



# TOWN OF HUDSON

## Planning Board



Vincent Russo, Chairman

Rick Maddox, Selectmen Liaison

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### HUDSON PLANNING BOARD MEETING MINUTES January 4, 2012

#### **I. CALL TO ORDER**

Chairman Russo called this Planning Board meeting to order at 7:00 p.m. on Wednesday, January 4, 2011, in the Community Development's Paul Butler meeting room in the Hudson Town Hall basement.

#### **II. PLEDGE OF ALLEGIANCE**

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

Chairman Russo then welcomed Ms. McGrath, newly reappointed to the Planning Board following a two-year absence, back to the Board, saying she had been missed and that he was sure the Board would benefit from her presence.

#### **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, George Hall, Tim Malley, Vincent Russo, Ed van der Veen, and Richard Maddox (Selectmen's Representative).

**Members**

**Absent:** Glenn Della-Monica (excused).

**Alternates**

**Present:** Irene Merrill, Ms. McGrath, and Jordan Ulery.

**Alternates**

**Absent:** Roger Coutu (Selectmen's Representative Alternate, excused).

**Staff**

**Present:** Town Planner John Cashell.

**Recorder:** J. Bradford Seabury.

**IV. SEATING OF ALTERNATES AND ANNOUNCEMENTS**

Chairman Russo seated Mr. Ulery in place of the absent Mr. Della-Monica.

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

Chairman Russo addressed the minutes for the meeting of June 22, 2011, as distributed in the meeting packet for the 07-27-11 meeting, asking if there were any changes or corrections.

Mr. Barnes requested the following changes:

- Page 10, 3<sup>rd</sup> text paragraph, 1<sup>st</sup> sentence — mistyped word should be "buildabilities."
- Page 20, 1<sup>st</sup> paragraph — last word should be "situation."

No further changes or corrections being brought forward, Mr. Barnes moved to accept the 06-22-11 minutes as amended; Mr. Hall seconded the motion.

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

Chairman Russo addressed the minutes for the meeting of March 2, 2011, as distributed in the meeting packet for the 03-23-11 meeting, asking if there were any changes or corrections.

Mr. Barnes requested the following changes:

- Page 3, 2<sup>nd</sup> bulleted paragraph, 3<sup>rd</sup> line from end — the word "damn" should be corrected to "dam" so that the sentence would read "He noted that the dam permit had cost \$4,000 ...."
- Page 8, 3<sup>rd</sup> full paragraph — The meaning of "XX" should be clarified.

Ms. McGrath requested the following changes:

- Page 5, 3<sup>rd</sup> paragraph from bottom,— audio record should be reviewed to explain transition from discussion of corridor funds to senior center at Bensons Park.

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- Page 6, 1<sup>st</sup> paragraph (5<sup>th</sup> line — “thing” should be pluralized so that the phrase reads “such things were subject to subsequent review.”
- Page 6, 2<sup>nd</sup> paragraph, last sentence —vague statement “if they could change it” should be reworded for clarification as to what was meant.

No further change requests being brought forward, Mr. Ulery moved to approve the 03-02-11 minutes as amended; Selectman Maddox seconded the motion.

Ms. McGrath noted that the Board did not yet know what two of the amendments would be.

**VOTE:** No further comment being brought forward, Chairman Russo called for a hand vote on the motion. Mr. Barnes, Mr. Hall, and Mr. Russo voted in favor; Selectman Maddox, Mr. Malley, Mr. van der Veen, and Mr. Ulery voted in opposition. Chairman Russo then declared the motion to have failed (3–4).

Chairman Russo directed the Recorder to review the audio record of the 03-02-11 meeting and amend the draft minutes accordingly and then bring them back for a second review.

Chairman Russo addressed the minutes for the meeting of May 25, 2011, as distributed in the meeting packet for the 06-22-11 meeting, asking if there were any changes or corrections.

Mr. Barnes said he had reviewed those minutes and had not found anything wrong.

No change requests being brought forward, Mr. Barnes moved to approve the 05-25-11 minutes as submitted; Mr. Ulery seconded the motion.

**VOTE:** No further comment being brought forward, 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).

Chairman Russo addressed the minutes for the meeting of December 7, 2011, as distributed in the meeting packet for this 01-04-12 meeting, asking if there were any changes or corrections.

Ms. Merrill requested the following changes:

- Page 4, 3<sup>rd</sup> paragraph from bottom — She questioned use of “signator”; Mr. Ulery confirmed this usage was correct but noted that the RSA designation should be “RSA 43:17.”

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- Page 9, 2<sup>nd</sup> paragraph, 1<sup>st</sup> line — correct misspelling of the word “meeting.”

No other change requests being brought forward, Mr. Barnes moved to approve the 12-07-11 minutes as amended. Mr. Malley seconded the motion.

**VOTE:** No further comment being brought forward, 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).

Chairman Russo addressed the minutes for the meeting of December 14, 2011, as distributed in the meeting packet for this 01-04-12 meeting, asking if there were any changes or corrections.

Mr. Barnes requested the following change:

- Page 13, 4<sup>th</sup> paragraph-- correct spelling of Kevin Landrigan’s name.

Ms. Merrill requested the following change:

- Page 13, 4th paragraph—change “event” to even,” so that the phrase is “even though.”

No other change requests being brought forward, Mr. Barnes moved to approve the 12-14-11 minutes as amended. Mr. Ulery seconded the motion.

**VOTE:** No further comment being brought forward, 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).

**VI. CORRESPONDENCE**

Chairman Russo stated that the item of correspondence received in tonight's handout packet would be taken up later in the evening, as he first wanted to get to the public hearing, because of the attending public.

**VII. PERFORMANCE SURETIES**

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

**VIII. OLD BUSINESS/PUBLIC HEARINGS**

No **Old Business/Public Hearings** items were addressed this evening.

**IX. NEW BUSINESS/PUBLIC HEARINGS**

- A. Re-Zoning Petition to amend the Official Zoning Map of the Town of Hudson by re-zoning from Residential-Two (R-2) to Business (B) 220 Lowell Road (known locally as the Demoulas Market Basket Shopping Center property), located at the corner of Wason Road and Lowell Road (Rte. 3A). Said parcel is shown on the Town's Assessor's Map 222, as Lot 018.**

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

Mr. Malley moved to open the public hearing. Mr. Barnes seconded the motion.

**VOTE:** No further comment being brought forward, 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).

Chairman Russo opened the public hearing at 7:15 p.m. and read aloud the public notice, as repeated above.

Mr. Tony Basso, of the firm of Keach-Nordstrom Associates, Inc., Bedford, New Hampshire, appearing before the Board as the engineering representative of the property owner, and distributed, full-size copies of the color-coded plan displayed on the meeting-room wall, **Re-Zoning Plan Market Basket, Map 222/Lot 18. 220 Lowell Road, Hudson, New Hampshire, Hillsborough County**, dated December 8, 2011, with no revisions.

Atty. Morgan Hollis, of the Gottesman and Hollis law firm, 39 Pearl Street, Nashua, NH, representing the owner of Map 222/Lot 18, DeMoulas Supermarkets, Inc., noted that the zoning amendment petition was to amend the official zoning map with respect to that lot. He discussed the lot, identifying details on the colored plan, noting the adjacent wetlands in the northerly half and the residential buildings behind the lot, to the north and east, as well as the commercial and industrial developments across the street to the west and south. He said this was a single lot, zoned as Residential but used as Business; he then reviewed several milestone dates pertaining to this property, noting that a variance had been granted in 1973 for the lot to be use as for a shopping center, with another variance (never activated) granted in 1977 for the lot to be used for a retail sales center and storage facility. He noted the recorded site plan for the existing supermarket complex had been signed by the Planning Board in 1991, with an additional variance being granted in 1991 for expansion of the parking lot and a special exception at that same time for a 45-foot encroachment into the wetland buffer, followed by approval of a subdivision plan in August of 1991 for a right-of-way dedication on Lowell Road, together with a revised site plan.

He said the property was an anomaly, as it was surrounded by business and was on a business road but was zoned as residential. He noted that a potential intersection construction had raised the question as to whether the property should be rezoned.

He stated that the interesting aspect of both variances was that the use would not be detrimental and would not be contrary, with the ZBA finding that to be the case unanimously in both instances. He noted there was a New Hampshire case, Belanger v. City of Nashua, 121 N.H. 389, 393 (1981). In which the New Hampshire Supreme Court had ruled that zoning should reflect the actual use in the neighborhood.

Atty. Hollis concluded his presentation by stating that his clients had asked him about the zoning and he had suggested bringing it to the Planning Board for rezoning. He then referenced the last-approved site plan of record, dated 14 May 1991, saying a plan was referenced in 2004 but had not been recorded, or he had not been able to find it at the Registry of Deeds, although he happened to own a copy.

Chairman Russo noted that the other members of the audience were also representing the applicant, so he would place the matter before the Board, and he asked if there were any questions from the Board members.

Selectman Maddox asked if Town Planner Cashell had a copy of the complete last site plan. Mr. Cashell said it would be up in the files. He noted that one of the major restrictions for further expansion of the complex was the wetlands to the north, which he identified on the displayed aerial view. Town Planner Cashell then went to get the hard copy from the files.

Ms. McGrath noted that in 1981, when she had previously been on the Planning Board, it had been the property-owners' intention to expand northerly at some point in time. She noted that Mr. Kattenbach, representing that firm in that matter, had come back in 1991 when the Planning Board approved changes in the plan. She said the 2004 change had been an expansion to add to the front part of the existing Market Basket portion of the building. When the corridor was widened, she continued, the original site plan had required plantings along the roadway, and maple trees had been planted, but those trees were taken down when the road was expanded and not replaced—adding that she had addressed this at the 1991 hearing, and Mr. Kattenbach had assured her at that time that the trees would be replaced, but this had never been done.

Mr. Ulery noted that the issue before the Board was whether the property should be rezoned, which was a separate issue. If expansion were to take place, he said, there were several programs that would allow the minor-size wetlands to be offset through purchase of other land or providing mitigation elsewhere. He said the issue was whether the existing building on the existing lot should be rezoned from Residential to Business.

Ms. McGrath said the issue was not just the building but the entire property, saying she thought they had intended to build in the northern front of the property. She said the Planning Board needed to consider that this particular property, although on Lowell Road and a business use for many years, had residential properties all around it, so the northern portion of the lot was very relevant. She noted that there had been very negative comments brought back to this Planning Board in 1991 from residential neighbors who were constantly picking up trash and constantly complaining about noise from tractor trailer trucks going behind the buildings. She said these things should be considered in consideration of a rezoning, noting that it had become so

bothersome for residents across Wason Road that they had sold their home and moved to another community.

Mr. Ulery said the issue remained whether or not this should be amended, saying potential expansion was beyond the Board at this point but would have to come back before the Planning Board in the future if planned.

Chairman Russo recalled that the issue about the trees was addressed at the time of the last approval, in 2004. He then expressed a belief that there was some advantage to the property-owner in rezoning the property, but it would be in the best interest of the Town and the landowner to see that those issues were taken care of. Ms. McGrath said two or three evergreen trees had been planted, but this was not the same as the beautiful row of maple trees that had been there previously.

Atty. Hollis said he had not been involved in the project in 1981 or 1991 and could not address the issue. He noted he had represented Stop & Shop when this property was last before the Board, but he would rely on Ms. McGrath's recollection. He said this was an issue of enforcement and he thought the point was fairly raised, and they would see what had not been done and get to the bottom of it. He expressed agreement that there were advantages to the property owner in having the property rezoned, but he said their point was that it was a business property and had been used as a business property, reiterating that the question had come up because a prospective intersection would be located in the residential zone rather than the business zone. He expressed doubt that changing the property to Business would have any impact on the adjacent residences, adding that any future change would have to come before this Planning Board. He noted there was an issue of buffering between the two uses, but they were just asking that the map be updated to match the use.

Mr. Basso pointed out that the setbacks were 15 feet on the side and rear regardless of what zoning district, adding that the buffer zone did not have an effect, as it was based on the use, not the lot line. He said the buffers and the setbacks would not change, either way.

Chairman Russo asked for clarification on the buffer distance. Mr. James R. Lamp, PE, principal of J & Company Engineering and Development Consults, 881 East Street, Tewksbury, MA, said he believed a fence had been provided to address the trash issue. He said Mr. Kattenbach was still involved with the organization, and he would talk to him about the trees. He said there were no plans for new construction, but this had simply come up with respect to a possible three-party agreement for a proposed signalized intersection. He stated that any change would have to go before the Zoning Board, saying they were just going through the process.

Selectman Maddox asked if Town Planner Cashell had found anything in the files. Mr. Cashell said everything had been controlled by the ZBA, going through a double control process. Selectman Maddox suggested that ZBA records should be researched to make sure there were not any restrictions on the original variance that were being overlooked.

Ms. McGrath noted that there had not been a 100-foot buffer requirement when this building was built in 1981. She then noted that the 2004 plan brought back by Town

Planner Cashell had not been signed by the Chairman of the Board or by the Secretary in 2005, nor had it been recorded. She questioned whether the associated Development Agreement was ever produced or signed, pointing out that it would have pointed out any future development plans. She noted there was a handwritten note on the plan saying it had not been signed or recorded.

Mr. Barnes said that matter clearly ought to be cleared up, but the parcel had been a business use for a considerable amount of time, and the zoning ought to be changed to reflect what the use was, saying he did not see it ever going back to a Residential use, and changing it to a Business zone would be appropriate.

Mr. van der Veen said he had nothing against rezoning the property, but he felt all the agreements should be documented and that the trees should be planted.

Mr. Ulery asked what the time-frame limits were. Town Planner Cashell said there could be one more public hearing, to amend the Zoning Map next week as a continued public hearing.

Mr. Ulery said the sole question was rezoning, saying the other issues were secondary and would take time to get resolved. He urged the members to understand that these were two separate issues.

Ms. McGrath said the only thing that needed to be reviewed was the Development Agreement, before moving forward, to see if there was anything in that document about future development. She stated that, If the Development Agreement existed, which it should, it should be up in the files, and she pointed out that this review could be accomplished within a week.

Town Planner Cashell said he clearly recalled that in 2005 they were dealing with a minor change, to add the facade on the front portion of the Market Basket building, and the Planning Board had said the plan did not have to be recorded, because it did not change the footprint significantly, as it was just a facade improvement. He said there was no amended Development Agreement involved, and the Development Agreement that existed was the one from 1991.

Mr. Malley asked if rezoning would make any of the Development Agreement null and void. Town Planner Cashell answered in the negative.

Chairman Russo said he was going to recommend that the Board make a motion that the Town Planner follow up on the 2004 issues, after this present issue was taken care of.

Town Planner Cashell said the use and improvements had been allowed throughout the history of this site, saying the property owner had come in for a change during the window of opportunity (from November 1<sup>st</sup> through December 1<sup>st</sup>), and that time frame was of the essence in scheduling public hearings. He reiterated that the hearing could be continued for one week, but this did not offer much time for research. He said what the Board was dealing with was simply the rezoning of the property, and the property owners would have to come in before the Board for any future expansion plans, after going to the ZBA first. He expressed a belief that the wetlands were so significant that they would have to go through the full process.



Atty. Hollis reiterated that any of restrictions on the variaces, whatever they might be, would not go away with a change in zoning, as they would run with the land and would remain in effect.

Chairman Russo asked the pleasure of the Board.

Mr. Barnes said he felt research needed to be done, but he was prepared to make a motion. He then moved to approve for the 2012 Town Warrant the Re-Zoning Petition to amend the Official Zoning Map of the Town of Hudson by re-zoning from Residential-Two (R-2) to Business (B) 220 Lowell Road (known locally as the DeMoulas Market Basket Shopping Center property), located at the corner of Wason and Lowell Road (Rte. 3A), as shown on the Town's Assessor's Map 222, as Lot 018.

Mr. Hall seconded the motion.

**VOTE:** No further comment being brought forward, 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).

Chairman Russo closed the public hearing at 7:59 p.m.

## **X. WORKSHOP**

### **A. Review Proposed Site Plan Review Regulations for Exterior Lighting.**

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

Town Planner Cashell noted that Mr. Hall had brought up some legitimate concerns with regard to the lighting at a recent site plan review, with light migrating from the site. He referenced his staff report, saying Hudson as a community had not gone forward with respect to adopting the statute for lighting regulations, but had religiously required the developers to come in with a lighting plan and to demonstrate what illumination would extend from the site. He noted the light plan that had been required from Sam's Club for its gas station addition, as an example. He then described the limitations of the Bedford ordinance, which he had included, along with a couple articles from the New Hampshire Office of Energy and Planning (OEP), including an article about the Dark Sky movement.

Mr. Cashell said he wanted to ask if the Board wanted to take this matter up for this year's workshop sessions, to eventually come up with lighting regulations.

Mr. Hall said he would like to see that, suggesting using the Bedford regulations as a model or starting point, but he agreed that it should be regulations rather than an ordinance. He said he would like to start out with what the Board already had.

Selectman Maddox suggested having Town Planner Cashell contact the Town of Bedford to see what issues that community had had with its regulations. Mr. Cashell said he knew Bedford Planning Director Rick Sawyer well and could do that.

Mr. van der Veen asked if the regulations covered residential subdivisions as well. Town Planner Cashell said the Board could do that, too. As far as street lights were concerned, he said, the statutes already addressed that, adding that any lighting being put in would have to comply with the statutes. He said residential homes with excessive lighting could come under the provisions of public nuisance.

Ms. McGrath expressed a belief that it would be good idea to have regulations in place, to give teeth to the Planning Board in case a developer came in with a plan for excessive lighting. She asked if the regulations would have any effect on the sign ordinance. Chairman Russo expressed a belief that it probably would if the sign were part of the site plan, because the sign would not be allowed to cast glare. Ms. McGrath asked if he were referring to the hot pink sign that was on after the business closed; Chairman Russo confirmed that to be the case.

Mr. Barnes said he liked the Bedford example, but he felt some additional definitions might be needed.

Mr. Ulery commented that, if lighting regulations existed and commercial properties were required to follow the regulations, and the security of the building became impacted, the Town would become a party to any civil suits if the property were broken into. He said there were some standards that existed saying what lights were needed, and these rules were not necessarily comparable with the Dark Skies rules.

Chairman Russo expressed a belief that this would be moving forward.

Mr. van der Veen said he did not see anything in the draft ordinance to keep anyone from lighting the property, but the intent was to limit the light escaping from the property.

Chairman Russo noted that the Board's hands would be tied if the developer put a property close to the street but then wanted to illuminate the walkways.

Selectman Maddox noted that Page 9 showed the Plaistow NH public library in day and night views.

Selectman Maddox moved for the Planning Board to defer further review of the issue on "exterior lighting" regulations to the February 1st Workshop, and for staff to present municipal regulations on that subject from Bedford, New Hampshire.

Ms. McGrath commented that she had noted in the documentation that homeowners would get more security from multiple lights shining down as opposed to one spotlight.

Mr. Hall seconded the motion.

**VOTE:** No further comment being brought forward, 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).

**B. Presentation on Steep Slopes and Relation to Development.**

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

Town Planner Cashell said he had put this on the agenda for informational purposes. Noting that steep slopes were addressed in the road regulations, he said this topic had been reviewed some five or six years ago, at which time Hudson's hilly terrain was noted. He said only 27 New Hampshire communities had adopted steep slopes regulations, noting that in a recent case for a developer who wanted to subdivide a very steep property, the developer was not successful. For the Town to really get involved, he said, it was a very in-depth issue, with ten very strict criteria that the Board would have to delve into. He noted that the state maximum was 15%, but the Town had a provision of subtracting out 15% steep slope area from property being developed. He asked if the Board wanted to spend any time on this.

Selectman Maddox left the meeting at 8:26 p.m.

Mr. Hall questioned how the Board would use it, saying he felt it was already covered in the subdivision regulations. He asked what the benefits would be to adopting any new regulations. He then expressed a belief that people ought to have the right to build on property if they purchased it, saying he did not know how he could tell them where they could build.

Chairman Russo noted that some homes on top of hills resulted in very steep winding driveways, putting some people at risk. Mr. Hall said the Board should not allow driveways to be more than 10% grade, and the Town Engineer should be looking at the slope before giving a driveway permit.

Chairman Russo suggested that Town Planner Cashell bring the driveway regulations before the Board at one of the upcoming workshops meetings.

Chairman Russo thanked Town Planner Cashell for bringing this matter before the Board.

Chairman Russo declared a break at 8:35 p.m., calling the meeting back to order at 8:55 p.m.

**C. 2011 Year in Review: PowerPoint Presentation on Projects Under-Construction and Completed.**

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

Town Planner Cashell presented a PowerPoint pictorial review of projects that had recently been approved by the Planning Board during the past year, starting with a picture of the Stellar Motors site—noting that the Board had received a letter from Mr. Febonio asking permission to start selling vehicles from the site prior to his completing the project, which he could not do until next spring. Mr. Cashell showed pictures of the progress on that site.

Mr. Cashell then displayed a series of photographs of various sites with which the Board had dealt with during the past year or two, with comments concerning details in each case, as follows:

- The Pelham Yard site, noting that the developer was now talking about having one tenant, rather than multiple tenants.
- Changes in the intersection of Pelham Road and Lowell Road (Route 2-A).
- Ongoing work at the Presentation of Mary soccer field.
- The Fairview Nursing Home, noting that they might be coming back soon to ask for a different driveway arrangement.
- Spartan Technology site, recently approved, with no construction going on as yet; he noted that the firm was moving to another community, so this would be a vacant building.
- The Cloud Network company's site, now the Right Networks. He noted that this business did not come before the Planning Board as there was no expansion.
- Kevin Slattery's Mission Point development, with only five units left.
- 99 River Road, with no activity having taken place as yet.
- Hudson Monument site on Dracut Road, which he described as beautifully done.
- Pete's Gun Shop, soon to be expanded and renewed.
- A new recently approved landscape company on Kimball Hill Road that soon will have a home built on the property.
- Beginning of the Jarry subdivision, with roughing in of the roadway area.
- Bockes Road retail site, with no improvements yet other than the sign.
- Hawthorne Woods site, which came in for one additional lot this year.
- 11 Executive Drive, showing the enclosed loading dock.
- Pelham Road Estates. Mr. Cashell noted that no work had been done as yet, but the Planning Board notice sign had remained in place since August 1<sup>st</sup>.
- Oakridge Estates older-person housing development approved last spring; Mr. Cashell said the actual construction was being done in textbook fashion.'
- The Bensons playground.
- The 9-11 memorial in Bensons Park.
- Capella Drive—all done, with curbing in place.
- 13 Park Avenue; Mr. Cashell noted that an E-mail had been sent telling the owner that more work was needed and that the site was regressing.
- Restaurant proposal on Route 111.
- Adelaide Street.
- Subdivision on Webster Street.

Town Planner Cashell said he felt things were starting to pick up again. He expressed a desire to make such photo displays to the Board on a regular basis in the future.

Chairman Russo addressed Mr. Michael Febonio's letter, dated 12-27-11, saying his own contention was that Mr. Febonio should come in before the Board to discuss this proposal to operate the Stellar Motors business at 57 Lowell Road even though he would not be able to complete the construction until next spring.

Mr. van der Veen asked about the hydrant that was supposed to be installed next to the office building. Mr. Ulery said it was closer to the back of the building. Mr. van der Veen expressed a belief that it was placed elsewhere on the plan. Mr. Ulery said he understood that the Fire Department had requested it more for the larger building at the rear, as they had city water at the front.

Mr. Hall said he would like to go along with Mr. Febonio and help him out, but he questioned how the Board would know or have any control if Mr. Febonio started selling the cars and then decided not to build the new building. He questioned how the Town would stop the operation once it started.

Mr. Malley asked if the Board had ever before given anyone permission to start a use without completing the construction. Mr. Hall said it was pretty radical.

Mr. Barnes asked what the incentive was from the Board's perspective, saying the Board should tread very carefully in this matter.

Town Planner Cashell expressed a belief that allowing this would be putting the cart before the horse.

Mr. Hall said anyone else had to put up a bond for work that had not been completed, and he did not see why this applicant should be treated any differently from anyone else.

Ms. McGrath said she agreed with all that had been said, and she expressed concern about the precedent of letting this applicant proceed without doing the work he had agreed to. She pointed out that all other applicants had to go through the process and complete the work, suggesting those who had done so would be asking how come this applicant did not have to do that.

Mr. Ulery asked if a decision had to be made tonight. Chairman Russo said this was a workshop meeting and no action was needed, but he felt the applicant should come before the Board—adding that from what he had heard from the Board members this evening he expected the applicant would be disappointed. Town Planner Cashell said the applicant would have to come up with a bond estimate.

Chairman Russo noted that the abutters had wanted that proposed building to be in place as a buffer, but it would not be there if this were allowed. He then directed the Town Planner to express the sentiments of the Board to the applicant.

**XI. DESIGN REVIEW PHASE**

No **Design Review Phase** items were addressed this evening.

**XII. OTHER BUSINESS**

**A.** Mr. J. Bradford Seabury, a member of the Zoning Board of Adjustment, said he wanted to correct a few untruths he had inadvertently stated two meetings ago when the Board got into a discussion about the Accessory Living Unit (ALU) ordinance.

First, Mr. Seabury said, he had stated at that time that property owners who were granted an ALU Special Exception subsequently were taxed as a duplex. He reported that he had subsequently learned from the Assistant Assessor that this was not the case, but that the property owner would be taxed for the added improvements (a second kitchen, an added bathroom, additional living space, etc.). Noting that he had also surmised at that previous discussion that property owners who gave up the ALU after the extended family members no longer needed it, such as by removing the second kitchen, would get a reduction in taxes as a result; he said he still expected that the house taxes would be reduced if someone went to the Assistant Assessor and said they had removed the improvements, but that the Assistant Assessor had reported that no one had ever done this.

Secondly, Mr. Seabury continued, he had expressed a belief that the restrictions applicable to an ALU Special Exception were documented at the Registry of Deeds. What actually happened, he reported, was that a decision sheet documenting the ZBA's granting of the ALU Special Exception was filed with the Registry, but the fact that assessors and attorneys subsequently came to the Assistant Assessor's office for clarification as to what this meant showed that the notification was inadequate. He then stated that he was changing the decision sheet so that, from this point on, decision sheets pertaining to the granting of an ALU Special Permit would clearly delineate the restrictions applicable to that permit.

**B.** Chairman Russo referred back to the Dark Sky concept, noting that some members of the Board had talked to him about the new EMC (electronic message-changing) sign on Lowell Road.

Ms. McGrath stated that she had not been in favor of the new sign ordinance, and this sign made her more certain, as it was a glaring example of obnoxious signage. She referenced a sign on Amherst Street in Nashua, across from the NH Technical College, which instead of advertising the firm's product during the weeks before Christmas said "Merry Christmas" and identified soldiers from the area, thanking them for their service—saying she would be more inclined to purchase that company's projects. She noted that Carpet Creations also had celebrated the Christmas season on its sign. She then expressed a belief that Code Enforcement should be talking to the property owner about having the fluorescent pink sign on Lowell Road on when the business was closed.

Mr. Malley said he was not sure the sign itself was the issue, noting that Ms. McGrath had not found the sign on Amherst Street offensive. He questioned whether the dimming capacity had been installed in the sign in question, as required by the ordinance, saying he was not sure if the sign dimmed at all or if the dimming had been activated.

Mr. Barnes said there were two things that the sign in question seemed to be violating—one being that it was on when the business was closed and the other being that it did not appear to be dimmed after sunset. He asked what was being done as far as enforcing the restrictions in the ordinance.

Chairman Russo said he had noted that he could not focus on the sign when driving by because it was so bright, adding that there were six and sometimes seven lines of text, when the ordinance said there could be no more than four. He then expressed a belief that the background contrast, using a very bright color, was objectionable. He said it really came down to the images, which were not allowed by the sign ordinance. He said he felt this sign was ruining it for everybody else, adding that these issues would have to be brought up to the Community Development Department.

Mr. van der Veen said it was an enforcement issue, saying one literally could not read what was on the sign when coming around the curve in the road, as it was too bright, with too many lines of copy. He said it was not really the sign ordinance, which stated restrictions, but it was a matter of enforcement, noting that this was not the first EMC sign that had an enforcement issue. He said the sign ordinance clearly stated what was allowed.

Mr. Malley questioned whether it might be good to involve some sort of bond for signs.

Chairman Russo said this would mean having to hire sign police. He said it might be necessary to get appropriate training for the Community Development Department personnel, so they would know how to enforce the ordinance. He then added that the other issue was that it was on at night and was bright, but no one was here to watch it.

Mr. Malley noted that the dimming requirement was part of the design specification, saying this was what the Chamber of Commerce had been told.

Ms. McGrath said it was unfortunate, saying the three signs that had been approved had been a perfect opportunity to change the minds of someone such as herself, who was opposed to such signs, but they had not done so. She said she felt the community had standards and wanted a community that was attractive to people who lived here and also to people who visited. She said she thought the business in question was an attractive business, but the sign took away from that. She then concluded by saying it had a negative connotation and was unfortunate for all other businesses that might want a sign in the future.

Town Planner Cashell said that the sign was an example of what the Town had tried to avoid, adding that the electronic message changing portion of the signs were supposed to be no more than 50% of the free-standing sign, limited to four lines of text (no more than ten inches in height), with the text not to change within 15 minutes, and they were not supposed to have any background colors or illumination. He then stated

that the issue was that the sign owners did not want to comply. Chairman Russo asked if anyone had brought them in; Mr. Cashell said he assumed this had been brought to their attention, as they were operating it after hours and he was quite sure the Zoning Administrator had made that known to them. If the Town wanted to pursue this as an issue, he said, it was a matter of documentation, to identify the zoning violations that were occurring. He said the backlash from this was probably going to ruin it for anyone else who might want to put an EMC sign up. Chairman Russo concurred, saying it might lead to a repeal of the EMC sign ordinance.

Town Planner Cashell said all of the EMC signs that had been put up since the ordinance was passed had been in violation, saying no one was complying with the strict language, which was black and white.

Mr. Malley noted that the sign at the corner of Flagstaff Drive and Lowell Road had been turned off for months, after the Community Development Department had buckled down, so enforcement worked.

Town Planner Cashell predicted that he would get phone calls at the office tomorrow morning because of this discussion, but the issue was that they were not complying with the Zoning Ordinance.

Chairman Russo expressed a belief that the sign in question was also illegal, saying the electronic message area was too big. He then expressed a belief that such signs needed to come back to the Planning Board for final approval. Mr. Hall said the signs needed to be taken out of the Zoning Ordinance to do that. Chairman Russo concurred, noting that all of the signs had been in violation, so they were batting 1,000. Mr. Hall noted that it was not too late to put in an amendment article to appeal the recently passed EMC sign ordinance. Chairman Russo expressed agreement, saying the Board could appeal it and send a message to these people.

Ms. McGrath said the particular sign in question had come in before the ZBA, and a representative from Barlo Signs had come tearing into the meeting because she did not like the way the discussion was going while watching it on HCTV, so Ms. McGrath presumed Barlo Signs was involved. She noted that the sign at Flagstone Drive had come before the ZBA because the sign was advertising an off-site location, and the owner had kept the sign off after being denied.

Mr. Malley suggested that the sign company that built the sign be asked to come in and explain how that sign met the Zoning Ordinance, before the Board voted to repeal the ordinance.

Mr. Ulery said the sign owners needed to be told that the signs were in violation, declaring that they were not in violation until they had been told so.

Chairman Russo said he had come to Town Hall to complain as an informal request, thinking that was enough. He said he did not know if a formal request had been made in writing.

Town Planner Cashell said the Planning Board definitely should have a training session, providing solid examples on what the language provided for, including the



background. Chairman Russo said he thought the background had not been addressed in the ordinance.

Ms. McGrath said it was incumbent on the property owner, as well as the sign company, who participated in developing the ordinance, saying they knew exactly what was allowed. She said ignorance of the law would not be an excuse, saying she absolutely agreed that there should be enforcement of the ordinance.

Mr. Seabury said he had gotten the inference from Mr. Cashell' comments that he considered the ZBA to be weak in this issue. Mr. Cashell demurred, saying what he had meant to say was that the Planning Board had devoted two years to developing the EMC sign ordinance, with some participation by the Zoning Board, but the Planning Board did not have zoning jurisdiction. Mr. Seabury said that, at the meeting that Ms. McGrath had referenced, the same Barlo representative who had been so adamant about developing the new ordinance had come charging in to express her concern that the things the Board was talking about, which was to express concern about the previous signs being in violation, had nothing to do with what that application was there for, which was whether the sign should be allowed within 200 feet of a residential building where no one would be living except perhaps a night watchman. He said the Zoning board at that time, and he himself in particular, had made it very clear that the sign would have to be in compliance with the ordinance, but the Zoning Board was not an enforcement agency and had to depend on Code Enforcement.

Chairman Russo said monochrome one-color signs were needed.

Mr. Malley asked about the cost of enforcement. Town Planner Cashell said it was a matter of overenthusiasm in advertising a project. Mr. Ulery said that had been his point—that the applicant should be told this was what the rules were and that they should comply or else.

Mr. van der Veen asked if Code Enforcement had the tools to measure 8000 nits. Town Planner Cashell said the Board could hire an expert. Mr. van der Veen said the ordinance was very descriptive, and the question was whether the Town could measure it.

Mr. Barnes said the ordinance was worthless if the Town was not willing to enforce it, saying everyone would do whatever they wanted to do. He said he felt it was a workable ordinance, but the Town had to enforce it.

Town Planner Cashell said he felt the applicant could be made to comply, but the Town had to be diligent about it.

## **XII. ADJOURNMENT**

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

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

**-- FILE COPY --**

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Chairman Russo then declared the meeting to be adjourned at 10:07 p.m.

Date: January 7, 2012

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

J. Bradford Seabury, Recorder

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

These minutes were accepted as amended following review at the 02-01-12 Planning Board meeting.

**-- FILE COPY --**

The following changes were made to the draft copy in accordance with review comments at the Planning Board meeting of 02-01-12:

Page 3, the first Vote paragraph – changed identification of voters so that Ms. McGrath (who was not seated) was replaced by Selectman Maddox (who was seated).

Pages 6 & 7 – replaced incorrectly spelled name “Katenback” with correct spelling of “Kattenbach” in three places.

Page 6, 5<sup>th</sup> paragraph, 3<sup>rd</sup> line from end – added the word “addressed” and changed the year date from 19912 to 2004, so that the phrase now reads “adding that she had addressed this at the 2004 hearing.”

Page 8, 7<sup>th</sup> paragraph – changed spelling of “façade” to “facade” (even though Microsoft apparently prefers the former).

Page 10, 3<sup>rd</sup> paragraph from end, last line – added “as opposed to one spotlight” so that the text now reads “homeowners would get more security from multiple lights shining down as opposed to one spotlight.”