



# TOWN OF HUDSON

## Planning Board



Vincent Russo, Chairman

Rick Maddox, Selectmen Liaison

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### HUDSON PLANNING BOARD MEETING MINUTES March 23, 2011

#### I. CALL TO ORDER

Chairman Russo called this Planning Board meeting to order at 7:04 p.m. on Wednesday, March 23, 2011, in the Community Development meeting room in the Hudson Town Hall basement.

#### II. PLEDGE OF ALLEGIANCE

Chairman Russo asked Ms. Merrill to lead the assembly in pledging allegiance to the Flag of the United States of America.

#### III. ROLL CALL

Chairman Russo asked Secretary van der Veen to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

**Members**

**Present:** James Barnes, Glenn Della-Monica, George Hall, Vincent Russo, Ed van der Veen, and Richard Maddox (Selectmen's Representative).

**Members**

**Absent:** Tim Malley.

**Alternates**

**Present:** Irene Merrill, Stuart Schneiderman, and Jordan Ulery.

**Alternates**

**Absent:** None. (All present.)

**Staff**

**Present:** Town Planner John Cashell.

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**Recorder:** J. Bradford Seabury.

**IV. SEATING OF ALTERNATES AND ANNOUNCEMENTS**

Chairman Russo seated Mr. Schneiderman in place of the absent Mr. Malley.

**V. MINUTES OF PREVIOUS MEETING(S)**

Chairman Russo said he would put off review of the minutes of past meetings until later, because of the extensive agenda.

**VI. CASES REQUESTED FOR DEFERRAL**

No cases had been requested for deferral from this meeting.

**VII. CORRESPONDENCE**

**A. Memo dated March 1, 2011, from Dave Yates to John Cashell Re: Request for use of Planning Board's Recreation Fund.**

Mr. Barnes noted he was a member of the Benson Park Committee, saying he would step down if anyone had a problem with his sitting on the matter. No problems were expressed with respect to his remaining sitting.

Mr. David Yates, Recreation Director, introduced Mr. Eric Horton and Mr. Jeremy Griffus, Chairman of the Recreation Committee. Mr. Griffus said they were here to request approval of using money from the Recreation Fund for the proposed "boundless" playground at the Benson Park. He reviewed details of the documentation, making reference to details on the aerial map of the area displayed on the room's projection screen, discussing factors that had been considered, and noting that the area was where the polar bears had used to be when the original Benson's Animal Farm existed. He said they were looking for approval to expend funds from the Recreation Fund, not to exceed \$100,000, and he offered to answer any questions.

Chairman Russo asked for comment from the Board.

Mr. van der Veen noted that it would take four to five years to replenish the \$100,000 in the Planning Board's Recreation Fund, and he asked if the committee anticipated any significant need for funds in that time. Director Yates said he did not foresee any need for a while.

Mr. Hall asked about the structure shown in the exhibit. Mr. Griffus said the view was representative, saying they expected to be able to build something similar for much less money, noting that the exhibited structure had been quoted at \$97,000.

Ms. Merrill asked if all the landscaping was included. Mr. Griffus responded in the affirmative. She then asked if they would return any matching funds from grants to the fund. Mr. Griffus said he could not say for certain, as there would be other attendant expenses. He discussed details of some of the grants they were looking for. Mr. Horton said the goal was not to exceed \$100,000, saying they expected a lot of volunteer help to get the project done. Mr. Griffus noted that the illustration was an artist's conception, saying they might want to make changes as they got into the actual development.

Mr. Della-Monica suggested that there be some education pieces provided to explain to parents how kids could or should use the equipment.

Ms. Merrill asked who would be responsible in case of any injuries. Mr. Yates said all of the Recreation facilities fell under the Town's insurance policy.

Mr. Schneiderman asked what the completion date for the project was. Mr. Griffus said they had not been able to put any timeline together without knowing whether they would have access to the Planning Board's funds. Mr. Schneiderman asked about other grants, and Mr. Griffus discussed them. Mr. Schneiderman asked if anyone had taken the Kaboom training; Mr. Griffus answered in the negative, saying they would provide a 50-second video that would be judged. He said there was nothing basing the grant on other funding. Mr. Schneiderman asked if they had a budget drawn up; Mr. Griffus said they would do that, based on costs experienced with other playgrounds, but they could not move forward on anything until they knew whether they would get the funds from the Planning Board.

Ms. Merrill asked about warranties on the equipment. Mr. Yates said they had had pieces replaced on other playground equipment, and the experience was that they were very maintenance free.

Selectman Maddox moved for the Planning Board to recommend to the Board of Selectmen the release of up to \$100,000.00 from the Recreation Account (#2050-000-182) to be used for the exclusive purpose of building a handicap accessible play structure at Benson Park.

Mr. Hall seconded the motion.

Speaking to his motion, Selectman Maddox said the Board wanted them to move forward but would be looking for some backup at some point.

Mr. Barnes said the Benson Park Committee was very much in favor and felt this would be a very valuable addition to the overall park.

Mr. Schneiderman said he thought the concept was terrific and would be down there working with them, with his tools, but he was having difficulty in knowing when it would be done or what would be happening later down the road, saying it seemed kind of like a blank check.

Mr. Yates confirmed that he would be overseeing this project, just as he had with previous projects done by the Recreation Committee.

Mr. van der Veen noted that the Town would be involved as well, so it really wasn't a blank check. Selectman Maddox said they probably would have to go out for bids, because of the size of the project, so there would be oversight and public scrutiny.

**VOTE:** Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7-0).

### VIII. PERFORMANCE SURETIES

No **Performance Sureties** items were addressed this evening.

### IX. ZBA INPUT ONLY

#### A. Central Street Restaurant ZI# 01-11

**Map 160/Lot 105  
297 Central Street**

**Purpose of plan: To construct a 4,400-ft<sup>2</sup> restaurant, associated parking lot, storm water management provisions, and other site improvements. The proposed project will disturb approximately 10,300-ft<sup>2</sup> of wetland buffer.**

Chairman Russo read aloud the published notice, as repeated above.

Mr. Patrick Colburn, of the firm of Keach-Nordstrom Associates, Inc., Bedford, New Hampshire, appeared before the Board as the engineering representative of the property owners, Bill Tate and Maureen DiPalma. He reviewed past hearings on this same proposal and commented on details of the plan, noting that they had obtained a Wetlands Special Exception and a Use Variance from the Zoning Board of Adjustment to allow a portion of the parking space in the wetland buffer, with the project then being held steadfast because of challenges by Century Park, an abutter. He said they were here tonight to propose some changes that hopefully would settle the matter outside of court.

He then discussed changes in the drainage management, saying the impacts were now slightly less with the new design than had been previously proposed. He reported that he had presented this new plan to the Conservation Commission in January and February, and the Commission had voted to send a second favorable recommendation for the Wetlands Special Exception to the Zoning Board of Adjustment. He then offered to answer any questions the Board members might have.

Chairman Russo opened the meeting for public input and comment, in favor or opposition. No one coming forward to provide input, despite two requests by the chairman for comment for or against, Chairman Russo asked if any members of the Board had any questions.

Mr. Barnes said it appeared that a substantial amount of fill would have to be brought in. Mr. Colburn concurred, explaining that the proposed restaurant would have a basement and the fill was being brought in to reduce the need for blasting. He discussed details of the regrading on the plan, confirming that there would be steps taken to prevent spill from the fill from getting into the wetland. Mr. Barnes asked about the location of the dumpster, asking if there were anything proposed to prevent spillage from the dumpster from getting into the wetlands. Mr. Colburn said none were proposed but he could consider moving the dumpster.

Mr. Della-Monica asked if this sort of subsurface detention area design had been applied elsewhere in New England. Mr. Colburn said part of it was closed pipe which had been around, with the newer technology of tree-box filters having been implemented in the Northeast, particularly at UNH.

Selectman Maddox asked if the issue of no frontage on a Town road had been resolved. Mr. Colburn said frontage was on Central Street (Route 111) but the State of New Hampshire restricted driveway access of that roadway, so access to the site was off Hudson Park Drive. Mr. Hall noted that this was a lot of record, not a lot being newly created, with the access to it having been planned as part of the original development. Mr. Colburn expressed agreement.

Mr. van der Veen asked about the wetland. Mr. Colburn said the wetland actually was a drainage swale along the side of Route 111, taking stormwater in an east-west direction. Town Planner Cashell noted that water flowed in the swale most of the year.

Mr. Ulery asked what kind of restaurant was being proposed. Mr. Colburn professed not to know.

Ms. Merrill asked about the retaining wall. Mr. Colburn described the wall as being a shallow wall at the northwest corner to catch runoff from the parking lot and prevent it from getting into the wetland swale.

Mr. Ulery asked where the signage would be and how many signs would be necessary. Mr. Colburn said he was not aware of that, and he asked Atty. J. Bradford Westgate, of the firm of Winer and Bennett, LLP, 111 Concord Street, Nashua NH, legal representative for the applicants, if there were provisions for signage at the intersection of the private drive way and Hudson Park Drive. Atty. Westgate said he could not recall discussion of the overall signage concept.

Selectman Maddox noted this was not a site plan review, but these were questions they would hear in the future.

Mr. Colburn identified the plan as ***Wetland Buffer Impact Plan, Central Street Restaurant (Map 160/Lot 105), 297 Central Street, Hudson, New Hampshire***; prepared by Keach-Nordstrom Associates, Inc.; dated April 3, 2009, with a revision date 11-30-10.

Mr. Schneiderman asked why tree-box filters were being installed. Mr. Colburn said it was for stormwater treatment, draining into the subsurface detention area. He said it was fairly gravelly soil, with a ledge, pointing out that he was required to treat the runoff from the parking lot.

Mr. Schneiderman asked if they would consider making the restaurant 700 ft<sup>2</sup> smaller in order to deal with the buffer. Chairman Russo questioned the applicability of this question. Mr. Schneiderman expressed a belief that they could avoid impacting the buffer if they made the building smaller. Mr. Colburn said the building was outside of the buffer area, saying the impact was because of the parking area. Mr. Schneiderman read aloud from the staff report, saying the restaurant would have to be reduced in size if the Zoning Board of Adjustment denied the Wetlands Special Exception. Mr. Colburn professed not to understand this statement. Town Planner Cashell said he was pointing out that there was a substantial amount of wetland impact and the Town could request reduction, if it were sufficiently concerned. Mr. Colburn said the restaurant with a bar resulted in a specific parking requirement, and the number of parking spaces was what dictated the amount of area consumed by the development, adding that he could not say that reducing the building size would eliminate the impact. Mr. Schneiderman said it would eliminate the need for four parking spaces.

Selectman Maddox noted that the Conservation Commission recommendations were referenced but not provided in the documentation. Mr. Colburn said he had discussed this same plan with the Conservation Commission, which had asked that the development try to limit the proposed clearing of the wetland setback—adding that they would try to do that but that it was tight because of the small lot.

Selectman Maddox said the reference was to April 2009, but the original recommendations were not given. Atty. Westgate said there had been a motion sheet, dated May 11, 2009, which noted a favorable recommendation, with stipulations, which he then read aloud. Selectman Maddox said there was a reference to April 2009, as well; Atty. Westgate said the motion sheet referred to a “plan” dated April 2009. Atty. Westgate expressed a belief that it was a case of redundancy.

Town Planner Cashell said he wanted to be a little more clear regarding the buffer impact. He said the impact area was relative the permitting, with the line going through four parking spaces and including the dumpster area, which was the permanent wetland impact. Mr. Hall asked about the retaining wall and the fill, asking if Town Planner Cashell did not consider this as permanent buffer impact. Town Planner Cashell said that area would be vegetated, outside of the impervious surface, but he agreed that the retaining wall would be permanent impact.

Mr. Della-Monica said the entire plan had been approved at one point but they had then had a problem with the abutter. He asked what had changed. Mr. Colburn said this plan had 330 feet less impact. Mr. Ulery said the buffer would be impacted with four parking spaces and the dumpster pad, but there would be plantings around the front to compensate, and he expressed a belief that this made the net impact diminutive. Chairman Russo demurred, saying there was definitely some impact.

Mr. Della-Monica asked if the addition of the mitigation (the tree boxes) would pretty much offset the intrusion into the parking area, and he asked if this were to offset the intrusion of the parking lot into the buffer zone. Mr. Colburn responded that he was proposing stormwater management strategies that would maintain stormwater quantity and quality discharging into the wetlands.

Town Planner Cashell referenced the pond on Wall Street, saying it drained under Wall street and then continued flowing parallel with Route 111, eventually making its way down under Kimball Hill Road to the Benson Park property.

Mr. Richard Maynard, Professional Engineer, of Maynard & Paquette, Engineering Associates, LLC, appearing before the Board as the engineering representative of Century Park, the owners of the pond, said the pond was for flood control and had a vertical pipe and could be let go at any time.

Mr. Barnes moved to forward correspondence to the Zoning Board of Adjustment stating that the Planning Board concurred with the favorable recommendation of the Conservation Commission with respect to the proposed 10,300-ft<sup>2</sup> wetland buffer impact cited on the Wetland Buffer Impact Plan for the proposed Central Street Restaurant (Note: said plan is entitled Wetland Buffer Impact Plan Central Street Restaurant, Map 160/Lot 105, 297 Central Street, Hudson, New Hampshire, prepared by Keach-Nordstrom Associates, Inc., dated: April 3, 2009, revised through Nov. 30, 2010, consisting of Sheet 1 of 1 and Notes 1 through 9).

Mr. Della-Monica seconded the motion.

Speaking to his motion, Mr. Barnes said the Board had looked at this before and made a favorable recommendation and this was for less impact.

Selectman Maddox asked if the maker of the motion would incorporate doing some research into what was meant by the reference to stipulations of April 2009i (#3 on the document). Mr. Barnes and Mr. Della-Monica concurred, making it a friendly amendment, to add the following stipulation:

- Stipulation #3 from the February 14, 2011, Conservation Commission Motion to Recommend Wetlands Special Exception shall be researched and the results of that research shall be incorporated into the plan.

Mr. Schneiderman expressed a desire for the Board to reconsider, saying a reduction of 16% would remove the need for further impact, and the voters had voted for a 50-foot buffer, so he would vote in opposition.

**VOTE:** Chairman Russo then called for a hand vote on the motion. All members present voted in favor except for Mr. Schneiderman, who voted in opposition, and Chairman Russo declared the motion to have carried (6-1).

**B. Vista Ridge Estates**  
**ZI# 02-11**

**Map 192/Lot 17**  
**68 Pelham Road**

**Purpose of plan: To propose a 31-unit manufactured home park on approximately 40 acres. Project entails construction of a 2,700-ft private roadway, water main extension, septic systems, closed and open drainage systems, and associated site appurtenances.**

Chairman Russo read aloud the published notice, as repeated above.

Town Planner Cashell said he had nothing to add to the staff report.

Mr. Patrick Colburn, of the firm of Keach-Nordstrom Associates, Inc., Bedford, New Hampshire, appearing before the Board as the engineering representative of the property owner, discussed details of the plan affixed to the meeting room wall, outlining the intended development and the nature of the site. He said two wetland impacts were required, as well as another to bring water through, and another to provide a maintenance access road, with a fifth being a buffer impact to provide outfall for one of the closed drainage systems. He said the total impact of the project would be 7910 ft<sup>2</sup> of wetlands and 32360 ft<sup>2</sup> of buffer impact, with these being permanent impacts, together with 420 ft<sup>2</sup> of temporary wetland impact and 898 ft<sup>2</sup>, for the temporary buffer impact. Due to the compact nature of the development, he continued, they were able to propose a dedication of about 26 acres in common open space, as identified on the plan, which he identified as ***Common Open Space Conservation Land Plan for Vista Ridge Estates (Map 192/Lot 17), 68 Pelham Road, Hudson, New Hampshire***, dated January 25, 2011.

Mr. Colburn discussed attempts to get water elsewhere, noting that all three wetland crossings had been permitted by NH-DES in 2008 and had been reviewed and approved by both the United States Army Corps of Engineers and EPA; he said all of the State permits remained valid. He noted that the Wetlands Special Exception had expired but, now that the economy was beginning to change around, the applicant was ready to proceed again with the project and had started by going to the Conservation Commission and now would go on to the Zoning Board of Adjustment. He noted that no major changes had been made since the plan was last approved, saying the Conservation Commission had asked that two of the culverts be swapped out and made open-box culverts.

Chairman Russo opened the meeting for public input and comment, in favor or opposition. No one coming forward to provide input, despite two requests by the chairman for comment for or against, Chairman Russo asked if any members of the Board had any questions.

Mr. van der Veen asked where the closest sewer outlet was located. Mr. Colburn identified the location but said they had been denied connection to that outlet.

Mr. van der Veen asked about the big wetland behind the proposed development. Mr. Colburn said that was a jurisdictional wetland complex on property that had access off Belknap Road and was now owned by K&M Developers.

Selectman Maddox said he would be looking for some sort of permanent markings of the wetland boundaries, such as a split-rail fence or a chain-link fence etc. Mr. Colburn said Selectman Maddox had expressed the same thing originally and he thought it had been agreed on. Selectman Maddox noted that it was not shown on the plan.

Mr. Schneiderman asked for clarification as to how the effluent disposal areas worked. Mr. Colburn said they were leach fields.

Mr. Ulery asked for an explanation of the difference between open-box bottom and closed bottom. Mr. Colburn said it was more of a critter crossing.

Mr. van der Veen asked what the water source for the wells would be. Mr. Colburn said the development would be on municipal water.

Mr. Barnes moved to send correspondence to the Zoning Board of Adjustment stating that the Planning Board had no planning concerns relative to the requested Wetlands Special Exception Permit application by Vista Ridge Estates, and that the Board concurred with the Conservation Commission's February 14, 2011, Motion to Recommend Wetlands Special Exception for this project.

Mr. Della-Monica seconded the motion.

Selectman Maddox asked why the two motions (this and the preceding one pertaining to the Central Street restaurant plan) were so different. Mr. Hall said the Planning Board had agreed that it was not up to the Planning Board to provide anything to the Zoning Board of Adjustment, and they had agreed on the wording "we have no planning concerns"—adding that the Board would say what its concerns were if there were any. He then stated that he did not know what concurrence with the Conservation Commission meant. Selectman Maddox suggested this should be a workshop item in the future.

Chairman Russo asked if Mr. Barnes wished to restate his motion differently. Mr. Barnes declined to do so.

Mr. van der Veen said he had a concern about a lot of units and waterways being spread around this pond and the wetlands, saying he felt a project of this size either should be hooked up to a sewer or that a way should be figured out to get money out of the project to help the Town expand its sewer base. Chairman Russo said the focus tonight was the crossings.

Mr. Hall suggested as an example that to say "concur" meant that the Planning Board was prepared to grant a waiver of a crossing at #8. He said density was another issue, but the Planning Board could control the length of the crossing as a cul-de-sac. He said the Board should be looking to see if there were a planning concern caused if the Wetlands Special Exception were to be granted.

Mr. Della-Monica said if NH-DES and United States Army Corps of Engineers had approved this, he was confident that it would have no effect on the existing pond. Mr. van der Veen said it was more of a principle thing.

**VOTE:** Chairman Russo then called for a hand vote on the motion. All members present voted in favor except for Mr. van der Veen, who voted in opposition, and Chairman Russo declared the motion to have carried (6-1).

Chairman Russo declared a break at 8:31 p.m., calling the meeting back to order at 8:30 p.m.

X. OLD BUSINESS/PUBLIC HEARINGS

A. 99 River Road Site Plan  
SP# 11-10

Map 256/Lot 001-000  
99 River Road

**Purpose of plan: To construct a 2,120-ft<sup>2</sup> convenience store with associated access drive and parking. Existing building on-site (former landscape supply business) to be demolished. Hearing. Deferred Date Specific from the January 26, 2011 Planning Board Meeting.**

Chairman Russo read aloud the published notice, as repeated above.

Mr. Christopher Rice, with TF Moran, Inc., stated that he was here on behalf of Hudson Realty Trust, which was the owner of Tax Map 256/Lot 001-000, together with adjoining property in Tyngsboro, Massachusetts, which was Tax Map 18/Lot 48-0. He identified the plan he had affixed to the meeting room wall as **Site Layout Plan, Retail Development, 99 River Road**, dated November 5, 2010, last revised March 10, 2011, and he distributed copies of a photograph showing the existing building. Mr. Rice reviewed discussions of past hearings on this project, saying it was now proposed as a 10,124-ft<sup>2</sup> convenience store, adding that Tyngsboro had said they had to get permission from the Hudson Planning Board. He said they had obtained a NH-DES sewer permit, and NH-DOT driveway permits. He noted they were looking for a waiver of the 100-foot buffer from residential use (noting that there no way to not have a building on this site within 100 feet of a residential use), less than 35 feet of green space between the right-of-way and the paving area (noting that they had dedicated this area to the Town for future widening), setback, screening between parking and loading for a residential use (he described screening being proposed), noise study, and fiscal impact study. He said all of these had been discussed before, but that he had subsequently added a request for a waiver to allow multiple driveways, at the request of the Board.

Chairman Russo opened the meeting for public input and comment, in favor. No one coming forward, he asked if there were anyone who wished to speak in opposition or with question or comment.

Mr. John Porter, 206 West Road, said he had the rights to that road (Porter Road); he then provided a copy of a letter from his attorney, which Town Planner Cashell made copies of for the Board members (dated February 28, 2011; from Alexander S. Buchanan, of Buchanan, Maynard, and Parodi, to Arthur M. Pearlman, Esquire, re: Ramanbharti S. Patel, Trustee, Development of 99 River Road, Hudson, NH). Mr. Porter said there was supposed to be money involved with respect to the pole on the road, but there had not been, and he was not letting anything happen with respect to the permit on that road until he got paid. Mr. Porter said he owned 198 Frost Road, across the street, which he described as the part that was in Tyngsboro, and there was a well and a septic system. "Until these people provided a new water line or something," he continued, and he then stopped without finishing.

Mr. Hall said there was a need to clear up the confusion, as the plans identified the property next door as 206 Frost Road. Mr. Porter said the house was at 198 on the Massachusetts side. Chairman Russo asked if he were concerned that the well was too close to the proposed septic. Mr. Rice said he had shown the setback to the State of New Hampshire, saying he was 65 feet from the corner of his septic system to the property line.

Selectman Maddox asked for full-size plans; Mr. Rice said he had a couple sets, which he passed out to the Board.

Mr. Rice said the 206 address he showed on the plan was the current assessor's information.

Mr. Rice said he could have someone double-check on the location of Mr. Porter's well. Mr. Porter continued to maintain it was too close.

Chairman Russo asked if there were any way he could shift the septic further under the parking lot. Mr. Rice said he would check. Mr. Della-Monica noted this would have to be approved by Tyngsboro, as well. Chairman Russo asked what sort of distance Mr. Porter was looking for. Mr. Porter said he wanted enough to protect his well, or else a new water line to his property. Chairman Russo noted that 75 feet was the required minimum. Mr. Rice said he was willing to work with Mr. Porter but he did not know why he would have to redesign if he met specifications.

Mr. Della-Monica asked if Mr. Porter had communicated with the applicant. Mr. Porter said he had, saying Mr. Patel was supposed to give him an amount of money for moving the pole and getting the extra footage for the parcel, but he had suddenly started avoiding communication and did not want to pay up.

Selectman Maddox said this was getting into a civil matter, but anything beyond 75 feet would be between the parties.

Chairman Russo said he was not sure what the Planning Board could do about the pole. Mr. Porter said he had the rights to the road and he did not want anything done, saying his lawyer would handle it.

Mr. van der Veen asked where Mr. Porter lived. Mr. Porter said he lived in the back, adding that this site had not been a landscaping place, as had been stated, but had been a hair salon; he said there was a 98R involved, which he owned, and he used to have buses back there with a special permit. He said he never sold anything out of the building, which was closed, but he still sold bark mulch, which had been okayed by the Town's inspector.

Town Planner Cashell asked if Mr. Porter owned the property. Mr. Porter said he did, saying he still owned it, as the applicant owed him \$50,000. Chairman Russo said this was not the floor for that discussion. Mr. Porter said it had been a beauty shop, and had used to be Hudson Auto, as well as the What-Not Shop.

Atty. J. Bradford Westgate, of the firm of Winer and Bennett, LLP, 111 Concord Street, Nashua NH, legal representative for the applicant, noted that the Patels had purchased the property a year ago and owned it, saying Mr. Porter owned the property

beyond. In the deed, he said, there was an expressed easement right over the private road, so the lot had the right to use the cross-hatched section of that road. He said the plan contemplated some modifications of the entrance to Porter Road to accommodate the business, as mandated by the NH-DOT, which had been signed by Mr. Porter. He said there was now an underlying dispute, with Mr. Porter maintaining that the Patels owed him money for cooperating, which was an underlying civil suit, but this was not resolvable in this forum, and the Planning Board had before it the executed permit from the State of New Hampshire. He noted that Atty. Pearlman was the Patels' Massachusetts attorney—adding that the February 28<sup>th</sup> letter was dated incorrectly and should be dated March 11, 2011.

No one else coming forward to provide input, despite two requests by the chairman for comment for or against, Chairman Russo declared the matter before the Board and asked if any members of the Board had any questions.

Selectman Maddox said the last thing he saw in the documentation package was that Tyngsboro had denied this plan. Mr. Rice said he had a copy of the notice of decision, which he would forward to Town Planner Cashell first thing in the morning.

Selectman Maddox said it was listed as a single-family drive. Mr. Rice said was listed as a multifamily. Selectman Maddox read aloud from his document, saying it was a single-family drive.

Mr. Barnes said he had noted the same thing, saying the first drive was for Porter Road and the second was for the family to the north, but he did not see a driveway permit for the driveway in question. Mr. Rice displayed a document from NH-DOT, saying he had two permits—one for Porter Road and one for the Patel site. Chairman Russo asked Town Planner Cashell to make copies of the second permit (Permit #05-229-0011, dated 03-11-11) for the Board members.

Selectman Maddox said he was trying to figure out how they were going to do all the things that needed to be done on a half-acre lot, when the Board was having problems with a 2-acre lot just up the street.

Chairman Russo said the owners of the surrounding properties were related to Mr. Porter, and he felt it was a family matter, and he then expressed a belief that they should have come in if they had a problem. Mr. Porter said the applicants had moved the rear entrance twice, and it was not supposed to be that way. If they could not make use of the driveways like everyone else had, he suggested, they should make it a hotdog stand. He said they had more than 50 feet and could take 20 feet of their own and do what they wanted to do.

Mr. Rice said he had first come in with a 2700-ft<sup>2</sup> building, later reduced to 2100 ft<sup>2</sup>, with a loading space. He said he had researched accident data. He said the site design had changed, but there was nothing in the purchase agreement saying he had to access the road at specific points, adding that the improvements he was doing on Porter Road were at the request of NH-DES, which had said Mr. Porter had at sometime in the past made improper changes, with the resulting slope causing problems. He said he had taken all the previously discussed points from the Board seriously and had tried to address them.

Selectman Maddox asked what was being done for the 100-foot buffer waiver. Mr. Rice said he had installed a fence along the Porter property; he said they could put up a fence to the north, too, but this place had operated for years with no problems. Selectman Maddox responded that it had operated as a hairdresser, closing in the evening.

Mr. Ulery noted that the Ayotte's Stateline Smokin' Joe's store was directly across the street. He asked if this were a commercial area. Chairman Russo said it was zoned commercial but the Board had to be mindful of the remaining residential uses. Selectman Maddox stated that the property was zoned G-1.

Mr. Rice noted that the property on the corner was also owned by Mr. Porter, with a very noisy rock-crushing machine.

Chairman Russo said he was not a big fan of waiving the residential setback requirement, saying he typically looked for input from the abutters. He suggested that Mr. Rice had to work with the abutters. Mr. Rice said he had received no objections during the process, but he now felt there would be no agreement until the civil matter was resolved.

Mr. Della-Monica said the propane tank was five feet from the parking space, with 5-foot-spaced bollards. Mr. Rice said they were six feet apart. Mr. Della-Monica said he thought they were close, considering the products being sold. Mr. Rice said he could shift them back. Mr. Della-Monica said he had a concern about minimal bollards. Mr. Rice said he would shift it and add another bollard.

Mr. Barnes referenced the letter dated November 5, 2010, which said open space was being increased; he asked what the total was now, noting that the letter said it was approximately 45%. Mr. Rice said there was 10% where the rip-rap was. He then consulted his documentation and said the total open space was about 9700 ft<sup>2</sup>, noting that the whole lot was 0.49 acres, including the portion in Tyngsboro—adding that the whole lot was 21,700 ft<sup>2</sup>, with about 19,000 ft<sup>2</sup> currently being impervious.

Mr. Schneiderman referenced Lot 18-38-0, saying it was recognized by the Town of Tyngsboro as 204 Frost Road. Mr. Rice said that might just be the number given to that triangular sliver. Mr. Schneiderman asked why there was a lien on that property. Mr. Rice said he was not aware of that. Chairman Russo said he would rule that that was irrelevant to what the Planning Board was dealing with at this time.

Ms. Merrill asked about hours of operation. Mr. Rice said there had been changes, noting that it had been stated at the last meeting that it would not be 24-hour operation. He said he thought his client was looking for operation from 7:00 a.m. to 11:00 p.m. Chairman Russo said the Board would be looking for that information on the plan. Mr. Rice noted that a note prohibiting sale of fireworks had been added to the plan.

Selectman Maddox asked if Mr. Rice had researched the traffic report since the last time. Mr. Rice said the report had been reviewed by both towns and by NH-DOT; he added that the report concluded that 73 peak-hours trips would be added because of this development, in three categories: primary (someone going to the site intentionally, hence "new" trips attributable to this development), pass-by (someone who decided to stop in while going by), and diverted link (someone who was going to the area and

added this as another stop). He said 61% of the 73 peak-hours trips would be pass-by trips and 18% would be diverted link trips, which meant this development would have 24 new primary trips (21 percent of the total), of which 16 trips would be coming north from Tyngsboro, while eight would be coming down from Hudson.

Selectman Maddox said he had gone down and sat there at the site, watching the traffic coming up from Massachusetts. He said he saw he saw a consistent problem with people trying to go into Ayotte's store, but now this was going to put another convenience store in the same area, and he thought it would be a safety issue with people trying to make left-hand turns into this site when others were trying to go north. He then expressed concern about this problem becoming worse when a truck was in there, saying it was going to be a challenge, and he thought the waivers being asked for were extensive for a lot of this size

Mr. Della-Monica said he had been looking at the traffic study, and he asked what incentive was provided for the upstream diversion. Mr. Rice said he could not tell him, sitting right here—but he then gave an example of his own way of thinking, saying that, if he were driving north, he would not try to turn left into a smaller convenience store when he could turn right to go to a much larger one. Mr. Della-Monica then questioned why anyone driving south would go further to reach this establishment when there were other sites "upstream." Mr. Della-Monica said the traffic study numbers did not seem logical to him. Mr. Rice said the report had been prepared by a licensed traffic engineer, adding that he thought it was a mix between actual counts at Ayotte's and numbers from the ITE manual. Mr. Rice noted that the traffic study had been reviewed by NH-DOT and by both Hudson's engineering consultant and Tyngsboro's consultant.

Mr. Rice asked which waivers were being objected to by Selectman Maddox. Selectman Maddox said the 100-foot residential buffer was not one he had been in favor of granting, saying this site would generate traffic throughout much of the day. He said he felt too much was being crammed into the lot, and he thought it was going to be problematic with trucks turning in when cars were there. He expressed a belief that the Planning Board had to do whatever it could to protect the residential neighbors, and he then said he did not think this lot was big enough to support all the things that were being put on it.

Mr. Hall said he was having trouble with the description of "residential neighborhood" when he was looking at a rock crusher, bark piles, a bus parking lot, earth excavation, and all kinds of other activities that did not pertain to residential issues. Selectman Maddox referenced Page A1, showing a 200 arc through residential units. Mr. Hall responded that the proposal was for something that would be a significant improvement over what existed there now.

Mr. Porter said every time he had tried to do something with the property, Mr. Maynard would suggest \$30,000 for a new license—adding that "Roger" had never gotten a license. Mr. Porter then expressed a belief that the Planning Board had to bend a little if it wanted something, but this was too big for what the lot was.

Ms. Merrill asked how 18-wheelers would come into the loading area. Mr. Rice said he did not know what they were planning on, but trucks could back in. Mr. Ulery

expressed a belief that 12-wheelers would typically come in. Mr. Della-Monica asked if the trucks would stick out onto River Road; Mr. Rice said they would not.

Chairman Russo asked if any Board member wished to make a motion with respect to any of the waivers.

Mr. Hall moved to grant the requested waiver of the requirements of HTC §275-9 C, *Noise Study*, citing the reason as being because such a study was unnecessary, taking into consideration the existing noise associated with the commercial activities of this site versus the proposed use being less or no greater than that, and within the allowances of Town ordinances regarding noise—and, as such, the granting of this waiver was not contrary to the spirit and intent of the Site Plan regulations.

Mr. van der Veen seconded the motion.

Selectman Maddox noted that the Planning Board had just made the other site, just up the road, do a noise study based on the buffer. Mr. Hall said he saw a huge difference between the activities proposed for the two sites, especially with respect to what happened outside the building.

**VOTE:** Chairman Russo called for a verbal vote on the motion. All members present voted in favor except for Selectman Maddox and Mr. Schneiderman, who both voted in opposition, and Chairman Russo declared the motion to have carried (5–2).

Mr. Hall moved to grant the waiver of the requirements of HTC §275-9 D, *Environmental and Fiscal Impact Studies*, citing the reason as being because said study, in addition to the submitted plans, traffic study, CAP fee, and other submitted application materials, was not necessary to evaluate the fiscal impact of this development, and because the granting of this waiver was not contrary to the spirit and intent of the Site Plan regulations.

Mr. Della-Monica seconded the motion.

Selectman Maddox noted that the numbers on the staff report had a different reference number. Town Planner Cashell said it was §275 9 D. Mr. Barnes noted that the wording of the motion was correct.

**VOTE:** Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).

Mr. Hall moved to grant a waiver of the requirements of HTC §193-10 G, *Multiple Driveways on a Single Lot*, citing the reason as being because the proposed driveways shown on the plan provided safe and adequate sight distance in accordance with the distance required in the Planning Board's Driveway regulations—and, as such, the granting of this waiver was not contrary to the spirit and intent of said Driveway regulations.

Mr. van der Veen seconded the motion.

**VOTE:** Chairman Russo called for a verbal vote on the motion. All members present voted in favor except for Selectman Maddox and Mr. Schneiderman, who both voted in opposition, and Chairman Russo declared the motion to have carried (5–2).

Mr. Hall moved to grant the requested waiver of the requirements of HTC §275-8 B (22), *35-ft Green Area Between ROW and Roadway Surface*, citing the reason as being because the proposed site improvements enhanced the overall appearance of the site, creating a more aesthetically appealing property—and, as such, the granting of this waiver was not contrary to the spirit and intent of the Site Plan regulations.

Mr. Della-Monica seconded the motion.

**VOTE:** Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).

Mr. Hall moved to grant the requested waiver of the requirements of HTC §275-8 B (32), *Screening Between Parking & Loading Areas to Abutting Residential Use*, citing the reason as being because existing conditions regarding screening between parking and loading areas relative to abutting residential uses were more adverse than proposed by the new use, and the specific terms and conditions of approval for this project shall safeguard any residential abutters who might otherwise be adversely impacted by the activities associated with this project—and, as such, the granting of this waiver was not contrary to the spirit and intent of the Site Plan regulations.

Mr. Barnes seconded the motion.

**VOTE:** Chairman Russo then called for a verbal vote on the motion. All members present voted in favor except for Selectman Maddox, Mr. Schneiderman, and Mr. Russo, who all voted in opposition, and Chairman Russo declared the motion to have carried (4–3).

Mr. Hall moved to grant the requested waiver of the requirements of HTC §275-8 (30) (C), *Loading Within 100 feet to Residential Use Without Screening*, citing the reason as being because the existing conditions regarding loading of products was more adverse than proposed by the new use, and the specific terms and conditions of approval for this project shall safeguard any residential abutters who might otherwise be adversely impacted by the activities associated with this project—and, as such, the granting of this waiver was not contrary to the spirit and intent of the Site Plan regulations.

Mr. Barnes seconded the motion.

Selectman Maddox questioned the “existing conditions” term. Mr. Hall said he had seen loading of concrete statues, bark mulch, etc. at that site in the past. Mr. Della-Monica said the overriding concern was setback from residential use, saying if that one did not get approved, the others would be moot.

**VOTE:** Chairman Russo then called for a verbal vote on the motion. All members present voted in favor except for Selectman Maddox, Mr. Schneiderman, and Mr. Russo who all voted in opposition, and Chairman Russo declared the motion to have carried (4–3).

Mr. Hall moved to grant the requested waiver of the requirements of HTC §275-8 B (12), 100-foot Residential Buffer, citing the reason as being because the specific terms and conditions of approval for this project shall safeguard any residential abutters who might otherwise be adversely impacted by the activities associated with this project—and, as such, the granting of this waiver was not contrary to the spirit and intent of the Site Plan regulations.

Mr. Barnes seconded the motion.

Mr. van der Veen said for the Planning Board to grant this would mean agreement with the neighbors, and he did not feel there was agreement at this point. Chairman Russo said the neighbors’ absence also spoke for them.

Selectman Maddox said he did not see that the safeguards were here yet, as the Board did not even know what the operating hours were.

Mr. Hall said there was only one abutter complaining, with that one being the one who had sold the property, and his concerns seemed to be in conjunction with a contractual obligation with the buyer. He then said that the activities on that abutter’s own lot were far more obtrusive than what was being proposed.

Mr. Della-Monica said he also felt that way regarding the abutter, but he would want to know what the conditions of operation would be.

Town Planner Cashell noted that the Board had asked him previously to check out operating hours in that area; he reported that it was typically 6:00 a.m. through 10:00 p.m. at the most, saying there was not much traffic in this area at or after 10:00 p.m., and he expressed a belief that the Board would not be out of order to restrict the hours accordingly.

Mr. Della-Monica said it depended on what else was open, saying people would drive to whatever site was closest and open. He said a definite closing time commensurate with the others in the area would settle the matter.

Mr. Rice said he thought his client would agree to 6:00 a.m. through 10:00 p.m.

**VOTE:** No other comments being brought forward, Chairman Russo called for a hand vote on the motion. Mr. Hall and Mr. Barnes



- Subdivision Plan, Map 219/lot 1, Gerald Q. Nash Land, 51 Trigate Road, dated August 14, 2007, last revised 7-21-09, recorded as HCRD #36509.
- A compilation of tax maps showing what the tax maps looked like in 2007, with the lot that had been approved in 2007/2008 outlined in red.

Mr. Maynard discussed the previous subdivision, saying there was what they had considered a lot of record, noting that this had been attributed to the State of New Hampshire but had always been owned by the Nash family. He said controversy had continued, so he had agreed to come here and show the two lots to clear the record and cut off debate. He said the only difference between the plans was that the lot was now fully dimensioned.

Chairman Russo opened the meeting for public input and comment, in favor or opposition. No one coming forward to provide input, Chairman Russo declared the matter before the Board and asked if any members of the Board had any questions.

Selectman Maddox asked what the parcel identified as Lot 218-28 was on the old plan. Mr. Maynard gave the identification as Lot 218-287. Selectman Maddox asked who it had been credited to. Mr. Maynard said to Mr. Nash—adding that the list of abutters had nothing to do with who owned it, legally, but what the assessor had on record was what counted. Selectman Maddox said there was a lot of confusion. Mr. Maynard said the map was legally correct but maybe that he should have said more. He said his point was that he was a licensed land surveyor and knew what he was doing, whereas the assessor was a land appraiser.

Mr. Hall said he did not see the number on the list. Mr. Maynard said there was confusion about lot numbers.

Mr. Barnes expressed a belief that the lot approved a couple years ago had subsequently been conveyed to someone else. Mr. Maynard responded in the affirmative, saying it went to one of the grandsons. He said approval would clear up the lot to the left.

Mr. Barnes said it looked as if there were wetlands on the new lot. Mr. Maynard said all of the topography was lower in that area. Mr. Barnes asked if the Town could go to the owner if there were any issue about cutting down vegetation for sight distance. Mr. Maynard expressed agreement.

Selectman Maddox moved to approve the subdivision plan entitled ***Subdivision Plan, Gerald Q. Nash Land (Map 219/Lot 001), 51 Trigate Road, Hudson, NH***, prepared by Maynard & Paquette, Engineering Associates, LLC, and dated: February 3, 2011, consisting of Sheets 1 through 2 and Notes 1 through 23, shown on Sheet 1, in accordance with the following terms and conditions:

1. All stipulations of approval shall be incorporated into the Decision of Approval, which shall be recorded at the Hillsborough County Registry of Deeds, together with the Plan.
2. A cost allocation procedure (CAP) amount of \$779.49 per residential unit shall be paid prior to the issuance of a Certificate of Occupancy.

3. A public school impact fee in the amount of \$3,578.00 per residential unit shall be paid prior to the issuance of a Certificate of Occupancy.
4. A public library impact fee in the amount of \$124.00 per residential unit shall be paid prior to the issuance of a Certificate of Occupancy.
5. A recreation contribution in the amount of \$400.00 shall be paid prior to the issuance of a Certificate of Occupancy.
6. All monumentation shall be set or bonded for prior to the Planning Board endorsing the Plan-of-Record.
7. Prior to endorsement and recording at the Hillsborough County Registry of Deeds, the Subdivision Plan-of-Record shall be amended, as follows: Note #14 on Sheet 1 of 2 shall be amended relative to citing the correct CAP fee of \$779.49.

Mr. Hall seconded the motion.

**VOTE:** Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7-0).

Mr. Ulery noted for the record that he had taken no part in the discussion pertaining to this case.

**B. 27 Hurley Street LLR (Horadan)  
SB# 04-11**

**Map 182/Lot 186  
27 Hurley Street**

**Purpose of plan: To illustrate an equal-area land exchange between the owners of tax map 182/Lot 186 and tax map 182/lot 185. Application Acceptance & Hearing.**

Chairman Russo read aloud the published notice, as repeated above.

Town Planner Cashell said the issue that had emerged was that the applicant was supposed to get all abutters to sign off on the plan but he had not been able to get that by tonight. He said there was an immediacy involved, so he would like the Board to consider deferring this to the workshop meeting. He noted that the workshop would have the Zack field coming in, with a public hearing at the end of April. He noted there had been correspondence pertaining to Pete's Gun Shop, which he also would like to put on the workshop agenda.

Selectman Maddox moved to defer further action on this matter to the meeting of April 2<sup>nd</sup>. Mr. Barnes seconded the motion.

**VOTE:** Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7-0).

#### XIV. OTHER BUSINESS

Town Planner Cashell referenced an E-mail he had received from the owner of Pete's Gun Shop, who was now prepared to move forward with that plan and was asking if the Board would consider representing that plan, saying he would make amendments if necessary, but was trying to avoid that.

Mr. Hall said the owner wanted to resubmit the previous plan. Town Planner Cashell said the fees would be today's fees. Mr. Hall asked if it needed to be submitted to CLD again. Town Planner Cashell suggested the Board could get into that in the workshop meeting; he suggested the need for CLD review would be to determine if modern drainage requirements were being met, adding that he felt traffic improve movements in that area might require some change, as well.

Mr. Barnes said zoning had changed, the neighborhood had changed, and there were a lot of changes that might affect this plan, with a lot more traffic using that driveway perhaps requiring something different with respect to the traffic light that was now there. Selectman Maddox suggested having the applicant come in to the workshop meetings as a conceptual. Mr. Hall concurred, saying that would be a fair start.

Town Planner Cashell noted that a lot of things had to be done for NRPC with respect to the roads.

Selectman Maddox suggested a concentrated effort be made to address the minutes of past meetings.

Chairman Russo said he wanted to have a discussion at the workshop with respect to the **ZBA Only** hearings. Town Planner Cashell noted that one of the issues was that the Planning Board did not know what the Zoning Board of Adjustment was going to approve, which might result in changes of the plans before they came back to the Planning Board.

Selectman Maddox said the Planning Board should also consider the impact of the new legislation that would let applicants make parallel passes through all of the boards.

#### XV. ADJOURNMENT

All scheduled items having been addressed, Mr. Barnes moved to adjourn; Selectman Maddox seconded the motion.

**VOTE:** Chairman Russo called for a verbal vote on the motion. All members voted in favor.

**-- FILE COPY --**

**HUDSON PLANNING BOARD Meeting Minutes  
March 23, 2011**

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Chairman Russo then declared the meeting to be adjourned at 10:45 p.m.

Date: April 4, 2011

\_\_\_\_\_  
Vincent Russo, Chairman

J. Bradford Seabury, Recorder

\_\_\_\_\_  
Edward van der Veen, Secretary

These minutes were accepted as amended following review at the 04-13-11 Planning Board meeting.

**-- FILE COPY --**

**HUDSON PLANNING BOARD Meeting Minutes  
March 23, 2011**

**Page 23**

The following change was made in accordance with the Board's review of these minutes at its March 13, 2011, meeting:

Page 12, 2<sup>nd</sup> full paragraph from bottom, 3<sup>rd</sup> line — corrected mistyped “whey” to “why” so that the phrase now reads “asked why there was a lien.”