



**PLANNING BOARD**  
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**MINUTES OF THE PLANNING BOARD WORK SESSION**

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Thursday, September 07, 2017 – 7:00 p.m. – Town Hall Conference Room

*Members Present:* Scott Baker, Stu Gerome, Courtney Homer, John McDevitt, Paul Sanderson (Selectmen's Rep), Rich Winsor, Steve Gerrato (Alternate)

*Members Absent:* David Moore, James Connelly (Alternate), Catie Medeiros (Alternate)

*Staff:* Mark Fougere - Consultant

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Chair Gerome opened the Planning Board meeting at 7:00 p.m. A roll call was taken by the Chair; he announced a quorum was present and the meeting was being recorded.

1. Proposed Changes: Subdivision and Site Plan Regulations, Zoning Ordinance

Zoning Ordinance updates were reviewed.

- Article II – Definitions - clearly define “contiguous”: The Building Inspector requested a clearer definition of “contiguous”, and submitted the definition from York, Maine, for the Board's consideration. M. Fougere met with the Building Inspector for clarification; both parties interpreted the definition differently. M. Fougere felt it would loosen the Ordinance; he will contact the York Planner to discuss their intent and how it's enforced. After a lengthy discussion, the Board asked that the Building Inspector attend a meeting on Thursday, October 19, 2017 or Thursday, November 02, 2017.

P. Sanderson told the Board that HB486 will be discussed next week in the House Resources, Recreation and Development Committee. This bill would allow for a State mandated 100' buffer from what is defined as “high value wetlands”. It would be a new definition, completely separate from the statutory definition of wetlands. P. Sanderson used the example: if Fish and Game identifies a threatened and endangered species, it automatically becomes a “high value wetland”. A similar bill didn't pass out of committee last year because there were problems; it will be revisited again the week of September 11, 2017.

S. Gerrato asked if duplex lots of 90,000 sq. ft. (60,000 sq. ft. contiguous) should be included on the chart in Article 18.7.2 – Structure Setback Requirements. M. Fougere agreed it should be included.

- Article II – Definitions - Cottage Industry: Continued until the Building Inspector was present to discuss his concerns.
- Article II – Definitions – Junkyard: This will be replaced with the State's definition, referencing the RSA as amended.
- Section 18.6.1 – Conditional Use Permit: M. Fougere will add a paragraph that would require site plan approval if no other plan is submitted. P. Sanderson suggested allowing the Building Inspector

the discretion to grant a permit; the Building Inspector may refer the application to the Planning Board.

- Sections 18.7.2 and 18.8.2 – Clarification of 75' Tidal Wetland: M. Fougere was unsure if there was a way to define which wetlands in Town are tidal; connecting to the Bay doesn't mean they're tidal. At some point they stop being tidal, and there may not be a way to clarify the distance no longer impacted by high tide. M. Fougere suggested that the soil scientist analyze the wetlands and make a presentation to the Board that it's not tidal; that can be cross-referenced with an independent analysis and be done on a case-by-case basis. J. McDevitt stated he would be concerned if it was tied to distance. M. Fougere stated an exception could be included that it needed to be confirmed in the field by a certified wetland scientist. The Planning Board Engineer could review if the Board felt it was questionable. R. Winsor suggested researching DES for their tidal rule. M. Fougere added that he was sure there was a DES definition; however, if the analysis is done by the wetland scientist, they could confirm if they met that definition and reviewed by the Planning Board Engineer if the Board had any concerns.
- Mandatory Open Space: P. Sanderson suggested that the compromise would be to have anyone applying for a major subdivision to provide a cluster analysis. The Board could then look at the two analyses in the preliminary phase, not requiring them to fully engineer both types of plans. The motivation for open space would be to reduce the length of the roads as well as more opportunities for buffering and LID, etc. Explanation of mandatory open space: any major subdivision of six lots or more must be clustered, reduced frontage and lot size. M. Fougere stated that in Hollis it's cluster unless there was a good reason for it to be waived; the decision is made during the preliminary phase so it's not costing the applicant too much money. A basic analysis must also be done: topo, wetlands, etc. P. Sanderson responded it didn't seem to be unfair to the applicant to require them to show the analysis. People love the traditional subdivision: lot size, buffers in between, etc. There are areas in Town that are better suited for clustering. J. McDevitt questioned if that would be considered "spot zoning"; Chair Gerome didn't think it would be. P. Sanderson felt there may be a time when the Town had more than one residential zone. R. Winsor wasn't sure reducing pavement would be the right reason for cluster housing. M. Fougere will research greenways in Town.
- Overlay for Sea Rise? Increase setbacks? Amend Article XVIII (Wetlands)? Discussions are ongoing with the research being done by RPC. This topic was continued until after the "Visioning Session" on Thursday, October 05, 2017 for sea rise level.
- Overlay for Breakfast Hill Road: P. Sanderson updated the Board on the MTBE Fund meeting. There is approximately \$400 million available for funding water projects; however, there is a need for \$2.5 billion. The standards are in the process of being considered, and will not be adopted for two to three months, if not longer. The program is administered by DES, but there is an advisory committee from various departments. Greenland and Portsmouth have submitted a letter of interest for potentially funding the water line on Breakfast Hill Road to connect to the Portsmouth water line on Lafayette Road. The project cost is \$20 million and would not be one of the first: \$5 million will be going to Amherst, the Whitefield project is shovel-ready and Merrimack is much farther along in the process than Greenland/Portsmouth. P. Sanderson continued that there would need to be consideration of what's in the best interest of Breakfast Hill Road residents and the Town going forward.

The Town is being told that existing water withdrawals are pulling the plume out of Coakley. The first step might be to reduce water withdrawal from the ground. What can the Planning Board do about further building on Breakfast Hill Road? There are property owners on that road that could submit plans for a subdivision at any time. What happens to land use in that area when a water line is run down Breakfast Hill Road? People would no longer need 60,000 sq. ft. and areas of contiguous upland soil because there would no longer be the need for wells. The major water withdrawal is

Breakfast Hill Golf Course at 100,000 gallons of water per day, which is approximately what all families combined on Breakfast Hill Road use per day.

R. Winsor questioned if the water line should be encouraged. He felt the water line brought with it a lot of unintended consequences. P. Sanderson agreed, adding it also brought safety for the current residents. There are 237 families between the top of Breakfast Hill Road and Rt. 1. R. Winsor asked how many were really impacted. P. Sanderson responded that it depended on how the testing was done and how impact was defined. If it was defined by the EPA provisional health levels, no one would be impacted because they haven't surpassed the seven parts per trillion. Defined to 14 parts per trillion, many more residents would be impacted. R. Winsor responded that there are areas on Breakfast Hill Road that were truly impacted—Stone Meadow Way and Berry Farm Lane.

P. Sanderson stated that the Rye Water District agreed to supply the 10 houses at Seavey Way, but aren't going any further at this time. Part of the reason that the Rye Water District doesn't want to extend their service is that they would have to become a public utility. The only source Portsmouth has is the Greenland Well and it goes to the top of Breakfast Hill Road now. The Town has been told there is a sleeve under the bridge and they can service Greenland from there. P. Sanderson explained that it would go down Breakfast Hill Road, left on Lafayette Road, connect to the Portsmouth system, and loop back up Breakfast Hill Road. That would allow them to pump from the Greenland Well or the Portsmouth system. This would also provide significant fire protection in those areas. P. Sanderson added that this is as complicated as anything that's ever been considered.

Chair Gerome stated if the zoning doesn't change, Breakfast Hill Road cannot be developed any more than it can be today, even if it has water; P. Sanderson agreed. Chair Gerome continued that if the Board didn't change the zoning, they could build 100 units on Breakfast Hill right now; if they get City water, they could do 100 units.

R. Winsor stated that he lives in the zone, has had his water tested, and there is nothing there. He felt the problem was being rapidly blown out of proportion. There is flawed science and lack of data. "A lot more" and "significant" were not measurable terms. R. Winsor agreed that there needed to be a solution for the residents that were impacted.

Jillian Lane, 25 Falls Way: Stated it could be very impactful to have some individuals who have been leading the charge on this issue provide the Planning Board with scientific information and help them understand why people are investing a tremendous amount of time advocating for access to municipal water. As a resident who has been involved with this, she encouraged the Board to have Representative Messmer make a presentation; everyone was on different pages of understanding the scope of the problem. She advocates for this because she knows it has to be fixed, and the fix is municipal water as soon as possible for people living within the two mile radius. People don't realize that the Greenland Well has been polluted by the mess (there are 9 parts per trillion present). She continued that there are contaminants not only in the residential drinking wells, but the irrigation systems people use. Of the 70 wells tested, 20 wells on Breakfast Hill Road have contaminants ranging from 1.9 parts per trillion to 30.4 parts per trillion. Through the latest research and science, people studying this are discovering that health effects are being seen in as low as 1 part per trillion. There is no exposure level where health effects are not seen in people who are consuming these. Her neighbor's 1.9 parts per trillion is not comforting; no one should be consuming this at any level. The Environmental Working Group's standard for exposure is .001 parts per billion. Surface water in her development is a serious problem because that is what recharges the groundwater that is drawn into their bedrock well. She asked the DES representative how was it

possible that the remediation that was established 30 years ago could be effective any more when it was meant to address the volatile organic compounds that are known to bio-degrade and go away. That was the plan, and then they discovered 1,4-Dioxane; later they discovered PFOS. And, they will never break down and go away. The DES representative responded that the remediation was still effective because they expected them to disperse from the site. That is what NHDES expects as an attenuation of the Coakley dump—for the PFC's to disperse into the groundwater. The solution is for Breakfast Hill Road to get municipal water. It's feasible and possible, and if the Town commits to it, it will happen.

R. Winsor agreed that municipal water was the answer, but they needed to be careful how it was done if water from a contaminated well was brought down Breakfast Hill Road; that may not be the solution. J. Lane responded that the answer was that under the Coakley dump, they know what they know. In the last ten years, two new contaminants were discovered, and that's just the tip of the iceberg. For residents surrounding this dump to continue to pull the plume from underneath the toxic waste dump that's been sitting there for 30 years is pretty frightening. Wells and irrigation can be disconnected from the system and residents can begin relying on a municipal water supply that can be regulated, treated and monitored.

Chair Jerome stated that the Board was aware, and in agreement, that it was a very serious situation. From the Planning Board, it was what could be done from a zoning perspective. Regardless of what happens with municipal water, zoning would stay the same and development would not increase. P. Sanderson added that the Board could state "no development on Breakfast Hill Road at all". Members were concerned that could be considered constructive taking.

J. Lane stated the goal for this meeting was to get on the agenda for the public hearing. She appreciated being able to share her concerns and perspective with the Board, and hoped they would consider bringing in Rep. Messmer. J. McDevitt responded that Rep. Messmer would be welcome to attend a meeting, but he would also like DES and the EPA present. R. Winsor questioned their expectation of the Planning Board.

Dave Shilman, 44 September Drive: If the concern was to cut down on withdrawal, there was going to be drawing from the Greenland Well. However, that was a single source that could be treated as opposed to the number of wells. It would be common sense for the community to have Breakfast Hill Golf Course treat what they pull. R. Winsor responded that the Board could not enforce that because it's through a State permit; the Planning Board was land use.

The minimum lot size could be increased, limiting potential growth. P. Sanderson added that some of the regulations could be changed to require water testing during the approval phase for future subdivisions.

S. Baker stated that the Board appreciated residents attending the meeting and the hard work that has been put into this issue. He continued that everyone on the Board had the same goals to work for the Town; no one on the Board was against water on Breakfast Hill Road. People think that the Planning Board has more power and the ability to do things; that was his thought also until he was a member of the Board. There are many things the Board can't do, and the Board is learning as the Coakley issue continues. Coakley has been a topic at almost every meeting. Public water can, and probably should be, brought to that area. Looking at it from the Board's perspective, if it does get run, there is the potential for development that could change the entire Town. Water on Breakfast Hill Road is a concern for the Board; however, they also need to be cognizant of what may occur if it does happen.

R. Winsor asked residents to help the Board understand what they could do to help them. The Board couldn't change what happened or do anything to fix it because it wasn't their purview. Moving forward, what were the land use regulations they would expect the Board to put in place.

It was noted that the developer voluntarily added to the deeds for Seavey Way that groundwater couldn't be taken from any of those lots. Even though it was on the site plan, it has been recorded at the Registry. Chair Gerome stated it would come up in a title search. R. Winsor added when the Planning Board approved Seavey Way, it was a stipulation put on the subdivision. The Board was looking ahead because they knew there was an issue.

J. McDevitt questioned why the taxpayers of this Town were paying to remediate the problem that wasn't caused by them. P. Sanderson responded that the Town wasn't obligated other than to engage in a joint application with the City of Portsmouth stating that Greenland would cooperate with the water line issue. Projections have been for a \$20 million project. If it were a \$20 million project, Portsmouth suggested the water rates would be prohibitive even if all families along Breakfast Hill Road signed up. They were looking for approximately \$4 million from the Town in order to bring the rates down to a more affordable level. P. Sanderson continued the Town has not obligated itself in any way to pay anything. There are things the Town could do: most of the land around the Greenland Well is owned by the Town; protection could be provided by the Town to the well head through deed restrictions or controlling the land use, adding significant value to the future of Greenland Well. Chair Gerome noted there are many restrictions around the well (400' to 500'); P. Sanderson responded it would be used as match. The increased buffer would protect the "cone of depression", which would be more highly protected than it ever has been.

Requiring water tests very early in the subdivision review would not be imprudent. If people wanted to rely on wells, they would have to show the Board they have pure water. It could also be a Town-wide regulation. The EPA has an acronym they call institutional controls, which means town zoning so they don't have to do the work. The EPA met with the Board several years to create an overlay district around Coakley and change the zoning.

Liza McGuckin, 10 Stone Meadow Way: Asked if this topic could be added to the agenda for the public hearing on Thursday, September 21, 2017. Chair Gerome responded that the Board would want to block an entire meeting for the issue. J. Lane stated that residents could attend a public hearing and get an understanding where the Planning Board stood on the issue. J. McDevitt explained the purpose of a public hearing. His preference was to have this type of discussion at a work session.

S. Baker explained that Breakfast Hill was discussed at this work session because it was a topic for zoning updates. Anything not on the agenda can be discussed under other business. R. Winsor and P. Sanderson further explained the Planning Board and zoning change process. Chair Gerome suggested that the requirements for water tests should be further defined Town-wide and include what specific tests are needed.

M. Fougere summarized: any subdivision coming to the Board will be required to provide water tests. In addition, the Building Code will be amended to require mandatory testing to include a larger parameter of chemical compounds than currently exists; this will be required Town-wide. He will create a definition of the water test.

- Impact Fees, Mitigation Corridor, Off-Site Improvements: Impact fees can be discussed when reviewing a capital project. S. Gerrato noted that developers aren't required to do anything with

water; it should be done during site plan review. M. Fougere stated it would create mandatory connection to utilities; communities with sewer mandate if a development is within "X" feet of a sewer line, there shall be a connection to the line.

- Wetland Crossings: S. Gerrato stated wetland crossings are very important for the future of the Town. If there was a strong wetland crossings ordinance on the books, Falls Way wouldn't have been built. He suggested no wetland crossings; if a waiver is allowed, the developer must provide twice the square footage and a rain garden. P. Sanderson stated there was no jurisdiction to require that. Wetland crossings were the purview of DES. The Town couldn't adopt an ordinance of that type; it was pre-empted.
- Workforce Housing: M. Fougere stated the Town was fine several years ago, and he will be running another analysis. The population of Greenland School has increased from 398 to 417; there is still plenty of capacity. High School numbers were not available.
- Extend Commercial Zone to Stratham Line: M. Fougere noted that planning conflicts along that corridor include very nice homes in that area. Responding to a question from C. Homer, P. Sanderson stated commercial properties would be more valuable and would increase the tax base. The Board will review the feasibility of a Commercial D Zone for low impact use (professional offices). M. Fougere will create a draft of allowable uses.
- Pavement Degradation Ordinance: M. Fougere felt that would be a Selectmen's Ordinance rather than the Planning Board. The Selectmen control all right-of-ways; to open a road, a street opening permit would be needed as well as the spec to put it back (usually through the Public Works Department). If it's part of a site plan, the Planning Board could oversee the work.

## 2. Topics for the Public Hearing: Thursday, September 21, 2017

Topics for the public hearing were reviewed.

## 3. 2018 Budget

The Board was in agreement to submit the budget in the same amount as 2017.

MOTION: R. Winsor moved to submit the 2018 Planning Board budget in the same amount as 2017. Second – J. McDevitt; all in favor. MOTION CARRIED

## 4. Approval of Minutes

MOTION: S. Baker moved to approve the minutes from Thursday, August 17, 2017. Second – J. McDevitt; six in favor, one abstain (R. Winsor). MOTION CARRIED

## 5. Approval of Invoices

MOTION: C. Homer moved to approve payment of invoices in the amount of \$4,291.86 to Altus Engineering from the Planning Board Escrow account. Second – S. Baker; all in favor. MOTION CARRIED

## 6. Other Business

Funding is available through the Planning Board budget for members who would like to attend the 2017 Municipal Law Lectures.

Reminder: There will be a "Visioning Session" on Thursday, October 05, 2017 (Planning Board Work Session) at the Discovery Center. More information will be available shortly.

7. Adjournment

MOTION: R. Winsor moved to adjourn at 8:41 p.m. Second – J. McDevitt; all in favor. MOTION CARRIED

NEXT MEETING
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Thursday, September 21, 2017 – 7:00 p.m., Public Hearing, Town Hall Conference Room

Respectfully Submitted: Charlotte Hussey, Secretary to the Boards

Approved: Thursday, September 21, 2017