

**TOWN OF NEW BOSTON
NEW BOSTON PLANNING BOARD
Minutes of 2015 Meetings**

February 24, 2015

1 The meeting was called to order at 6:30 p.m. by Chairman Peter Hogan. Present were
2 regular members Mark Suennen, David Litwinovich and Joe Constance; and, ex-officio Dwight
3 Lovejoy. Also present were Planning Coordinator Nicola Strong, Planning Board Assistant
4 Shannon Silver and Recording Clerk Valerie Diaz.

5
6 Present in the audience, for all or part of the meeting, were Building Inspector and Code
7 Enforcement Officer Ed Hunter, Town Counsel William Drescher, Esq., Selectman Rodney
8 Towne, Town Administrator Peter Flynn, Michael Tremblay, BJ Branch, Esq., Tim Trimbur, Jon
9 Stout, Peter Chickering, Jim Straw, approximately 12 other abutters/interested parties to the
10 Tremblay matter and Earl Sandford, PE.

11
12 **TREMBLAY, MICHAEL**

13 **TREMBLAY, JOANNE**

14 **TREMBLAY, ROBERT**

15 **SHERMAN, JEANNE**

16 Public Revocation Hearing/Non-Residential Site Plan Review/cordwood processing & sales
17 agricultural business

18 Location: 194 Parker Road

19 Tax Map/Lot #3/122

20 Residential-Agricultural "R-A" District

21
22 The Chairman read the public hearing notice. Present in the audience, for all or part of
23 the hearing, were Building Inspector and Code Enforcement Officer Ed Hunter, Town Counsel
24 William Drescher, Esq., Selectman Rodney Towne, Town Administrator Peter Flynn, Michael
25 Tremblay, BJ Branch, Esq., Tim Trimbur, Jon Stout, Peter Chickering, Jim Straw, and
26 approximately 12 other abutters/interested parties.

27 William Drescher, Esq., introduced himself and explained that he was present to
28 represent the Board of Selectmen and the Code Enforcement Officer who had been motivated to
29 bring the petition before the Planning Board. He noted that he had submitted two copies of a
30 document and had a third copy available if needed. This document was a compilation of all the
31 town records cited and footnoted in the petition that had been made to the Board. William
32 Drescher, Esq., went on to say that it was his understanding that Mr. Tremblay was represented
33 this evening by counsel, BJ Branch, Esq. William Drescher, Esq., noted that he had provided
34 Attorney Branch the records presented to the Board this evening and that BJ Branch, Esq., would
35 like to make a preliminary request regarding the timing of receiving these documents so he
36 would defer to Attorney Branch to discuss this.

37 BJ Branch, Esq., stated that he would like a continuance of the proceedings for one
38 month since he had just received these materials that related to the importance of the issues to be
39 discussed at the hearing. He asked the Board's leave to make a presentation on how the
40 cordwood operation could be changed or modified to run properly in the future so as to hopefully
41 make the revocation of the site plan unnecessary. He said that Mr. Tremblay would propose
42 some self-assumed conditions that he hoped would make everyone happy.

43 The Chairman stated that he was interested in hearing BJ Branch, Esq.'s presentation.

**TOWN OF NEW BOSTON
NEW BOSTON PLANNING BOARD
Minutes of 2015 Meetings**

February 24, 2015

1 **TREMBLAY, cont.**

2
3 The Chairman believed that the information included in William Drescher, Esq.'s record had
4 been available to BJ Branch, Esq., from the get go and was old information. He repeated that he
5 would like to hear the presentation. Mark Suennen agreed, since BJ Branch, Esq., was present,
6 that he would like to hear his presentation also.

7 BJ Branch, Esq., noted that there were a number of people present in the audience, some
8 against the operation and some with letters that stated they had no problem with the business.
9 The Chairman said that he had been Chairman when this site plan was approved in the first place
10 and he had said it then that the neighbors have no vote. He wanted to be clear that no matter how
11 many people agreed that Mr. Tremblay complied with his plan it was not really material. BJ
12 Branch, Esq., explained that he was merely pointing out that there were people for and against
13 the business. The Chairman stated that there always were. BJ Branch, Esq., said that he was
14 trying to address everyone's concerns. The Chairman stated he should be trying to address the
15 regulations just as was done when the site plan was approved. BJ Branch, Esq., stated that the
16 existing business had been lawfully operating for ten years under the vague conditions of the site
17 plan approval. He further stated that he wanted to flesh out those conditions and provide a
18 template to go forward with new conditions that would render both sides equally pleased or
19 displeased. The Chairman asked him to continue his presentation.

20 BJ Branch, Esq., stated that Mike Tremblay realized that his business was a better fit in
21 the location back when it was approved than now, there being increased development and more
22 people living in the area. The important thing about the proposed conditions was that Mike
23 Tremblay would shut down his business by March 31, 2017. The business would not be
24 transferred to another party and all operations that were not residential in nature would cease. BJ
25 Branch, Esq., pointed out that date was about two years out which was about the same time that
26 would be lost taking the case to Superior Court to get an order on the matter. He said that the
27 proposal would mean that the business would be shut down and the Town would never have to
28 hear a complaint about it again after March 31, 2017.

29 BJ Branch, Esq., stated that some of the conditions to the approval were a little loosey-
30 goosey and open to interpretation. For instance the condition that no more than one person could
31 be sawing implied that other people could be onsite doing other things. Mr. Tremblay had
32 interpreted it that way and had people stacking wood which was not a nuisance. BJ Branch,
33 Esq., also noted that deliveries had not raised any concerns. He said that the main issue was the
34 saw. He stated again that having only one person operating was ambiguous as to whether it
35 meant just Mr. Tremblay alone versus Mr. Tremblay and the helpers he had always had. BJ
36 Branch, Esq., stated that Mr. Tremblay did not consider them employees but independent
37 contractors. BJ Branch, Esq., stated that he could, however, see how the Town might have
38 expected it to be just Mr. Tremblay.

39 BJ Branch, Esq., stated that the proposal was to scale back the operation to Mr. Tremblay
40 and no more than two additional people to stack and move wood; that the operation would run
41 for no more than five hours a day; that there would be no operation before 8:00 a.m. or after 3:00
42 p.m.; that there would be no operation on Sundays or holidays; that operations would only take
43 place on two Saturdays a month, the first and the third, weather permitting. BJ Branch, Esq.,

**TOWN OF NEW BOSTON
NEW BOSTON PLANNING BOARD
Minutes of 2015 Meetings**

February 24, 2015

1 **TREMBLAY, cont.**

2
3 stated that Mr. Tremblay could live with those conditions and believed that they met the spirit of
4 the agreement when the site plan was approved.

5 BJ Branch, Esq., noted that he had taken into account the fact that at the time of approval
6 it was noted that the business would not run all the time because Mr. Tremblay worked a third
7 shift job. He noted that Mr. Tremblay still worked third shift five days a week from 11:00 p.m.
8 to 7:00 a.m. and did not want to work all day after that. BJ Branch, Esq., stated that five hours a
9 day, every other Saturday and no Sundays or holidays with a maximum of three people onsite,
10 working with a date to close down the operation in two years was better than any relief that could
11 be provided through the judicial process.

12 BJ Branch, Esq., stated that he was not before the Board to issue threats but to try to find
13 a solution to the problem. He stated that if the matter ended up in litigation Mr. Tremblay would
14 have no choice but to try to sell the business as an ongoing business to fund the court case. He
15 noted that the proposal he had presented would have Mr. Tremblay closing the business and
16 walking away and that while it was still in operation there would be firm rules in place so that
17 compliance could be easily determined. BJ Branch, Esq., stated that these were voluntary
18 conditions to allow the continuation of the operation that were more specific and explicit than
19 those in place when the business was approved.

20 In terms of his request for a continuance, BJ Branch, Esq., said that the Chairman may
21 say that the records were old but he could assure the Board that he had not seen them all. BJ
22 Branch, Esq., said that if the Board wanted to try and shut Mr. Tremblay down then granting the
23 30 day continuance request would provide him with due process and avoid that becoming an
24 argument before the courts. He suggested that the Board not create an issue for the Town by not
25 granting the request. He went on to say that he would review the documents to see if there was
26 anything included that would change the reasons why they felt they were right. BJ Branch, Esq.,
27 stated that the Board and Mr. Tremblay could enter into a consensual decree with the right to
28 revoke if Mr. Tremblay did not comply with the conditions laid out.

29 William Drescher, Esq., did not object to the one month continuance. He agreed with BJ
30 Branch, Esq., that if there was the possibility of revocation he would just as soon that BJ Branch,
31 Esq., got all due process so there would be no argument in Superior Court. William Drescher,
32 Esq., stated that the proposal gave the Town several very beneficial things that may not get
33 granted by a court. He went on to say that he had not had the opportunity to meet with the whole
34 Board of Selectmen but had only met with one Board member who had indicated his agreement
35 with the proposal. William Drescher, Esq., stated he would prefer to meet with the whole Board
36 of Selectmen before saying the Town was agreeable. He stated that the proposal did have a ring
37 to it.

38 William Drescher, Esq., stated that if the Planning Board embraced the proposal then he
39 did not know if the Board of Selectmen needed to comment. He noted that he could go forward
40 with the hearing if necessary as he had the evidence he needed to do so. William Drescher, Esq.,
41 agreed that it was advisable to put off the hearing for 30 days during which time he would be
42 able to meet with the full Board of Selectmen and get a complete answer on the Town's position.
43 He stated that was his recommendation but that the Planning Board could do what it wanted and

**TOWN OF NEW BOSTON
NEW BOSTON PLANNING BOARD
Minutes of 2015 Meetings**

February 24, 2015

1 **TREMBLAY, cont.**

2
3 he recognized that.

4 Dwight Lovejoy stated he would try and respond for the Board of Selectmen. He said to
5 go ahead with the process because the Board of Selectmen would not be throttled to go to some
6 place they did not want to go. The Chairman asked to what process Dwight Lovejoy was
7 referring. Dwight Lovejoy stated that he would not be intimidated with lawsuits and threats.

8 The Chairman stated that BJ Branch, Esq.'s interpretation was what he wanted it to be.
9 The Chairman said again that all the information in the packet was old and BJ Branch, Esq.,
10 could have gotten it at any time. He stated that the 30 day delay benefited the applicant because
11 he could do what he wanted and the enforcement would be the same as now. The Chairman said
12 he was not saying he would not take the legal advice, but was just saying the argument was false.
13 He stated that during the approval process it was crystal clear that if the business had any growth
14 it would have to seek a new location. The Chairman noted that he had said that himself. He
15 repeated that the information had been available right along.

16 William Drescher, Esq., stated that his purpose was to build a record because if the case
17 went to Superior Court there would be not witnesses and the whole thing would ride on the
18 record. He stated that it was very important that in Superior Court he could argue that the
19 applicant got all due process. He noted that he was ready to present his case now or in 30 days.

20 The Chairman said again that he was not saying he would not take counsel's advice but
21 that he saw this as another attempt to get another 30 days. He asked if the applicant could be
22 fined for operating on a daily basis for violating the cease and desist. William Drescher, Esq.,
23 stated that neither the Planning Board nor the Town were authorized to impose fines. He noted
24 that a different action would have to be brought in court to collect fines. He said the court could
25 award the Town attorney fees but the ability to collect fines was up to the judge. He stated that
26 frequently the fines were added up and were very high on a daily civil penalty. William
27 Drescher, Esq., stated he did not see a lot of towns getting the fines. He said the potential of
28 being charged these fines was a strong incentive to a defendant to not continue what they were
29 doing while the lawsuit was pending. He noted that the Town was not in the position to tell the
30 court to order the business to stop but any business that kept operating while litigation was
31 pending would do so at the applicant's peril. William Drescher, Esq. said that any daily fine
32 would not happen until a judge said so and that would not be until the case was over and the
33 town won, if it happened then.

34 Joe Constance said that he would like to hear from Ed Hunter about what BJ Branch,
35 Esq., had said about the vagueness of the original approval. He asked if Ed Hunter agreed that
36 there was any vagueness at all. Ed Hunter stated that he would assume that this was to do with
37 employees versus sub-contractors. He went on to say that most reasonable people he thought
38 would be concerned with activity on the site and whether the people were employees or sub-
39 contractors made no difference. He stated that everyone had gone away thinking that the
40 business could not grow beyond the scope of the approval and that was one of the points of
41 vagueness. Ed Hunter stated that in terms of hours of operation, starting and ending times, days
42 of the week etc., that was all clear.

43 The Chairman stated that it was clear that the business was in violation. William

**TOWN OF NEW BOSTON
NEW BOSTON PLANNING BOARD
Minutes of 2015 Meetings**

February 24, 2015

1 **TREMBLAY, cont.**

2
3 Drescher, Esq., stated that was his position. David Litwinovich agreed that the operation was in
4 violation and noted that he did not buy the subcontractor/volunteer argument. He also agreed
5 that he did not mind the 30 day continuance as it only helped the Town's position. Joe Constance
6 stated that the continuance did not mean that the Board was predisposed either way on the
7 matter. William Drescher, Esq., stated that through his document pleading he would have to
8 prove the points which would be made through the documents and his oral presentation. He
9 noted that the Board had to be objective enough a month from now to do the right thing.

10 Mark Suennen stated that his position was that the compromise the applicant and his
11 attorney had proposed spoke to specific rules that they wanted in place to continue the business
12 but did not comment on the size and the nature of the facility on the site. He said that nothing
13 was included regarding limitations on the size of the piles, the location of the piles, the number
14 of trucks going in and out or the traffic on the road. He felt the compromise was inadequate
15 because of those deficiencies. Mark Suennen agreed with having firm and fixed guidelines but
16 thought the compromise should go further as it was not sufficient to address the concerns and
17 issues from the original site plan. The Chairman pointed out that the magnitude of the operation
18 now would not have been approved when the business came before the Board and it was unlikely
19 that it would be approved under current regulations.

20 BJ Branch, Esq., responded to Dwight Lovejoy's statements by pointing out that his
21 presentation began by saying that he did not want to make threats. He stated that the proposal
22 they had presented was an attempt to say that the business was no longer a good fit in the
23 neighborhood. He went on to say that there were two sides to the story and hearing the Board
24 members say that Mr. Tremblay was clearly in violation made him concerned that the Board was
25 not objective in this matter. He stated that they hoped the Board would be willing to consider
26 additional suggestions.

27 The Chairman stated that Mr. Tremblay should abide by the approved site plan. BJ
28 Branch, Esq., stated that Mr. Tremblay was still cutting between 200 - 300 cord of wood a year
29 and had the receipts to prove it. The Chairman stated that the way the operation was being
30 conducted was what was in question. BJ Branch, Esq., said the only ambiguous condition was
31 the workers. He stated that Mr. Tremblay complied with the hours and the one saw operator
32 requirement at one time. He stated that condition itself was ironic if the condition was
33 supposedly that there be only one person on the site anyway. BJ Branch, Esq., said that there
34 was some ambiguity with the approval and that Mr. Tremblay had always had helpers for his
35 operation. He stated that he had testimony and evidence that the operation had continued more
36 or less the same for many years and the people who delivered wood to Mr. Tremblay prior to the
37 approval would state that.

38 BJ Branch, Esq., said that Mr. Tremblay was willing to shut down his operation; the
39 current site plan allowed operation between 7:00 a.m. to 5:00 p.m. five days a week. He noted
40 that if the helpers were not allowed Mr. Tremblay would have to take up the slack and
41 potentially be operating 11 hours a day. BJ Branch, Esq., stated that Mr. Tremblay's offer to
42 give up his right to do this business was not an inconsequential offer. He went on to say that
43 there was no increased truck traffic from the business and none of the complaints had mentioned

**TOWN OF NEW BOSTON
NEW BOSTON PLANNING BOARD
Minutes of 2015 Meetings**

February 24, 2015

1 **TREMBLAY, cont.**

2
3 trucks, they had all been about the noise of the saw and the number of people onsite. BJ Branch,
4 Esq., said that Mr. Tremblay had no employees, they were helpers who stacked the wood and did
5 not bother anyone. He noted that the proposal was to cut the hours so there was no operation on
6 Sundays and holidays. He stated that Mr. Tremblay had no interest in ending up in court and that
7 this was a way to avoid the cost of that by allowing Mr. Tremblay to shut down with these
8 conditions before any compliance appeal process would run its course anyway. BJ Branch, Esq.,
9 pointed out that a case on point involving the Town of Amherst indicated that the Town had
10 pulled the applicant's permit in February of 1997 and the Supreme Court decision was finally
11 reached in December of 1999. He stated that was more than two years and Mr. Tremblay was
12 offering to close after two years.

13 The Chairman asked why the applicant thought the Planning Board was interested in
14 closing the business. BJ Branch, Esq., stated it was a combination of things including changes in
15 circumstances. The Chairman said he had no interest in revoking the plan. He said he would
16 give the 30 day continuance. BJ Branch, Esq., said he was concerned about the objectivity of the
17 Board having heard this evening's discussion. The Chairman said that BJ Branch, Esq., was
18 present hoping that people would act on something but they are not. He stated that hoping that
19 people would buy the difference between employees and contractors was just ridiculous. He
20 went on to say that Mr. Tremblay could continue in perpetuity under the conditions attached to
21 the approval. The Chairman went on to say that he had no empathy for neighbors who moved
22 into the area when the business was already there. BJ Branch, Esq., stated that the Chairman was
23 putting forth an "apocalypse now" solution when the applicant had come in with a proposal that
24 he was willing to walk away from the business. The Chairman said that appropriate safeguards
25 had been built in to the original approval to prevent the business from getting too big.

26 David Litwinovich stated that the Board was acting in good faith granting the 30 days
27 because he felt that some of the information had been sprung on BJ Branch, Esq., but he did
28 think there were some holes in the proposal presented. Joe Constance reiterated that after the
29 continuance the Board would not be predisposed one way or the other but were willing to grant
30 the applicant and his attorney the time to review the information. He thought that BJ Branch,
31 Esq.'s concerns about bad vibes from the Board were not valid.

32 BJ Branch, Esq., stated that he was willing to listen to further suggestions from the
33 Board. He stated that it was unusual to be before a Board who saw a negotiated resolution as
34 less preferable than a drawn out court battle. He said the proposal was made so everyone did
35 not have to just live with the site plan as it was. He asked the Board to lay out the things they
36 thought could be part of the proposal and if that involved limiting truck deliveries and so on to
37 let him know. BJ Branch, Esq., went on to say that nothing about the noise of stacking wood or
38 any other commotion had been mentioned; it had all been about the saw and there being more
39 than two people onsite.

40 The Chairman said BJ Branch, Esq., should be looking at the violations and focusing
41 energy on making the business in compliance. BJ Branch, Esq., stated that would be difficult
42 with a hearing in 30 days. The Chairman said that operating in compliance would demonstrate
43 goodwill and the business in compliance could operate in perpetuity. Dwight Lovejoy stated that

**TOWN OF NEW BOSTON
NEW BOSTON PLANNING BOARD
Minutes of 2015 Meetings**

February 24, 2015

1 **TREMBLAY, cont.**

2
3 all of this had been told to Mr. Tremblay previously when he first came to the Board. Dwight
4 Lovejoy said that if Mr. Tremblay had communicated this eight months ago they would not be
5 here this evening. BJ Branch, Esq., pointed out that there had been no violations since the cease
6 and desist; nothing from the Town or the Code Enforcement Officer had been presented since
7 that time.

8 William Drescher, Esq., suggested the Board recess to a date certain.

9
10 Mark Suennen **MOVED** to adjourn the Public Revocation Hearing/Non-Residential Site
11 Plan Review/cordwood processing & sales agricultural business, for Michael Tremblay,
12 Joanne Tremblay, Robert Tremblay and Jeanne Sherman, Location: 194 Parker Road,
13 Tax Map/Lot #3/122, Residential-Agricultural “R-A” District, to March 24, 2015, at 6:30
14 p.m. Joe Constance seconded the motion and it **PASSED** unanimously.

15
16 The Chairman noted that no further notices would be sent to abutters since the hearing
17 was adjourned to a time and date certain at this meeting.

18
19 **Board to discuss question, re: Wetlands Conservation and Stream Corridor District**

20
21 Present in the audience was Earl Sandford, PE.

22 The Coordinator indicated that there was not a rush to do anything with this as it would
23 be a proposal for a Zoning change next year.

24 The Coordinator stated that this had to do with the contiguous upland requirements in the
25 Wetlands Conservation District and the fact that 25% of the minimum lot size could be made up
26 of poorly drained soils. She explained that the various districts in Town had different minimum
27 lot sizes and continued that the remaining 75% needed to be contiguous upland. She stated that
28 the acreage sizes would change if the minimum lot sizes changed. She questioned why there was
29 a requirement for 1.5 acres of contiguous upland for a 2 acre, front lot in the “R-A” District but
30 only 1.125 acres of contiguous upland for a 1.5 acre lot in the “R-1” District. The Chairman
31 answered that the difference was most likely due to the requirements being written at different
32 times. The Coordinator clarified that the requirements had been written at the same time for the
33 1990 Zoning Ordinance.

34 Mark Suennen stated that an argument could be made that the Board would not assign a
35 location in the “R-1” District unless it could support smaller lot sizes to begin with which would
36 allow for the 25% reduction and potentially a smaller house that would fit on 1.125 acres. The
37 Coordinator agreed that Mark Suennen’s statement could be a potential argument, however, she
38 pointed out that Open Space Developments with a potential one acre lot created separate issues.

39 The Chairman stated that he was not sure there was a problem with the numbers as they
40 existed. Joe Constance commented that Mark Suennen’s argument seemed valid to him.

41 The Chairman asked if the Coordinator had a suggestion for changing the requirement.
42 The Coordinator suggested that the Board specify how the 1.5 acres of continuous upland be
43 delineated on the plan layout and where that area should be located on the lot. David

**TOWN OF NEW BOSTON
NEW BOSTON PLANNING BOARD
Minutes of 2015 Meetings**

February 24, 2015

1 **WETLANDS CONSERVATION DISTRICT DISCUSSION, cont.**

2
3 Litwinovich stated that he was fine with the plan being shaded to show the contiguous upland.
4 The Chairman asked if the shaded area would represent the required location of the contiguous
5 upland. Mark Suennen read from the regulations and confirmed that the contiguous dry land
6 area had to be the required building site with the accommodating utilities. Joe Constance asked
7 if the shaded area would have actual dimensions shown on the plan. Mark Suennen answered
8 that it was difficult to adequately define the wetlands being delineated without calculations. He
9 indicated that the stamp of a licensed land surveyor and/or a wetland scientist verified the
10 accuracy of the calculations.

11 The Chairman asked if Mark Suennen believed no changes were necessary to the current
12 requirements. Mark Suennen answered that he was unsure. The Chairman asked for the Board
13 to give the matter further consideration for discussion at future meeting.

14 Earl Sandford, PE, stated that it was his interpretation that a valid lot could be created by
15 achieving 1.5 acres of contiguous upland. He continued that there were instances when he was
16 forced to obtain a dredge and fill permit even though a perfectly good 1 acre front area existed
17 with plenty of room. He believed it was egregious under the circumstances that he explained to
18 require the 1.5 acres of contiguous upland when doing so was not good for the environment.
19 Mark Suennen commented that the Board could address this requirement by not making it a
20 requirement if the applicant could show that the proposed area for the house could meet all the
21 setbacks and not be placed on the 1.5 acres of dry, contiguous upland.

22 Earl Sandford, PE, believed that a good solution would be moving these requirements
23 from the Zoning Ordinance into the Subdivision Regulations. He stated that the Board would
24 have more flexibility with regard to waiving certain requirements by moving them to the
25 Subdivisions Regulations.

26 Mark Suennen stated that he would give the matter more thought for discussion at a
27 future meeting. David Litwinovich added that he would be interested to hear about what abuses
28 could take place if changes were made. Earl Sandford, PE, suggested that the Town take the
29 200' x 200' square and require that something half that size fit on a dry, contiguous upland
30 building area.

31 Mark Suennen asked if Board action was required this evening on these matters. The
32 Coordinator answered no.

33
34 **Board to discuss next Zoning Ordinance question, re: existing zoning districts and uses**

35
36 David Litwinovich advised that following the last meeting he continued his research by
37 cross-referencing town area and tax rate in an effort to find towns that were similar to New
38 Boston; he indicated that the effort did not yield any results.

39 David Litwinovich commented that he was amazed by the differences he found with
40 regard to how towns handled zoning.

41 The Chairman asked for the long term goal of David Litwinovich's research. David
42 Litwinovich answered that his long term goal was to list New Boston's allowable uses for the
43 Industrial District as well as a list of other uses that other towns applied to their Industrial

**TOWN OF NEW BOSTON
NEW BOSTON PLANNING BOARD
Minutes of 2015 Meetings**

February 24, 2015

1 **ZONING ORDINANCE DISTRICT DISCUSSION, cont.**

2
3 Districts. He continued that he wanted the Board to be able to evaluate the information and
4 determine if other uses would apply in the various districts.

5 The Board agreed to revisit David Litwinovich's research in one month.

6
7 **Miscellaneous Business and correspondence for the meeting of February 10, 2015,**
8 **including, but not limited to:**

9
10 8a. Letter dated February 12, 2015, from Earl Sandford, P.E., Sandford Surveying and
11 Engineering, Inc., to Nic Strong, Planning Coordinator, re: Shaky Pond Development,
12 LLC, completeness of project, for the Board's review and discussion.

13
14 8b. Letter copy dated February 10, 2015, from Ridgely Mauck, P.E., Alteration of Terrain
15 Bureau, NH DES, to Shaky Pond Development, LLC, re: Request for AOT Permit
16 Extension, for the Board's information.

17
18 9. Letter with guarantee worksheet attachment, dated February 5, 2015, from Earl Sandford,
19 P.E., Sandford Surveying and Engineering, Inc., to Nic Strong, Planning Coordinator, re:
20 Shaky Pond Development, LLC, response to Northpoint Engineering, LLC's, January 19,
21 2015, technical review comments, for the Board's information.

22
23 Present in the audience was Earl Sandford, PE.

24 The Chairman addressed 8a, 8b and 9 together as they were related.

25 Earl Sandford, PE, stated that the applicant was an interesting situation. He advised that
26 the applicant had been refused an extension of his AoT permit. He explained that new laws had
27 been made relative to AoT permits, i.e., for disturbance of more than 100,000 sq. ft. of area an
28 AoT permit was required. He noted that conditional approval for the AoT permit had been
29 given; however, subsequent to the conditional approval, the rules changed. He indicated that one
30 five year extension of the AoT permit had been granted and was due to expire on March 7, 2015.

31 Earl Sandford, PE, stated that he had contacted Ridgely Mauck, NHDES to find out if
32 there was any leeway with regard to granting a second extension. He went on to say that he had
33 been advised that there was no leeway; however, there was precedence with this matter. He
34 explained that there was a recent subdivision that had been deemed as "substantially complete"
35 at the time a conservation easement had been deeded to another party. He stated that Ridgely
36 Mauck had believed that a substantial amount of work had been completed to create the
37 easement and that a substantial amount would be lost if they were shut down. He noted that the
38 subdivision he was referencing had not moved a tablespoon of soil on the project.

39 Earl Sandford, PE, stated that he was before the Board to make a plea to keep the project
40 alive. He continued that if the request was denied the project would need to be totally
41 revamped.

42 Earl Sandford, PE, stated that the project had not been completed due to the economy and
43 due to the applicant's serious health issues. He also indicated that there had been some issues

**TOWN OF NEW BOSTON
NEW BOSTON PLANNING BOARD
Minutes of 2015 Meetings**

February 24, 2015

1 **MISCELLANEOUS BUSINESS, cont.**

2
3 with the design of the cistern and the Town's required warranty for that cistern. He advised that
4 the matter had been resolved and Mitchie Corp guaranteed the cistern for 50 years.

5 The Chairman asked if the Board could consider work already completed as substantially
6 complete. Earl Sandford, PE, stated that the word substantial was key with regard to the
7 warranty deed; 59 acres being deeded to the Town. He noted that a lot of work had gone into the
8 subdivision and that there had been a lot of meetings with the Board.

9 David Litwinovich asked if the Board could modify the original approval. Mark Suennen
10 believed that the original approval was not being discussed and that the Board was judging the
11 issue using the current regulations.

12 Earl Sandford, PE, pointed out that the Board had recently granted a two year extension
13 for the project. Mark Suennen acknowledged that an extension had been granted and stated that
14 the subdivision had been approved in 2008. He went on to say that three consecutive extension
15 requests had been granted due to the economy and that the Board had indicated that no further
16 extensions would be granted. He continued that the applicant came before the Board with his
17 plan and the Board granted him a two year extension. He explained that an additional six month
18 extension had been granted as the adjacent subdivision's road would not be completed until June
19 or July of 2015.

20 Mark Suennen stated that it seemed unlikely that the applicant would get any work done
21 within the next six months with the exception of filing papers and getting the cistern approved,
22 based on the progress that he had seen. He further stated that he was not likely to say that the
23 project was substantially complete. He added that he did not foresee the project becoming
24 substantially complete within six months. Earl Sandford, PE, asked for the deadline of the most
25 recent extension; the Planning Board Assistant left the conference room to find the date in the
26 file.

27 The Chairman stated that stopping the subdivision now did not make sense after all the
28 work that had been completed. He agreed that the work completed with the Town was
29 substantial but was not sure it met the substantial completion criteria. Earl Sandford, PE,
30 thought that deeding 59 acres of land would be significant towards substantial completion
31 because it tied up the rest of the subdivision.

32 The Planning Board Assistant reported that the deadline extension was for January
33 2016. Mark Suennen asked if the extension was contingent on maintaining all existing permits.
34 The Planning Board Assistant answered that she checked the minutes and the Board had not
35 made it contingent.

36 Mark Suennen stated that he was disinclined to state that the project was substantially
37 complete. Earl Sandford, PE, clarified that the applicant was not asking the Board to deem that
38 the project was substantially complete until the land was deeded to the Town. Mark Suennen
39 acknowledged that the applicant was requesting that the Board deem the project substantially
40 complete on March 7, 2015, which would provide the applicant with a cemented AoT permit.
41 The Chairman noted that the Board would not grant another extension past January of 2016. Joe
42 Constance agreed with Mark Suennen and noted that the extension would expire in January of
43 2016. David Litwinovich agreed with the other Board members.

**TOWN OF NEW BOSTON
NEW BOSTON PLANNING BOARD
Minutes of 2015 Meetings**

February 24, 2015

1 **MISCELLANEOUS BUSINESS, cont.**
2

3 The Chairman asked for the specific changes that were made to the laws relative to the
4 AoT permits. Earl Sandford, PE, advised that a certain portion of stormwater had to be
5 contained 100% rather than treating the stormwater.

6 David Litwinovich commented that he felt like the Board's hands were tied. The
7 Chairman believed that a lot of the ground work had been completed; however it had not been
8 completed onsite. He added that further water containment for the site was not such a bad thing.

9 The Chairman stated that he was not convinced that the project could be deemed
10 substantially complete by filling out paperwork that should have been completed a long time
11 ago.
12

13 Mark Suennen **MOVED** to deny a finding of substantial completion for the Shaky Pond
14 Development, LLC. Joe Constance seconded the motion. **Discussion:** The Chairman
15 stated that he would love a compelling reason to say that there was substantial completion
16 as there were a lot of meetings, paperwork and negotiations that had been completed. He
17 continued that once all of the meetings, paperwork and negotiations had been completed
18 nothing else had been done. The motion **PASSED** unanimously.
19

- 20 1. Distribution of the February 10, 2015, meeting minutes, for review and approval at the
21 March 24 2015, meeting. (distributed by email)
22

23 David Litwinovich stated that the Town of Sandown had been misspelled in the February
24 10, 2015, meeting minutes.
25

26 David Litwinovich **MOVED** to approve the February 10, 2015, meeting minutes as
27 amended. Joe Constance seconded the motion and it **PASSED** unanimously.
28

- 29 2. Endorsement of a Subdivision Plan for Thomas Mohan, Jr., Trustee, of the C.H. Mohan
30 Revocable Trust, 2 Lots, Tax Map/Lot #14/84, N.H. Route 13 a/k/a Mont Vernon Road,
31 Meadow and Dunbar Roads, by the Planning Board Chairman & Secretary.
32

33 The Chairman indicated that the above-referenced subdivision plan would be endorsed at
34 the close of the meeting.
35

- 36 3. Endorsement of a Notice of Decision Cover Sheet, for Thomas Mohan, Jr., Trustee, of
37 the C.H. Mohan Revocable Trust, 2 Lots, Tax Map/Lot #14/84, N.H. Route 13 a/k/a
38 Mont Vernon Road, Meadow and Dunbar Roads, by the Planning Board Chairman.
39

40 The Chairman endorsed the above-referenced Notice of Decision Cover Sheet.
41

- 42 4. Email copy with attached letter and pictures, received February 16, 2015, from Kevin
43 Leonard, P.E., Northpoint Engineering, LLC, to Nic Strong, re: Twin Bridge Estates,

**TOWN OF NEW BOSTON
NEW BOSTON PLANNING BOARD
Minutes of 2015 Meetings**

February 24, 2015

1 **MISCELLANEOUS BUSINESS, cont.**

2
3 Phase II, Site Stabilization Update, for the Board's information.

4
5 Mark Suennen asked if work was actively being completed for the above-referenced
6 subdivision. Dwight Lovejoy answered that work was not actively being completed.

7
8 5. Invoice and Construction Services Reports dated January 15 and February 6, 2015, from
9 Northpoint Engineering, LLC, for Twin Bridge Estates, Phase II, for the Board's
10 information.

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

14
15 6. Invoice and Construction Services Reports dated January 5, 10, 14, 18, and February 6,
16 2015, from Northpoint Engineering, LLC, for Forest View II, for the Board's
17 information.

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

21
22 7. Invoice dated February 5, 2015, from Northpoint Engineering, LLC, re: Shaky Pond
23 Development, LLC, for review of fourth plan submission and guarantee worksheet;
24 correspondence with design engineer, for the Board's information.

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

28
29 The Coordinator reminded the Board that there would not be a Planning Board meeting
30 on March 10, 2015, due to Town Voting.

31
32 Joe Constance **MOVED** to adjourn at 8:04 p.m. David Litwinovich seconded the motion
33 and it **PASSED** unanimously.

34
35
36 Respectfully submitted,
37 Nicola Strong, Planning Coordinator and
38 Valerie Diaz, Recording Clerk

Minutes Approved:
3.24.15