1 2 3 4 5 6 7 8 9 10		Stratham Planning Board Meeting Minutes September 07, 2016 Municipal Center, Hutton Meeting Room 10 Bunker Hill Avenue Time: 7:00 PM		
11				
12 13 14 15 16 17 18 19	Members Present:		Mike Houghton, Chairman Bob Baskerville, Vice Chairman David Canada, Selectmen's Representative Jameson Paine, Member Tom House, Member Nancy Ober, Alternate Lee Paladino, Alternate	
20 21 22	Staff	Present:	Tavis Austin, Town Planner	
23	1. C	1. Call to Order/Roll Call		
24	Т	The Chairman took roll call.		
25	2. R	Review/Approval of Meeting Minutes		
26	a	. August 03, 2	016	
27 28			nade a motion to approve the minutes from August 03, 2016. Motion Mr. Baskerville. Motion carried unanimously.	
29	3.	Public Hearing		
30 31 32	b		Stratham Hill Stone, LLC, 313 Portsmouth Ave., Stratham, NH, Tax Map 22 Lot 29. Site Plan Review for landscaping and construction business (continued from July 20, 2016)	
33 34			Scamman, Emanuel Engineering introduced himself as representing the e introduced the applicant Mr. Andy Birse and his attorney Tom Keane.	
35 36 37 38		conditions pl and they are	an said they are back before the Board with a more thorough existing lan as requested at the last meeting. A survey has been performed on site e prepared to provide a licensed land surveyor's stamp. The final site as on August 23^{rd} .	
39 40 41 42		said that the elevation poi	ille asked Mr. Austin if he felt the application was complete. Mr. Austin Board requested drainage details which are missing, however there are ints on the plan. Mr. Scamman said his interpretation concerning drainage vious meeting was to show contours on the plan. He added it is a fairly flat	

- site and they have added a few spot drains in places so people can depict how flat it is.
 Mr. Houghton referred to the minutes of the previous time they met with the applicant
 and asked the Board if they felt the applicant had now provided enough information to
 view the application as complete.
- 5 Mr. Baskerville made a motion to accept the application as complete. Motion seconded 6 by Mr. House. Motion carried unanimously.
- Mr. Baskerville inquired about the gravel area shown on the plan. Mr. Scamman
 explained it was not Mr. Birse's intent to use any of that area, but he wanted to show it
 as it does exist. Additionally when the tower was built they had leased this property for
 the construction of the tower. Mr. Baskerville confirmed that therefore it wasn't part of
 this site plan application. Mr. Scamman said that was correct.
- Mr. Canada said he remembered that at the last meeting they requested that some of the inventory area be moved to the left. Mr. Scamman said it was his understanding that the inventory was at different depths. He prepared the plan on a certain day and that plan shows the inventory from that day. The regulations only call for a 10' set back according to the foot note of Table 4.2.
- 17 Mr. Austin said the original approval for this for the well drilling business called for a 18 90' set back from the center line of Portsmouth Avenue. The current zoning would be 19 30' in the front and 20' in the side and rear; staff recommends maintaining the 20' for 20 the side and rear. If the business encroaches into those setbacks it will be a zoning board 21 issue as a variance will be required. Mr. Scamman said his understanding is that there 22 were bins there before when the well company was there and also when the Planning 23 Board last reviewed this and when the lot line was created. Mr. Scamman said one of 24 the old bins is over the property line and was there prior to the current owner when Mr. Hanna owned the property. The Planning Board approved the lot line adjustment in 2002 25 26 which included a bin over the property line that is a poured in place concrete wall. Mr. 27 Austin asked if the boundary line map included those structures on it. Mr. Scamman said 28 the recorded plan does not have them on there. Mr. Austin said that the Planning Board 29 back then may not have realized about the bins. Mr. Scamman added that the majority 30 of this if not all of it was in place in 2013/2014 when the cell tower was approved on the 31 site.
- 32 Mr. Canada referenced a 2007 plan and said the inventory area was largely grass. Mr. 33 Austin said Audrey Cline, former Code Enforcement Officer put together a presentation 34 for the zoning board and her representation was that in 2009, material bins start arriving. 35 If they were there in 2002, he wonders what else started arriving. At some point after 2007 more bins started arriving. Mr. Scamman said it is hard to see from an aerial photo 36 37 what the surface is on a site so he can't say a lack of use changed the surface from gravel Mr. Austin said it would be difficult to ascertain that the same amount of 38 to grass. 39 material stored outside the building today is the same as it was in 2002 or 2007. Mr. 40 Scamman said he was requested to provide an existing conditions site plan which he has 41 done. Mr. Austin said the justification of the ZBA putting this in front of the Planning 42 Board was for the Planning Board to look at this site plan in relation to the site plan and 43 zoning regulations and apply a development or use envelope for the property; not to 44 negate the use or put any business out of operation.

1 Mr. Houghton said the purpose to having a complete site plan application is to move 2 away from this existing situation of who did when what. There are unclear recollections 3 of what happened in 2002 and 2007. The intention is to have a clear site plan application 4 in place that would exhibit the intention of the applicant's use of the property and then a 4 detailed list of waivers for everything that is not compliant with current zoning 6 regulations for this parcel. Mr. Houghton asked when the aerial photos were taken. Mr. 7 House said 2010.

8 Mr. Andrew Birse said when he bought the property in 2007 and got the approval to open 9 up the business, they put in displays and got those approved and actually submitted a plan 10 of that. He knows the photos aren't from 2010 because he had things in place by then. 11 Mr. Austin said because the zoning board felt Mr. Birse's business was of a similar nature 12 to the well drilling business before it, Mr. Birse was allowed to operate under the same 13 variance.

- Mr. Austin said he agrees with Mr. Scamman that aerial pictures may not provide enough evidence, but the presentation by Audrey Cline includes more details as to how the ZBA reached its conclusion in 2007 to allow the business to continue and when the enforcement action was brought back, there wasn't much to go on as there wasn't an approved plan to determine whether an increase in the non-conformity had occurred or not.
- 20 Mr. Tom Keane, counsel for Mr. Birse said he appreciates the fact that the Board doesn't 21 want to put his client out of business. He said they are here because there was a notice 22 of violation about an expansion of use that was brought by the Code Enforcement Officer. 23 The position that Mr. Birse took is that in 2007 the ZBA granted a change in use and by 24 their own admission with no limitations. That issue was addressed two-fold; under the 25 ordinance 5.1.2 a variance isn't required, the expansion is a natural expansion which does 26 not change the nature of the use. The use has never changed, it has always been a 27 landscaping and construction business. There was also a case lost specifically on point 28 that said variances aren't required if it's a natural expansion of the use. The complaint 29 from the Town in the beginning said that if there had been an expansion, it was unlawful 30 which was challenged by going before the ZBA and there was a reasonable resolution. 31 Mr. Keane said if there is a concern over whether this business is going to expand in the 32 future, there is no bench mark to determine whether or not expansion took place as there 33 was no accurate plan in 2007. The site came before the Planning Board in 2014 for the 34 cell tower use and there were no objections at that time to any expansion of use. Mr. 35 Keane said if the Board recognizes that expansions are accepted if they are a natural 36 progression of a business, then they will agree that if there are expansions beyond this 37 current plan, the Town can come to them and say they have expanded what was approved.

38 Mr. Paine said with any additional activity on the lot, the existing regulations for the lot 39 needs to be taken into consideration. You can't just put an extra 100 cars for example on 40 the front lawn just because you feel it's great for the business; there are limitations. Mr. Keane responded that according to a decision made by the Supreme Court a land owner 41 42 is allowed to increase the volume and the intensity of the use without any need for 43 variances for as long as "it doesn't adversely impact the neighborhood". Mr. Canada asked for clarification on what the ZBA said in 2007. 44 Mr. Paul Deschaine, Town 45 Administrator said that Mr. Birse had approached the then Code Enforcement Officer,

1 Terry Barnes about his plans. Upon review of the file of how Hanna appeared, there was 2 a discussion that caused Mr. Barnes to direct Mr. Birse to go to the ZBA. In part because 3 there was a stipulation in the 1972 decision that granted the variance to allow a non-4 occupied home occupation and any change of use had to be brought before the ZBA. In 5 that context Mr. Birse filed for an administrative appeal. The ZBA decided that the use 6 was significantly similar to the prior use and therefore the previous decision still applied. 7 Mr. Canada asked when the wall to wall storage came in. Mr. Deschaine said he 8 disagreed with Mr. Keane's representation that natural expansion is allowed for an 9 unfettered use of one's property. He continued that any use of any property with a zoning 10 ordinance that pre-exists certain minimum standards have to be met and going lot line to lot line would not be permissible. 11

- 12 Mr. Austin pointed out that the original variance granted to Hanna was so their home occupation didn't have to be owner occupied. His understanding is that it would be a 13 14 storage building for a commercial entity and then in 2007 the ZBA acknowledged that Stratham Stone would be operating in a similar manner as Hanna had operated. This is 15 16 somewhat relevant as Ms. Cline pointed out that at the time they didn't put limitations 17 on the operation because they weren't considering it. Mr. Deschaine added that the 18 question before the ZBA was an administrative appeal to decide if the proposed use was 19 significantly different than the use approved in 1972 which it was found not to be. As a 20 consequence, the basis for the operation and use of this site is founded in the 1972 21 decision which had a few restrictions; if anything changed they had to go back to the 22 ZBA, and there was a 90' setback. Mr. Austin said in 1972 the application asked for 23 relief only for the construction of the building for storage of equipment and the restriction 24 of the use of the premises for public access was an integral part of the existing zoning 25 language; there would have been no reason for the Board to comment regarding the 26 balance of the parcel. Section J of the regulations were applicable at the time. There shall 27 be permitted within this district the incidental use of buildings and land for storage of 28 equipment utilized by the owner or owners of land in the district provided that the 29 business operation was customarily operated from the home without the purpose or 30 business operation catering to the general public or having a business primarily engaging 31 public traffic to the land and subject to the following limitations: no use shall be 32 permitted which is included in Article 4A, parts B – H inclusive as permitted uses in a 33 commercial district and thus specifically permitted in Article 4 Part A – I inclusive of the 34 residential agricultural district. It should be a condition precedent to the use of any land 35 in this district pursuant to the particular provision of the owner or owner shall have first 36 erected and occupied upon the subject land or residential home and it shall be a 37 requirement that the home remain occupied as a residence during the period which the 38 land is used as authorized herein.
- 39 Mr. Keane said he felt the focus should be on the plan before the Board and they should 40 try to resolve the issues. He said if the Board read the 2007 minutes and the approval the 41 ZBA granted, the bins covered the same area then that they do now, the buildings remain 42 in the same location and Chuck Grassie said in his memo to the ZBA what Mr. Birse 43 wanted to do with the rest of the site is not an issue with the Town. The percentage of 44 sales has been determined to be the same as it was in the Hanna days. Ms. Cline wanted 45 to limit the hours of operation and a couple of other things including removing the tenant. The tenant has been removed and the hours of operation are the same. It is impossible to 46

determine whether or not the percentage of retail versus wholesale sales are the same as they were in Hanna's day because they have no records for that so that is why they couldn't comply with the notice of violation at the time. Mr. Keane said the site plan before the Board isn't much different from the 2007 one. Mr. Houghton said it is quite a bit different; Mr. Austin added it is also quite a bit different from the cell tower one too.

7 Mr. Austin said listening to what Mr. Keane is saying, he would suggest that if the Board 8 is willing to accept the plan as is they should add a condition that the buildings not be 9 enlarged and that the areas depicted on the plan as orange be ground level storage only. 10 He does not want it to lead to a natural progression of second and third floor storage as represented on tonight's plan as a natural progression. Mr. Deschaine said stating that 11 12 the current plan would be the minimal acceptable amount would be agreed to in concept. As a minimum the 1972 restrictions such as the front setback as a minimum would have 13 14 to be observed or else there is no right to have a commercial use in this zone. The 1972 conditions still hold and everything beyond the 90' mark will need to be pushed back. 15 16 Mr. Deschaine said in his mind the setback doesn't apply in his mind as it's a residential 17 setback. Mr. Scamman said he thought the 90' setback referred to the building. Mr. 18 Deschaine said he believed it referred to anything placed in front of the building. Mr. 19 Keane said that was not mentioned in the violation. Mr. Deschaine said there were a 20 number of things they didn't know of until this progressed which if they had started from 21 square one, the notice of violation would have looked a lot different. Mr. Birse said 22 representatives of the Board came to the site and they told him what should go where and 23 it's all documented. Mr. Birse said he worked with Mr. Lincoln Daley the former Town 24 Planner every step of the way. Mr. Deschaine said that was a moot point and what the 25 Town knows of this site and its history has developed and roamed significantly over the 26 last year to year and a half.

- 27 Mr. Houghton referred to the waiver requests that had been submitted and said they aren't 28 really the ones he is talking about and cited the rules on setbacks as an example. Mr. 29 Austin said his understanding is that the applicant thinks he can expand into the setbacks 30 as no restrictions were applied on the approval. The Town's position would be that 31 development in the setback would require either an area variance or a waiver. Mr. Austin 32 read a ZBA decision allowing Mr. Hanna to build a garage and storage shed as per plans 33 submitted. The setback of the building from Portsmouth Avenue right of way shall be 34 90' from the center line of said Portsmouth Avenue and there shall be no hot top between 35 the edge of the right of the way and proposed buildings and should use of the building be 36 changed by either the present or future owner, a rehearing before the ZBA would be 37 required. Mr. Scamman showed on the plan how the 90' in his opinion was being met. 38 The decision doesn't talk about storage or any other things, just the building and the 39 pavement.
- Mr. Houghton asked Mr. Scamman to talk through the waiver requests. Mr. Scamman
 said he went through the site plan regulations to see where this plan doesn't meet them.
 The waiver requests are for the HIS maps, the test pit and perc. Data, soils map for
 existing conditions; for proposed conditions they are not proposing to change anything.
- 44 Mr. Houghton said his request was to provide waivers for everything on the application 45 that does not meet existing regulations. Mr. Scamman said it is felt they already have

- variances in place to operate as is. Mr. Houghton said he doesn't see that and asked
 where the approval was for operating in the 20' side and rear setbacks. Mr. Birse said in
 the meeting in 2007, the use of the existing bins was covered they are in the minutes.
 Mr. Austin said the bigger concern is the proliferation of the inventory storage in the
 south west corner of the property and the container to the North West corner of the
 property that crosses the setback line.
- Mr. Baskerville said that outdoor storage is probably not considered a building. Mr.
 Austin believes there is a distinction between a commercial business proliferating
 displays for the purpose of doing business and a residential home with a landscaped front
 yard. He also believes there is a distinction between a services orientated well drilling
 business that was originally approved and the commercial operation that is there today.
- 12 Mr. Keane said the applicant is still using the building in the same manner as Hanna in 1972. He doesn't believe a new review by the ZBA is necessary. It's a commercial use 13 14 changed from Hanna to this landscaping and at the time there were bins in the back and 15 Hanna was using storage on all parts of the site. Mr. Baskerville referred to the bins on 16 the far right. Mr. Birse said he doesn't use those because it's over the property line and 17 it's in the process of being removed. Mr. Keane said in the memo to the Chair of the 18 ZBA in 2007 by the Town Administrator "the inside portions of the property was never 19 discussed or restricted by this decision for case 45. From what I've been seeing is 20 proposed by Mr. Birse will not be dissimilar from the activities that Mr. Hanna had on 21 the site and will not constitute a change in use."
- 22 Mr. Houghton said a variance would be needed for anything in the setbacks. Mr. 23 Scamman clarified that the Board wants whatever doesn't meet the setback, it either 24 needs to be removed and landscaped with grass versus the landscaping currently there or 25 it needs a variance. Mr. Austin asked if the Board wanted to consider inventory storage 26 the same as the landscape displays in front of the building. If inventory storage is viewed 27 differently, does it require screening or setbacks? Mr. Houghton said if he thinks of this 28 as a commercial business such as a car dealership, they display inventory and move it 29 around, but it all complies with the setbacks so that is what he expects from this.
- Mr. Scamman asked about lighting. Mr. Canada said that would require a waiver. Mr. Scamman said they have a waiver for all proposed conditions which would cover lighting. Mr. Paine pointed out that the waiver requests that had been asked for were not listed out in any great detail; there was a bunch of them all on one sheet. It needs to be clear for further down the road.
- There was discussion about the correct front setback and whether waivers or variances are more appropriate. Mr. Baskerville explained that if things were moved back a little, and some landscaping buffers were put in, it would be possible to get a waiver rather than a variance that requires going to the ZBA as this refers to the site plan regulations.
- Mr. Keane confirmed that they would modify the plan and apply for relevant waivers
 including for encroaching into setbacks. Mr. Keane suggested to Mr. Scamman that he
 show some landscaping too for the areas that they are requesting waivers for. Mr.
 Houghton said in a light commercial use area, minimum open space is 40%. He said they
 should show a lighting plan too because the regulations require that and should a change
 in that plan occur in the future, the Board will have some documentation to refer to. Mr.

1 House said it would be a good idea to see what was submitted by the applicant before the 2 cell tower was put in.

- Mr. Jeremy Riecks, resident said the last couple of times he has driven by this site at night, the 4 lights on the corner are fairly easy on the eye when driving by. Mr. Riecks said he had heard that the hours of operation would not be changing, but from a previous meeting it could be that at 3:00 am a contractor who may have run out of salt and sand for his snow plowing could pull up there to get those things which causes noise. He continued that the existing plan shows only 5 lights on the building which makes him wonder how you light that are while the operation of providing salt and sand is going on.
- 10 Mr. Deschaine said he is troubled that the Board hasn't gone through Section 5 of the site 11 plan to see what is important rather than relying on memory. Mr. Houghton said he appreciated Mr. Deschaine's comments. Mr. Scamman said they had requested a work 12 session with the Board in writing and feel a little frustrated as they need more guidance. 13 14 They would have preferred that rather than a direct hearing. Mr. Baskerville suggested 15 the next time the applicant comes back, that the waivers be listed out individually and the Board can go through them one at a time and get through them. He feels a lot of 16 17 headway has been made this evening and a work session isn't really needed.
- 18 Mr. Houghton said they should look at parking. Storm water and erosion control has 19 been looked at already so he is fine with those kind of things. He is fine with the 20 elevations relative to drainage. Mr. Scamman confirmed they needed to look at screening, parking, lighting, landscaping, setbacks and open space. He said it sounds 21 22 like it is also has to do with how far they go into the setbacks and what they are going to 23 do to buffer and screen that. Mr. Paine added that the storage bins seem to have creeped 24 over to the east a little bit over time so he would like that reviewed to see if a variance 25 should be requested as there is a duplex to the east of that and a variance would protect them from creep and any increase from noise or activity in that area. 26
- Mr. Baskerville asked for a note to be added to the plan that the fence is a stockade fence
 and its height. He requested also that a note be added stating what he existing hours of
 operations are.
- 30 The applicant requested a continuance to September 21, 2016. Mr. Austin said he would 31 be willing to accept the paperwork on Monday, September 12, 2016. Mr. Scamman 32 said he would make every attempt to make that work. Mr. Austin said he would be willing to receive it a little later if the Planning Board agrees. Mr. Houghton said the 33 Board would love to see the planning board materials as far as possible in advance of the 34 35 meeting. Mr. Austin said if Mr. Scamman can submit the paperwork in an electronic version, he would be willing to accept that by September 13 or the morning of September 36 37 14, 2016.
- Mr. Baskerville made a motion to continue the site plan application of Stratham Hill
 Stone, 313 Portsmouth Avenue to September 21, 2016 with all material being submitted
 to the Town Planner by the morning of September 14, 2016. Motion seconded by Mr.
 Paine. Motion carried unanimously.

42 **3.** Public Meeting

43 Zoning Ordinance changes—ADU, TRC/GCBD, etc.

1 Mr. Austin said that the language for accessory dwelling units (ADU) is still waiting for 2 the dates to come out for public hearings so it can be heard and the TRC has had 3 interesting participation during its last 2 meetings but it's not going as quickly as 4 anticipated. The focus of those discussions are on reconsideration of the tree planting 5 and lighting regimen for Portsmouth Avenue and a request has been made that Mr. Austin 6 present the Weston & Sampson concept drawings to consider a multi-use trail as opposed to a regimented tree and lighting scaped 5' sidewalk and then a building line. The TRC 7 8 has concerns about 6 lanes of traffic then a bike lane, then trees, sidewalk and no place 9 for snow or emergency vehicles. Building setbacks are being considered and how bike 10 traffic works with the traffic.

- 11 Mr. Houghton asked if everybody on the Board had seen the publication put out by Mr. 12 Deschaine that refers to Town meetings, deadlines and dates. He feels that the Board should start to hold public hearings. Mr. Deschaine said there is no statutory restrictions 13 as to when the public hearings can be held, however if it is put in more than 120 days 14 prior to the March election, it might be inferred as calling for a special Town meeting to 15 propose amendments. Mr. Austin said he will have something to the Board at least on 16 17 ADUs to allow enough time for at least a couple of public hearings. Mr. Houghton said 18 October time would probably be appropriate. Mr. Canada suggested the Board hold a 19 meeting dedicated to suggested zoning amendments. Mr. Austin said he had already 20 noted the subjects that Mr. Canada would like to discuss for zoning amendments.
- Mr. Austin mentioned that the TRC did have a lengthy debate understanding the 6 year clock on a sidewalk fund. Regardless of project size, holding to the sidewalk requirement along Route 108, whether it's an easement and payment into an "in lieu of" fund. The 6 year clock was brought up but whether that can be done as paying into the Stratham sidewalk bank and that money can be used for the Town Center or Gateway District.
- Mr. House asked about the discrepancy in the footnotes of the Table 4.2 that was brought
 up tonight by the applicant; he asked if that would have to go through the public hearing
 process. Mr. Austin said it might be a scriber's error.
- Mr. Houghton suggested that the Board go back to the application approved for Kevin
 Roy at 257 Portsmouth Avenue as there were now flags out there.
- 31 **4. Miscellaneous**
- 32 33 34

35

36 37

- i. Public Works Commission
- Mr. Austin said the only thing on the agenda is further discussion on sewer possibilities with Exeter. At the last meeting there was suggestion that should Exeter not respond to Mr. Deschaine's waste water agreement draft, other options should be considered with other towns.
- 38 39
- 40 b. Other.
- 41 Mr. Austin said that Mr. Deschaine and he had attended a meeting about a Winnicutt
 42 River masterplan which is in process. They were focused on dissolved oxygen, nitrates

- 1 and phosphorous levels and what might be creating changes in these levels and what 2 would be a better plan for the preservation of Winnicutt River.
- Mr. Austin updated the Board on upcoming projects for the next meeting. He said there will be a 22 lot cluster subdivision application for 96 Stratham Heights Road. The applicant requested certified abutter notices be sent out even though it is a preliminary consultation.
- 7 Mr. Austin gave an update on the Wiggin Way/Winterberry Lane well application.
- 8 Mr. Baskerville recused himself

9 He reminded the Board that the condition of approval was that the applicant should 10 submit a legal opinion clarifying how Wiggin Way and Winterberry interrelated from 11 their inception and how the proposed legalese was going to be modified and reported to 12 allow Aquarion to provide water to both of those subdivisions. On Friday Mr. Austin did receive a legal opinion and a series of notarized signature lines responding to legalese 13 that mimicked what was in the legal opinion. In Mr. Austin's opinion the legalese is very 14 15 concise from 2000 forward, however does nothing to illustrate or clarify how the 1995 approval moved through 2016 to a point which the legal opinion applies. Mr. Deschaine 16 17 added that the legal opinion answered some questions, but also brought forward some 18 new ones.

- Mr. Deschaine said last Friday he was invited to a meeting in Hampton; the Towns of Hampton, North Hampton and Rye invited Aquarion Waterworks to the meeting because the addition of 43 lots onto their system is going to further detriment the water supply concerns they have which currently exist with Aquarion Waterworks. Mr. Deschaine noted that the emergency PCU order allowing the emergency connection expires on September 15, 2016. Mr. Deschaine said that only 10,000 gallons of water had been used for the summer.
- Mr. Canada shared there is an opening on the Rockingham Planning Commission (RPC)
 Board of Directors. The Planning Board nominates a person to the Board of Selectmen.
 Mr. Canada said he would like this Board to nominate Leo Gagnon for the position.
- Mr. Canada made a motion to nominate Leo Gagnon, Stratham resident to represent
 Stratham on the RPC board. Motion seconded by Mr. House. Motion carried
 unanimously.
- Mr. Baskerville requested a copy of all up to date regulations. Mr. Austin explained the
 costs involved and said he would see if there was a way to find some money from his
 budget to get copies.

35 5. Adjournment.

36 Mr. Baskerville made a motion to adjourn the meeting at 9:42 pm. Motion seconded by
37 Mr. House. Motion carried unanimously.