion that recently came down from the Supreme Court  
17 with regard to this issue in part. He explained that in Atkinson, New Hampshire, a seasonal lot  
18 transformed into a year round lot that required a variance to do so. The ZBA granted a variance  
19 and required that the respondent meet the requirements of the police and fire departments. He  
20 emphasized that the ZBA never specifically addressed sprinklers in their decision. He continued  
21 that the property in question had a poor driveway with bad access and when a driveway permit  
22 was applied for the Building Inspector needed input from the fire department. He stated that the  
23 fire department and respondent were able to negotiate a long driveway that was compliant with  
24 the driveway regulations in lieu of installing sprinklers. He explained that the driveway  
25 regulations required an 8% grade for the driveway but the Fire Chief allowed the respondent to  
26 construct a driveway with a 10% grade. He continued that the respondent installed a 13.7%  
27 driveway and the town refused to grant the CO. He went on to say that the town brought an  
28 enforcement action and the trial court found that the respondent was not in compliance because  
29 the grade of the driveway was not between an 8% and 10% grade. He noted that the trial court  
30 ordered the respondent to install a sprinkler system and pay fines in the amount of \$275.00, for  
31 the first day of non-compliance and \$500.00 for each subsequent day as well as attorney's fees.  
32 He stated that the case had been appealed to the Supreme Court and was remanded back to the  
33 trial court, not because of the requirement of the sprinklers but because of over reaching fines.  
34 He explained that the respondent had made an argument that the requirement to install the  
35 sprinkler system violated the law but the Supreme Court disagreed, pointing out that the  
36 requirement was not based on a local ordinance and was based on an access code. He further  
37 explained that the access code allowed for review of driveways on a case-by-case basis and the  
38 Fire Marshall was allowed to enforce sprinklers.

39 Bill Drescher, Esq., advised that there was no safe way for the Planning Board to require  
40 sprinklers because the Town could be sued and lose. He went on to give a hypothetical situation  
41 in which a developer promised to install sprinklers in lieu of a cistern and agreed that COs would  
42 not be given unless the sprinklers were installed, however, the developer sells the subdivision  
43 prior to completion and the new developer made the argument that he had not entered into the

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1 **CONSULTATION WITH COUNSEL, cont.**

2  
3 sprinklers-in-lieu-of-cistern agreement. He was unsure that the Town would prevail if brought to  
4 court of the matter.

5 Bill Drescher, Esq., believed that the law had to change as it had unintended  
6 consequences. He added that lawsuits were beginning to pop up and they were expensive to  
7 litigate.

8 Bill Drescher, Esq., asked for questions. The Chairman stated that at the last meeting  
9 with the Fire Wards they had proposed three options for how the Town could handle this matter:

- 10 1. Leave the regulation as is;  
11 2. Require cisterns for subdivision approval; or  
12 3. Require a fire fighting water supply system that meets the Subdivision Regulations  
13 requirement.

14 Bill Drescher, Esq., reiterated that the issue would arise at the time of building and not at  
15 the approval. He went on to say that if the Board and Fire Wards were expecting to get clarity  
16 on the matter, it was not going to happen.

17 The Chairman asked if the approval would be retroactive if the Board moved forward and  
18 required sprinkler systems and the law changed next year. Bill Drescher, Esq., answered that he  
19 was unsure but could see an argument being made that the Board did not have the right to make  
20 the requirement at the time the sprinklers were required. Rodney Towne asked if it was a current  
21 issue. Bill Drescher answered yes.

22 Bill Drescher, Esq., stated that if the Town did nothing even plans that were approved  
23 would be suspect. Dan Teague asked if approvals would be suspect if the Town did away with  
24 the regulation. Bill Drescher, Esq., advised that everyone needed to be on the same page, i.e.,  
25 require that cisterns be installed for subdivision approval or be denied.

26 Dan Teague, referred to HB 109 and asked if a CO was necessarily tied to an approval.  
27 Bill Drescher, Esq., answered that a CO was an affirmation by the Town that the house had been  
28 built to code and was legally allowed to move forward.

29 The Coordinator asked if the sprinkler regulation should be left as is. Dan Teague  
30 answered yes. Bill Drescher, Esq., was of the opinion that the Town needed to require cisterns  
31 and not sprinklers.

32 Dan Teague asked the developer could be required to deed a spot for a cistern even if  
33 they offered to install sprinklers so that if that developer did not finish the development the next  
34 developer would have to put in a cistern. The Chairman further asked if the Board approved a  
35 subdivision with sprinklers and five houses were built with sprinklers and no cistern installed but  
36 the plans showed a cistern, would the Building Inspector have to have the cistern installed to  
37 issue COs? Bill Drescher, Esq., pointed out that the Town would have no money to enforce the  
38 installation of the cistern. He stated that the trick was to get the money for the cistern up front  
39 and noted that most towns approved developments with required bonding.

40 Rodney Towne suggested that a bond for the cistern could be required and if the agreed  
41 upon sprinkler systems were not installed the Town could pull the bond and install the cistern.  
42 Bill Drescher, Esq., stated that the problem with Rodney Towne's suggestion was that building  
43 costs changed frequently and bonding companies have been going belly-up. The Coordinator

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1 **CONSULTATION WITH COUNSEL, cont.**

2  
3 asked if the scenario could be tied to another developer who was not involved in the initial  
4 agreement. Bill Drescher, Esq., answered yes and stated that the agreement would be sent to the  
5 Registry of Deeds, notes would be placed on the plan and restrictions would be placed in the  
6 deed. Dwight Sowerby, Esq., added that the Subdivision Regulations required that all fire and  
7 safety requirements be completed prior to the issuance of a CO. He pointed out that the  
8 ordinance needed be changed for Rodney Towne's scenario.

9 The Coordinator asked if the Town allowed sprinkler systems as Rodney Towne had  
10 suggested could they be inspected in accordance with NFPA 13D. Dwight Sowerby, Esq.,  
11 thought that the enforcement of the installation per the Building Code and NFPA would be all  
12 right.

13 Dwight Sowerby, Esq., stated that Rodney Towne's suggestion had a chance to work and  
14 was a lot less risky than continuing business as usual. He continued that the cistern would be  
15 approved, money would be placed in escrow, an agreement would be placed in the deeds and  
16 when the developer decided not to install sprinklers in house #4, money from the original  
17 developer would be used for the installation of a cistern.

18 The Chairman asked for clarification on what the HB and SB affected. Bill Drescher,  
19 Esq., explained that the bills addressed the Building Code and Subdivision Regulations. He  
20 noted that the Building Code seemed to be fine. Dwight Sowerby, Esq., added that the first one  
21 says that towns cannot adopt a sprinkler regulation or enforce an existing sprinkler regulation  
22 and the second one only stated that the town cannot adopt sprinklers in the Building Code as the  
23 intent of the legislation was not to mess up towns that already had the ordinance in place.

24 The Chairman asked if Subdivision Regulations should be modified to only require  
25 cisterns or allow developers to install sprinklers. The Coordinator did not believe that the  
26 regulation should be modified. Bill Drescher, Esq., suggested that the Town follow an  
27 agreement template that required cistern design, provided money for the cistern and recorded the  
28 agreement in the deed. He added that it was his advice to turn everyone down and that would  
29 send a message to the legislature. Rodney Towne did not see any reason to take the current  
30 regulation out of the Subdivision Regulations.

31 The Coordinator noted that Planning Boards had a duty to provide assistance to their  
32 constituents and wondered if the Board had an obligation to inform an applicant of the suggested  
33 method of allowing sprinklers while requiring bonding for cistern installation. She asked if this  
34 negotiation should come as a result of the applicant asking the require questions instead. Dwight  
35 Sowerby, Esq., advised that there was no obligation for the Board to tell people of this possible  
36 arrangement and Bill Drescher, Esq., reiterated that the safest avenue was for the Board to  
37 require cistern installation of all applicants regardless of the number of lots.

38 The Coordinator raised the issue of the Planning Board requiring fire fighting water  
39 supply at the fifth lot subdivided, noting that this had been part of the Subdivision Regulations  
40 sine the 80s. Bill Drescher, Esq., stated that the better way to approach the issue was for a  
41 Master Plan to be created for the town which separated the town into Fire Districts based on the  
42 hazard level of the location (distance from Fire Station, availability of water sources in the area,  
43 etc.). Then each subdivision, whether for one lot or 20 would have to provide a Master Plan of

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1 **CONSULTATION WITH COUNSEL , cont.**

2  
3 the Subdivision defining what would be done for fire fighting water supply. In this way the fire  
4 fighting requirements would be known from the start and not come as a surprise to the fifth guy  
5 in. The Coordinator pointed out that the Town's regulations specify the fifth lot requirement, and  
6 that there was never a way for anyone to "get around" the requirement by dividing four lots,  
7 selling the land and dividing the rest in another name because the fifth lot was measured from the  
8 parent parcel of land as the land looked in 1978 when the Town's tax maps were first developed.

9 Bill Drescher, Esq., thought that if the requirement was in the regulations, in the  
10 subdivision agreement and included as a note on the plan, it might be OK. No definitive  
11 conclusion was reached on this matter.

12 Going back to Rodney Towne's scenario of requiring a bond for a cistern while allowing  
13 sprinklers to be installed, the Planning Board Assistant asked how long a bond could be held by  
14 the Town, noting that there were already numerous problems getting bonds and letters of credit  
15 renewed when they expired. She asked if cash only could be required but Bill Drescher, Esq.,  
16 noted the Town was not permitted to require cash only by law. He stated that cash was certainly  
17 the best option with a Letter of Credit in second place. It was noted that it could be a very long  
18 time from the time a bond was received from the original developer held until the last lot was  
19 developed with sprinklers, or until the next developer decided not to comply with the agreement  
20 and then the bond would be pulled and used for the cistern. At that point the original developer  
21 may not be involved with the property at all.

22 The Planning Board Assistant asked if a developer could claim that the Town was  
23 "double dipping" by requiring a bond for a cistern while allowing the installation of sprinkler  
24 systems. Both counsel noted that was a possibility but noted that a written agreement and notes  
25 on the plans were most important in making sure that the agreements were followed through on.

26 The Chairman asked the Fire Wards if they would talk about the suggested scenario at  
27 their next meeting and come and meet with the Planning Board again at their next meeting on  
28 9/11/12 to discuss what the final outcome would be. The Fire Wards agreed. The Board thanked  
29 the Fire Wards and Town Counsel for coming to the meeting.

30  
31 The Board took a six minute recess prior to the start of Miscellaneous Business.

32  
33 The Chairman seated David Litwinovich as a full-voting member in Mark Suennen's absence.

34  
35 **MISCELLANEOUS BUSINESS AND CORRESPONDENCE FOR THE MEETING OF**  
36 **AUGUST 28, 2012.**

37  
38 1. Approval of the July 24, 2012, minutes distributed by email.

39  
40 Don Duhaime **MOVED** to approve the minutes of July 24, 2012, as written. Rodney  
41 Towne seconded the motion and it **PASSED** unanimously.

42  
43

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1 **MISCELLANEOUS BUSINESS, cont.**

- 2  
3 2. Driveway Permit application for James Dane, Tax Map/Lot #5/6-2, Pine Echo Road, For  
4 the Board's action.

5  
6 The Board Members reviewed the above-referenced driveway permit.

7  
8 Rodney Towne **MOVED** to approve the Driveway Permit application for James Dane,  
9 Tax Map/Lot #5/6-2, Pine Echo Road. Don Duhaime seconded the motion and it  
10 **PASSED** unanimously.

- 11  
12 3. Endorsement of a Subdivision Plan for Twin Bridge Land Management, LLC, Tax  
13 Map/Lot #2/62-12 & 3/5, by the Planning Board Chairman & Secretary.

14  
15 The Chairman advised that the above-referenced document would be executed at the  
16 close of the meeting.

- 17  
18 10. Request for Project Review received July 27, 2012, from the New Hampshire Division of  
19 Historical Resources, re: Twin Bridge Estates, Phase II, for the Board's information.

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

- 23  
24 11. Copy of State of New Hampshire Driveway Permit, received July 30, 2012, for Dan  
25 Campbell, NH Route 136, for overlaying an existing driveway for the Board's  
26 information.

27  
28 The Chairman acknowledged receipt of the above-referenced matter; no discussion  
29 occurred.

- 30  
31 12. Letter received August 1, 2012, from David J. Preece, AICP, Executive Director/CEO,  
32 SNHPC, to Mr. Stuart Lewin, re: SNHPC Membership Fee, fiscal year 2013-2014, for  
33 the Board's information.

34  
35 The Chairman acknowledged receipt of the above-referenced matter; no discussion  
36 occurred.

- 37  
38 13. Memorandum received August 9, 2012, from Ed Hunter, to Planning, re: Reclamation of  
39 Twin Bridge Gravel Pit, Tax Map/Lot #2/62, for the Board's information.

40  
41 The Chairman acknowledged receipt of the above-referenced matter; no discussion  
42 occurred.

43

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1 **MISCELLANEOUS BUSINESS, cont.**

2  
3 14. Information, re: Civic Participation, from New Hampshire Civic Forum Planning Group  
4 Findings, July 2012, for the Board's information.

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

8  
9 15 Copy of article, titled; "Community life at the heart of new Granite State town center  
10 projects", by Barbara Taormina, New Hampshire Union Leader Correspondent,  
11 published in New Hampshire Union Leader, July 31, 2012, for the Board's information.

12  
13 16a. Editorial from American Planning Association Chief Executive Officer, Planning,  
14 August/September 2012, for the Board's information.

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

18  
19 16b. American Planning Association Press Release dated June 14, 2012, re: APA's National  
20 Poll, for the Board's information.

21  
22 The Chairman acknowledged receipt of the above-referenced matter; no discussion  
23 occurred.

24  
25 16c. Planning in America: Perceptions & Priorities, A Research Summary, June 2012, for the  
26 Board's information.

27  
28 The Chairman acknowledged receipt of the above-referenced matter; no discussion  
29 occurred.

30  
31 19. Capital Improvements Program

32  
33 The Chairman advised that the CIP process had started. He continued that a memo had  
34 been sent from the Planning Department to all of the Town Departments on July 27, 2012, asking  
35 for forms and submissions by 9/1/12.

36 The Chairman asked the Coordinator if the CIP Handbook needed to be updated from the  
37 previous year. The Coordinator answered no.

38  
39 20. Piscataquog River Management Plan Update

40  
41 The Chairman stated that at the next meeting the Board would be determining whether or  
42 not to incorporate the above-referenced document into the Town's Master Plan. He asked for all  
43 members to finish reading the document prior to the next meeting.

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1 **ROHE, ALEXANDER S. & AMY L.**  
2 **FOX, TANYA L. & GERHARD R.**  
3 **PATRICK & MICHELLE CONLEY REVOCABLE TRUST**  
4 Submission of Application /Public Hearing/Minor Subdivision/Lot Line Adjustment  
5 Location: Wilson Hill Road  
6 Tax Map/Lot #'s 6/32-19, 20 & 21  
7 Residential-Agricultural "R-A" District  
8

9 Present in the audience were Raymond Shea, LLS, and Patrick Conley.

10 The Chairman read the public hearing notice. He noted that an application form and  
11 cover sheet had been signed and submitted on August 9, 2012. He stated that a waiver had been  
12 requested for the Traffic, Fiscal and Environmental Impact Studies and that there were no  
13 outstanding fees. He added that all items required for a completed application had been  
14 submitted.

15 Raymond Shea, LLS, stated that the applicant was proposing a lot line adjustment that  
16 involved three properties. He indicated that the property was located on the east side of Wilson  
17 Hill Road and was part of the Highland Hills Subdivision. He noted that all of the properties  
18 were about 2.1 acres in size.

19 Raymond Shea, LLS, explained that while the Conley's were preparing to sell their home  
20 it was discovered that there were a couple of non-conforming encroachments between their  
21 property and the abutters; he identified the aforementioned locations on the plan and noted that  
22 one lot line was in fact in the middle of the Conley's driveway. He also noted that a carport had  
23 been built too close to a lot line.

24 Raymond Shea, LLS, advised that the Conley's had spoken with the abutters, the Rohe's  
25 and the Fox's, and they all agreed to minor lot line adjustments to resolve this matter.

26 Raymond Shea, LLS, pointed out the locations of the proposed lot line adjustments and  
27 stated that an equal amount of land was being swapped and as such there would be no change in  
28 the area of the properties. He added that no other conforming aspects of the lots would be  
29 affected, i.e., septic, frontage and 200' squares.  
30

31 David Litwinovich **MOVED** to accept the application for Alexander S. & Amy L. Rohe,  
32 Tanya L. & Gerhard R. Fox and Patrick & Michelle Conley, Location: Wilson Hill and  
33 Popple Roads, Tax Map/Lot #'s 6/32-19, 20 & 21, Residential-Agricultural "R-A"  
34 District. Rodney Towne seconded the motion and it **PASSED** unanimously.  
35

36 The Chairman stated that the deadline for Board action was November 21, 2012.

37 The Chairman indicated that there were waivers for the Traffic, Fiscal and Environmental  
38 Impact Studies. The Board did not believe there was a need for a site walk.  
39

40 David Litwinovich **MOVED** to grant the Traffic, Fiscal and Environmental Impact Study  
41 waivers for Alexander S. & Amy L. Rohe, Tanya L. & Gerhard R. Fox and Patrick &  
42 Michelle Conley, Location: Wilson Hill and Popple Roads, Tax Map/Lot #'s 6/32-19, 20  
43 & 21, Residential-Agricultural "R-A" District. Don Duhaime seconded the motion and it



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1 **ROHE, FOX & CONLEY, cont.**

2  
3 **PASSED** unanimously.

4  
5 Raymond Shea, LLS, noted that a typographical error existed on the map with regard to  
6 acreage. He explained that "0.3 acres" was shown on the plan instead of "0.03 acres". He stated  
7 that he would make the correction on the plan.

8  
9 David Litwinovich **MOVED** to approve the Minor Subdivision/Lot Line Adjustment  
10 Plan for Alexander S. & Amy L. Rohe, the Patrick and Michelle Conley Revocable Trust  
11 and Gerhard R. & Tanya L. Fox, for Tax Map/Lot #6/32-19, -20, & -21, Wilson Hill and  
12 Popple Roads, such that Parcel A of 0.0248 acres is annexed from Tax Map/Lot #6/32-  
13 20 to Tax Map/Lot #6/32-19; Parcel B of 0.0248 acres is annexed from Tax Map/Lot  
14 #6/32-19 to Tax Map/Lot #6/32-20; Parcel C of 0.307 acres is annexed from Tax  
15 Map/Lot #6/32-21 to Tax Map/Lot #6/32-20; and, Parcel D of 0.307 acres is annexed  
16 from Tax Map/Lot #6/32-20 to Tax Map/Lot #6/32-21, resulting in the following  
17 acreages, Tax Map/Lot #6/32-19, 2.214 acres; Tax Map/Lot #6/32-20, 2.091 acres; and  
18 Tax Map/Lot #6/32-21, 2.125 acres, subject to:

19  
20 **CONDITIONS PRECEDENT:**

- 21 1. Submission of a minimum of four (4) blue/blackline copies of the revised plat,  
22 including all checklist corrections and any corrections as noted at this hearing;  
23 2. Submission of the mylar for recording at the HCRD;  
24 3. Payment of any outstanding fees related to the subdivision application and/or the  
25 recording of documents with the HCRD (if necessary).  
26 4. Upon completion of the conditions precedent, the final plans and mylar shall be  
27 signed by the Board and forwarded for recording at the HCRD.

28  
29 The deadline date for compliance with the conditions precedent shall be **October 28,**  
30 **2012**, confirmation of which shall be an administrative act, not requiring further action by  
31 the Board. Should compliance not be confirmed by the deadline date and a written  
32 request for extension is not submitted by that date, the applicant is hereby put on notice  
33 that that the Planning Board may convene a hearing under RSA 676:4-a to revoke the  
34 approval.

35 The applicants are further put on notice that this lot line adjustment approval constitutes  
36 recognition that the lot configurations are in conformance with local land use regulations.  
37 To complete the lot line adjustment, deeds must be transferred.

38  
39 Rodney Towne seconded the motion and it **PASSED** unanimously.  
40  
41  
42  
43

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1 **MISCELLANEOUS BUSINESS AND CORRESPONDENCE FOR THE MEETING OF**  
2 **AUGUST 28, 2012, Cont.**

3  
4 21. Electronic Plans sent to Town Department Managers

5  
6 The Coordinator advised that during the last Town Department Manager's meeting she  
7 had asked if it would be okay to electronically send plans in lieu of printed 11" x 17" plans. She  
8 stated that the Department Managers were in favor of the electronically sent plans.

9 The Coordinator noted that this matter should be reflected in the next update to the  
10 Subdivision Regulations.

- 11  
12 4. Letter dated August 15, 2012, from Robert Todd, Todd Land Use Consultants, LLC, re:  
13 request for extension of the conditions subsequent deadline for Robert W. & Crystal L.  
14 Nadeau, Tax Map/Lot #4/14, Route 136, a/k/a Francestown Road from August 24, 2012,  
15 to August 24, 2013, for the Board's action.

16  
17 The Chairman stated that the above-referenced conditions subsequent had previously  
18 been extended by one year. He asked if conditions could be placed on an extension, i.e.,  
19 submission of driveway within 60 days. The Coordinator answered yes and pointed out that the  
20 driveway permit in question was approved by the State, so she suggested requiring that a copy of  
21 the driveway permit be submitted upon receipt rather than setting a time frame.

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

24  
25 Don Duhaime **MOVED** to extend the conditions subsequent deadline for Robert W. &  
26 Crystal L. Nadeau, Tax Map/Lot #4/14, Route 136, a/k/a Francestown Road from August  
27 24, 2012, to August 24, 2013, and to require submission of the updated driveway permit  
28 upon receipt from the State. Rodney Towne seconded the motion and it **PASSED**  
29 unanimously.

- 30  
31 9. Email received July 5, 2012, from Linda Moore, SNHPC, to Nic Strong, Planning  
32 Coordinator, re: SNHPC Representative for New Boston, for the Board's action. (see  
33 Nic's side note)

34  
35 David Litwinovich **MOVED** to recommend to the Board of Selectmen that Brent  
36 Armstrong continue as the SNHPC Representative for New Boston. Don Duhaime  
37 seconded the motion and it **PASSED** unanimously.

- 38  
39 17. Letter dated August 22, 2012, from Reggie Houle, to New Boston Planning Board, re:  
40 request for extension of the conditions subsequent deadline of 09/01/2012 until  
41 12/31/2012, for the Board's action.

42  
43 Don Duhaime **MOVED** to extend the conditions subsequent deadline of 09/01/2012 until

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11

1 **MISCELLANEOUS BUSINESS, cont.**

2  
3 12/31/2012, for Reggie Houle, Daylily Lane, Tax Map/Lot #7/74, Greenfield Road.  
4 David Litwinovich seconded the motion. AYE – David Litwinovich, Don Duhaime and  
5 Rodney Towne. ABSTAINED – Stuart Lewin. The motion **PASSED**.

- 6  
7 6. Letter received August 22, 2012, from Kathy Etlinger, re: 2 Mont Vernon Road (Heidi  
8 Palmer Real Estate office) operating her antique business under previously approved  
9 conditions for Real Estate Office, for the Board's review and discussion.

10  
11 The Chairman pointed out that the above-referenced property would have a change in use  
12 from a previously operated real estate office to an antique business. He indicated that it was Ms.  
13 Etlinger's intention to install a sign in a location where a sign had not previously been approved.  
14 He noted that there was an issue with cars backing out onto Clark Hill Road.

15 The Chairman asked if the Board could request that Ms. Etlinger come to a meeting with  
16 a hand drawn plan. The Coordinator pointed out that the business was located in the  
17 Commercial District and it was generally required that a professionally engineered plan be  
18 provided. She noted that the requirement could be waived if there were only specific items being  
19 changed on the plan. She continued that a new plan may not be required if items on the site were  
20 not being changed, i.e., hours of operation, parking spaces, etc. She noted that the items on the  
21 plan would need to be reviewed to ensure that they met current regulations.

22 Rodney Towne stated that Ms. Etlinger intended to install new signs and asked if she had  
23 received permits for the proposed signs. The Planning Board Assistant advised that Ms. Etlinger  
24 had spoken with Ed Hunter, Building Inspector/Code Enforcement Officer, and had indicated  
25 that she would adhere to parking, signage and lighting of the previously approved site plan with  
26 the exception of the installation of one sign. She stated that the previously approved site plan  
27 allowed for cars to back out from the parking lot onto Clark Hill Road. The Coordinator noted  
28 that it had been pointed out to Ms. Etlinger that the current Site Plan Regulations prohibited  
29 backing out onto Town roads. The Planning Board Assistant stated that Ms. Etlinger advised  
30 that she would barricade the area of the driveway in question with buckets and chains; however,  
31 Ms. Etlinger's letter to the Board represented parallel parking in the area in question. She noted  
32 that cars have been backing out of the driveway.

33 Rodney Towne asked the Coordinator how the matter could be handled. The Coordinator  
34 stated that the Board could request that Ms. Etlinger meet with the Board, require a new plan, or  
35 considering allowing a note or drawing to be added to the plan that addressed the parking issue.  
36 She pointed out that the plan could not be amended as it had been professionally engineered.

37 The Board agreed to request that Ms. Etlinger attend a meeting and bring a hand drawn  
38 plan that addressed the parking issues and how it will be ensured that cars are not backing out  
39 onto Clark Hill Road.

40 The Coordinator asked how the Board wanted to handle the issue of the business  
41 currently operating without an approved site plan. Rodney Towne stated that a cease and desist  
42 order be sent to Ms. Etlinger. The Chairman agreed with Rodney Towne.

43

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12

1 **MISCELLANEOUS BUSINESS, cont.**

2  
3 5. Letter received August 16, 2012, from William R. Sylvester & Peter Allen, re:  
4 consignment shop business at 290 2nd NH Turnpike, for the Board's review and  
5 discussion. (1986 ZBA Notice of Decision attached along with current Zoning Ordinance  
6 Uses in the "R-A" District).

7  
8 The Chairman asked what currently existed at the above-referenced property. The  
9 Coordinator answered that currently a building with apartments existed at the property. She  
10 advised that when the property was owned by Roger Hartleb many years ago apartments and a  
11 business existed. She explained that Roger Hartleb had received a special exception in 1986  
12 because at the time the Town was all one district and a business could not be operated without  
13 one. She noted that the 1986 special exception allowed for Mr. Hartleb to change part of his  
14 electrical supply store to a general store. She noted that for at least eight years, if not more, only  
15 apartments existed at the property. She explained that the previous business was considered a  
16 pre-existing, non-conforming use. She continued that because a business had not operated out of  
17 the property in more than two years a business use would not be allowed unless it was a home  
18 business. She noted that a home business was not generally permitted in an apartment building.  
19 The Chairman started that the proposed business appeared to be more than a home business. The  
20 Coordinator agreed and added that the proposed business was a consignment store.

21 The Chairman asked how to handle the matter. The Coordinator answered that Mr.  
22 Sylvester and Mr. Allen would need to go to the ZBA for a variance to allow something that was  
23 not currently permitted in the district. She noted that if a variance was granted they would need  
24 to come to the Planning Board for a Site Plan.

25 The Board agreed to send Mr. Sylvester and Mr. Allen a letter explaining that they  
26 needed to request a variance from the ZBA if they wished to pursue this option.

27  
28 22. Compliance Walk for Peter Shellenberger

29  
30 The Coordinator advised that Peter Shellenberger had requested an inspection of his new  
31 warehouse building with the hopes of opening operations by October 1, 2012.

32 The Coordinator stated that the landscaping had not been completed and Mr.  
33 Shellenberger would most likely propose a bond for trees and other landscaping issues.

34 The Board scheduled a compliance walk for September 12, 2012, at 6:00 p.m.

35  
36 **TOWNES FAMILY TRUST**

37 **TAYLOR, MARILYN J.**

38 Submission of Application/Public Hearing/Minor Subdivision/Lot Line Adjustment

39 Location: South Hill Road

40 Tax Map/Lot #'s 13/61 & 13/64

41 Residential-Agricultural "R-A" District

42  
43 Present in the audience was Dennis McKenney, LLS, and Charles Peak.

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13

1 **TOWNES FAMILY TRUST, cont.**

2  
3 The Chairman read the public hearing notice. He stated that an application form and  
4 cover sheet had been signed and submitted on August 13, 2012, and there were no outstanding  
5 fees. He noted all items required for a completed application had been submitted and waivers for  
6 the Traffic, Fiscal and Environmental Impact Studies had been submitted.

7 Dennis McKenney, LLS, provided an updated plan that incorporated revisions identified  
8 in the Coordinator's plan review letter dated August 22, 2012.

9 Dennis McKenney, LLS, stated that the Townes Family Trust owned a 90+ acre parcel  
10 with frontage on South Hill Road. He identified a location on the plan where the Town road  
11 maintenance ended and South Hill Road became Class VI. He also identified Marilyn Taylor's  
12 property, Tax/Map Lot #13/64, and noted that was broken into two tracts of land that equaled 5.2  
13 acres.

14 Dennis McKenney, LLS, explained that the applicants proposed to take 7.3 acres from  
15 Tax/Map Lot #13/61 and annex it to Tax/Map Lot #13/64. He stated that Tax Map/Lot #13/64  
16 would be 12.5 acres and Tax/Map Lot #13/61 would be 88.9 acres. He stated that both lots  
17 would remain conforming.

18 The Chairman asked if it was required to have a note on the plan that explained the  
19 purpose for the proposed changes in the Subdivision Regulations. The Coordinator answered no.  
20 The Chairman suggested adding such a requirement to the Subdivision Regulations.

21 The Chairman noted that it was required that 11" x 17" plans be legible and he was  
22 unable to read the plan that had been provided. Dennis McKenney, LLS, noted that he had  
23 delivered a number of large scale plans to the Planning Department. The Chairman pointed out  
24 that the Board Members did not receive large scale copies of the plan to review. He requested  
25 that larger font be used in the future that was easier to read. Dennis McKenney, LLS, pointed  
26 out that the original plan that had been produced to scale could not be reduced to an 11" x 17"  
27 piece of paper and remains legible. The Coordinator pointed out that there was no requirement  
28 that the plans be prepared on one sheet of paper. She noted that if the 1" = 200' scale of the  
29 original plans did not transfer well to 11" x 17" paper, the surveyor could use 1" = 100' and use  
30 two sheets. Dennis McKenney offered to provide multiple copies of large scale plans in the  
31 future. The Chairman pointed out again that the Subdivision Regulations requirement was for  
32 11" x 17" legible plans for the use of the Board members.

33 The Chairman pointed to the plan and asked if the area was sloped, wooded or a wide  
34 open field since there was no such definition on the plans. Dennis McKenney, LLS, answered  
35 that a timber harvest had recently been completed and the land generally sloped southwest.

36  
37 Rodney Towne **MOVED** to accept the application of Townes Family Trust, Marilyn  
38 Taylor, Location: South Hill Road, Tax Map/Lot #'s 13/61 & 13/64, Residential-  
39 Agricultural "R-A" District as complete. David Litwinovich seconded the motion and it  
40 **PASSED** unanimously.

41  
42 The Chairman indicated that the deadline for Board action was November 21, 2012.  
43

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14

1 **TOWNES FAMILY TRUST, cont.**

2  
3 Don Duhaime **MOVED** to grant the waiver requests for the Traffic, Fiscal and  
4 Environmental Impact Studies. David Litwinovich seconded the motion and it **PASSED**  
5 unanimously.

6  
7 The Board agreed that there was no need for a site walk.

8  
9 David Litwinovich **MOVED** to approve the Minor Subdivision/Lot Line Adjustment  
10 Plan for the Townes Family Trust and Marilyn J. Taylor, for Tax Map/Lot #13/61 and  
11 13/64, South Hill Road, such that 7.3 acres is annexed from Tax Map/Lot #13/61 to Tax  
12 Map/Lot #13/64, resulting in the following acreages: Tax Map/Lot #13/61, 88.9 acres;  
13 and Tax Map/Lot #13/64, 12.5 acres, subject to:

14  
15 **CONDITIONS PRECEDENT:**

- 16 1. Submission of a minimum of four (4) blue/blackline copies of the revised plat,  
17 including all checklist corrections and any corrections as noted at this hearing;  
18 2. Submission of the mylar for recording at the HCRD;  
19 3. Payment of any outstanding fees related to the subdivision application and/or the  
20 recording of documents with the HCRD (if necessary).  
21 4. Upon completion of the conditions precedent, the final plans and mylar shall be  
22 signed by the Board and forwarded for recording at the HCRD.

23  
24 The deadline date for compliance with the conditions precedent shall be **October 28,**  
25 **2012**, confirmation of which shall be an administrative act, not requiring further action by  
26 the Board. Should compliance not be confirmed by the deadline date and a written  
27 request for extension is not submitted by that date, the applicant is hereby put on notice  
28 that that the Planning Board may convene a hearing under RSA 676:4-a to revoke the  
29 approval.

30 The applicants are further put on notice that this lot line adjustment approval constitutes  
31 recognition that the lot configurations are in conformance with local land use regulations.  
32 To complete the lot line adjustment, deeds must be transferred.

33  
34 Don Duhaime seconded the motion and it **PASSED** unanimously.

35  
36 **MISCELLANEOUS BUSINESS AND CORRESPONDENCE FOR THE MEETING OF**  
37 **AUGUST 28, 2012, Cont.**

- 38  
39 7. Discussion, re: Conditions Precedent deadline of August 1, 2012, for Gravel Pit located  
40 on Tax Map/Lot #6/14, Parker Road, Thibeault Corporation. (AoT Permit outstanding)

41  
42 The Chairman stated that the above-referenced matter had previously been discussed in  
43 May 2012. He continued that the applicant had represented that they were supposed to be

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15

1 **MISCELLANEOUS BUSINESS, cont.**

2  
3 getting their AoT permit any day and an extension to the Conditions Precedent had been granted  
4 to August 1, 2012.

5 The Board agreed that the Conditions Precedent had lapsed. The Chairman asked if a  
6 cease and desist should be issued. The Coordinator stated that the Board should consider giving  
7 direction to Ed Hunter, Building Inspector/Code Enforcement Officer, to advise that the  
8 applicant did not have a Town Earth Removal Permit and were no longer permitted to remove  
9 material from their gravel pit. She explained that once the applicant obtained their AoT Permit  
10 they would need to come back to the Board with a new Earth Removal Permit application.

11 Rodney Towne recused himself from the decision on this matter.

12 The Board agreed to send a memo to Ed Hunter, Building Inspector/Code Enforcement  
13 Officer, that the conditions of the conditional approval had not been fulfilled, therefore, there  
14 was no Earth Removal Permit for the gravel pit.

- 15  
16 8. Discussion, re: Outstanding Gravel Permit Applications for Gravel Pits located on Tax  
17 Map/Lot #3/57, Parker Road and Tax Map/Lot #6/45, River Road, owned by Thibeault  
18 Corporation. (see email correspondence attached)

19  
20 The Coordinator stated that if material had not been removed from a gravel pit within two  
21 years the Town could deem the pit abandoned. She planned to research how much material had  
22 been removed from the gravel pits in last two years as well as how the abandonment matter was  
23 handled procedurally.

24  
25 **Continued Mixed Use Discussion**

26  
27 The Chairman reminded the Board to review the Town's Commercial Design Guidelines.

28 The Chairman stated that the public input session was scheduled for Saturday, October  
29 20, 2012, at 8:30 a.m. He noted that a save the date for the session would be in the September  
30 issue of the New Boston Bulletin.

31 The Coordinator asked that comments for the October New Boston Bulletin article be  
32 submitted to her by the next meeting.

33 The Board agreed to finalize the survey questions at the next meeting.

34  
35 Don Duhaime **MOVED** to adjourn the meeting at 9:26 p.m. David Litwinovich  
36 seconded the motion and it **PASSED** unanimously.

37  
38  
39 Respectfully Submitted,  
40 Valerie Diaz, Recording Clerk

Minutes Approved:  
09/25/2012