



# TOWN OF HUDSON

## Planning Board



Vincent Russo, Chairman

Rick Maddox, Selectmen Liaison

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### HUDSON PLANNING BOARD MEETING MINUTES September 14, 2011

#### I. CALL TO ORDER

Chairman Russo called this Planning Board meeting to order at 7:08 p.m. on Wednesday, September 13, 2011, in the Community Development meeting room in the Hudson Town Hall basement.

#### II. PLEDGE OF ALLEGIANCE

Chairman Russo asked Mr. Barnes 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, George Hall, Tim Malley, Vincent Russo, Ed van der Veen, Richard Maddox (Selectmen's Representative), and Glenn Della-Monica (arrived at 7:22 p.m.).

**Members**

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

**Alternates**

**Present:** Stuart Schneiderman and Jordan Ulery.

**Alternates**

**Absent:** Irene Merrill (excused) and Roger Coutu (Selectmen's Representative Alternate; excused, attending another meeting).

**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 tardy Mr. Della-Monica.

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

Chairman Russo noted that he had asked the Board to be prepared to review the 05-11-11 and 03-02-11 meeting minutes this evening. Mr. Barnes referenced the minutes for May 11, 2001, Page 4, 1<sup>st</sup> line of 3<sup>rd</sup> paragraph, stating that Ayotte's was misspelled, and adding that he thought it was also misspelled in another place, as well.

No other change request being brought forward, Mr. Barnes moved to approve the 05-11-11 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).

No members being prepared to review other minutes, Chairman Russo asked that the Board members be prepared at the next meeting to review the minutes for the March 2<sup>nd</sup> and May 25<sup>th</sup> meetings.

**VI. CASES REQUESTED FOR DEFERRAL**

No cases had been requested for deferral for this meeting.

**VII. CORRESPONDENCE**

Chairman Russo noted that there was no correspondence items to be addressed.

**VIII. PERFORMANCE SURETIES**

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

**IX. ZBA INPUT ONLY**

No **ZBA Input Only** items were addressed this evening.

## X. PUBLIC HEARINGS

No **Public Hearings** items were scheduled for this evening.

## XI. OLD BUSINESS/PUBLIC HEARINGS

### A. Jarry Subdivision (Re-submittal)                      Map 207/Lot 8 SB# 09-11    Bush Hill Road

***Purpose of Plan:*** To amend SB# 06-09 to create an 18-Lot Subdivision consisting of 17 open space lots and one conventional lot. Hearing. Deferred Date Specific from the 08-10-11 Planning Board Meeting.

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

Town Planner Cashell said the application had been accepted at the prior meeting.

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, outlined the application, noting that the waiver had been granted but there had been a couple issues, including removal of the library impact-fee note and a correction of a note about the driveways not exceeding 10% grade.

Mr. Basso then referenced the plan he had affixed to the meeting room wall, identifying it as ***Master Plan; Jarry Subdivision; Map 207/Lot 8; Bush Hill Road, Hudson, New Hampshire***; prepared for and owned by Michael and Rebecca Jarry; dated May 2011, revised through 08-11-11. He noted that there had previously been an easement to enable Mr. Jarry to access the back lot, but he had only needed the corner, so he had made it what it needed to be, as a private easement solely for Mr. Jarry's use, and not a public road.

Mr. Basso then referenced a second plan on the wall, identifying it as: ***Lot Line Adjustment, Land of Rebecca & Michael Jarry, Bush Hill Road, Hudson, New Hampshire***; prepared for Michael and Rebecca Jarry; dated May 2011, revised 08-11-11 (noting that this had been approved at the previous meeting). He noted there had been a question about the conventional plan, with a strip going out to Bush Hill Road, with discussion about that strip not being included in the land area. He said he had looked at the Hudson OSD ordinance HTC §334-53, which said "the minimum open space requirement of HTC §335-50 may be provided for individually owned land placed in permanent conservation, recreation, or by land-use restriction"; he said they could show this by putting a restriction, and he noted that a note had been added to restrict the area from any future subdivision of Lot 20-4, saying it was not included in the calculation for minimum lot area or minimum open space. He contended they had pulled it out from any possible future use, saying this was allowed by the Town Code. He noted that a note to that effect had been added to the recordable plan (Note 26), so it was all tied together. He then offered to answer any questions.

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.

Selectman Maddox said they had changed the Lot Line Subdivision plan. Town Planner Cashell said that was in accordance with the conditions of approval.

Mr. Hall asked how anyone would remember the restriction 25 years from now. Mr. Basso said it would be on the plan at the registry and also on the future deeds as the project moved forward. He said new deeds would be drafted for each of the two parcels, with the consolidated piece including that same note. He said the language was incorporated by reference but could be tied into the deed itself if the Board wanted that done.

Mr. Hall said this presumed someone would look at all the plans, so it would be better if the note were placed in the deed itself. Mr. Basso said he would be fine with that.

Mr. Hall asked how the Board could make all this happen. He then noted that the Board had learned there was no limitation on the length of a private road, as would be discussed in the next item on the agenda, so he thought the Board might see a plan in the future whereby the private road extended down to develop the property across the wetland. Mr. Hall expressed concern that this would be regarded as a perfect case for granting a Special Exception, saying he thought the corner was set up to allow a 50-foot road. Mr. Basso said all his client wanted was to be able to use the logging road to work the rest of his property, saying he was just trying to give his client access and the Board could restrict it however the Board wanted, and emphasizing that he was not trying to hide anything. Mr. Basso said that what Mr. Hall was talking about, for the other case, was a condition limited to a site plan for manufactured housing, noting there was no public water available for this property, and adding that he thought the Fire Department would have a problem with that. He reiterated that this was just so that Mr. Jarry could access that land.

Mr. Della-Monica arrived at 7:22 p.m. and took his regular seat at the table, although not recognized by the Chairman for the inprocess hearing.

Atty. J. Bradford Westgate, of the firm of Winer and Bennett, LLP, 111 Concord Street, Nashua NH, legal representative for the applicant, said they had thought it made sense to develop the note for both plans, so that the land mass could not be "double-dipped." In terms of the enforcement issue, he said, they would be happy to put the note in the deed. He said the real enforcement monitoring was right here at this Board, as the conditions of approval were that the land could not be double-dipped and counted again, and this would be part of the record, so buyers could not do anything that overrode that. He noted that the Board would monitor this internally, regardless of what happened at the Registry of Deeds. He also pointed out that this was not before the Board tonight in terms of any development, only for a private access.

Mr. Hall said he was not trying to limit anyone's rights, but merely asking what possibilities could happen in the future. He said it seemed to him that that possibility existed, adding that the corner could be taken out and made a part of the open space.

Selectman Maddox asked how wide the easement was. Mr. Basso said it was a triangle, 50 feet wide at one end, and followed the existing path. Selectman Maddox suggested making it 35 feet wide, so it could not be a Town road. Mr. Basso said it did not really have a set width, as it went to a point; he said the idea was that the woods road went through that corner, so they drew that line there for that purpose. He said they could narrow it up further, but he could still get the width technically over the land they owned. He said it was part of this plan, saying he knew that calling it an easement flagged it, but the open space used that tract of land, so that Mr. Jarry could use it without having another wetland impact. He insisted he had nothing else on the table, with no discussion of future development—adding that the property would be severely restricted because of the lack of Town water and its remoteness. Mr. Basso said it technically was tied, as it was part of the open space, except that Mr. Jarry was reserving a private right to cross this in order to get to his other property.'

Mr. Ulery said he understood what Atty. Westgate had said—adding that the inclusion of Note 26 would be a flag to the Community Development Department with respect to any future plan for further development. Town Planner Cashell outlined a hypothetical example of some paralegal in the future not noticing that note, but he said it should be caught so long as people were reading everything.

Mr. Hall asked if Town Planner Cashell had gone through the ordinance and regulations and was satisfied that the method of calculating the 18 lots was accurate, expressing concern about the issue of using another piece of land, other than the property being subdivided, to get the 18 lots, and how to make sure it stayed that way forever. Mr. Hall then said it did not sound as though Town Planner Cashell agreed with that method of calculation and he would like to know if the Town Attorney did. Mr. Cashell displayed an aerial photograph of the property, saying it would be clearer if the only property involved was the OSD parcel but they were adding another property that included another house, saying he understood what Mr. Hall was saying, but he did not know if these notes entangled the lot-density restriction clearly enough that a future Planning Board would not be dealing with another development 10 or 25 years in the future, when none of the current members would be present. Mr. Hall said the issue was that the only way he could get 18 lots was to show a road that went over Lot 4, which was not part of the development; he then said he would not be interested in approving a plan on that basis if Town Planner Cashell and the Town Attorney and Code Enforcement had not reviewed it and made sure there was a method of tying it down in the future. Mr. Cashell said this was a hybrid situation, as the board was not dealing with a rectangular lot. He said there was time to have Town Counsel review it if the Board wanted—adding that he thought it was appropriate, as long as people were comfortable that the language was tight enough, but he acknowledging that valid facts sometimes got lost, noting that the Community Development office had just come across just such a case, dating from only 1996, because of the lack of continuity of staff to pick up the issue.

Mr. van der Veen asked if the OSD would be limited to 17 lots without this land. Mr. Cashell said he would have to look at it again. Mr. Basso said the 18-lot density was supported with the land not included in that restriction. He said the restricted area was just for the purposes of the private road, to show there was a way to get out to the other road for a loop road, so the roadway portion itself was restricted. He said it was spelled out clearly in the OSD ordinance that they could have land like that, not just to show a connection but also to calculate lots. If there were a road there today, he contended, the density would still sit as it does, noting that no lots were shown in that area on the conventional layout plan (Sheet 36).

Mr. Barnes noted Sheet 35 showed that the buildable areas needed to be at least 2.0 acres, saying they all met that—adding that the chart did not include the road area. Mr. Hall said his concern was that the density was based on a standard subdivision, not an OSD subdivision. Mr. Basso said he had shown that he could get those lots, noting that they did own that land and they were just going to restrict it; he suggested that the text was written as it was so as to preserve a piece of land and give density elsewhere, and he then read the ordinance text (HTC §334-52) aloud again, saying all the land encompassed in the development was in open space or restriction. Mr. Hall said he had a problem with that analysis, of using OSD ordinance language for a standard subdivision. Mr. Basso said they had not done that, putting the restrictions whether it was on the open space or the other strip. Now that he had shown the conventional plan, he said, he had to develop an open space plan, saying the ordinance did not say it all had to be the same parcel. He said he would agree with Mr. Hall's concerns if they did not own the land, but they did.

Atty. Westgate said the strip was to show that a conventional subdivision loop road could be put on land that the Jarry's controlled, noting that it was the inverse of a comment that Mr. Della-Monica had made at the previous month's meeting, where he had noted that, if the road in that strip existed, this discussion would not be occurring, as clearly the land mass provided enough open space—adding that the only difference was that the road did not exist, but it could be created. He said he would agree with Mr. Hall's concern if the Jarrys did not own that land. He said they wanted to restrict the land so that it could not be used in the future, which was why they had developed Note 26. He argued that it was an enforcement mechanism that was right here in Town Hall—saying any new person coming in would come in with a plan that made reference to all exiting recorded plans pertaining to the lots, so they by necessity would have to be addressing this note.

Mr. Della-Monica said the minutes of the last meeting had made him think about the ultimate extension of the road, saying they would qualify based on the road existing, even if it belonged to someone else, if they decided to show an OSD, having shown they could do a conventional plan. The developer could then abandon the easement and bulldoze the road. If that is the case, he suggested, it did not need to exist now.

Selectman Maddox referenced Note 26, asking where the land use restriction area was. Mr. Basso designated the location on the conventional plan shown on the wall. He said it was clearly delineated and defined with meets and bounds.

Mr. Ulery noted that Sheet 2 had a benchmark set in the middle of a telephone pole. Mr. Basso said the benchmarks were what were used for this plan, for elevation only, saying they could be done in the future and it would not matter.

Mr. Barnes noted that Note 8 on the conventional plan had a typo in the second line that should be corrected. Mr. Basso concurred.

Chairman Russo suggested that the Board defer this to have it reviewed by Town Counsel, with respect to Mr. Hall's concerns. Mr. Barnes expressed agreement, saying he was inclined to approve this but this was unique. Town Planner Cashell said the Town Attorney might be able to offer better language for the restriction.

Mr. Ulery noted that current law was all that applied, suggesting there might be different laws in the future.

Chairman Russo asked for a motion.

Mr. van der Veen moved to defer further review of the Jarry OSD Subdivision, date specific, to the September 28, 2011, Planning Board Meeting. Mr. Barnes seconded the motion.

**VOTE:** No further comment being brought forward, Chairman Russo called for a verbal vote on the motion to defer. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7-0).

Mr. Hall asked what question Town Planner Cashell would ask of the Town Attorney. Mr. Cashell said he would send Atty. Buckley everything, saying that Mr. Jarry wanted to create 17 OSD lots on the northern property and also had control over the southern property, which he wanted to convey as part of the OSD as one separate lot—adding that he would ask Atty. Buckley what his opinion was and whether he could add language so that they could not further subdivide that property in the future. Mr. Hall said he did not have a problem with any of that, but his question was whether the method used to calculate the density was appropriate, given that part of the road needed in order to complete the standard subdivision went over a piece of property that was not going to be included in the parcel being subdivided or being developed, so that the plan was using land on a parcel that was not included in the development to create a road to justify the eighteen lots. He said his concern was using language in the OSD ordinance for negating a standard subdivision.

Chairman Russo suggested that the Board should have the Town Attorney come talk to the Board, as opposed to doing it through phone calls or through Town Planner Cashell.

Atty. Westgate said he would be happy to come by at that same time, so that their perspective could be clearly stated, so that the loop would be fully closed—noting that he would sit out the associated attorney/client session. Town Planner Cashell said it would either be an attorney/client session at the start of the meeting or called during the process of the hearing.

Selectman Maddox said the Town Attorney should not be asked to come in and hear from the client's attorney that night and then respond by giving guidance that same evening. Chairman Russo then suggested that Atty. Westgate should prepare a memorandum that could be sent to the Town Attorney ahead of time, to prepare him.

Mr. Ulery requested that the juxtaposition of the two ordinances, be made available, side by side, so that the Board could see where they fit together or did not fit together.

Selectman Maddox expressed concern that too much was being planned for the 28<sup>th</sup>. Town Planner Cashell said there were only two other items scheduled. Chairman Russo stated he did not expect much problem if Atty. Buckley were fully prepared.

**B. Vista Hills Estates  
SP# 07-11**

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

**Purpose of plan: To establish a manufactured home park, consisting of 31 spaces, on a 39.5 acre parcel. Hearing. Deferred Date Specific from the 08-10-11 Planning Board Meeting.**

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

Chairman Russo then acknowledged Mr. Della-Monica as having arrived, saying he would be seated from this point on, with Mr. Ulery resuming his role as a nonvoting alternate.

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, noted that he had been before the Board last month, with a CLD comment to address, along with a second letter received subsequently, with both having been addressed. He noted the issue of features within 2000 feet, which had been added to the plan, along with snow storage areas and a note that snow removal would be privately contracted and not the responsibility of the Town. He said the radius of the cul-de-sac turn had been increased to 60 feet, which was the Town standard, as well as a central mailbox station being added, along with addressing some detail questions that CLD had brought up. He noted that the wetland applications had been resubmitted. He noted there had been a question of ownership, saying the client had decided to go rental spaces, so he would be the person maintaining the roads.

Chairman Russo opened the meeting for public input and comment, in favor or opposition.

Ms. Sharon Mora, 66A Pelham Road, expressed concern about some trees being cut down. Mr. Basso said the trees were not on the property, explaining that the trees she referenced were on her side of the lot line. Ms. Mora said she had been concerned with the proximity, saying it was hard to tell from the plans where things were or how close they were, noting she and her husband had only owned the property for a year. Mr. Basso said the project would be enhancing the landscaping where she lived and would be putting buffer back in, but there would not be a housing unit there. He showed her where her home was on the plan and what would be placed near her. She



then asked about salt impact on her well; Mr. Basso explained how the storm water system worked, to take it away from her property. Chairman Russo asked if the city water bring brought in would be accessible to any of the neighbors. Mr. Basso said they were bringing it all the way to Pelham Road, so others would have access if they wished, noting there would be a hydrant located there.

Town Planner Cashell asked if anyone in the town had approached Mr. Basso or the property owner about accessing the water. Mr. Basso said water mains in the town were public, reiterating that the water would be extended into the Town's right-of-way, off a pumping station that the Town owned.

No one else coming forward from the public to ask questions or make comments, Chairman Russo asked if there were any questions from Board members.

Mr. Barnes asked about the wording of Note 25, asking what Town obligations were involved. Mr. Basso said the Town currently picked up trash in many of the private developments, saying they did not want to be precluded in the future if they were allowed to have public trash, but they were being told right now it could not be.

Selectman Maddox expressed a belief that the development would be responsible for trash pickup if it were a rental project but that it might go another way if the units were condominiums. Mr. Basso expressed agreement.,

Mr. Barnes said he could not find the parking calculations. Mr. Basso said he was required to provide two spaces per unit, and they had bays in the garage (two-bay garages) and two spaces in the driveway in front of the garage. Mr. Barnes said the regulations said the calculations should be provided. Mr. Basso said they could add those as a note to the plan—adding that the garages were an option, but two spaces would be provided, anyway.

Mr. Della-Monica asked if the road would be mountable-curbed, so that people could park on the grass. Mr. Basso answered in the affirmative.

Mr. Malley asked about residential sprinklers. Mr. Basso said it could not be required of them but could be volunteered. Selectman Maddox said there had been some discussion about that; he suggested that a letter be provided to the Board, and he started to suggest some possible wording, but Mr. Ulery then interrupted to say that the letter should say he would do it, with no inference of pressure from or by the Town, as consideration for the safety of the public.

Mr. Della-Monica said it was incorrect to say that solids would come out if the septics backed up, as he had suggested at the prior meeting as likely to occur, saying he had examined the septic plans more carefully and in theory the solids would go into a chamber before the pump chamber, so only liquids should escape.

Selectman Maddox referenced a need for a Note 27, saying the septic would be private—adding that he would like to see it designate the responsibility to some specific company. Mr. Basso said a note could be added to the plan.

Mr. Schneiderman referenced Page 2 of 33, saying the ownership of Map 199/Lot 14-1 (66A Pelham Road, owned by David and Sharon Mora) was listed as belonging to

Raymond G. Gravelle. Mr. Basso said it was designated correctly on the previous sheet but had not been carried through, saying he would update that.

Selectman Maddox asked where the mailbox station would be. Mr. Basso said it was in the stretch of road on which no units were located, shown on Sheet 2.

Town Planner Cashell noted two waivers remained.

Selectman Maddox moved to grant the request for waiver from the requirements of HTC §275-9C, *Noise Study*, citing the reason for granting the waiver as being because such a study was unnecessary, taking into consideration the proposed development consisted of single-family detached residential dwellings, which was the same or similar to uses of surrounding developed properties—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:** 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).

Selectman Maddox moved to grant the requested waiver from the requirements of HTC §275-9 D, *Fiscal & Environmental Impact Study*, citing the reason for granting the waiver as being because the said study, in addition to the submitted plans, traffic data, CAP fee, and other submitted application materials, was not necessary in order to evaluate the fiscal impact of this development—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:** 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 asked the Board's pleasure.

Selectman Maddox asked if the two roads going down to the leach fields would be blocked. Mr. Basso said they were just for access of equipment to maintain the fields, and they had not intended to block them. He confirmed that the first one, closest to Pelham Road, would be widened at the beginning for a turnaround, noting it had been done on the plan to the satisfaction of Deputy Buxton.

Mr. Della-Monica suggested putting some sort of barrier in to protect the leach field, noting that a truck had made it into his back yard during hunting season. Mr. Basso said they would note something on the plan. Chairman Russo suggested a swinging gate, such as a fire-road gate, would be more appropriate than a chain, in case

someone off-roading came that way. Mr. Basso said he would note on the plan that it would be gated.

Selectman Maddox asked about the offsite contribution. Mr. Basso said he had read the note; he then suggested changing the text from "The developer agreed" to "The developer voluntarily was installing". Chairman Russo suggested "Each one will ...". Mr. Hall said the Town Attorney had said owners could not be forced, and he then asked why it was needed on the plan at all. Mr. Basso said they were still volunteering the sprinklers. Mr. Hall suggested taking it off the plan and just doing it. Mr. Ulery said he had been trying to get rid of any suggestion that the Town was requiring this, saying the property owner had the absolute right to put in anything to make the property more valuable. Atty. Westgate then commented that it was always dangerous to put anything pertaining to safety on the plan, saying plan notes should deal with land use.

Selectman Maddox said Note 8 should be left in place, with the text the Board had agreed on.

Mr. Barnes moved to approve the plan entitled ***Residential Site Plan Vista Hills Estates, Map 192/Lot 17, Hudson, New Hampshire***, prepared by Keach-Nordstrom Associates, Inc., dated: August 8, 2007, revised through September 1, 2011, consisting of a Cover Sheet and Sheets 1 through 33, together with Notes 1 through 27, in accordance with the following terms and conditions:

1. All stipulations of approval shall be incorporated into the Development Agreement, which shall be recorded at the Hillsborough County Registry of Deeds, together with the above-cited Plan-of-Record.
2. Prior to Planning Board endorsement of the Site Plan-of-Record, Town Counsel shall favorably recommend on the Development Agreement, Declaration of Covenants and Restrictions and all Easement Deeds.
3. A cost allocation procedure amount of \$2,034.34, per residential unit shall be paid prior to the issuance of a Certificate of Occupancy.
4. 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.
5. 5A recreation contribution in the amount of \$400.00 per residential unit shall be paid prior to the issuance of a Certificate of Occupancy.
6. An offsite improvement contribution of \$500.00 shall be paid prior to the Certificate of Occupancy for each residential unit, and said contributions shall be used exclusively to help defray the cost to the Town for engineering and construction work associated with the planned Pelham Road Bridge/Dam project.
7. Prior to the issuance of a final certificate of occupancy, an LLS-certified "As-Built" site plan shall be provided to the Town of Hudson Community Development Department, confirming that the site conforms with the Site Plan-of-Record.
8. This approval shall be subject to final engineering review, including approval of the Stormwater Pollution Prevention Plan.

9. The applicant or his assigns, at his/her expense, shall be responsible for repairing all construction cuts on Pelham Road, and this work shall be properly bonded with the Town of Hudson.
10. The number of dwelling lots for this Site Plan development shall be limited to 31 dwelling units.
11. A note shall be added to the Plan citing off street parking regulations.

Selectman Maddox seconded the motion; he then asked to add Note 27, with regard to sewerage responsibility. Mr. Barnes expressed agreement, amending his motion so as to require the addition of a note saying that the Town of Hudson will not be responsible for maintained, as it was private.

12. Note 27 shall be added to the Site Plan, stating: "Owner acknowledges that the Town of Hudson will not be responsible for the septic system within the development, since said systems are privately owned."

Selectman Maddox asked about a construction hours note. Mr. Basso said that was on the plan, as Note 20.

**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 declared a break at 8:45 p.m., calling the meeting back to order at 9:10 p.m.

**C. Stellar Motors Site Plan  
SP# 05-11**

**Map 190/Lot 001  
57 Lowell Road**

**Purpose of plan: Convert existing retail sales building into automotive sales office. Construct a 2,640 S.F. automotive service/storage building, and delineate vehicle display areas. Hearing. Deferred Date Specific from the 08-24-11 Planning Board Meeting.**

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

Mr. Richard Maynard, Professional Engineer, of Maynard & Paquette, Engineering Associates, LLC, appeared before the Board as the engineering representative of the applicant, Mr. Michael Febonio, who was also present.

Mr. Maynard said all the waivers had been dealt with, noting that the property had been cleaned up. He said the existing conditions plan had been updated to reflect what was there, and the landscaping (Dwg. 5) had been substantially beefed up. He said his client had met with the abutter to the north and discussed what was being proposed, saying the abutter had not gotten back to them as yet. He said one could barely see through to the adjoining property Harmony Real Estate today, and he provided

photographs showing that, saying the dense woods would remain. He said there had been a suggestion about extending the stockade fence, but neither party thought that had any particular value, so it had not been put on the plan. He said there had been discussion about the number of vehicles that could be displayed, commenting that some vehicles could be placed inside the building—adding that Town Planner Cashell had noted there could be ten full-size vehicles outside; he then suggested they might get up to 25 or 26 if they were small vehicles. In front of the site, he said, a barrier had been discussed so that vehicles would not be parked on the lawn, along with asphalt berms—which he said would be too low, so landscaped timbers would be better and would better delineate the area and prevent vehicles from being parked in the front. He noted that the land being taken out for widening had significant value, noting that it had been going to be considered a donation in lieu of any further contribution, but he had noticed that Town Planner Cashell had included a CAP fee in the draft motion; he then stated that the traffic counts would be significantly lower than had occurred on the site in the past, so the CAP fees were not applicable for this site, and he concluded by saying the board could have either Stipulations 2 or 12 of the draft motion for approval, but it would not be friar to have both, noting that waivers for noise study and fiscal impact study had already been granted at a previous hearing.

Chairman Russo said he would open the meeting for public input; noting there was no one present, he then closed the public hearing and asked if any members of the Board had any questions.

Mr. Schneiderman noted that Mr. Maynard was saying a CAP fee was applicable only with an increase in traffic. Mr. Maynard said that was what the ordinance stated. Mr. Barnes asked for the citation of that claim. Mr. Maynard said the entire Cost Allocation Procedure program was to develop increase in road capacity for the three corridors. Chairman Russo noted that he had not heard Town Planner Cashell express disagreement with Mr. Maynard's claim.;

Mr. Schneiderman asked if Mr. Maynard were saying the CAP fee applicability was not in the Town ordinances. Mr. Maynard said it was in the regulations, but the procedure was in the VHB (Vanasse Hangen Brustlin, Inc.) report, which was a separate document. He then outlined the process by which the CAP fee program had been developed, saying it was not a funding for current traffic but for future traffic, arguing that a site getting less traffic was not impacting the capacity of the corridor roadway. Mr. Schneiderman asked who had underwritten that VHB study. Mr. Maynard said it was a Planning Board study and had probably been done by developer contributions. Mr. Hall affirmed that the Planning Board had paid for the study from developer contributions.

Town Planner Cashell said that HTC §334-74 (Article XVI of the Zoning Ordinance) spelled out the procedure, adopted on 03-12-96, with the matrix for the fees being adjusted each year.

Selectman Maddox noted that Mr. Febonio had said at the last meeting that he used to own or manage the site at 85 River Road. Mr. Febonio said that had been in 2004 through 2008. Selectman Maddox noted that some of the required improvements

for that site had never been done. Mr. Maynard said Mr. Febonio had been a tenant, not the property owner.

Mr. Schneiderman asked if the applicant were planning to store 20 vehicles. Mr. Maynard said twenty, then amended that to be twenty outside and ten inside. Mr. Schneiderman asked how many vehicles were for sale right now; Mr. Febonio said 14 or 15. Mr. Schneiderman then asked if Mr. Febonio were familiar with the Web site called `MichaelsCarStoreAnex.net`. Mr. Febonio said he no longer had that Web site. Mr. Schneiderman asked if Mr. Febonio were displaying vehicles at Tate's garage. Mr. Febonio answered in the affirmative.

Chairman Russo asked that Mr. Schneiderman ask a pertinent question.

Mr. Schneiderman said the vehicles being sold on the referenced Web site were on display at Tate's garage; if this was not his Web site, he asked, why were cars on the web site being sold at the place where he said he was selling them? Mr. Maynard asked what this had to do with 57 Lowell Road. Mr. Schneiderman said he would withdraw his question so that the Board could move on.

Mr. Barnes referenced the landscaping plan, asking about the plantings on the left side. Mr. Maynard said they would be Norway Spruces. Mr. Barnes said most of the shrubbery on the front were deciduous; Mr. Maynard said there were white pines, too—claiming that this would provide more buffer during the winter and that most of the time it was pretty obscure, as one could not see through there.

Mr. Malley said he did not like Note 23, as he did not like the concept of approving an automobile garage and restricting it. He then said he had gone down and walked around the site, saying he did not like the front building still being there, saying it was a very tight site, and he could foresee the back building becoming some sort of automotive garage while the front building was used for retail sales.

Mr. Maynard said Note 23 was to indicate this was not for full-fledged repair garage but only for servicing of vehicles sold from that site, saying it would not be a full-fledge garage, and any significant repairs would be done elsewhere. He said the building on the front would be cleaned up, but one always had to think about when the site would be turned over to another owner, who might use it for something else, and just having a paved area in the front might lead to a repair facility. He said they wanted to keep the front building, noting that any change of use would have to come before this Planning Board. He said the front building had value to his client, as it served his purposes.

Mr. Malley said it would be very congested. Mr. Maynard expressed disagreement, saying it met the regulations and was no different from any other used-car lot. Mr. Malley expressed concern about there being two buildings when a new owner came in; Mr. Maynard argued that the new owner would still have to come before the Planning Board for a change in use.

Chairman Russo said he had made a request to be shown how they would put 20 cars outside and plow the snow without putting cars out on the street. Mr. Maynard displayed a working drawing (the site plan marked up in color), pointing out areas

where plowing could be done and the vehicles then moved around, saying the occupied space at the time of plowing would be a third of the total area.

Chairman Russo said he could not see that, saying he could not see how 20 cars could be placed on the property. Mr. Maynard identified on the plan where he thought the vehicles could be placed, saying it had been measured off. Chairman Russo said it was really difficult to get in and out of cars in 8-ft-wide spaces. Mr. Febonio said he put 17 cars in the garage area that he had now; he contended that plowing the lot would be "as simple as pie," saying he did it now at the other site with cars never going out into the street. Chairman Russo noted that some towns allowed 8.5-ft parking widths. Chairman Russo then commented that the snow storage was behind the vehicles; Mr. Maynard disagreed, saying this as just a matter of moving the vehicles as necessary.

Chairman Russo said there was no stipulation as to the amount of cars that could be put on the site. Mr. Maynard said it was limited to where they could be displayed, adding that he would accept a limitation of 25. Chairman Russo reiterated that he was not convinced, saying he did not see enough room. Mr. Febonio said the plowing was the least of his concerns.

Selectman Maddox said there was too much stuff on the lot, adding that having a 1000-ft<sup>2</sup> building to sell one car a day did not make sense. He said he thought this was way too busy for a half-acre lot off Lowell Road.

Mr. van der Veen expressed agreement, noting that the Board had previously suggested removing the front building and providing more space.

Mr. Maynard said the plan met every regulation that existed, and he urged the Board not to tell his client how to run his business. He said Bradley's, to which this site was being compared, was a different kind of operation, which was more full-service.

Chairman Russo asked about the fence. Mr. Maynard said Selectman Maddox had suggested extending it 50 feet to appease the abutter, but when his client met with the abutter (on August 25 with Ms. Ziehm) his client had suggested the fence would not do it but he could put in shrubbery, but she had never responded. He said the residential abutter to the rear had come before the Board and said he was very happy with what was being done. He said this was why he had provided the photograph, to show how dense it was, and the five evergreens to be added would make it more so—adding that the fence would only block the view of the front building.

Mr. Della-Monica said he was wavering on this one, saying there seemed to be too much on the lot, but the Town had regulations—and, if the Town did not want this, then the Town should have a rule saying they could not have that much stuff. If Mr. Febonio maxed out what the Town allowed, he said, that was still what the Town allowed.

Mr. Hall moved that the CAP fee was not needed, saying he was making the motion because the CAP contribution was for the increase in traffic and there was none.

Mr. Della-Monica seconded the motion.

**VOTE:** No further comment being brought forward, Chairman Russo called for a verbal vote on the motion. All members present

voted in favor except for Selectman Maddox, who voted in opposition, and Chairman Russo declared the motion to have carried (6-1).

Mr. Hall said he was prepared to make the motion to approve the plan, but he had heard reservations from some of the members, so he would like to hear what regulations or ordinances were not being complied with—adding that he did not see one and he did not know why the Board would deny the plan.

Town Planner Cashell asked about the waivers. Mr. Maynard said all waiver requests had been approved, and he identified the dates of approval.

Selectman Maddox referenced HTC §334-2 D J, citing the text as reading “to prevent the overcrowding of land.” Mr. Hall said he agreed with that, but he wanted to hear what ordinance was being violated to show it was being overcrowded.

No further response being provided, Mr. Hall moved to approve the Site Plan entitled ***Stellar Motors 57 Lowell Road, Hudson, New Hampshire, Lot 1/Map 190***, prepared by Maynard & Paquette, Engineering Associates, LLC, dated April 27, 2011, latest revision date September 1, 2011, consisting of Sheets 1 through 5 and Notes 1 through 23, in accordance with the following terms and conditions:

1. All stipulations of approval shall be incorporated into the Development Agreement, which shall be recorded at the Hillsborough County Registry of Deeds, together with the Site Plan-of-Record.
2. Prior to the Planning Board endorsement of the Site Plan, the Development Agreement and sidewalk easement document concerning the future widening of Lowell Road shall be favorably reviewed and recommended on by Town Counsel.
3. All improvements shown on the Site Plan-of-Record, including Notes 1 through 23 shown on the Site Plan-of-Record, shall be completed in their entirety and at the expense of the Applicant or his assigns.
4. After the issuance of foundation permit for the structure and prior to the issuance of a framing permit, the applicant shall submit to the Hudson Community Development Department a foundation “As-Built” plan on a transparency and to the same scale as the approved site plan. The foundation “As-Built” plan shall include all structural dimensions and lot line setback, measurements to the foundation and be stamped by a licensed land surveyor. Any discrepancy between the approved site plan and foundation “As-Built” plan shall be documented by the applicant and be part of the foundation “As-Built” submission.
5. Prior to the issuance of a final certificate of occupancy, an LLS-certified “As-Built” site plan shall be provided to the Town of Hudson Community Development Department, confirming that the site conforms with the Site Plan-of-Record.
6. Onsite landscaping shall be provided for in accordance with the plant and tree species specified on Sheet 5 of 5 of the Site Plan-of-Record.



7. Construction activities involving the subject lot shall be limited to the hours between 7:00 a.m. and 7:00 p.m., Monday through Saturday. No construction activities shall occur on Sunday.
8. Hours of operation for the automotive service use shall be Monday through Friday, 8:00 a.m. through 6:00 p.m. & Saturday, 8:00 a.m. through 3:00 p.m. and for sales of vehicles Monday through Friday, 8:00 a.m. through 8:00 p.m., & Saturday, 9:00 a.m. through 5:00 p.m. & Sunday, 11:00 a.m. through 4:00 p.m.
9. Onsite automotive repairs shall be limited to those specified in Note 23 on Sheet 1 of the Site Plan-of-Record.
10. Refuse removal shall be limited to Monday through Friday, 8:00 a.m. through 6:00 p.m. & Saturday 8:00 a.m. through 3:00 p.m.
11. Prior to Planning Board endorsement of the plan, it shall be subject to final engineering review.

Mr. Barnes seconded the motion.

Chairman Russo said he was not certain the parking regulations had been met, saying they certainly had not been stipulated on the plan, which should say where the vehicles would be located and how many there could be. He said he thought it would not be safe for people to visit this site if it were so full of cars that they could not get around.

Mr. Hall said he had heard discussion about the number of vehicles on display, saying the Board had approved a number of used and new car dealers and had never specified the number of vehicles but had said where the display would be, so this was his rationale for not doing so. Chairman Russo said he recalled some smaller sites, and he thought vehicle spaces were designated and requirements were stipulated as to how many vehicles were to be parked there—citing a Lowell road site just before Dracut Road as an example. Town Planner Cashell said that had been Internet sales; Chairman Russo expressed agreement but said it was limited.

Mr. Della-Monica said he felt that less than half of the cars on view on the Bradley site were parked in accordance with Hudson parking regulations. If the Town were allowing it in one place, he argued, the Town should not prohibit it in another place.

Mr. van der Veen said he had always thought this site was too tight, saying it might be acceptable if the building in the front were removed.

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

Chairman Russo asked if the Board wanted to defer at this point, to give the applicant an opportunity to come back with something different.

Mr. Febonio asked for permission to speak; he then said he had lived in Hudson for 40 years, and had been refused before for reasons that could not be determined. He said he was meeting every regulation, noting that Dunkin Donuts on a quarter of an acre had 1,000 cars a day, and he then asked how a stagnant car lot could be considered as too busy. He noted that the waivers had been granted, but now the Board was saying the site was too busy. Chairman Russo said it was not too busy traffic-wise, but there was too much on it.

Mr. Febonio said things were always built to capacity, and he thought the Board was overlooking that. He said the residential abutter behind the site was in agreement, saying he did not understand how the Board could vote against it, and that he needed an explanation. He said he was not going to walk away without being given reasons why. Chairman Russo said a couple members had given reasons, saying the Board was willing to give him an opportunity.

Mr. Febonio said he had met everything the Board had asked for, saying he felt having a parking lot in the front would be worse than a landscaped building separating the front and the back. Mr. Maynard said the only option he had heard was taking the front building down, which was not a viable option. He said it was not fair or legal for the members to vote it down when the waivers had been granted, and he expressed a belief that the decision would be overturned if it went to court. He said knocking the building down would not reduce the congestion, as it would lead to more cars being there, adding that the green space was over what was required, and noting that the abutter was happy with what was happening. He asked the Board either to give very clear things, besides knocking over the building, or to make a motion to reconsider the vote, as they met every regulation and were giving a right-of-way.

Chairman Russo said there was a 2600-ft<sup>2</sup> building at the back of the lot, asking how many bays were needed to service vehicles. Mr. Febonio said only one was needed for service, but he hoped to have classic cars inside, and he was spoiled, since he now (at the Tate's Garage site) parked the vast majority of his cars inside when it snowed, so that he did not have to clean them off. Mr. Maynard asked why the size of the building contributed to overcongestion, saying he did not understand what the purpose was in making the building half the size.

Selectman Maddox said he had said from the beginning that moving the back building to the center, without all the angles, could result in a nice building that would serve desires for inside storage without all the strange angles. He said the applicant was trying to put a lot on the site.

Mr. Febonio said he had been down this path before, saying he was meeting every regulation, but the Board was telling him he met all the regulations but they did not like it, which was not an answer. He declared that he was not going to quit on this.

Mr. Maynard said he wanted real reasons if the Board was going to deny the plan, saying they were not going to waive the 55 day limitation, as they had had enough, and deferment would not achieve any purpose.

Mr. Barnes said the date could be extended if the applicant and the Board agreed, but he felt Mr. Maynard had a legitimate point.

Mr. Malley said the big point was Note 23. Mr. Hall said the applicant had agreed to put it on the plan, acknowledging that it would be difficult to monitor or enforce—adding that it was part of the mitigation for the 100-foot buffer waiver.

Mr. Della-Monica said it was volunteered, that the abutters knew it was not going to be a full-service garage, and the applicant wanted the abutters to know they would not be exposed to chemicals, odors, noise, etc. Town Planner Cashell concurred, saying the applicant had offered it. Mr. Maynard said that was their intention from Day One, to minimize service work. He said they did not want to be a repair operation, but only wanted to service the vehicles so that they could be sold.

Town Planner Cashell said they were on the 85<sup>th</sup> day since the date of Application Acceptance.

Mr. Malley said he was looking for where in the regulations it said the Board could make the kind of restriction provided by Note 23. Mr. Maynard then asked, if that mattered to Mr. Malley, why didn't he make a motion to reopen. Mr. Hall commented that Mr. Maynard was out of control.

Chairman Russo asked if they would be willing to limit the amount of cars on exterior display to 14. Mr. Maynard responded that this was ridiculous, as he could get 16 with standard spaces.

Town Planner Cashell said the Town could enforce, easily and in a reasonable manner, where the parked vehicles were for sale. He said the site plan showed them as where they would be parked. and parking anywhere else would be a violation.

Chairman Russo said he would be comfortable with a limitation as to the number of cars. Mr. Maynard said he could easily put 20 there, adding that five more for small cars and/or motorcycles should be allowed. He said the spaces could be marked.

Selectman Maddox moved to defer to September 28<sup>th</sup>, 2011. Mr. Maynard asked for the purpose of the deferral. Selectman Maddox said it would allow Town Planner Cashell to prepare a motion to deny. Mr. Cashell cautioned the Board that they were over the time limit, saying he could prepare a draft motion to deny this evening.

Selectman Maddox moved to take a 15-minute break to give Town Planner Cashell time to prepare a draft motion. 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 except for Mr. Hall who abstained, and Chairman Russo declared the motion to have carried unanimously (6–0–1).

Chairman Russo declared a recess at 10:17 p.m., calling the meeting back to order at 10:40 p.m.

Mr. Febonio asked to address the Board. Chairman Russo granted permission. Mr. Febonio said he had had an informal discussion with Mr. Maynard during the recess about changing the display areas in a way that would be more pleasing to the Board.

He said everyone would like to have a sustainable business, and he asked for deferral so that Mr. Maynard could come up with an adjustment to the plan.

Mr. Maynard said the idea being discussed was to use the entire area in the front for display and to use the area in the rear for parking. He said a display vehicle should occupy a typical 8-by-16 space, saying in used-car lots one could not get in without moving the car out. He said if the Board took a position that more than 8-by-16 was needed, every car-dealer site in the town would be in violation. He said granting of a ten-foot right-of-way had taken away from what he could display in front, which cut back on a significant amount of the display.

Chairman Russo asked if Mr. Maynard were asking for an opportunity to come back. Mr. Maynard indicated agreement. Chairman Russo said he did not have a problem with them showing him something like that, saying he could compromise to some extent on what he was looking for, but he needed to see it.

Mr. Hall asked if they were suggesting he would remove the parking in front of the small existing building and use the entire area for display. Mr. Maynard answered in the affirmative. Mr. Hall said he did not feel that was an improvement, saying it would not make the site look less congested.

Mr. Febonio said the thought process was that there would be no concern about drive aisles, as that would just be display area.

Mr. Maynard said he could not make the September 28<sup>th</sup> meeting date, as he would not have time to do a plan. Town Planner Cashell said the next available meeting would be November 9<sup>h</sup>, because October was out for the Law Lecture Series. Mr. Febonio expressed concern about the delay, and members of the Board then suggested the October 5<sup>th</sup> workshop meeting date.

Selectman Maddox moved to defer further action on this matter to the meeting of October 5<sup>th</sup>. Mr. Barnes seconded the motion.

Mr. Hall said he would hope that the members who had voted against approval would indicate that this would be sufficient, rather than just to put it off. He said he would be voting against deferral, otherwise.

Mr. Della-Monica noted he had heard moving the building forward and putting the display behind the building. Mr. Maynard said the abutter absolutely did not want that, as the cars would then be in front of their site, lessening the viability of the buffer.

Mr. van der Veen asked how many cars would be on the site, using 8-by-16-foot spaces. Mr. Maynard said it approached 20 in the front; he then said there would be 20 in front and ten in the building. Mr. Della-Monica referenced Item 4 on Page 1 of the staff report, saying staff had determined that 20 standard-sized vehicles could be displayed on the site. Mr. Maynard noted that certain members of the Board did not agree with that calculation, saying they wanted boxes, but this site did not work that way, as this was not a 90-degree site.

**VOTE:** No further comment being brought forward, Chairman Russo called for a verbal vote on the motion to defer. All members

present voted in favor except for Mr. Hall, who voted in opposition, and Chairman Russo declared the motion to have carried (6-1).

**XII. DESIGN REVIEW PHASE**

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

**XIII. CONCEPTUAL REVIEW ONLY**

No **Conceptual Review Only** items were addressed this evening.

**XIV. NEW BUSINESS/PUBLIC HEARINGS**

No **New Business** items were addressed this evening.

**XV. OTHER BUSINESS**

Town Planner Cashell referenced Kimball Webster's History of Hudson; he then provided DVD copies of that document, as obtained from the Google Docs Website.

**XVI. ADJOURNMENT**

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

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

Chairman Russo then declared the meeting to be adjourned at 10:53 p.m.

Date: September 19, 2011

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

J. Bradford Seabury, Recorder

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

These minutes were accepted as amended following review at the 09-28-11 Planning Board meeting.

**-- FILE COPY --**

**HUDSON PLANNING BOARD Meeting Minutes  
September 14, 2011**

**Page 22**

The following changes were made to the draft copy in accordance with review comments at the Planning Board meeting of 09-28-11:

Page 6, next-to-last paragraph, next-to-last line — changed “convention” to “conventional plan.”

Page 9, 7<sup>th</sup> paragraph from the top, 1<sup>st</sup> line—changed “Mr. Della-Monica noted that the road would be curbed, asking if parking on the road would be allowed” to read “Mr. Della-Monica asked if the road would be mountable-curbed, so that people could park on the grass.”

Page 9, 9<sup>th</sup> paragraph, added “a chamber before” so that the clause now reads “so that the solids would go into a chamber before the pump chamber.”

Page 15, 4<sup>th</sup> paragraph from bottom—added “if the Town did not want this, then” so that the passage now reads “but the Town had regulations—and, if the Town did not want this, then the Town should have a rule saying they could not have that much stuff.’

Page 17, 4<sup>th</sup> paragraph from bottom—changed the “[unfinished]” sentence to read “If the Town were allowing it in one place, he argued, the Town should not prohibit it in another.”

Page 20, 2<sup>nd</sup> paragraph from bottom—changed “side” to “site” so that the clause now reads “but this site did not work that way”

Page 9, 4<sup>th</sup> paragraph from bottom, next-to-last line—changed “with no pressure on the Town” to read “with no inference of pressure from or by the Town”

Page 12, last paragraph, 2<sup>nd</sup> line, 1<sup>st</sup> word—changed “bee” to “been” so that the text reads “the property had been cleaned up”

Page 14, 1<sup>st</sup> full paragraph, 4<sup>th</sup> line, changed mistyped “ifr” to “if.”

Page 16, 2<sup>nd</sup> full paragraph, last line—corrected mistyped “aproval” to be “approval.”

Page 17, 3<sup>rd</sup> text paragraph, next-to-last line—added “said” so that sentence reads “Town Planner Cashell said that had been Internet sales.” Also removed extraneous apostrophe following that passage.