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HUDSON PLANNING BOARD
MEETING MINUTES
September 9, 2009

I. CALL TO ORDER

Chairman Russo called this Planning Board meeting to order at 7:07 p.m. on Wednesday, September 9, 2009, in the Community Development meeting room in the Hudson Town Hall basement.

II. PLEDGE OF ALLEGIANCE

Chairman Russo led the assembly in pledging allegiance to the Flag of the United States of America.

III. ROLL CALL

Chairman Russo asked Ms. Quinlan to serve as Acting Secretary Stewart to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members Present:	James Barnes, Suellen Quinlan, Vincent Russo, and Richard Maddox (Selectmen's Representative).
Members Absent:	George Hall (excused), Tierney Chadwick, and Terry Stewart (excused).
Alternates Present:	Brion Carroll, Tim Malley, Stuart Schneiderman, and Ken Massey (Selectmen's Representative Alternate).
Alternates Absent:	None. (All present.)
Staff Present:	Town Planner John Cashell.
Recorder:	J. Bradford Seabury.

IV. SEATING OF ALTERNATES AND ANNOUNCEMENTS

Chairman Russo seated Mr. Carroll in place of Mr. Hall, Mr. Malley in place of Ms. Tierney, and Mr. Schneiderman in place of Ms. Stewart.

V. MINUTES OF PREVIOUS MEETING(S)

Chairman Russo addressed the minutes for the meeting of 08-12-09, asking if there were any changes or corrections. None being brought forward, Mr. Carroll moved to accept the minutes as submitted; Mr. Malley 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 asked that the Board be prepared to review the minutes for the 09-24-08 and 05-06-09 meetings at the next meeting.

VI. CORRESPONDENCE

Chairman Russo noted that items of correspondence received in tonight's handouts would be taken up in conjunction with the associated cases, with any remaining items being taken up under **Other Business** at the end of the meeting.

VII. PERFORMANCE SURETIES

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

VIII. ZBA INPUT ONLY

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

IX. DESIGN REVIEW PHASE

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

X. OLD BUSINESS

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

XI. NEW BUSINESS/PUBLIC HEARINGS

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

XII. OLD BUSINESS

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

XIII. OTHER BUSINESS

A. Second Driveway Request – Lashua
12 Hartson Circle – Map 154/Lot 015

***Reference*: memo dated 04-20-09 from Gary Webster, Acting Town Engineer, to John Cashell.**

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

Town Planner Cashell said Mr. Lashua had asked the Board to consider the application for a second driveway at 12 Hartson Circle. He noted that there as a letter from Ms. Lashua in the meeting packet. He noted that Mr. Lashua was asking the Board to further consider the application that had previously been withdrawn a couple months ago.

Selectman Massey called for a point of order, saying he thought the Board had voted on August 12th to deny the second driveway, and his understanding was that the applicant should have a right to present, as he had not been here that evening. He said it was not a new application but the Board was simply being asked to look at new evidence that might have led to a different decision at the earlier meeting.

Ms. Quinlan said what the Board would be hearing was the applicant's argument that his driveway was in fact grandfathered; she said it might be good to hear from the applicant and any interested abutters, but that she would be uncomfortable about making a decision on the issue of grandfathering without further input from the Town Attorney. She said the issue was whether or not the driveway had existed at that time.

Mr. Carroll concurred, saying the Board should allow additional evidence to be presented. He said he would like not to hear from people who were not present on or before 1982—and only about the driveway, not about other incidental things.

Ms. Quinlan said the question of whether there had been increased use of the second driveway might be significant, but the Board should hear from the Town Attorney on relevant case law.

Mr. Carroll said he did not know what that meant. Ms. Quinlan said "grandfathered" had a legal definition, determined by case law, and what the Board needed to do was determine if the driveway existed prior to 1982—and, if so, what its use was. She said the Board knew the applicant had a garage and was refurbishing vehicles back there, and should inquire what the driveway, if it existed, was used for. She then added that her present understanding was that it had been a dirt path that did not have any use.

Selectman Massey said he was still asking for a point of order, saying he did not believe the Board should be accepting an application, as the issue was whether there was additional information to be presented to the Board.

Mr. Carroll asked if this would be setting precedent such that something denied at one meeting could be brought back to a subsequent meeting, questioning what this

implied for other decisions made in the past. Chairman Russo said he was concerned about that, as well.

Ms. Quinlan said she would like to defer this discussion until the Board had an opportunity to hear from Atty. Lefevre. She noted that this issue was in litigation, as an abutter had filed a law suit. She said what the Town decided on this present matter might have an impact on that lawsuit. She said she understood that the Board had conflicting information, as Atty. Lefevre had said they could come in to discus grandfathering.

Chairman Russo questioned what application had been denied—stating that the decision was on the issue of whether the driveway in question had existed at the time or was already grandfathered, and had nothing to do with the application that had been withdrawn.

Ms. Quinlan noted that the previous matter had been brought in because of a zoning violation.

Selectman Maddox said the motion that evening was to send a letter informing the property owner to comply with the driveway regulations, which would be to submit an application for a second driveway, which he had done, so Selectman Maddox suggested that the Board should accept that application and move forward. He contended that the civil litigation matter had nothing to do with the Town.

Mr. Carroll expressed agreement, saying the Board should be looking at a new application, in that it had come back after being withdrawn.

Mr. Barnes noted that the staff report said the applicant had the right to present additional evidence, adding that he felt the Board should move ahead with that. Chairman Russo said that had to do with the grandfathering, which had already been denied; he said this was a new application, which was complete.

Town Planner Cashell said the only logical explanation of where the Board was today was what had been described by Selectman Maddox: the application had been withdrawn, and the Board had then made a decision concerning an appeal of a decision made by the Acting Town Engineer.

Mr. Carroll moved to accept the application for the second driveway at 12 Hartson Circle (Map 154, Lot 015) Selectman Maddox seconded the motion.

Ms. Quinlan said she was not voting on a final resolution until she had talked with Town Counsel.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor except for Mr. Schneiderman who abstained, and Chairman Russo declared the motion to have carried unanimously (6–0–1).

Chairman Russo asked if the applicant wished to make a presentation to the Board.

Mr. Michael Lashua, 122 Hartson Circle, said he did not know how this dog and pony show had got this far, saying he had people, neighbors and friends, who knew the driveway was there. He said he wished to say something about a statement that Mr. Watkins, an abutter, had made. He said Mr. Watkins had said the second driveway never existed—adding that he had met Mr. Watkins when he moved in, when his boat was parked there—stating that Mr. Watkins had been standing on the structure at that time, in June of 1981, He said he had made improvements on the property, building a chimney in 1982, noting that the inspector had parked on that structure at the time of inspection—adding that no one had said anything about it, then or since, but the inspector had said it looked as though it had been there forever.

He said he had improved the structure and had come in and talked with Gary Webster, to ask if he needed a permit, and Mr. Webster had looked at it and said nothing was needed, as he was making an improvement.

Mr. Lashua presented a stack of photographs, which he said were pulled off a video, showing the structure in 1981, with these photographs being passed around and looked at by the members of the Board.

Mr. Lashua said this was a pre-existing driveway.

Selectman Maddox said all the vehicles in the photographs were parked in a parking area, asking if he were seeing the landscaping timbers in the photographs. Mr. Lashua said he had subsequently improved the area, as he had been improving the property for the past 19 years. He said his truck went down the driveway at night and came up in the morning.

Selectman Maddox said he had been told by someone who lived on the street that there had been a parking area, with cars regularly parked there, but there was no driveway going to the back of the lot, until Mr. Lashua had added the addition onto the building. Mr. Lashua said it had always been there, adding that it looked similar to his neighbor's driveway, where he parked daily, with grass growing up through it. selectman Maddox said he had been told there were timbers that had blocked off a parking area. Mr. Lashua demurred, saying He said they had stopped at (indecipherable).

Mr. Carroll noted that there were three affidavits that had relevance, saying the first three spoke of 1981, 1982, and prior—but all the others were null and useless, as they spoke of later dates. He said it was well-intended to say that there was use through the 1990s, but it was not relevant to the issue before the Board.

Ms. Quinlan asked if there were any home occupation on this property. Mr. Lashua said there was, approved in 1982, to cut hair. Ms. Quinlan asked if that were no longer done. Mr. Lashua said it was still done, but not so much as before. Ms. Quinlan asked about the car repairs. He said that was a hobby. Ms. Quinlan asked how many vehicles were on the property; Mr. Lashua answered, "Three." Ms. Quinlan asked what the largest number of vehicles were; Mr. Lashua answered, "Six." Ms. Quinlan asked if they were registered. Mr. Lashua answered in the affirmative. Ms. Quinlan asked how long they had been there; Mr. Lashua said he had not got to some for 16 years, again confirming that they were currently registered. Ms. Quinlan asked what he did with the

proceeds from selling them; Mr. Lashua said it was for the education of his children. Ms. Quinlan asked how many cars had been sold; Mr. Lashua answered, “Maybe one.” Ms. Quinlan then asked if the refurbishing of antique cars and then selling them was a business, requiring a special permit. Town Planner Cashell said it was a labor of love, a hobby, not a business that required a special permit. Ms. Quinlan said she recalled someone coming in before a different Board, which had to take some action because of car repair work taking place on the property; she then asked Town Planner Cashell to check into that.

Ms. Quinlan noted that the Board had seen some photos, showing eight to ten cars on the property, after the garage was built. Town Planner Cashell said the garage still was not built. Ms. Quinlan said this was an extensive garage, adding that she found it hard to believe that the proceeds from selling one car would finance children’s education. She said the Board needed information as to what activities were taking place on the property, including cutting hair, selling cars, etc.

Mr. Carroll said Section §193-7 of the site plan regulations defined driveway as "any improved or unimproved area serving as an area of access, entrance, exit or approach from any highway to any parcel of land, regardless of public or private ownership"—noting that it did not site any specific depth. He expressed doubt that there was anything in the regulations pertaining to the distance, but only to the cutaway providing access.

Selectman Maddox said the property owner came before the ZBA in 1982 for a hair-cutting salon, noting that customer parking would be restricted to two vehicles on the parking area at the front. Before the addition was put on, he continued, the property owners would have driven back there from the first driveway, which went straight through.

Mr. Barnes said he wanted to respond to Mr. Carroll’s concern, saying a long driveway would be needed for a deep lot—adding that he was not aware of anything restricting the length of the driveway.

Mr. Carroll said he considered a driveway as a curbcut off of a road, given that it was going back to something, so the question was whether it had been a parking lot rather than a driveway. He said he did not know if the depth of the driveway had any relevance to the issue of whether it was a driveway or not.

Mr. Schneiderman said his reading of 193-4—was that it would be unlawful to construct or alter in any way that substantially affected the size—so he felt the size was covered, in making the driveway larger.

Chairman Russo said he wanted to comment on the issue raised by Ms. Quinlan about car repairs, noting that the Zoning Ordinance said a vehicle for sale had to be back 15 feet from the lot line but there were no restrictions as to how many were being sold. After so many were sold, he continued, it became an issue with the state, but he did not know if selling a car constituted a business. He said that was not a purview of this Board. Ms. Quinlan said she wanted to know what sort of activities were going on on this property, noting that the ordinance said that no one could have more than two unregistered vehicles; she then asked Town Planner Cashell to determine how many

unregistered vehicles were at 12 Hartson Circle. Mr. Cashell said that issue had been addressed by the Zoning Administrator, adding that all of the vehicles on Mr. Lashua's property were now registered.

Mr. Cashell said any access coming onto the property was a driveway, saying what the regulations regulated was whether or not a culvert was needed, whether sight distance requirements were met, etc. If an area of access was not needed, he said, it would not be a driveway. He then used a pointer to illustrate what he meant on the aerial view of the property, saying the Board's regulations only pertained to the right-of-way area from the pavement to the driveway, noting that the Town's right-of-way was 50 feet, measured 25 feet on either side of the middle of the roadway. He said the property-owners did not physically own the right-of-way beyond the pavement.

Mr. Carroll noted that the hand-drawn drawing spoke to the fact that the driveway did in fact encroach on the setback from the side lot line; he said the actual grandfathering of this could not mean that the driveway could be in the setback of an abutter, unless the abutter allowed that. Town Planner Cashell said Mr. Carroll was totally wrong, saying the side setback regulation was not adopted until 1997.

Mr. Malley asked what the classification was for changing a parking lot to a driveway. Chairman Russo said there were definitions, but they might not help. Town Planner Cashell said some people might consider it as a parking lot, but really it was a driveway, as it was used for ingress and egress between the roadway and their property. He said parking a car in a designated area where one was accustomed to parking a car was a driveway. Mr. Malley suggested that the applicant, in talking to the ZBA, had said he had a really wide driveway. Mr. Lashua expressed agreement.

Town Planner Cashell referenced the aerial photograph, asking if there were a reason why the new pavement had stopped and not gone out to the roadway. Mr. Lashua said he had a contractor who had to saw cut the main road back about three inches when putting in the other driveway, saying that he really had not wanted to get into that for this driveway because of the extra cost, and adding that he had not been looking for anything fancy.

Town Planner Cashell noted that the pavement of Hartson Circle was the same shade as the portion of the parking area, and he asked when the pavement for the main driveway had been put in. Mr. Lashua said it had been about 1984 or 1985, saying he had left the asphalt attached to the road.

Town Planner Cashell referenced Mr. Schneiderman's reference that the regulations restricted widening of a driveway. Mr. Schneiderman demurred, saying he had been referring to the size of the driveway. Town Planner Cashell said the Board did not have the authority to regulate the driveway outside of the right-of-way area, noting that Mr. Lashua had said it would cost extra money to alter the connection, and the integrity of the structure would have to be maintained. Mr. Malley asked if what was meant was that the Town did not care what was done after the driveway extended to or beyond 20 feet. Town Planner Cashell answered that some communities restricted the amount of paved surface, but Hudson did not.

Mr. Carroll asked if any of certain persons referenced by Mr. Lashua's affidavits were present. Mr. Lashua said Mr. Daviney and Mr. Whitmore were present.

Mr. Barnes asked about the purpose of the new driveway, with Mr. Lashua confirming it was to access the rear of the property. Mr. Barnes asked if it were still being used for the parking for the home business. Mr. Lashua said they could park in the driveway or in the parking area, but it was very sporadic, amounting to one or two persons a week. He noted that he himself sometimes parked in the front driveway, sometimes in the back.

Ms. Quinlan noted that the aerial picture now on display was different from the other, asking if there were any way of identifying the dates of the pictures—noting that there was a 2009 date on the picture, but she saw 16 cars and a trailer Chairman Russo interrupted to note that the Zoning Administrator was working with the applicant on this matter, and he asked what she was driving at. Ms. Quinlan said that anything over 13,000 pounds was prohibited. Chairman Russo said that was a zoning issue, that needed to be taken up by the Zoning Administrator. Ms. Quinlan said she did not think the Board should be approving anything that was in violation, saying she was not comfortable about approving a second driveway, adding she felt the reason was to tie in with Town Planner Cashell's assertion that it was not a driveway if not tied in, and it clearly was.

Mr. Barnes said the applicant was here to talk about a driveway, not to talk about vehicles parked on the property.

Mr. Lashua said the picture was about three years old, and he began to describe probable reasons for trucks being there as belonging to subcontractors.

Mr. Carroll referenced the first three affidavits, noting that Mr. Lederwitcz was not present. Chairman Russo asked how Mr. Lashua knew of Mr. Lederwitz. Mr. Lashua said that Mr. Ledderwitz had been one of his first customers, when he started his business. He confirmed that he still had a business relationship.

Mr. Al Deviney, 155 Mountain View Road, [indecipherable] NH, from Manchester Paving, appeared before the Board. Mr. Carroll referenced his affidavit, asking if he had done other paving in that area. Mr. Deviney said he had done paving in that area long before he met Mr. Lashua, saying he knew the road cut and tarred surface into the property in the same location as the second driveway had been there. Mr. Deviney said it was of that vintage, saying it had been there forever.

Selectman Maddox said that Mr. Deviney was saying that the pavement of the parking area was of the same vintage; Mr. Deviney concurred. Selectman Maddox asked how far in it went; Mr. Deviney said it went in, but he could not say exactly how far it went. He said it went in, but he could not remember how much of it he had overlaid. He said it went in quite a ways, but he could not tell the exact number of feet, but it had been there forever. He confirmed that he had been in that neighborhood before. Chairman Russo noted that Mr. Deviney's memory seemed to be not so certain about recent things, but he was testifying that it existed back in 1981. Mr. Deviney said all he was saying was that there was hot top going down into that driveway, but he could not say how far, adding that he could not say how far a driveway he had put in

yesterday went, but it did go in quite a ways, and it had been there forever. Chairman Russo asked if Mr. Deviney had been in that area previously; Mr. Deviney responded in the affirmative. Chairman Russo asked if Mr. Deviney were saying the parking area was original with the roadway. Mr. Deviney said he was doing that.

Mr. Carl Whitmore, 42 [indecipherable] Road, Nashua, said he knew it was there as his father used to drive down there to drink beer, noting that the driveway had been dirt with stumps down at the bottom. He said it went down about 30 feet, and every time the truck dumped wood chips, he and Rick had to push the truck back up the grade to get over the bump. He said he had graduated in 1982. Town Planner Cashell asked Mr. Whitmore to point out on the aerial view. Mr. Whitmore did so, noting that there had only been a little spot at the back, where the truck turned around and came back up.

Chairman Russo restated that Mr., Lashua was here submitting a request for approval of a second driveway, and this Board had to determine whether a waiver should be granted.

Mr. Lashua said he had another witness, Ms. Donna Thorn. Ms. Donna Thorn, 12 Grouse Lane, Litchfield, NH, said she had been delivering the mail in 1976, and her car had broken down prior to Mr. Lashua moving in, and she had parked in that area so that Mr. Lashua could fix her car, in the 1980s, and he had used that driveway to get down to his tool shed.

Mr. Carroll said he confirmed from her testimony that she had seen the driveway in 1982. He then asked if she remembered seeing the driveway prior to 1982. Ms. Thorn said it had always been there, as there had been a shed down there, and there had always been two driveways, so she had wondered which one to go down.

Mr. Barnes expressed a belief that there should be a public hearing.

Selectman Maddox said the applicant was requesting a second driveway, hanging everything on the grandfathering issue, but had not presented any layout.

Ms. Quinlan said the Planning Board had written the zoning ordinances, and she was troubled for the Board to be approving a second driveway.

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

Ms. Jeanne Leblanc, 35 Sullivan Road, said she had thought of a couple things since the last meeting. She noted that Mr. Lashua had testified that he applied for something in 2003 but was told he did not need it. Chairman Russo said there was a requirement to redo a driveway. Town Planner Cashell said a cautious homeowner might believe a permit was needed for just about anything. Chairman Russo asked if a permit were needed for redoing the driveway. Town Planner Cashell said it would be needed if it was disturbing the connection to the roadway but not if just repaving the driveway.

Ms. Leblanc noted that she had submitted two colored pictures from the DPW. Chairman Russo interrupted to say that what the Board was discussing was whether

Mr. Lashua should be granted a second driveway. Ms. Leblanc asked what the reason was for the new driveway. Chairman Russo read aloud from the application, which said a second driveway had existed prior to 1982 and he needed access to the rear of the property. Chairman Russo said the Board was really not dealing with the grandfathering issue, but was still moving forward. Ms. Leblanc asked what the hardship was. Chairman Russo said the applicant stated that he needed access to the rear of his property.

Mr. Barnes interrupted to request that other members of the audience take their conversations outside.

Ms. Leblanc said all of the abutters had more of a hardship with the second driveway, saying Mr. Lashua had created his own hardship by putting the house addition on, blocking his original driveway. She noted that Town Planner Cashell had said the Town Attorney had said they could keep coming back as many times as they wanted; she then asked if there would be a determination at some point. Town Planner Cashell said he took exception to Ms. Leblanc saying constantly he had said something that he had not said, adding that he absolutely did not tell her that the applicant could come before the Planning Board as many times as he wanted to. He said he took exemption to the number of times she had lied to the Planning Board about what he had said to her. Chairman Russo stopped Mr. Cashell at that point, and Ms. Leblanc said next time she would have someone with her.

Mr. Carroll said Mr. Lashua was coming back for different reasons, and a different purpose was being provided, noting that this was a he-said/she-said syndrome, noting that Mr. Lashua had always thought he had a second driveway. Given that the hardship was relevant, and that the route did fit, he said, the Board would vote based on that evidence. If he felt that there was something there in 1982, he said, he would vote in favor, noting that there was different evidence before the Board.

Ms. LeBlanc asked if she were allowed to submit something to the Board. Chairman Russo expressed agreement. Ms. Leblanc introduced Mr. John Watkins, an abutter.

Mr. John Watkins, 10 Hartson Circle, said he had a letter from the original owner, saying he had made no changes from the time he moved in until he left in 1975. He then read aloud the letter from Mr. Robert E. Sargent, saying the original single driveway was still there in 1985, with no fill added to the back yard. Mr. Carroll then read the letter himself, for clarification, stating that he could not tell if the writer were saying he did not add a second driveway. Mr. Watkins said the letter-writer was saying that he did not add a second driveway, noting that the letter referred to a single driveway. Mr. Carroll expressed concern about the ambiguity of the letter, which was then passed around to other members of the Board for review.

Mr. Watkins said the aerial 1998 view showed that there was a single driveway, with no cutout at the location of the second driveway. Mr. Watkins said there came a time to use logic, and logic would question why have a second driveway when there was a driveway already going down to the rear. He noted that he had lived there in 1975, saying the other people had a little parking area that was put in about 1986, and the second driveway was put in about 2003. Mr. Carroll asked if he were saying that the curbcut was made while the second owner after Mr. Sagent lived there. Mr. Watkins

said there was no curb there, adding that they had parked cars there but he did not remember if they had cut it out or paved it.

Ms. Victoria Lashua, 12 Hartson Circle, identifying herself as Mr. Lashua's wife, referenced the colored photos that Ms. Leblanc had provided, saying the driveway looked different widths at different times in the year—wider in the winter than in the summer. She displayed a ;photograph of the property from when they had moved in, in 1991, saying the asphalt and telephone pole were the same in the different pictures, but the area in which cars had been parked had been ugly; she said they were showing improvement, noting that this now had grass. She said she was asking the Board to look at all the evidence, saying she probably could have gotten a letter from the previous owner, but she wanted to go back to the original picture, saying the original asphalt was still in front of her house. She then displayed photos taken off her computer, noting that there was a car parked there, with stones and pebbles, which she said was her neighbor's driveway.

Mr. Mark Vanderham, 34 Mulpern Street, Fitchburg MA, saying had had known Mr. Lashua since 2001 or 2003, and the driveway had been there since he first met him, saying they shared many of the same hobbies. He said the old driveway was just all weeds and grown in and was hard to go up and down, when one tried to bring cars up or down. He said Mr. Lashua's neighbors had used it to pump out their septic system, saying Mr. Lashua had said he had no problem with that. He referred to a keystone driveway right next to the property, adding that there were other second driveways all over town. Selectman Maddox called a point of order, saying this was irrelevant.

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

Selectman Maddox asked if Mr. Whittemore could come back to the lectern. Town Planner Cashell noted that Mr. Whittemore had left the meeting room.

Mr. Carroll noted that there were two things before the Board, one being a request for judgment and the other a request for a wavier for a second driveway for two reasons, to get access to the back and because of grandfathering. If he were to disapprove it, he continued, it would be because for one, he did not believe the grandfathering, and two, he did not believe it was a hardship.

Ms. Quinlan said she thought a couple of the Lashua's witnesses were very credible, adding that she did not think the length of the driveway was an issue—but she had an issue with the access, noting that she would like access to her chicken coop but was not going to pave a driveway back there. She noted that she had a friend who refurbished old cars, noting that he had come into scrutiny from the Zoning Administrator for that purpose, and she felt the Board needed a clear understanding that what was being done there was appropriate, as there seemed to be two home occupations going on, with only one being permitted.

Selectman Maddox said there was testimony on both sides, saying he felt there was not a driveway in 1982, and he felt the Board should reaffirm what it had said originally, adding that the property owner could just alter his existing driveway and use that.

Chairman Russo declared a break at 8:57 p.m., calling the meeting back to order at 9:14 p.m.

Chairman Russo noted that the applicant wished to speak and he granted approval. Mr. Lashua said he wanted to clear the air on the three vehicles he had not touched in 18 years, saying he might never get to them, but he did not do any business on the property, but his wife did.

Mr. Carroll noted that Mr. Whitmore had said he had occasion to be there with his father, dumping wood, with stumps in the roadway—which latter statement make Mr. Carroll feel that it was in fact the second driveway that was being referenced.

Mr. Barnes asked Mr. Lashua about the layout in the hand-drawn sketch, asking if the width were designated as 15 feet. Mr. Lashua said it was 15 feet from the property line, about 40 feet down, adding that the 15-foot line on the drawing was the setback line, and adding further that the paved area was about five feet from the property line. Mr. Barnes asked if the paved driveway were in the same location as the graveled driveway had been. Mr. Lashua responded in the affirmative.

Mr. Tim Remp, 14 Hartson Circle, apologized for arriving late. He said there as a paved roadway starting mere inches from his property line, going 200-plus feet down along the side of his property. He said it was affecting his property and did not belong there, adding that it could be moved. He said he could not use the porch on that side because of vehicles going up and down the driveway, saying vehicles going up and down that driveway could be heard throughout his house, even with the doors and windows shut tight.

Mr. Carroll asked Mr., Lashua what Mr. Remp meant by vehicles, asking how many vehicles Mr. Lashua used. Mr. Lashua said he had a work truck, noting that Mr. Remp; had said the same thing at the last meeting, but he had gone home and found Mr. Remp's windows up, adding that the Remps did not use their deck because they were up at their summer camp all the time, adding that the Remps did not have any grass and threw stones on his property.

Mr. Malley asked if the driveway did not come off the street, but came over to the side, whether that would be in violation. Ms. Quinlan said the driveway was in the side setback, but the Board had not addressed that. Chairman Russo said he believed he had heard opinions both ways.

Mr. Carroll argued that, if the driveway was grandfathered because it existed prior to 1982, then the encroachment would also be grandfathered. Ms. Quinlan confirmed that the setback ordinance was approved in 1987.

Mr. Lashua said he had purchased property when the Town and the assessor knew about it, questioning if he were liable. Chairman Russo said he needed to talk to an attorney about that.

Ms. Quinlan said what the Board was looking at was new pavement, which had been laid down recently, extending all the way to the end of the property. She said it was problematic.

Mr. Al Deviney, Manchester Paving, said he had paved the driveway and it was not 200 or 300 feet but was 75 to 100 feet long, about ten feet wide, or nine feet wide in spots. He said the pavement was just to make things easier in the winter, and it was just a replacement.

Mr. Carroll moved to approve the application for a second driveway at 12 Hartson Circle, Map 154/Lot 015, in accordance with the following reason: The applicant has proven to the Planning Board, through the submission of three affidavits, that there is sufficient evidence that the southernmost driveway (i.e., the second of two driveways that pertains specifically to this application) at 12 Hartson Circle, Map 154/Lot 015, predates the Planning Board's 1-20-1982 adoption of its Driveway regulations—noting that the said regulations represented the first documentation that residential dwellings are restricted to one driveway each without a waiver for same being granted by the Planning Board.

No second being brought forward, Chairman Russo declared the motion to have failed.

Ms. Quinlan moved to uphold the August 12, 2009, vote of the Planning Board, which in effect denied the property owner of 12 Hartson Circle, Map 154/Lot 015, from having a second driveway at said property, noting that the said property owner was previously notified of the Planning Board's decision on this matter in accordance with the provisions set forth in the New Hampshire RSAs, as well as the Planning Board's Driveway regulations.

Mr. Schneiderman called for a point of order, asking if Ms. Quinlan needed to say "on this matter." Mr. Carroll and Selectman Maddox said she had done so.

Mr. Barnes seconded the motion.

Mr. Barnes stated that, after listening to all of the input, the Board was faced with a decision, with some people saying it was there and some saying it was not. He said he had come to the conclusion that there was not a driveway there in 1982, and it was probably constructed after the original owner sold the property in 1985, but before Mr. Lashua moved in, in 1991. Since it was not there before 1982, he added, he could not say it was grandfathered.

Mr. Carroll said what had caused him to make a motion to approve had been Mr. Whitemore's testimony, dating to some time before 1982. He said he believed there was something there in 1982.

Mr. Schneiderman said he believed there was something there before 1982, but the evidence probably proved that it had not been a driveway.

Ms. Quinlan said she was going off the old plot plans, which showed only the one driveway; she said she did not know if driving a truck over stumps was sufficient to constitute a driveway, saying it was not something that the individual who improved the driveway and enhanced the length and probably the width for twice the original length, with an impediment on at least one abutter, with nose and runoff and other impact on another. She said the Board had always been conservative in requiring that there truly

had to be a hardship to warrant granting of a second driveway, and access to the back was not sufficient.

Chairman Russo said he was probably going to vote against this motion, as he believed the Board probably in the past had granted second driveways for no more reason than to provide access. He said everyone could have an opinion, but the final outcome of this vote should show that all the members had really toiled with it.

Selectman Maddox said he agreed that the Board had granted such waivers in the past, but this request was based on the question of whether it was grandfathered, adding that there were other means of getting to the back of the property.

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

Mr. Lashua asked what all this meant. Chairman Russo stated the his request for a second driveway had been denied. Mr. Lashua asked if it would be all right if he removed the pavement and returned to the dirt pathway. Chairman Russo said he could not answer that. Mr. Lashua asked where he needed to go now, saying this was crazy, as half the town had stuff going on. Chairman Russo stopped him, saying the matter was no longer before the Board.

Mr. Watkins [?] asked why someone had to keep screwing with people who were trying to do what was right and improve their property—declaring that this was nonsense.

B. Update on "The Workforce Housing Law" – SB 342 – Chapter 299, Laws of 2008.

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

Town Planner Cashell said he had met with Kerry Diers, saying he felt it was much more complicated than he believed the authors had believed it would be, in trying to implement it at the local level. He discussed a probable need to develop an ordinance.

Mr. Carroll said he understood the example, and had also read Attachment B, the Rockingham ordinance, but he could not figure out what the municipal mean was. He discussed the formula, saying the dollar value between what the developer spent and the purchaser paid seemed to be what the Town assumed; he then asked if that meant the Town had to put in the difference, as a lien on the property, and he asked if the Town would be responsible for putting in that dollar amount.

Mr. Barnes said his interpretation was that the Town was not putting in any money, but when someone purchased the house it must be maintained as affordable housing and could not be flipped, so there was an attempt to put some kind of cap control on the value.

Mr. Carroll hypothesized a house at $100,000, with the value set at $80,000, asking if the developer walked away with $100,000 or $80,000. Mr. Barnes said the house would have to be developed as an $80,000 house, saying the developer would have to build a smaller house, or put in two bedrooms instead of three, etc.

Mr. Carroll said he did not understand, if the buyer's price was equal to the market price, there was no delta, and hence no mean assigned to the Town. He read from the text, saying he did not understand how the developer walked away with the full market value unless someone gave him the delta. Town Planner Cashell said the lien had to do with capping the potential profit margins. Mr. Carroll said he understood, but there was a fair market value to the house, and it was too high, saying he would like more information; he then asked if there were a fund.

Chairman Russo said the city of Nashua had a lot of affordable housing, which was owned by the Nashua Housing Authority. He said he did not know how the government could say that someone owning a property must sell it for "X" amount of dollars. He said the only way this would be feasible, in his opinion, would be if Hudson were required to provide affordable housing by owning the housing and renting it.

Ms. Quinlan said the Town was not required to provide housing, but merely to provide developers with the opportunity to build affordable housing. She hypothesized an example of allowing more density for smaller homes, which could be sold for affordable housing units, saying the Town would have to give the builders the opportunity to do that. If developers came with a smaller parcel, she suggested, and said they wanted to build smaller units, that would be affordable—noting, however, that there had not been such requests lately.

Mr. Barnes expressed concern about the Planning Board's role, saying the Town could have some sort of commission, but the Planning Board did not want to get involved in that sort of thing.

Mr. Schneiderman said the assurance of continued affordability worked such that, if a unit sold as affordable housing was worth $200,000, it needed to be sold for $160,000. He referenced the Consumer Affordability Index as a driving force, describing an example of how the restrictions would work as the index values increased.

Mr. Carroll said the CPI was the inflation driver, saying it actually was the opposite of that, since the house value could only go up in accordance with the CPI. He said this was a listing of ways the Town could let developers brought it, but he liked Ms. Quinlan's idea of building smaller houses better. He then described another example, based on the income of the people living in the house, saying the developers would not be allowed to build a house priced higher than the given value, but the Board might allow grater density. He said the board had to look at regulations that would encourage the developers to do this.

Town Planner Cashell said there were very few people in New Hampshire who really understood this statute, saying this statute was not created in New Hampshire. He said this pertained to Massachusetts, where nonprofit developments were built with grants. He said the statue was now in the books, however, and Hudson and all communities

had to comply, adding that it was still in the air, but it appeared that Hudson would have to fashion an ordinance similar to the one developed for Rockingham.

Mr. Carroll suggested that, if Hudson allowed certain things in certain zoning districts, that the developers would have the ability to do it, if the land value were proportioned to the housing value. He suggested finding a genie that understood this and could provide guidance.

Mr. Schneiderman said he wanted to correct himself on the lien thing; he then revised his previous example, saying the flippers would have to give the excess profit to the Town. He said a density bonus would increase the capability.

Mr. Carroll demurred, saying the statute did not say that, but instead said the purchasers could not sell the property for more than the CPI-determined value. Mr. Schneiderman said the Town could not stop the purchaser from selling the property at a higher price, but would take the difference.

Ms. Quinlan said this legislation was primarily communism, as it did not allow people to buy and own property and sell it for whatever they could get; she said the Board needed to discuss this with Kerry Diers, saying the Town could not tell people what they could sell the property for.

Town Planner Cashell said the statute was all voluntary, saying developers would have to make a profit or go out of business. He said there were many ways to create the housing that people wanted, saying many houses were provided below the median value. He said it was likely that the Planning Board would never see such a request, as there were so many opportunities to make a profit without getting caught up in this legislation.

Selectman Maddox said this was not communism but socialism; he said the Town of Hudson provided workforce housing and most likely already met the goal, so he saw no sense in trying to put this on the ballot when only two or three people could understand it and the Town already met it. If Hudson were already meeting the goals, he said, there was no need for the Town to chase its tail. He expressed doubt that anyone could explain to the voters how this would work. He then moved for staff to continue working with Nashua Regional Planning Commission staff to show that Hudson, through its Master Plan and its ordinances, met the intent of workforce housing. Mr. Malley seconded the motion.

Mr. Schneiderman said this voluntary law was capitalism at its finest, as it was a package of financial incentives for builders to come in and voluntarily create affordable housing. He said it was not needed today but might be needed some day. He then stated that it was costing the Town nothing. Chairman Russo demurred, saying costs would go up as the density went up. Mr. Schneiderman said the Town offered services that the Town could afford and the people wanted, saying it would not break the Town if used in a balanced method. He said it was just a tool that would be available if the Town needed it.

Town Planner Cashell said the statute was designed to prevent snob zoning. He noted that the Town of Hudson allowed manufactured housing parks in over half the

town, as well as OSD development, adding that Hudson was not a snobby town and tried to work with the developers.

Mr. Carroll asked that the word "ensure" be used instead of "show." Selectman Maddox expressed objection, saying ensure meant the developer would have to come back.

Ms. Quinlan, a member of the NRPC Executive Board, said own Planner Cashell would get a piece of paper from Kerry Diers showing that the Town of Hudson met the requirements.

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

C. Update on RSA 674:63 – Small Wind Energy Systems – and Model Ordinance.

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

Town Planner Cashell said BACKOS was having trouble with the traffic, and had requested deferral to the next available meeting, which would be November 18th. He noted that the board would be attending the Law Lecture series in October.

Chairman Russo said the Board could not defer something that was not on the agenda.

Ms. Quinlan moved to defer this discussion to the September 23rd meeting. Mr. Carroll seconded the motion.

Mr. Barnes said he was opposed, as there was a little discussion that could be accomplished this evening.

Mr. Schneiderman asked to hear what Mr. Barnes had to say.

VOTE: Chairman Russo then called for a verbal vote on the motion to defer. Mr. Malley Mr. Carroll and Ms. Quinlan present voted in favor except for Selectman Maddox, who voted in opposition, and Chairman Russo declared the motion to have failed (3–4).

Mr. Barnes said the documentation included different ordinances developed in other towns, noting that he had asked for some kind of input from the Zoning Administrator as to whether he was in support—adding that the handout indicated that the Zoning Administrator supported this model ordinance. That being the case, he said, he would like to move to forward this model ordinance to Town Counsel for review and comment. Mr. Schneiderman seconded the motion.

Selectman Maddox said he could not believe that the OEP would put out a model that violated the RSAs, so this would be wasting the Town's money; adding that he would have no problem if Town Planner Cashell confirmed that this had been vetted. Mr. Cashell said this model ordinance was pretty much what all of the communities had been adopting.

Mr. Barnes asked if it were Town Planner Cashell's opinion that there was a need to have the Town Attorney review this. Mr. Cashell said he thought every ordinance had to go through the Town Attorney to go onto the Town Warrant.

Mr. Carroll referenced the 2-hour discussion held earlier this evening about a second driveway, saying he anticipated a lot of controversy from abutters in the future. He expressed concern about seeing such structures sprouting up all over Hudson. Chairman Russo noted that the gentleman who had addressed the Planning Board on this matter a few months ago had made it clear that Hudson did not have much property amenable to this use.

Selectman Maddox said this was an accessory structure, noting that any building site had a 30-day period in which anyone could come in and provide comment to the Building Inspector as to why it should or should not be built. He said there was not sufficient wind speed over a sufficient number of days in the year in Hudson to make these structures economically viable.

Mr. Carroll expressed concern that people living a quarter of a mile away would be seeing these things, adding that these people would not be aware of the proposed structure until it was built.

Ms. Quinlan said the State law allowed this, so they would be built if the Town did not prohibit them.

Selectman Maddox said he did not disagree that notification was fuzzy, at best. He referenced Item 3, saying it could be addressed under **OTHER BUSINESS** on the Planning Board's agenda, so it would be announced on television.

Ms. Quinlan said as long as it complied with the requirements, it should be handled by the Building Inspector.

Mr. Barnes expressed a belief that the regular notification of Building Permits was sufficient notice.

Selectman Massey said he felt the applicants should be required to pay for inserting the Building Permit in two local newspapers. He noted other possible changes for Item 3, as suggested by the Building Inspector.

Mr. Carroll noted that the agenda was published in the HLN and posted at the post office, the Town Library, and Town Hall.

Ms. Quinlan said these were reasons for her motion to defer this.

Mr. Barnes said there was a motion to send it to Town Attorney. Chairman Russo said it probably was not ready, as these changes should be made. Mr. Barnes then withdrew his motion; Mr. Schneiderman withdrew his second.

Ms. Quinlan again moved to defer to September 23rd. Selectman Maddox seconded the motion.

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

Mr. Barnes noted that there had been a request to take action about the tax map updates. He then moved to recommend to the Board of Selectmen the expenditure from the Tax Map Fund, Account #01-0000-1313-000-505, of $350.00 to be used for the exclusive purpose of updating the Town of Hudson's PDF tax map library to include 2008/2009 map changes. Mr. Carroll seconded the motion.

VOTE: Chairman Russo called for a verbal vote. All members vote in favor except for Mr. Schneiderman, who abstained, and Chairman Russo declared the motion to have carried (6–0–1).

Selectman Massey announced that there would be a 9/11 memorial observance at Library Park on Friday, at 10:30 a.m.

Town Planner Cashell noted that he still had registration forms for the Law lecture Series, and he asked if the Board wished to cancel the conflicting meetings, as five members had signed up for the Law Lecture Series.

Ms. Quinlan moved to cancel the meetings of October 14th and 28th, so that the Board members would be able to attend the Law Lecture Series. Mr. Carroll seconded the motion.

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

XIV. ADJOURNMENT

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

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor except for Mr. Schneiderman who abstained, and Chairman Russo declared the motion to have carried (6–0–1).

Chairman Russo then declared the meeting to be adjourned at 10:48 p.m.

Date: February 21, 2010

_____
Vincent Russo, Chairman

J. Bradford Seabury, Recorder

_____
Suellen Quinlan, Acting Secretary

These minutes were accepted as amended following review at the 03-24010 meeting.

The following changes were made during review of these minutes by the members of the Planning Board at the 03-24-10 meeting:

Page 1 — Roll call paragraph was corrected to show which members were not present.

Page 13, next-to-last paragraph, 2nd line — Mistyped "thee" was corrected to "there," so that the sentence reads "Mr. Schneiderman said he believed there was something there before 1982."