



Newton Planning Board

Public Meeting Minutes

September 27th, 2022



The Newton Planning Board public meeting was called to order at: 7:01PM

Present were members: Mr. Moran, Mr. Marchand, Mr. Guide, and Mr. Piper, also, James Doggett – PB AA and Ms. Rowden - Circuit Rider.

Via Zoom was Members Mr. LaVoie, Ms. Collyer and Ms. White as well as 9 observers.

Chairman Moran led the salute to the Flag.

1. Public Hearing

Mr. Moran called the Public Hearing to order at: 7:02PM and read:

Brandon Rogers of Newton NH requests a public hearing for a Non- Retail - Home-Based Business (Mobil Auto Repair) from 34 Marcoux Rd., Newton NH. The property is referenced as Tax Map 1, Block 1, Lot 14.

Mr. Moran asked Ms. Rowden for her input on completeness of the application

Ms. Rowden offered her opinion that the application seems to be a complete, it conforms with the requirements and that she understands it is intended just for office work to be done in the home. She has a couple of recommendations for conditions but would go into that after the applicant has a chance to speak.

Mr. Moran ask if a member wants to make a motion on completeness of the application

Mr. Guide **MOVED** to accept the application as being complete and take jurisdiction;
Mr. Piper seconded the motion.

Mr. Moran asked A.A. Doggett to call the roll.

Mr. Moran - Aye Ms. White - Aye Mr. Piper - Aye Ms. Collyer - Aye Mr. Guide - Aye
Mr. Marchand - Aye The **VOTE** was: **Unanimous**

Mr. Moran invited the Mr. Rogers to present the application.

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Mr. Rogers made his presentation stating that it was a start-up business that he believes will scale properly as he builds his client base. At this time, he chose a mobile practice due to the unavailability of commercial garage space in Newton. He stated he understands the issue of living close to Country Pond as that would be impossible. He plans to remain mobile until such a time as a commercial space opens up.

Ms. Rowden asked how he planned to deal with spent fluids.

Mr. Rogers stated that he does not deal with fluids, they are immediately recycled after a job. He also apprised the Board that his tools are stored in a rented space and not at his home.

Mr. Piper asked if his customers were paying money or bartering for his services and about using his own driveway to do work.

Mr. Rodgers stated that he did not do barter and that the only work done in his driveway was on his personal vehicles.

Ms. Rowden suggested that a condition of approval could be: no servicing, repair, storing, or sales of vehicles at the premises except for personal vehicles. She also apprised him of the potential of a sign at his home, not to exceed 2 square feet in total size.

Ms. Collyer asked about the disposal of tires and oil.

Mr. Rogers stated that used oil is returned to the vender that he gets his fresh oil from and that he does not deal with anything tire related.

Mr. Moran invited the Public to give input or ask questions stating: *"Please announce your name and address so the Administrative Assistant can note it for the minutes."*

There was no Public Input.

Board comments:

Mr. Moran asked Ms. Rowden for any final comments.

Ms. Rowden's comments:

Mr. Moran asked for a motion on the application

Mr. Marchand **MOVED** to Approve the Application with the following conditions:

Conditions Subsequent:

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1. All mechanic work will be done off site except working on the property owner's vehicles.
2. No outdoor storage of business-related materials.
3. No storage of hazardous materials as enumerated in Zoning Ordinance XXVIII.2

Toxic or Hazardous Materials: Any substance which poses an actual or potential hazard to water supplies or human health if such a substance were discharged to land or waters of the Town. Hazardous materials include volatile organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis. Also included are pesticides, herbicides, solvents and thinners, and such other substances as defined in the NH Water Supply and Pollution Control Rules, Section Ws 410.04(1), in the NH Solid Waste Rules He-P 1901.3(v), and in the Code of Federal Regulations 40 CFR 261 as amended.

Mr. Guide seconded the motion.

Mr. Moran asked A.A. Doggett to call the roll.

Mr. Moran - Aye Ms. White - Aye Mr. Piper - Aye Ms. Collyer - Aye Mr. Guide - Aye
Mr. Marchand - Aye The **VOTE** was: **Unanimous**

Mr. Moran closed the public hearing at 7:14PM.

Mr. Moran called the Public Hearing to order at: 7:15PM and read:

A continuation of 125 Development NH Corp of Plaistow, NH's request for a public hearing for a 4-building condominium site plan off S. Main Street, in Newton NH. The property is referenced as Tax Map 14, Block 1, Lot 27- 3.

Mr. Moran noted that unless the developer requests a continuance the Board will be required to make a decision at this meeting.

Mr. Moran asked Ms. Rowden for her input.

Ms. Rowden reminded the Board that they had taken jurisdiction, there are a number of waivers the Board have not dealt with, some of which are still applicable and some of them are not. She suggested that because of the fairly major revisions done to this application she would recommend that the Board allow Mr. Gier to go through the changes that have been made.

Mr. Gier (engineer with Jones and Beach, agent for the applicant) stated this is a 143.7-acre parcel in the Light Industrial / Commercial Zone. Since the last public hearing the Newton ZBA denied the requested variances that were for this project, so

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we have gone back to the drawing board with the applicant in order to make the project more compliant with zoning. The major in changes including the relocation of Industrial Way, reduction in building sizes, and the reduction in buffer impacts. The relocation of Industrial Way, even though we do not agree with their interpretation, the ZBA ruled that the road cannot be located within the 200-foot structural setback. Strict enforcement of which would make the property inaccessible from route 108. Even though that, the applicant still needs variances to access the property. We have shifted the proposed Industrial Way to be located outside the 200-foot structural setback to the extent possible. This is shown on the C2 sheet. The roadway used to follow more closely along the 50 Foot vegetation vegetative bluffer, this we've shifted it up past the 200-foot structural setback where we could. Where it was previously down by the 50-foot setback the vegetative buffer - the building size have also been reduced. While as originally submitted there was a total building size of 207,000 square feet the revised building size total is 192,750 square feet. With building number one, there is no change in size, it is still at 15,750 square feet, building number two was reduced from 86,250 square feet to 75,000 square feet. He apologized for the error on sheets that still shows up as 86,250 but it is actually 75 000. In the footprint outline there is the number that is wrong. Building number three there is no change it is still 67,500 square feet and building number four was reduced from 37,500 to 34,500 square feet the reductions in building size allowed us to remove all the buffer impacts associated with the buildings, grading for the buildings. and drainage associated with the buildings. The buffer impacts went from 102,101 square feet to 53,092 square feet. He stated that they had almost halved the buffer impacts. The impacts that are remaining are associated with the proposed roadways and the stormwater treatment areas associated with the roadway runoff. The roadway has to be adjacent to the wetlands and the buffers to actually access from 108 and their section of the Puzzle Lane Extension of the cul-de-sac that we actually have to cross very close to the wetlands and create a wetland impact and we have buffer impacts along that. The last major change is the intersection of Industrial Way and Route 108. The traffic study has been completed and it has been submitted, the town has it as well as DoT. We have indicated or included the proposed improvements recommended in the traffic study in our revised plan set. They are shown on sheet HA1. The biggest change is that Route 108 will be widened to include a left turn lane into the site and that Industrial Way will be three lanes exiting with dedicated right and left turn lanes. Our traffic study is at D.O.T for review it hasn't been approved yet, they are still looking at it, as soon as we hear back and get feedback from D.O.T. we will let the Board know. Storm water is still being collected and directed to one of five infiltration basins throughout the site, there is one, proposed of gravel, near the Wetland at the end of the proposed Puzzle Lane. We have received comments from the town engineer. We know we have a few items on his list to iron out. We also received comments from Ms. Rowden and we will need to address them. He did not see any problem with addressing them, but they understand that they need to address before making another application to the ZBA. Because there are some buffer impacts and some impacts into that structural setback that we still have to have ZBA variances, we still have State permits to obtain which we are waiting until we get the ZBA approval to move forward on. It does not make sense to move forward until we have those

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approvals. Therefore, we are proposing to answer any questions the Board has and to ask for a continuance until we have input from the ZBA on the revised plans and input from DoT on the proposed intersection.

Mr. Moran asked about existing conditions and the construction materials on the site.

Mr. Marchand echoed Mr. Moran's comments.

Mr. Gier asked if the existing conditions should reflect what is out there today.

Mr. Moran stated he would like the plans to reflect what is on site. (asked to have the aerial photo shown on the hall screen) he stated there is not one pile one piece of equipment shown on these drawings (as on the photo). The Board has a really hard time looking at the drawings to make a decision if the existing conditions do not reflect the limit of work. Plans should reflect what is out there today as well as the proposed conditions on an areas of the site that are not surveyed.

Mr. Gier stated they can I can look into that and see if it can be taken care of.

Mr. Moran then referred to basin #3 and his uncertainty of how it was designed. what the Board has in front of it tonight does not reflect generally what is out there.

Mr. Gier stated all right we will see about updating that and get back to the Board on that. In answer Mr. Marchand's question, yes, most of the equipment out there has purchased equipment to construct the roads on the site in general but I know they operate

Mr. Marchand said well right because they've been breaking concrete and whatever so I am wondering where that is going to go if that was supposed to be part of the road.

Mr. Gier stated yes, a lot of that will be used as part of the road base.

Mr. Marchand stated that the applicant did receive permits, but they were dated all the way back to 2009. and he believe that they have expired.

Mr. Lekberg (agent for the applicant) interjected that they were almost finished with the new permits selectman approval for the operation and frequency of the property as we are constructing. We still hold open permits in the 2013. This was all put in place by the selectmen, and we continue to decide the work for creating materials for the project. What is going to happen in this location rather, up on lot 27-4 and just made sense of the time to do this because eventually as you know what you see here when you are looking at this uh Google Earth. It is basically inside all the buildings that we are proposing, and it is a moving target. Obviously these piles, we've been using crushed concrete consistently underneath our building slabs, and some of the roadways, but

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definitely building slabs and it comes and goes depends on what we have going on and as you know we just finished 27-4 and it is been thousands of yards over there and so what is sitting there today will be used at the entry we have a lot of shield needed to be done in retaining walls that is coming into the entry and then in the Road design so hopefully that answers it.

Mr. Marchand stated that part of his concern was happening to whatever is not used. Any new area of operation would need new permits pulled in order to create a new work site somewhere else on that property.

Mr. Lekberg stated, no, we only have to notify the state when we move that is that. You know obviously, we sit down talk with everybody else what we are doing but you know this is we are trying to finish this project out. There will be nothing left behind we are short material at this point we are still trying to make as we need it. I would say we will, probably, process quite a bit more material to complete the project we got 5600 feet of roadway to do and there is a lot of areas where the road needs to come up.

Ms. Rowden opined that with the application that is before the Board, you can certainly ask that the existing conditions reflect the existing conditions; that you absolutely have the right to do. As for the other activity that may be going on the site, I do not know the legal status of it one way or the other, it predates my involvement with Newton and that is outside of this Board's purview right now. Her understanding of what is going on in the site as far as the existing conditions absolutely, but the other items are a separate matter so she recommended the Board cease with that part of the conversation.

Mr. Moran stated additional comments from Ms. Rowden and the town's engineer of various levels of completeness of this set of drawings. He also recommended that the applicant take a look at their drainage design there are some areas of concerns that specifically with each basin and that the swales may or may not be graded correctly. That they are not graded into the existing conditions maybe the existing conditions are incorrectly shown on the drawings but in his opinion, they should be reviewed again for completeness and constructability, that is an overall statement throughout the drawings.

Ms. White asked a question about the guard rails since the applicant has said that their supply chain has issues, and it is 40 weeks out, that is 10 months. Her thoughts were that in a couple of these areas there is a real need to have those guardrails and how they how are they expecting to take care of that if they cannot get real guard rails There are a couple of different places where guardrails are supposed to be, on some of the curves and such. It is on the plans.

Mr. Lekberg stated that Ms. White is correct, we have them on order already. They are already in the pipeline. We have to do the best we can as the applicant and the contractors building it. If we have to ask for a substitute, we will talk with the town engineer to determine what a substitute would be.

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Mr. Marchand commented that according to the plans here there is a tree line shown behind Howard Lane that is supposed to be forming the 50-foot undisturbed buffer and that is going to need a lot of trees and shrubbery put in to restore it. Right now, it is all bare, so there is going to be a lot of plant life that is going to have to be put in there.

Mr. Gier stated we are going to review our existing conditions but if you look on the landscape plan; we propose to add trees along that line, so they are already shown. Obviously, we have to augment whatever tree line that is out there.

Ms. Rowden stated that just because of timing, they have not provided all of the septic system detail which has direct impact on whether a hydro geologic studies even required by the Board's regulations, the Board can require it anyway, regardless of the amount of septic capacity. Because of timing that does take a little while if that is something that the Board feels is worthwhile information, I would highly recommend requiring one regardless of the subject detail, that would be very useful information. She suspects the applicant to know it.

Mr. Gier replied that he thinks the applicant will be going to be over so we are going to go ahead. We were waiting to determine exactly where we would be able to potentially locate them. Because we originally had them located within or some of them located within the 200-foot structural setback, now we've relocated them outside of it. We have to complete the design, but we will be over the 2500 I think it is, gallons, requirements so we will be moving towards getting that completed.

Ms. Collyer questioned the procedure. She understood that Mr. Lekberg has stated that the ZBA has turned down the applicants waiver requests and she wonders what the process is to go back before ZBA. Does the applicant need a denial from the Planning Board or does the existing denial work.

Mr. Gier responded that the ZBA has granted the applicant a re-hearing, we are preparing for the rehearing right now and hope to be on before the end of the year.

Ms. Rowden stated that as far as the Planning Board's process the Board needs to continue on, any condition of approval would be that they get any necessary variances and at whatever point if they are successful in getting all of the variances then they move forward with Planning Board approval. If we get to that point if they are denied any of the variances then they have to come back for the Planning Board because their site will change. If the septic system or the storm water is drainage needs to move, it wouldn't be in conformance with what you have before you, so you just continue on with the regular Planning Board process and the ZBA has to deal with their own it is good to be aware of it, but they are separate processes at this point. Everybody has to say yes in the end for it to happen.

Mr. LaVoie asked where things are in terms of communicating with Plaistow about this. Will they be notified after the Board decides or are they already in the loop on this particular item.

Mr. Gier stated that they have been in contact with Plaistow we have not submitted officially to Plaistow for their review and approval just because we had so many issues still to work out in Newton, specifically the ZBA issues. Now that those have been resolved and the applicant is moving forward with both Boards in Newton we will be applying to Plaistow for their approval or at least their review and then the plans can be adjusted like it says it is supposed to be in the plans. Plaistow, he thinks it is more technical than approval based. Does that make sense.

Ms. Rowden stated if Plaistow could ask their Planning Board to make the decision that they do not need any approval but no approval from the town of Plaistow is necessary. If Newton receives that correspondence from the Plaistow Planning Board that satisfies the State requirements. If that is received before anything gets recorded, then Plaistow's signature block does not have to be on the plan set. We will just need to have the date of the correspondence from Plaistow if that is how they choose to handle it. If they choose to take it as a full application their signature block needs to be on the mylar. They also have to have a statement that is currently a note in the plans that actually needs to be removed because it is incorrect. So, it can be dealt with a couple of ways, but Plaistow has to be aware of the application and make a determination to either see it as an application or that they have no comments.

Mr. Moran asked when the existing condition survey done for these plans. Was two years ago 10 years ago.

Mr. Gier stated that it was it was before his involvement with the project and his company did not do the actual existing condition survey.

Mr. Lekberg stated it was done 21 months ago.

Ms. Rowden informed the Board that she believed this is right, that is what the certification note at least says it is over two years in February of 2020.

Mr. Lekberg stated that the conditions really have not changed, the piles are like moving target uh you know we are in process of 27- 4 to finish up everything there, so we have been using quite a bit of material over there. He reiterated that the applicant was going to stockpile to get the entry Road in, just in case we get lucky we get some ZBA positive votes... if we need to do existing conditions again, I guess we will have to do them, but Barry (Mr. Gier) will do them.

Mr. Lekberg continued referencing aerial images that were not available to be shared. Some would be in the easterly corner of the site. He was looking at where all the crushed concrete piles are, it is sort of widened out in there the gravel because that was

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the only place I changed. There and then the in the south westerly corner up to the other end, there are some changes there too. That would be it from the original It is basically; we are pushing piles is what we are doing.

Ms. Rowden commented that whether it is February 2020 or a few months ago asking for the existing conditions, there is clearance that has happened out there. It has been there I think for a number of years, showing that on the plan and understanding yes, the piles have shifted in the areas.

Mr. Moran stated that that would be just a demarcation of stockpile area would be helpful we do not need to know the volumes of material or just in general. There is equipment storage or some something right now it looks like it is a cleared flat area that does not have any activities going on and there is my understanding is there is some activity out there.

Mr. Lekberg stated that would be correct Mr. Chairman there is activity there. There is activity every day we need to process what we are doing it has been like this for quite some time. We have been there since probably 2000. I believe it is when we started kind of instead of initially, we did it up on lot 27-7 and 27. In the in the end of that Sergeant

Woods started filling in, you know, we kind of work with everybody there to sort of like go to a different direction with it.

Mr. Moran stated that he do not really care what was happening before. It is just that the plans in front of the Planning Board do not show what it looks like now.

Mr. Lekberg stated that Mr. Gier would take care of it.

Mr. Moran asked if the data could be updated as of September 28, 2022, that way the Board can have some idea, so there is a baseline of what we are looking at with the understanding that piles frequently change and move around.

Ms. Rowden opined that the Board has accepted jurisdiction of this plan and there are still a few waivers to deal with. She did not know if the Board was prepared to deal with them tonight. It would be her recommendation, but you have taken jurisdiction if you wanted to do a site walk you could do it before it gets too cold. Now you can still see the trees filled in. that might be something in the interim that might be a useful full activity to help move the application forward while the Board is waiting for more Information. She stated this is with the presumption the applicant is going to ask for a continuance or be amenable to a continuance but she might be incorrect so that should be verified.

Mr. Gier stated no, you are correct we would ask for a continuance as we still have some issues to work out with the ZBA as well as Dot.

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Mr. Gier stated that they have completed the traffic study which has been submitted to DoT, their lead time is a long lead time right now so they are looking at it when we get more input from them we will come back and let you know we did depict all the improvements that are suggested or recommended in the traffic study on the plans that are in fronting and that is basically the left turn lane in right off of Route 108.

Mr. Marchand said that he is trying to put together the extra information that would be necessary when the applicant comes back before the Board, we would like to have in front of us.

Mr. Gier stated that besides the existing conditions, we do have the comment letter from Ms. Rowden and the comment letter from the town engineer that will be addressed to the extent practical. Before we get this ZBA and Dot info.

Ms. Rowden offered her list of items still outstanding: a hydrogeologic study; septic design detail; some questions road design; questions about the storm water, there is a little bit of more detail needed; some design aspects for the engineering component.

Mr. Marchand **MOVED** to grant the continuance and that that information be supplied to the Board prior to October 25th ; Ms. Collyer seconded the motion.

There was a discussion of the continuance and public input.

Chair Moran opened the floor for public comment and asked people to identify themselves and their addresses for the record.

Nancy Kozlowski (Abutter, 3 Woodland Road, Newton) there are four buildings in this parcel. Does the applicant intend to break those up into smaller units like they did on 27-4? 9 Puzzle Lane it was going to be one building and now it is turned into several condominiums in the one building. Are they Planning to do that in each of the four in this project?

Mr. Lekberg stated they are not splitting them up.

Tom Alberti (Abutter, 2 Ridgewood Road, Plaistow) just had a couple of questions. He knows that this parcel of land is over a large aquifer and there was mentioned about using utilizing crushed concrete, so he just wanted to make sure the Board considers that material is being used and if it has been tested and essentially been cleared as environmentally approved for use in this project. Where did the initial concrete come from; how is it utilized; crushed; and when it goes back into the ground; it was for the project that it is considered, this hazardous in any capacity. Because it is over the aquifer. That is one point I just asked the Board to consider. Number two, a little bit further along from the cul-de-sac there has been some construction; I wouldn't say construction actually; there has been some activity involved with what maybe future

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basins and my only concern is that there is no site plan for that area. I want the Board to understand that there has been activity without approved site plans, I want you to know just give that information so you can consider the discussion with the applicant, so they understand that they are taking actions without an approved site plan. thank you.

Dan Sweeney (abutter, Howard Lane) just wanted to verify the plan. He just wants to make sure that 200-foot setback around his house at the end of Howard Lane was protected.

Ms. Rowden stated that the way this is proposed the majority of it is outside of the 200-foot setback. The roadway entrance does infringe upon that which is why they are going to the ZBA.

Mr. Lekberg stated that all our concrete coming in we received has a clean letter and we supply those in as we get them. It has to be approved before we even look at it and we can supply some clean letters to the to the Board if they would like.

Mr. LaVoie stated this would be great if the applicant can submit those to the Board.

Mr. Moran asked if these materials were currently being regulated through New Hampshire DES or the building department.

Mr. Lekberg stated that that is correct.

There was a brief discussion of the materials being used and the impact on the existing conditions page in the plan set and other deficiencies in the existing conditions sheet(s).

Mr. Moran brought the discussion back to the motion on the floor

After a brief discussion on the continuance Mr. Moran asked A.A. Doggett to call the roll.

Mr. Moran - Aye Ms. White - Aye Mr. Piper - Nay Ms. Collyer - Aye Mr. Guide - Aye
Mr. Marchand - Aye

The **VOTE** was: **6 Aye/ 1 Nay**

The motion carried

There was a brief discussion of what the Board expected to see before the next public hearing.

Chairman Moran recessed the public hearing at 8:01PM

Chairman Moran called the public hearing to order at 8:02PM and read:

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125 Development NH Corp of Plaistow, NH, request a public hearing for an Amended Site Plan at 3, 5, 7, & 9 Puzzle Lane, Newton NH. The property is referenced as Tax Map 14, Block 1, Lots 27-4.

Chairman Moran asked Ms. Rowden for her opinion on completeness.

Ms. Rowden stated that the application itself does appear to be complete but, based on the site visit from the town engineer and his reports of some discrepancies she would recommend the Planning Board not take jurisdiction, at least, not this evening until the Board gets some clarification on some of the discrepancies. With an amended site plan, you want existing conditions to be correct based on the Town Engineers report. There might be some things that are inconsistent with the original approval which does happen, how it happened I am not at privy give an opinion one way or the other, but the existing conditions should be correct whatever they are proposing to do. With what they have is fine, but we need to know what the differences are with what they want to do versus what is on the ground, to make sure that it is meeting your regulations.

Mr. Moran stated that to recap what Ms. Rowden said we asked the town's engineer to review the drawings that were approved back in 2015. With what is out there today compared to what is on the drawing set that was submitted to the Planning Board approximately four weeks ago. In his opinion there are various items that are either not existent in the field or differ from the approved plan. Just to relay this to the public, generally the parking lot is not consistent between what was approved and the amended site plan; there is no guard rail which was discussed a few times; stormwater ponds D and G are different than what was approved; the parking lot driveway on the north end of the building was constructed and extends an estimated 75 feet beyond the building, on the approved plan no parking lot or driveway was shown except an emergency route; stormwater ponds J and I at the northern end of the building have not been constructed and are not shown or shown as deviating on the amended plan that is in front of the Board. There are cars and trucks parked against and in front of the building these were not on the amended or the approved site plan, so the parking has changed. ADA spaces and striping or other suitable handicap stalls are missing, former parking lot lighting is partially complete... so in the town engineer's opinion the amended site plan does not accurately reflect the existing conditions or what was approved previously. Their recommendation is that the existing condition plan is updated to accurately reflect what is out there and the application is amended to capture those deviations so that the Planning Board has an opinion to either approve the changes or opine on the changes either way once that information is provided to the board then we can potentially make a decision so in his record.

Ms. White offered some additional information: on the on the plan where it says that There are a transformer on a concrete base there is also a second one which is not listed on this plan; and at the south end at the back of the building there is a temporary office trailers that has been pulled in so it is blocking the access road so that you

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couldn't get behind the building; the plan does not show the buried propane tanks are located. She agreed with Mr. Moran.

Mr. Moran took a hard look at some of the very recent aerial photos that he has access to... there are missing bollards, he also noted the electrical transformer; the parking stalls that deviate from what was approved compared to what is out there; none of the striping is out there; stormwater basins were missing there was quite a few items that he knows are missing it is hard for him to accept this as complete application knowing that what is in front of the Board is just not correct. It does not accurately reflect what is out there today.

Ms. White stated she wanted to inform the Board that where the driveway comes in the first place, where the driveway turns to the left, where it says private access driveway, that is right at the edge of the slope and there are boulders there. That was supposed to be cut back at an angle so that there was more room for snow storage instead of pushing it down the hill into the wetlands. They have paved that hole they squared that off instead of having at an angle because on the original plan those two parking areas down there, one was straight and the other one came at an angle. She did not know if it is conceivable that the Board could have the applicant removed part of that driveway
6:38

since he's now, however there is no place for snow storage and that is going to end up being pushed down into the wetlands.

Ms. Collyer asked the Board address Mr. Fitzpatrick's letter, what he said about the plantings that were on the original plan and how those have not happened and about the Board's letter to the applicant stating that they had to be done as of six months ago or the original permit was null and void. I would like us to address that can Ms. Rowden speak to that.

Ms. Rowden stated that her understanding is the trees on the berm have been planted at this point.

Mr. Moran stated there are some trees that have been planted on the Northern side of this site it is his understanding it is not the quantity that was discussed or approved.

Ms. White stated that there were supposed to be a hundred and 112 trees planted they have planted fourteen trees and they are not the type that is on the list at all.

Ms. Rowden stated that if they are not, if they have not complied with their approval they are out of compliance with their approval and that is a Code Enforcement action . The only ability the Planning Board has and I am going to put aside the application you have before you right now is to revoke the site plan approval um that would be an unusual move for landscaping to be honest that is the only authority that the Board has the other is Code Enforcement. The corrective code enforcement action would be for them to come before you. One of the actions would be to come and get an amended

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site plan. They are here with an amended site plan so this is an opportunity to correct it with the process that has already begun. If they have not planted the full extent of the trees that can absolutely be a condition on any potential approval you may give to this application. The Board may reiterate that condition now

Mr. Moran stated since he thinks the Board is all in agreement there are unapproved items that are out there. If we deny the approval, then it flips back to code enforcement.

Ms. Rowden stated that one of the core corrections of a code enforcement action like this this to seek an amended site plan approval through the Planning Board.

Mr. Moran postulated about the ponds: There are supposed to be four, there are two so the Board could say we are never going to approve it while there are still just two ponds and the only way to remedy the lack of the two the additional two ponds would be for a code enforcement action to take place. He continued that was just one thing he had picked out not just focusing on that one thing.

Ms. Collyer felt that did not seem consistent with the letter that Mr. Fitzpatrick referred to, which was sent from the Planning Board saying that it would be revoked if not complied with. She was a little confused about the process asking if it is a code enforcement issue. She asked that the Board discuss the letter that was sent.

Ms. Rowden apologized that she did not have a copy of the letter in front of her. She has seen it but did not have the letter in front of her

Mr. Moran recognized Mr. Fitzpatrick.

Jamie Fitzpatrick (abutter, 15 Walnut Farm Road) informed the Board that the letter was sent out on September 16, 2021, with the Notice of Decision which, in part, listed the things that must be done in order to get the special use approval. One of them included landscaping which is the one he is particularly interested in. He stated that at the end of that letter it says,

“per Newton Planning Board Policies and Procedures Manual, Section 6- B, Conditional Approval: The applicant shall have six months to comply with the conditions and have the plans signed by the Board accordingly the conditions present shall be met mylars and recordable condominium instruments shall be submitted for endorsement and recording by the Board honor before March 14, 2022, if conditions are not met by this date or an extension has not been requested in writing by the applicant and granted in writing by the Board prior to this date the conditional approval shall lapse without further notice.”

Ms. Rowden stated that that approval, because they did not get the trees, in that approval lapsed. It is as if the Board did not approve it. The original site plan for the construction

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of this building however did not lapse that got recorded, that is the storm water management, it is the detention basins, it is the entire construction of that building there were additional conditions put on the subsequent amended site plan for what Mr. Fitzpatrick was just reading the approval for.

A.A. Doggett informed the Board that what Mr. Fitzpatrick was reading was the cover letter and the notice of decision on the condominium conversion.

Mr. Guide asked if this is the second time this site plan has been amended.

Ms. Rowden stated that there have been subsequent applications that apply to this site.

Mr. Moran clarified that they built it they got approval to build it; then they came in front of the Board for the condominium conversion, which was virtually lines on plans. He recalled three different units being created in one building. Then, he believes Mr. Fitzpatrick's question is what happens to that approval.

A.A. Doggett stated that Mr. Fitzpatrick read the notice of decision and the cover letter that went out with the condominium conversion approval, condominium conversion approval is not a site plan approval.

Mr. Moran continued that then this amended site plan, based on the applicants letter from their attorney, was to document that the revised plan difference from the recording plan in the following regards; the correct building configuration on unit 5 is shown on the revised plans; a new easement node has been added; the driveway access has been relabeled as private access; a 24 foot wide access commonly referred to / formally labeled as a common area; and a common boundary line and the square footage has been updated; so that is what this application is for. We have the previous amended site plan for the condominium or the creation of the condominiums I will call it for our conversation has lapse now.

Ms. Rowden stated yes.

Mr. Guide asked what that means.

Ms. Rowden stated that that means that they that decision it is as if it never was made because the conditions have not been met.

Mr. Guide stated the applicant cannot rent them out as three condominiums.

Ms. Rowden corrected that he cannot sell them, they can rent them. He cannot sell them until such time as the condominium has been finalized.

Mr. Moran stated that Turner Motorsports is trying to close on the purchase of 9A Puzzle Lane, Newton, New Hampshire, and the bank's closing attorney has found some

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minor issues that they have requested be corrected. These issues were this was some of issues. Mr. Moran was not sure if that is why this application came in front of the Board. The bank, in reviewing the previous and prior approvals noticed, in their opinion, some deficiencies, so the applicant came to the Planning Board to close those out.

Mr. Guide asked if that issue that was just identified (the landscaping) is on top of this

Mr. Moran stated it is another one outside of it.

Ms. Rowden stated agreed

Mr. Guide asked if they still needed to come back.

Ms. Rowden opined that if it is just transfer of the whole building ownership they do not necessarily have to, they can still rent out the units because they've gotten approvals for those uses. It is just how it would be legally subdivided into property that is the issue.

Mr. Moran stated their lender may not care, or Turner Motorsports may not care I guess

Mr. Marchand inquired that if the Planning Board does not approve all this, the applicant cannot sell that property if we add those back on as conditions

Ms. Rowden stated the applicant can still sell it; he would be able to sell it as the whole property not individually units.

Mr. Guide asked if the applicant has two ponds of the four ponds that the Board required, can he sell it that way if somebody is willing to loan the money or the buyer pays cash.

Mr. Moran replied we will take this the sale out of it and the previous condominium approval that has since lapsed, the only thing we are looking at right now is the application in front of the Board is to amend the site plan. The site plan that we have in front of the Board does not accurately reflect the conditions that are out there. The applicant needs to document the deviations and was not what was approved seven years ago. The Board would have to make a decision if this is complete, to take jurisdiction.

Ms. Rowden stated that because the site does not match what they have applied for, the Board has two different sets of information, but they have only given you one set of information.

Mr. Marchand commented that as the Board is looking at what was stated, this is incomplete, and we cannot take jurisdiction.

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Ms. Rowden opined she would recommend that the Board not take jurisdiction even though it is on paper, complete. The Board knows that the existing conditions, based on the town engineer's site visit, are inconsistent with what has been proposed.

Mr. Moran stated that the Town's Engineers recommendation is that the existing conditions be updated to reflect what is out there and for us to just make it a decision, if we approve it, it would be "as is". If the Board does not approve it, then it goes to code enforcement accordingly.

Ms. Rowden stated the only corrective action is code enforcement.

Mr. Moran continued: or the applicant amends what is out there to allow us to make a decision to approve it potentially.

Ms. Rowden stated that, procedurally, the easiest path forward would be for the Planning Board to request of the applicant an accurate existing conditions sheet.

Mr. Marchand commented that the applicant was here.

Mr. Moran inquired if the Board could request that the applicant provides a complete application that documents the deviations from the approved plan

Ms. Rowden you can ask them to provide a narrative of the deviations between the existing conditions and the approved plan from May 7th, 2015. Then what they have proposed can actually stay the same if that were what they would like to propose.

Mr. Lekberg stated that the best way to handle this would be to continue it for me to get the time to depict the existing conditions for you. Is that how the Board would like to see this move forward because obviously we have some deficiencies. We will also provide you a letter of agreement between us, code enforcement, and Jamie Fitzpatrick on the trees. There are the trees on the North side against his property and the continuing properties on his street. Those trees are all planted as per agreement. We will provide emails and letters from Shanti the previous Building Inspector / Code Enforcement officer to all that, to the Board. As far as the two ponds and everything Mike Vignale is talking about, I believe two of them were construction ponds because we had a lot of issues there with runoff during construction. So, I believe that is what it is but I am not 100 percent sure. Unfortunately, I am in Canada right now I do not have that set of plans in front of me. I think if maybe if I request a re-hearing of this and we will bring everything you are you are asking for.

Mr. Marchand inquired of Mr. Lekberg if he thought a month was long enough.

Mr. Lekberg replied yes, because I am speaking behalf of our engineers now and you know everybody's buried right now. He requested that the Board give him 30 days and he would bring this back.

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Mr. Moran stated 25th of October is when the previous application was continued to, He asked Mr. Lekberg if he could be ready for that date or if he needed longer. Either do it the same night or it would be two weeks after that, in November.

Mr. Lekberg replied he would be ready for October 25th, 2022.

Mr. Marchand **MOVED** to not take jurisdiction and to continue the public hearing to October 25th, 2022; Ms. White seconded the motion.

Mr. Moran asked A.A. Doggett to call the roll.

Mr. Moran - Aye Ms. White - Aye Mr. Piper - Aye Ms. Collyer – Aye Mr. Guide – Aye
Mr. Marchand - Aye The **VOTE** was: **Unanimous**

2. Board Business

a. Acceptance of minutes of the 8/9/22 meeting

Mr. Piper **MOVED** to accept the minutes as printed; Mr. Guide seconded the motion.

Mr. Moran asked A.A. Doggett to call the roll.

Mr. Moran - Aye Ms. White - Aye Mr. Piper - Aye Ms. Collyer – Aye Mr. Guide – Aye
Mr. Marchand - Aye The **VOTE** was: **Unanimous**

b. NPREA Manifest

Mr. Guide **MOVED** to pay the NPREA Manifest dated 9-27-22 in the amount of \$1248.19; Mr. Marchand seconded the motion.

Mr. Moran asked A.A. Doggett to call the roll.

Mr. Moran - Aye Ms. White - Aye Mr. Piper - Aye Ms. Collyer - Aye Mr. Guide - Aye
Mr. Marchand - Aye The **VOTE** was: **Unanimous**

c. Updated Rules of Procedure

Mr. Moran opened the discussion of the changes to the Rules of Procedure.

A.A. Doggett informed the Board that it now contained all the legislative changes from the past year and also made the document gender neutral, as well as catching some grammatical errors and typos.

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Mr. Moran thanked A.A. Doggett for his efforts.

Ms. Collyer **MOVED** to adopt the Rules of Procedure as presented; Mr. Piper seconded the Motion.

Mr. Moran asked A.A. Doggett to call the roll.

Mr. Moran - Aye Ms. White - Aye Mr. Piper - Aye Ms. Collyer – Aye Mr. Guide – Aye
Mr. Marchand - Aye The **VOTE** was: **Unanimous**

d. Updated Fee Schedule

A.A. Doggett presented an expansion of the application fee cost to cover the time spent on abutter notices. He suggested having a scaled fee so those with more abutters paid a higher fee to cover the costs.

Mr. Guide asked if this amount actually covered the time spent by the A.A.

A.A. Doggett offered that it covered about half, but that the full amount might be prohibitive for some applicants.

The Board discussed the item and determined the amount for more than 50 would be \$100 per each additional 25 abutters and to remove the maximum amount the fee could cost.

Ms. Collyer **MOVED** to adopt the Fee schedule with the above listed changes; Mr. LaVoie seconded the Motion.

Mr. Moran asked A.A. Doggett to call the roll.

Mr. Moran Ms. White Ms. Collyer Mr. Guide Mr. Marchand Mr. LaVoie Mr. Piper
The **VOTE** was:

Mr. Moran asked A.A. Doggett to call the roll.

Mr. Moran - Aye Ms. White - Aye Mr. Piper - Aye Ms. Collyer - Aye Mr. Guide - Aye
Mr. Marchand - Aye The **VOTE** was: **Unanimous**

Ms. Collyer updated the Board of a proposed letter to the Board of Selectmen regarding the Master Plan Steering Committee efforts in completing the C.I.P.

Ms. Rowden suggested that at the next meeting the Board might wish to review their goals for the Land Use Chapter and discuss applying for the newly available, no-match grants, (to pay for professional assistance to review Zoning Ordinances, to potentially

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rewrite said ordinances and/or appropriate Master Plan chapters, and to do an accurate inventory of housing stock as it pertains to work force housing). The Board agreed.

Mr. Guide asked about having the code enforcement officer at the meeting at least once. He has concerns about moving forward when sites are not built according to the approved plans. The Board discussed their concerns.

3. Adjourn.

Chairman Moran adjourned the meeting at 8:58PM

Respectfully Submitted,

James L. Doggett, AA
Newton Planning Board

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