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**HUDSON PLANNING BOARD
AUGUST 26, 2009**

I. CALL TO ORDER

Chairman Russo called this Planning Board meeting to order at 7:05 p.m. on Wednesday, August 26, 2009, in the Community Development meeting room in the Hudson Town Hall basement.

II. PLEDGE OF ALLEGIANCE

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

III. ROLL CALL

Chairman Russo asked Mr. Barnes to serve as acting Secretary in the absence of Secretary Stewart and to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

Present: James Barnes, Tierney Chadwick, George Hall, Vincent Russo, Richard Maddox (Selectmen's Representative), and Terry Stewart (arrived at 7:26 p.m.).

Members

Absent: Suellen Quinlan (excused).

Alternates

Present: Brion Carroll, Tim Malley, and Stuart Schneiderman.

Alternates

Absent: Ken Massey (Selectmen's Representative Alternate, excused).

Staff

Present: Town Planner John Cashell.

Recorder: J. Bradford Seabury.

IV. SEATING OF ALTERNATES AND ANNOUNCEMENTS

Chairman Russo seated Mr. Carroll in place of the absent Ms. Quinlan and seated Mr. Schneiderman in place of the tardy Ms. Stewart.

V. MINUTES OF PREVIOUS MEETING(S)

Chairman Russo skipped over the minutes for previous meetings (including the 07-08-9 minutes distributed in the 08-12-09 meeting packet and the 09-24-08 minutes distributed in the 11-12-08 and 03-11-09 meeting packets

VI. CORRESPONDENCE

Chairman Russo noted that items of correspondence received in tonight's handouts would be taken up under **Other Business** at the end of the meeting.

He then announced that he would go directly to the **Old Business** Addendum item.

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. CONCEPTUAL REVIEW ONLY

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

XI. OLD BUSINESS

**A. Flagstone Plaza (Extension)
SP# 05-09**

**Map 222/Lot 014
3 Flagstone Drive**

Purpose of plan: To request a one-year extension of a previously approved proposal to construct an 8,576 ft² building with parking garage. (Previous extension approved on 08-27-08.) Hearing. Deferred Date Specific from the 08-12-09 Planning Board meeting.

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

Mr. Richard Maynard, Professional Engineer, of Maynard & Paquette, Engineering Associates, LLC, appearing before the Board as the engineering representative of the applicant, distributed copies of the plans

Town Planner Cashell noted that he had distributed copies of a legal opinion from the Town Attorney. He noted that he had prepared draft motions both for approval and to go the other way, based on that legal opinion, and he then distributed copies of the latter.

Mr. Maynard said the whole question was whether the RSA applied or not.

Town Planner Cashell said the Board had granted an extension last year, but had not received a site plan for endorsement purposes, nor a Development Agreement, nor had any development occurred on the site. He said the applicant was citing the economy as extenuating circumstances, adding that the Board might want to consider not granting that, since no work has been done and since changes had occurred in the Planning Board's parking requirements. He noted that the approved plan would be nullified if the Board denied the requested extension, meaning that the applicant would have to reapply—adding, however, that the applicant would not have to comply with the new parking requirements if the Board granted the 1-year extension. Mr. Maynard reiterated his belief that the new RSA (SB093) applied, which gave a 3-year window, saying there had been no other reason to expand the 1-year period to 3 years other than the present state of the economy. He expressed hope that the Board would abide by that, if it considered itself business friendly. He then said the designated “restaurant” most likely would be a sub shop or something of that nature, meaning that the parking provided would be sufficient, whereas the Board had doubled or even tripled the parking requirement for restaurants when it went to requiring one parking space for every 100 ft², whether take-out or sit-down in nature. He argued that food-service establishments with drive-up windows or take-out business did not require that much parking, including pizza places, where customers would only be sitting at a table for half an hour or so, and he expressed a belief that the Board “overdid it” in changing the requirements. He then said the Board could re-approve or re-extend the plan subject to a stipulation that any restaurant would have to abide by the new regulations, adding that it was not required that a restaurant go into this retail center.

Town Planner Cashell said he had discussed this issue with Atty. Buckley, who had been adamant that SB093 did not apply because there was no recorded plan and no substantial development. Mr. Maynard said that clearly was not the spirit and intent of why the Legislature passed SB093.

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 declared the matter before the Board and asked if any members of the Board had any questions.

Ms. Chadwick asked if Mr. Maynard's view were that his client was unable to meet the current requirements. Mr. Maynard said if some restaurant went there, it could not meet the current requirements, so there could not be a restaurant with the available parking.

Mr. Carroll asked why the site plan had not been recorded in the Hillsborough County Registry of Deeds. Mr. Maynard expressed a belief that it had been. Town Planner Cashell demurred, saying the plan had been approved but the applicant had chosen not to submit a plan for recording purposes. Mr. Carroll asked if applicants who intended to go forward usually brought in a plan for a first step. Mr. Cashell said all applicants got from this Board was conditional approval and that it was up to the applicant in each case to take the action necessary to protect the project. Mr. Carroll said he was asking what the general practice was; Mr. Cashell confirmed that applicants generally submitted a plan for recording right after getting approval. Mr. Maynard declared that it was sometimes one month, sometimes three, sometimes many months. Mr. Carroll noted that two years had passed, with no plan recorded as yet, saying he wanted to know what the standard flow was, not what Mr. Maynard's flow was. Mr. Maynard said he did over half the projects in this town, declaring that he was the flow.

Selectman Maddox asked what the parking requirements would be today. Mr. Maynard interjected that it would be 20 spaces, one per 100 ft² of space. Mr. Cashell read the regulations aloud. Selectman Maddox said the plan was eight spaces short, adding that there were two extra, so it was actually six spaces short. He stated that this had been a bone of contention when the plan had originally gone through. He then asked Town Planner Cashell what would be a reasonable size for a sub-shop application, asking if 1500 ft² would be reasonable. Mr. Maynard said it could be, adding that there would not be many seats in a pizza place for that size—adding that that space would only allow for eight to twelve seats.

Selectman Maddox said he was asking if the Board should approve the plan but change the parking requirements such that the restaurant was limited to that size by shifting 500 ft² from the restaurant use to the retail use. Mr. Maynard acknowledged that Selectman Maddox was correct, if he chose to ignore what Mr. Maynard had said about the applicability of the new RSA.

Mr. Hall said he did not hear Mr. Maynard explain why the plan had not yet been recorded. Mr. Maynard said there was no reason, saying he had to ask for an extension within the year.

Mr. Hall suggested that a reason for the 1-year time could be to allow time for the plan to be recorded and to delay the time in which construction had to be completed. Mr. Maynard said this was not true, saying work had to be started one year from the time of approval and then completed within four years. Mr. Hall said his understanding that the recording was what started the time frame, adding that the new RSA changed the timeline a little bit. Mr. Maynard said none of the towns he worked in would say it was the time of recording, saying it was always the time of approval. Mr. Hall said there was no other reason for the 1-year limit.

Ms. Stewart arrived at 7:26 and took her seat at the table, although not yet recognized by the chairman for the inprocess hearing.

Mr. Carroll asked if the plan were approved pending the recording, as a condition. Town Planner Cashell said that was correct.

Mr. Carroll then asked if Mr. Maynard had been saying that approval would be contingent on taking 500 ft² off the restaurant and putting it on the retail. Mr. Maynard said that was correct, if the Board chose to ignore SB093.

Selectman Maddox said he understood the hardship of the economy, but he noted that the Board had had a hardship with this originally. He then asked if the Board members would be in agreement with approval with the understanding that the square footage would be changed. Mr. Carroll said he would second such a motion.

Mr. Barnes expressed confusion as to what was intended. Selectman Maddox said he would add a Stipulation 12—or change Stipulation 3 accordingly. He said approval would be contingent on satisfaction of the conditions. Town Planner Cashell said all conditions of approval of the original plan had to be satisfied, so Stipulation 3 would cover it, adding that the mylar would have to be amended to reduce the size of the restaurant.

Ms. Chadwick said there seemed to be confusion as to whether the extension was appropriate, so she felt there needed to be language somewhere saying it was being allowed in this instance but not for others, since there was lack of clarity as to whether approval was appropriate.

Mr. Hall said he would be in favor of granting the extension, because he felt this case met the intent of the statute, adding that he could not see how the extension could be granted if the plan was being changed, especially since this change had not been advertised. He expressed a belief that the only other option was to deny the request for extension, with the applicant coming back with a new plan.

Selectman Maddox said he did not disagree but he was trying to balance that with not forcing the applicant to come back. He then suggested that the best thing would be to get a legal opinion as to whether the Board could make the change he had suggested.

Mr. Carroll asked Town Planner Cashell if adding another stipulation would be doable. Mr. Hall said the plan clearly showed what was intended, including the parking and how big the restaurant was to be.

Chairman Russo said the Board had worked on this issue quite a bit and had approved the parking as it was. He said he did not see that anything had changed on this plan—saying extension would be appropriate if members felt that way.

Ms. Stewart noted that no work had been done on this site—saying she would vote to deny, based on that fact, if she were voting on this motion, as they had not yet put a shovel to the ground.

Mr. Barnes said he had been looking at the new RSA, saying the new paragraph said something about six months after approval but did not say anything about recording. He said he would be in favor of granting the extension.

Mr. Barnes moved to grant a 1-year Site Plan Extension for the Flagstone Plaza Site Plan, 3 Flagstone Drive – Map 222/Lot 14, Hudson, NH, in accordance with the following conditions:

1. This 1-year extension is approved for the period from June 27, 2009, through June 27, 2010.
2. All terms and conditions of approval cited in the Site Plan-of-Record and Development Agreement, as approved by the Planning Board on June 27, 2007, shall remain in effect.

Mr. Hall seconded the motion.

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

Chairman Russo seated Ms. Stewart at this time (7:40 p.m.), with Mr. Schneiderman returning to his nominal position as a nonvoting alternate.

XII. NEW BUSINESS/PUBLIC HEARINGS

A. Clement Road & Bradford Circle LLR SB# 05-09

Map 171/Lots 9 – 12
Clement Rd. Bradford Circle

Purpose of the Plan: to relocate the existing lot lines between Lots 9, 10, 11 & 12 (no other changes are proposed). Application Acceptance & Hearing.

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

Town Planner Cashell said the plan was ready for Application Acceptance. Selectman Maddox moved to grant Application Acceptance; Mr. Hall seconded the motion.

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

Town Planner Cashell said there was nothing new to add to his staff report.

Mr. Richard Maynard, Professional Engineer, of Maynard & Paquette, Engineering Associates, LLC, appearing before the Board as the engineering representative of the four property owners listed on the plan, noted that he was accompanied by Paul Skathas, one of those property owners. He reviewed the attempt four years ago to resolve this, saying there had been problems with the way the plan had been presented previously. He then reviewed details of the copy of the plan mounted on the meeting room wall, explaining why the lines were being changed, primarily because a driveway had been built over an original lot line, as well as to locate the lot lines more proportionally.

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 declared the matter before the Board and asked if any members of the Board had any questions.

Ms. Chadwick moved to approve the Lot Line Relocation Plan entitled **Tax Map 171/Lots 9, 10, 11 & 12, Clement Road & Bradford Circle, Hudson, New Hampshire**, prepared by Maynard & Paquette, Engineering Associates, LLC and dated: June 2, 2009 (no revision date), consisting of Sheet 1 of 1 and Notes 1 through 7, in accordance with the following conditions:

1. The approved Plan, together with the Decision of Approval, shall be signed by the Board and recorded at the Hillsborough County Registry of Deeds.
2. All of the bounds shall be set or bonded for prior to Planning Board endorsement of the Plan.

Mr. Carroll seconded the motion.

Chairman Russo asked if there were any discussion.

Selectman Maddox asked Mr. Hall to clarify what the problems had been before. Mr. Hall said the surveyor had said the original survey was incorrect.

Selectman Maddox asked if the house in Lot 10 would have appropriate setback. Mr. Maynard said the designated structure was a landscape wall, not a house.

Mr. Carroll said the approach to the triangles was very ingenious.

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).

**B. Trigate Road Wireless Facility
Co-Location SP# 07-09**

**Map 219/Lots 001 (Sub 001)
Trigate Road**

**Purpose of plan: to co-locate wireless equipment at an existing wireless facility in order to provide new wireless services to the Town of Hudson.
Application Acceptance & Hearing.**

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

Town Planner Cashell said the plan was ready for Application Acceptance, so long as everyone went along with an whole litany of waivers. Ms. Chadwick moved to grant Application Acceptance; Mr. Hall seconded the motion.

Chairman Russo asked for discussion.

Mr. Hall asked if he were the only one who did not get a copy of the plan. Mr. Carroll said he did not get one, adding that he did not see how the Board could accept it

without having gotten a plan. Mr. Hall said he did not see how the Board could vote on it if the members did not get a plan, as the members had not had an opportunity to see what was being done

Atty. Thomas Voltero, Jr., of Duval, Klasnick & Pastel, LLC, distributed reduced-size copies of the plan and two full-size copies.

Town Planner Cashell displayed PowerPoint photographs of the location and proposed structure (pictures of existing structures elsewhere) on the computerized projector system.

Chairman Russo asked if the Board were ready to move forward.

Selectman Maddox noted that Atty. Voltero had signed off the application with the statement that he would be bringing five full-size copies of the plan to the meeting. Atty. Voltero apologized, saying his associates had prepared the application. Selectman Maddox then moved to defer. Mr. Hall objected that there was a motion on the floor already, to grant Application Acceptance.

Mr. Hall said his inclination was to accept the plan and listen to the presentation, but not move to approve tonight, saying otherwise the Board should defer. Mr. Carroll expressed agreement.

Ms. Chadwick said Town Planner Cashell had what he needed, and the Community Development Department had what it needed. Selectman Maddox said this was not what the representative had signed off on, so the application was not complete.

VOTE: Chairman Russo then called for a verbal vote on the motion to grant Application Acceptance. 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).

Town Planner Cashell went up to the office to see if he could find copies of the plans, which Atty. Voltero said had been submitted.

Atty. Voltero apologized for not having the plans. Town Planner Cashell then returned with an armful of plans and distributed them to the Board members.

Atty. Voltero discussed details of the proposal, saying the FLO TV™ application was offering nine channels of television to wireless devices and was offered through Verizon.

Mr. Carroll asked what the coverage of the application was. said the existing tower was approximately 300 feet high, saying it would cover a 10- to 15-mile radius.

Selectman Maddox asked if the structural analysis of the tower, listed on the notes as being performed by others had been completed. Atty. Voltero answered in the affirmative. Selectman Maddox noted that the last time that tower had been before the Board, they had been told by the applicant's representative that the device being discussed at that time would be the last thing to be placed on the tower. Atty. Voltero

responded by referring to and displaying a PowerPoint show, saying the service had a capacity to have 20 channels—adding that it was market-based. He noted that there were two other wireless towers on the Nash property, saying his client would be leasing tower space and ground space from Nash Properties. He showed pictures of actual installations elsewhere, commenting on details of the construction. He then offered to answer any questions.

Chairman Russo noted that no one was present for public input. He then asked if any members of the Board had any questions.

Ms. Chadwick asked how long the generator would last. Atty. Voltero said it would be approximately 12 hours, noting that it had a 250-gallon diesel tank. Ms. Chadwick asked if diesel trucks would be delivering to the generator. Mr. Voltero said FLO TV had people monitoring each of their sites, remotely, with all sites being monitored from a “war room” 24/7.

Mr. Carroll referenced Attachment A, saying the analyst had said the existing load had a specific capacity but that the proposed load would still maintain that capacity.

Mr. Volteroi said the larger tower had been considered, but it would have cost a tremendous amount of money to retrofit that tower.

Mr. Barnes asked if this one tower would cover the entire Town of Hudson. Mr. Voltero said it would cover the town except for places behind the mountain, same as wireless. Mr. Barnes asked if Atty. Voltero anticipated that no other towers would be needed in Hudson. Atty. Voltero concurred, saying the tower should cover Hudson and some of the surrounding towns. Mr. Barnes asked if he would be back to put up other towers; Atty. Volltero said the Board would not see his face again.

Mr. Schneiderman addressed the requests for waiver of the noise study, noting that the diesel generator was an engine with an exhaust and a tail pipe. Atty. Voltero said he had specifications, but did not have them with him. Selectman Maddox suggested that he bring them next time.

Chairman Russo noted that other generators, probably larger, were already located on the Nash property. Town Planner Cashell stated that no one could possibly hear this except for the Nashes. Ms. Stewart noted that the site was surrounded by the landowners.

Ms. Chadwick asked if any other towers had been done in New Hampshire. Atty. Voltero said there were applications in Goffstown, saying the Boston-Manchester market was the last one to be deployed.

Mr. Barnes, referring to Mr. Schneiderman’s concern, noted that Mr. Clegg was an abutter and should have been notified. Ms. Stewart noted that Mr. Clegg was an abutter.

Mr. Barnes asked why a waiver of the green space requirement was being requested. Town Planner Cashell said they wanted to ask for a waiver rather than measuring it, noting that the green space was significantly more than the ground space being disturbed.

Ms. Chadwick asked how long it would take to build it after approval. Atty. Voltero said it was normally two months after approval of the Building Permit, adding that it would not be done until next April or May if the application were not approved before the building season came to an end—that is, by October or November.

Mr. Carroll moved to grant approval of the waiver requests.

Mr. Carroll moved to approve the following waivers associated with the Site Plan:

1. HTC 275-8(B)(9) -- Boundary Survey
2. HTC 275-8(B)(11) -- Soil Types and Locations of Soil Boundaries
3. HTC 275-8(B)(17) -- Existing Topography
4. HTC 275-8(B)(18) -- Proposed Topography
5. HTC 275-8(B)(22) -- Green Space
6. HTC 275-8(B)(24) -- Open Space
7. HTC 275-8(B)(26-29) -- Off-Street Parking
8. HTC 275-8(B)(30) -- Off-Street Loading
9. HTC 275-8(B)(31) -- Landscaping
10. HTC 275-9(A) -- Stormwater Management Report
11. HTC 275-9(B) -- Traffic Study
12. HTC 275-9(C) -- Noise Study
13. HTC 275-9(D) -- Fiscal & Environmental Impact Statement
14. HTC 275-9(H) -- High Intensity Soils Survey
15. HTC 275-8(B)(16) -- Features Within 200 Feet
16. HTC 275-8(B)(16) -- Surveying Information Within 200 Feet
17. HTC 275-8(B)(11) --Wetland Locations Boundaries and Drainage Channels
18. HTC 275-8(B)(9) -- Error of Closure

Ms. Stewart seconded the motion.

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

Mr. Carroll moved to approve the Site Plan and the Conditional Use Permit for the Plan entitled ***Manchester -001 MHT-001 51 Trigate Road, Map 219/Lot 001, Hudson, NH***, prepared by David H. Kuhn, PE, Black & Veatch, 10950 Grandview Drive, Overland Park, KS 66210, dated 03/23/09 and revised through March 2009, consisting of Sheets T-1, GN-1, A-1 through 1.1, 1.2, 2, 3 & 4 and Notes I through VIII, 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 plan.

2. All improvements shown on the Site Plan-of-Record, including Notes, I – VIII, shown on Sheet T-1, shall be completed in their entirety and at the expense of the applicant or his assigns.
3. 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 Planning Board approved site plan.
4. Construction activities involving the subject lot shall be limited to the hours between 7:00 a.m. and 5:00 p.m., Monday through Saturday.
5. Prior to Planning Board endorsement of the plan, it shall be subject to final engineering review.
6. The applicant shall schedule a pre-construction meeting with the Acting Town Engineer prior to applying for a building permit.
7. All terms and conditions of approval previously approved by the Planning Board for this site shall remain in effect with the approval of this plan.

Ms. Chadwick seconded the motion.

Chairman Russo asked if there were any discussion.

Mr. Barnes said he was going to vote against the motion, as he had not seen the plan, saying he was not saying there was a problem with it but he had not been given an opportunity to review the plan.

Mr. Carroll said he had made the motion because he had seen the plans.

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

Mr. Hall noted that Costello, Lomasney, and deNapoli, Inc., the Planning Board’s consultant, had been given a copy of the plans for review.

Town Planner Cashell said this was not a virgin site, but was a highly-developed antenna site.

XIII. OTHER BUSINESS

Town Planner Cashell referenced the announcements for the Law Lecture Series, saying the closest site for Hudson members would be the Derry site, on October 12, 21, and 28. Mr. Barnes noted that this conflicted with two of the Planning Board’s meeting dates. Town Planner Cashell said nothing was planned for those dates at this time and he would schedule around them—adding, however, that the Board would be busy in November. He noted that Board members would have to pay for any lectures they missed if they scheduled themselves to go to those meetings. Ms. Chadwick asked when notice had to be given. Town Planner Cashell suggested that members sign up

either tonight or on either of the meetings scheduled for the next two weeks. A question arose about canceling the meetings in conflict; Chairman Russo suggested that the Board first determine the response through the next two weeks to determine how many members would be attending the lectures.

Town Planner Cashell noted early notice of the SB2 dates, suggesting anyone having concerns should send him an E-mail.

Town Planner Cashell said the Planning Board should be finalizing the Electronic Message sign amendments to the Zoning Ordinance at next week's meeting.

Chairman Russo asked members to be prepared to review the remaining minutes at next week's meeting.

XIV. ADJOURNMENT

All scheduled items having been addressed, Ms. Chadwick 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 8:31 p.m.

Date: June 16, 2010

Vincent Russo, Chairman

J. Bradford Seabury, Recorder

Terry Stewart, Secretary

These minutes were accepted as amended following review at the 08-11-10 Planning Board meeting.

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**HUDSON PLANNING BOARD Meeting Minutes
August 26, 2009**

Page 13

The following change was made in accordance with the Board's review of these minutes at its August 11, 2010, meeting:

Page 7, last line, the spelling of the word "that" was corrected ("tat" should be "that").