

1 Sandown Planning Board
2 Minutes
3 January 15, 2013
4

5 **Date:** January 15, 2011

6 **Place:** Sandown Town Hall

7 **Members Present:** Matt Russell -Vice Chairman, Steven Meisner, Ed Mencis, Ernie
8 Brown, Matthew Brown, Jim Carroll, James Devine – Ex-Officio

9 **Also Present:** Town Engineer Steve Keach, Recording Secretary Andrea Cairns

10 **Absent:** Chairman Mark Traeger,
11

12 **Opening:** Mr. Russell opened the meeting at 7:06 p.m.
13

14 **Review of 12/26/12 Minutes**

15 L90 change “would” to “may”

16 **MOTION:** Mr. Ernie Brown made a motion to accept the 12/26/12 minutes as amended.
17 Mr. Matthew Brown seconded. The Board voted unanimously in favor. The motion
18 passed.
19

20 **Correspondence**

21 The Board received a letter from Attorney Gorrow. The letter was a copy of the Special
22 Appearance filing for Peter Holmes.
23

24 **Bob Bogosh – Building Inspector**

25 Mr. Traeger had asked Mr. Bogosh to attend the meeting to introduce himself and to
26 discuss ways to involve him more with the Planning Board.
27

28 Mr. Russell asked if he had any questions on how the Board operated. Mr. Bogosh didn't
29 but thought he would watch the meeting.
30

31 Mr. Russell noted that in the past there have been a few instances where there could have
32 been better communication between the Planning Board and Building Inspector. Mr.
33 Russell noted that he might get correspondence from the board from time-to-time
34 regarding certain decisions that have been made.
35

36 Mr. Meisner noted that Valerie Way would be a good example of a development that
37 would be good for him to keep in mind since the town issued a moratorium on building
38 there until the issue of paving the road is resolved.
39

40 Mr. Bogosh noted his hours are 5-7pm on Monday and 3-4pm on Thursday. Mr. Russell
41 stated that they board will try and be accessible to him and try and keep communication
42 open.
43

44 **7:30 – Chief Tapley - Fire Chief and Denis Giangregorio - Deputy Chief**

45 Chief Tapley asked if he could come before the Board to discuss fire protection at the
46 Meghan's Way development. He noted that after the issue at Phillips Pond Estates, he
47 looked at areas where there was no fire protection and that development was one in need.
48 He questioned if there was any way he could enforce putting a cistern in since he wasn't
49 chief at the time that development was approved.

50
51 Mr. Keach indicated that there are several phases to the development. He noted the
52 history of the current Board has been to refer applicants to the fire department, but that
53 has not always been the case. If the fire department requests something, the current Board
54 does what they can to make it happen. Mr. Keach felt that if they went through old files,
55 they likely would not find anything from Chief Tapley's predecessor in regards to this
56 development.

57
58 Mr. Keach noted that Chief Tapley would have the opportunity to meet with Tim Lavelle
59 to discuss a potential opportunity for water. He noted that there is residential land behind
60 the recreation building near Hunt Pond that is potentially going to be subdivided. Mr.
61 Keach made Tim Lavelle aware of the chief's concerns and he indicated that Mr. Lavelle
62 is going to propose they put in a hydrant on Abby Road. Mr. Lavelle is confident they
63 could lay an intake line to Hunt Pond and attach it to a hydrant at the edge of the road.
64 Chief Tapley thought that would be great, but noted he would want something else down
65 near Meghan's Way since those houses are far from the proposed hydrant.

66
67 Mr. Keach noted that from a standpoint of this being an approved and vested subdivision,
68 the Planning Board wouldn't be able to compel the builder to put in a cistern under the
69 vesting statute in NH. Once the plans is signed, approved and recorded, the Board could
70 not legally compel any changes. He did indicate that Chief Tapley has some authority
71 under NFPA and recommended to the Chief that he pursue that avenue.

72
73 Chief Tapley noted that since there was still an undeveloped area in that neighborhood he
74 would like to see if he could have some recourse.

75
76 Mr. Keach noted that Tim Lavelle presumed the Chief would be looking for water supply
77 in that area which is why he drafted the idea of the line and hydrant. Chief Tapley felt
78 that was a great idea for that area. Mr. Keach noted that Mr. Lavelle would need to do
79 some work to make sure it was feasible.

80
81 Mr. Russell questioned if Mr. Lavelle should have a conversation with Chief Tapley
82 before they present the new plans for Meghan's Way. Mr. Keach suggested that he could
83 make sure that happens. He didn't feel Mr. Lavelle could give him an answer on how it
84 could be achieved, but he could certainly work on ideas.

85
86 Chief Tapley will speak to the people at NFPA to see if there is anything he could do to
87 get a cistern. He is happy about the idea of the pipe but is concerned about how far away
88 it is from the other end of the development.

89
90 Mr. Mencis joined the meeting.

91

92 Mr. Russell appointed Mr. Carroll for Mr. Traeger.

93

94 **7:45 – Review mylars for Holmes Estate, c/o Arlene Bassett for a two-lot subdivision. The**
95 **property is shown on Map 18, Lots 2 and 2-2, North Main Street and Royal Range Road.**

96

97 Mr. Carol Bassett was in attendance.

98

99 Mr. Russell questioned the letter stating that the bound certificates were set to the “Town
100 of Chester Regulations.” Ms. Cairns will send a note to Mr. Hatch asking him to resubmit
101 a new letter.

102

103 Mr. Keach handed out his final review letter and went over the conditions noting that
104 each condition of approval had been met and it was his opinion that the mylars were
105 ready to be signed.

106

107 **MOTION:** Mr. Mencis made a motion to authorize the Chair to sign the mylars and
108 cause them to be recorded. Mr. Carroll seconded the motion. All members voted
109 unanimously in favor. The motion passed.

110

111 Mr. Russell signed the mylars.

112

113 **8:00 – Review mylars for Michael and Lisa Oleson for a two lot subdivision. The property**
114 **is shown on Map 12, Lots 1 and 2, 109 and 101 Odell Road.**

115

116 Mr. Keach reviewed his final review letter noting all the conditions had been met.

117

118 Mr. Keach noted that the easement deed had a typo. On page 2 of the draft document it
119 read “7.09’ ” and it should read “7.90’ ” Mr. Keach made Mr. Zilch aware of the change
120 that needed to be made and they will be correcting that and sending over a final
121 easement. He noted the corrected executed easement deed should be recorded with the
122 mylars.

123

124 Mr. Ernie Brown asked if the easement recording number would be put on the mylars.

125 Mr. Keach clarified that the plan number would be placed on the easement deed on page
126 one.

127

128 Mr. Keach noted there would be no LCHIP fee for the deed because it is being conveyed
129 to a municipality. Mr. Mencis asked what LCHIP stood for. Ms. Cairns noted it stood for
130 Land Conservation and Historic Preservation Fund.

131

132 **MOTION:** Mr. Mencis made a motion to authorize the Chair to sign the mylars and
133 cause them to be recorded. The mylar would not be recorded until the corrected easement
134 deed is received. Mr. Ernie Brown seconded the motion. All members voted unanimously
135 in favor. The motion passed.

136

137 Mr. Russell asked who needed to sign the easement deed. Mr. Keach noted that Michael
138 and Lisa Oleson would sign it.

139

140 Mr. Russell signed the mylars.

141

142 **Town Engineer's Report**

143 Mr. Keach noted for the board that he learned that Peter Holmes' home has been placed
144 on the market and suggested it might be appropriate to let Attorney Gorrow know.

145

146 Mr. Mencis questioned if it could change hands while the case is active. Mr. Keach noted
147 that if someone were to buy the property, the pending litigation would be part of the sale.

148 The realtor needed to make the buyer aware of any pending legal cases against the home.

149

150 **Other Business**

151 Mr. Russell noted that they have been asked by Mr. Richard Kearney to make a few
152 changes to the 12/26/12 minutes. Mr. Kearney sent a letter stating his concern and
153 objection about the proposed ordinance change and sent emails to the Board. Mr. Russell
154 read an email the Board received from Mr. Kearney:

155

156 *My apologies. I didn't look in the right place on the web site and, in reviewing the tape,*
157 *you did say that it was on the agenda. Again, my apologies. The bigger issue on the*
158 *legality of the meeting itself was the board ignoring Fred Daley's warrant article passed*
159 *by the town requiring the planning board to notify all property owners impacted, via US*
160 *mail, a detailed summary of the proposed zoning ordinance, the date, time, etc. of the*
161 *public hearing. This article applies to new ordinances which affect less than 45% of the*
162 *property parcels in the town. At the meeting, I did try to point out to the board that those*
163 *people should have been properly notified and I made the comment that maybe there*
164 *would have been a bigger turnout if the required notices had been sent out. I pointed this*
165 *out to the board before they voted to send this ordinance to the voters. Would you please*
166 *make sure that this issue is included in your update of the minutes.*

167

168 *If you would please forward this email to all the board members, I would appreciate*
169 *it. Thanks.*

170

171 *Richard Kearney*

172

173 Mr. Russell noted for the Board that Attorney Gorrow was contacted regarding the issue
174 of the petition warrant article. Attorney Gorrow responded saying that she updated her
175 research and still felt the warrant article would be advisory only. Mr. Russell also noted
176 that he remembers her clearly stating that at the 2011 deliberative session.

177

178 *Mr. Fred Daley, 16 Rangeway Ave., Sandown joined the discussion.*

179

180 Mr. Daley noted that the warrant article was one he worked on with several other people.
181 He was one of those that drafted the petition warrant article and stated that the intent of
182 the article was not advisory. He did not feel that term had been brought up to him when

183 the petition was put forth and felt at that time, there was reluctance from town leadership
184 to put forth the article.

185

186 Mr. Russell noted he specifically remembered Attorney Gorrow stating at deliberative
187 session that the article in her opinion would be advisory only and referenced specific
188 cases that lead her to believe that.

189

190 Mr. Daley stated that the intention of the petition was not advisory. The intent was to
191 have the Board proactively communicate with the community.

192

193 Mr. Daley noted that upon reviewing the 12/26/12 minutes, he didn't see any discussion
194 on how many properties would be impacted by the ordinance. As a former member of the
195 Board it was even hard for him to know how many homes would be impacted. He didn't
196 understand why the Board was reluctant to answer the question. He stated that he felt the
197 way town officials communicate with the people was ineffective. He felt that 90% of the
198 town was probably unaware of the warrant article. He felt that the Board could easily go
199 to the Town Clerk and determine how many parcels would be affected. He also noted that
200 they Board shouldn't have held the public hearing the day after Christmas.

201

202 Mr. Russell stated that all lots would be impacted. Mr. Keach clarified that every lot in
203 town would be impacted because Article 1, Part B of the Zoning Regulations creates an
204 overlay district on every parcel in town. He noted that it would apply to every parcel, but
205 wouldn't necessarily impact every parcel. In order for Article 1 Part B to affect a parcel,
206 it has to have wetland on it and not every parcel does.

207

208 Mr. Keach also stated that there was the impression that the change would take away
209 property owner's rights to the extent that their environments would be compromised.
210 Regardless of what the new regulation states, there are vesting laws in the State of NH,
211 which would prevent that from happening. He noted if someone has buildings on the
212 property or has made significant improvements within 50 feet of the wetlands, they are
213 vested under state law. He clarified that a property owner would lose the vesting if they
214 made changes to the configuration of the property, for example if lots were combined.

215

216 Mr. Daley asked what if someone wanted to add to the existing structure. Mr. Keach
217 explained that they would need to apply for a conditional use permit if the structure is
218 situated within 50' of a wetland.

219

220 Mr. Keach noted that since 1984, when the town implemented the current wetlands
221 regulations, the state regulations have changed dramatically and are far more restrictive
222 than our town ordinances. This amendment creates consistency with the requirements of
223 the state in terms of wetlands. The new amendment creates a 50' boundary beyond the
224 boundary of the wetland. The new amendment also creates a clear path to permit building
225 within the 50' setback. Currently you would need to get a variance. With the new
226 ordinance in place you would go for a special use permit which is a far less rigorous
227 process than getting a variance.

228

229 Mr. Daley noted that Mr. Keach implies that one would automatically get a special use
230 permit, but in reality you have the opportunity to apply for one, but it isn't guaranteed
231 you would get it. He was also confused as to what was being put forth and felt there were
232 members of the Board that were also confused.

233

234 Mr. Keach clarified again that Article 1, Part B as written effected every parcel in
235 Sandown and always has since 1984. However, if the property doesn't have wetlands on
236 it, it does not serve to affect that property.

237

238 Mr. Ernie Brown noted that the intent of the petition was to notify property owners if less
239 than 45% were affected. He noted that in reality this change didn't effect any parcels
240 covered by the shoreline protection area or anything upland. He feels that the Board
241 should have notified those people in writing. He no longer feels the warrant should go on
242 the ballot. In his opinion, he felt it didn't affect everyone in town.

243

244 Mr. Carroll questioned if it was fair to say that 45% of the lots or less have wetlands. Mr.
245 Keach didn't feel there was any way to determine exactly how many properties would be
246 affected.

247

248 Mr. Daley felt it could be determined by looking at the map of the town. He was
249 disappointed that the petition warrant was being considered advisory, it was only
250 counsel's opinion and would be interested to see how it would play out in court. He also
251 felt more confused than before because he thinks his property may be impacted.

252

253 Mr. Keach stated that it has the potential to impact every piece of property in town. He
254 clarified that there is a provision stating if there is a wetland on the property that isn't
255 10,000 sq. ft. or more than it doesn't apply.

256

257 Mr. Ernie Brown stated that he was there to represent the people of the town. There have
258 already been two people saying they haven't been properly notified. No one has come
259 before the Board saying they were for the ordinance. He felt the warrant article should be
260 tabled for another year.

261

262 Mr. Russell noted for the record that the Board did everything they were legally required
263 to do to notify the public. He stated that it wasn't done in the middle of the night without
264 everyone knowing about it, as was suggested.

265

266 Mr. Daley noted that if the Board truly felt that 100% of the town was going to be
267 effected, then the notification ordinance didn't apply.

268

269 Mr. Daley left the meeting.

270

271 Mr. Keach noted that even if the town had GIS mapping, they still couldn't determine
272 every lot in town with a wetland.

273

274 Mr. Ernie Brown felt that if more people knew about the warrant article then they might
275 have had more input.

276
277 Mr. Keach clarified that the Board has a small 30-day window of when they can hold
278 public hearings. The law of the state governs that timeline. That timeline happens to be
279 around the holidays. There is nothing the Board could do to change that.

280
281 Mr. Russell asked Mr. Devine if he had any input as a Selectman. Mr. Devine had no
282 input.

283
284 Mr. Mencis noted that he did sign the notification petition. He did a lot of thinking about
285 the situation and feels the voters will decide. He felt that if the Board did things over, he
286 would send notices to everyone in town.

287
288 Mr. Russell noted that they would have a budget issue in the future if they were to do
289 that.

290
291 Mr. Meisner noted that Mr. Daley mentioned that it would be talking people's rights
292 away. He noted that every zoning regulation essentially does that. All amendments need
293 to provide for the health, safety and general welfare of the community and feels this
294 amendment does that.

295
296 Mr. Brown noted he just didn't like the part about notification. He was under the
297 impression that it wouldn't affect many people.

298
299 Mr. Russell reiterated that it was very clearly stated at deliberative session that it was
300 advisory. Mr. Ernie Brown stated that the town people voted for it thinking it was going
301 to mean something and it doesn't. He's trying to represent the people in town they way
302 they want to be represented and feels the Board missed the boat in this situation.

303
304 **Adjournment**

305 Mr. Mencis made a motion to adjourn. Mr. Matthew Brown seconded the motion. The
306 Board voted unanimously in the affirmative. MEETING ADJOURNED AT 9:10 p.m.

307
308 Respectfully submitted,



309
310 Andrea Cairns, Recording Secretary