

**-- FILE COPY --**

**HUDSON PLANNING BOARD  
MEETING MINUTES  
May 27, 2009**

**I. CALL TO ORDER**

Chairman Russo called this Planning Board meeting to order at 7:04 p.m. on Wednesday, May 27, 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 Ms. Quinlan to serve as acting secretary in the absence of Ms. Stewart and to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

**Members**

**Present:** George Hall, Suellen Quinlan, Vincent Russo, and Richard Maddox (Selectmen's Representative) .

**Members**

**Absent:** James Barnes (excused), Tierney Chadwick, and Terry Stewart .

**Alternates**

**Present:** Tim Malley, Stuart Schneiderman, and Ken Massey (Selectmen's Representative Alternate) .

**Alternates**

**Absent:** Brion Carroll.

**Staff**

**Present:** Town Planner John Cashell.

**Recorder:** J. Bradford Seabury.

**IV. SEATING OF ALTERNATES AND ANNOUNCEMENTS**

Chairman Russo seated Mr. Malley in place of the absent Ms. Chadwick and Mr. Schneiderman in place of the absent Mr. Barnes .

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

Chairman Russo determined that members of the Board had not had a chance to review available minutes of previous meetings waiting to be reviewed . He then requested that the Board member be prepared to review the 04-08-09 and 04-22-09 minutes for the next meeting.

**VI. CORRESPONDENCE**

Chairman Russo stated the items of correspondence received in tonight's handouts were simply notices of zoning actions for the Board members' review, with nothing to be taken up by the Board at this point.

**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. Derry Street Professional Building.                      Map 174/Lot 23**  
**SP# 15-08 (Amended Plan)                                      26 Derry Street**

**Purpose or plan: To amend the previously approved plan, Hillsborough County Registry of Deeds #35723, to include: existing white fence, exterior lighting, and additional parking along rear. Hearing. Deferred Date Specific from the 04-08-09 Planning Board Meeting.**

Chairman Russo read aloud the published notice, as repeated above, adding that the Board had received a request to defer this item to the meeting of June 24<sup>th</sup>. Mr. Hall so moved; Ms. Quinlan seconded the motion.

Dr. Robert Ebeed , the applicant, said he was requesting deferral because the light pole had just been received but he had not yet had an opportunity to have it erected. Chairman Russo asked about the lighting plan , asking if it would be completed by that time; Mr. Ebeed said he thought it would be.

Mr. Hall noted that only the post lights had been lit at the time of inspection by the Board. He asked about the lights on the building. Dr. Ebeed said all of the lights had been disconnected and would not be on the plan, except for the light at the back entrance—adding that there would be shielded lights over the door. Mr. Hall said that light had not been on the night the Board went to inspect; he then asked about the lights on the side of the building, asking if they would not be on any more. Dr. Ebeed said he actually did not think there were any more lights on the building.

Ms. Quinlan noted that the Board members had gone over twice to look at the lights finding the lights were not on the first time and the problems addressed by Mr. Hall had been there the second time. She said the Board needed a letter from Dr. Ebeed's attorney or from his engineer stating when the Board could go look again and which lights would be on , so that the Board members could see what the neighbors would be seeing all the time .

Chairman Russo said having attached lights disconnected might not satisfy the Board, adding that Dr. Ebeed should have them removed.

Mr. Schneiderman asked if having the members of the Board go to the site constituted a meeting if there were a quorum present. Chairman Russo expressed a belief that it would not be a meeting if no decisions were made.

**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 (5 –0–1).

## XII. NEW BUSINESS/PUBLIC HEARINGS

### A. PSNH Conditional Use Permit CU# 01-09

Map 167/Lot 009  
15 Power Street

**Radio Service Facility – Purpose of plan: To construct a radio communication tower to provide communications to remote electrical system devices for critical radio electrical service restoration and reliability.  
Application Acceptance & Hearing.**

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

Mr. Hall questioned the order of the agenda (taking up the conditional use permit before the site plan) , asking how the Board could vote on the conditional use before hearing input about the site plan. Town Planner Cashell said the ordinance called for

them both, saying the Board could act on them both at the same time or take them up separately .

Chairman Russo said he agreed with Mr. Hall, saying the Board would take up Item B, first. Mr. Hall suggested that the applicant could give the background for the conditional use permit at the same time.

**B. PSNH Radio Service Facility Site  
SP# 03-09**

**Map 167/Lot 009  
15 Power Street**

**Purpose of plan: To construct a radio communication tower to provide communications to remote electrical system devices for critical radio electrical service restoration and reliability. Application Acceptance & Hearing.**

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

Town Planner Cashell said the plan was ready for Application Acceptance.

Ms. Quinlan moved to grant Application Acceptance ; Selectman Maddox 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 (6 -0).

Mr. Jack Holland, from the AI Engineers firm in Middletown, Connecticut, accompanied by Mr. Corey West from Northeast Utilities, the parent company of PSNH, stated that he was present to ask for a 100 -foot-high radio communication tower and a 20-foot-high dipole antenna to be located at the existing power substation , with an additional 10 -foot by 20 -foot equipment shelter building, and an 8.5-KW natural-gas powered generator, with a small gravel apron to accommodate temporary parking of service vehicles . He described the building and tower, noting that the equipment shelter would have a manually -operated light next to the door but aerial lights would not be required on the tower . He explained that the purpose of the tower was to provide reliable communication in emergency situations, stressing that it would be used for the company's internal communication, only.

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. Quinlan asked if there would be a light at the top of the structure. Mr. Holland answered in the negative, saying it was not required for towers under 200 feet in height. He then provided photographs showing what the tower would look like. Mr. Holland said the highest tree in the area was about 75 feet tall, saying the facility would be

located in an already cleared area. Mr. West clarified that the photograph showed the existing tower at another location, simulated into the proposed Hudson location.

Selectman Maddox asked about the need for a variance for the fall zone. Town Planner Cashell said the applicant had been granted a variance by the Zoning Board of Adjustment. Mr. Holland identified the tower location on a projected aerial view, noting the presence of an easement covering the fall zone.

Selectman Massey referenced Drawing 4, asking if the applicant planned to provide a muffler on the generator, and noting that nothing was indicated in the notes. Mr. Holland said a noise study waiver was being requested, noting that testing would only occur from 2:00 p.m. to 3:00 p.m. on a Friday. Selectman Massey asked if the applicant would be able to grant an easement to the Police Department and Fire Department to place an antenna on the tower. Mr. Holland said an antenna would be allowed, but a cell site could not be accommodated. He noted that he had spoken to the First Selectmen and had asked if the Police Department and Fire Department would be interested, reporting that the First Selectman had said "No" as those departments were on wireless right now.

Selectman Maddox asked why a monopole was not being proposed, as these lattice-type towers appeared to attract other antennas. Mr. Holland said his firm was not looking for additional business, saying the need for this tower was in case a microwave or backup connection might be needed in the future.

Ms. Quinlan asked if there never would be an instance for people to park there, since a waiver for the parking lot requirement was being requested. Mr. West said an apron was being proposed, adding that occasional visits of a few hours duration would be all that was required.

Mr. Schneiderman asked how often maintenance would be required. Mr. West said there would be someone there twice a year for a few hours. Mr. Schneiderman asked about the testing of the emergency generator, asking if it would be bi-weekly or run remotely. Mr. West said it would probably be an automated test, but there were occasional 30-minute tests, with an alarm being activated if something went wrong.

Chairman Russo asked if anyone wished to address the extensive list of waivers.

Ms. Quinlan moved to approve the following waivers:

1. HTC §275-9 A – Stormwater Management Report
2. HTC §275-9 E – Water Service
3. HTC §275-9 E – Sanitary Sewer Service
4. HTC §275-8 B (12) (c) – 100' Residential Setback
5. HTC §275-8 B (28) – Parking Lot Requirement
6. HTC §275-8 B (30) – Loading
7. HTC §275-8 B (31) – Parking Lot Landscaping
8. HTC §275-8 B (32) – Lot Screening/Landscaping
9. HTC §275-9 B – Traffic Study

10. HTC §275-9 C – Noise Study
11. HTC §275-9 D – Fiscal Impact Study

Mr. Malley seconded the motion.

Ms. Quinlan asked if there were any restroom facilities for the people who would be there twice a year for a few hours each day. Mr. West said this was not a manned facility and no restroom facilities were being provided.

Selectman Maddox asked about the residential setback, saying the given reason was that it had previously been granted for the last project. He suggested that more reasons should be provided. Chairman Russo referenced Page 11 C. Selectman Maddox said it should be in the minutes that the reason for requesting this waiver was that the land was not developable, as it was open space for the adjoining condominium project. Mr. Holland said this was an addition to the easement which would be enforced. Selectman Maddox said there should be a reason on the record as to why the waiver was being granted.

**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 (6 –0).

Mr. Hall moved to approve the Site Plan entitled: ***Public Service Company of New Hampshire Radio Service Facility Map 167/Lot 9, 15 Power Street, Hudson, NH***, prepared by AI Engineers, Inc., dated 3 April 2009 (no revision date), consisting of Sheets 1 through 8 and Notes 1 through 18, 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, 1 through 18 shown on Sheet 4 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, a n 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 and verification that a muffler shall be placed on the generator.
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 (depicted as Plans of Reference 1 and 2 on Sheet 2 of this plan set), shall remain in effect with the approval of this plan.

Ms. Quinlan seconded the motion.

Selectman Maddox asked if Mr. Hall would be amenable to adding a stipulation that no additional antenna or other appurtenances other than for municipal use except by Planning Board approval. Mr. Hall expressed agreement, and Ms. Quinlan concurred, noting this would be a friendly amendment. Mr. Holland noted that the ZBA had applied that same limitation.

8. No additional appurtenances shall be put on the tower without Hudson Planning Board and Hudson Zoning Board of Adjustment.

Chairman Russo asked about the power source for the generator. Mr. Holland said it would be natural gas.

**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 (6 -0).

Chairman Russo then returned to the request for a Conditional Use Permit.

Town Planner Cashell confirmed that this was in conjunction with the plan that had just been approved.

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

Selectman Massey called for a point of order, saying application acceptance for the Conditional Use Permit needed to be approved first.

Ms. Quinlan moved to accept the Conditional Use Permit application for the Public Service Company of New Hampshire Radio Service Facility, Map 167/Lot 9, 15 Power Street.

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).

Chairman Russo asked if the applicant wished to add anything to what he had already said. Mr. Holland answered in the negative.

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

Ms. Jeannine Le Blanc, 25 Pelham Road, said she could not get 24/7 telephone service, and she asked if this would affect that. Mr. West said this tower was on a different frequency.

Mr. John Watkins, 10 Hartson Circle, asked if the frequency might interfere with television broadcasts. Mr. West said they would be using licensed 220-MHz frequencies, adding that these would be relatively low powered.

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

Mr. Hall noted that this conditional use permit was specific to the one antenna described in the application; he then asked whether, if the owners were to ask for any additional antenna for the tower, that would require a new application for a conditional use permit. Town Planner Cashell said it would. Mr. Hall noted that the process had not been in place with previous cell towers that had added antennas, adding that this had been the idea of including the conditional use permit process in the Zoning Ordinance. Town Planner Cashell said Selectman Maddox's amendment would come in handy, as that language pertained to two other towers, which had caused the applicant to come back. He noted that there remained one tower site where no such requirement was specified.

Selectman Maddox asked if this were considered a communication tower. Town Planner Cashell replied in the affirmative, saying radio service towers and ham radio towers were bunched in with cell-phone towers in the Zoning Ordinance. Selectman Maddox asked about requiring a bond for removal. Town Planner Cashell said there was language addressing that issue, adding that the ordinance also allowed for the waiving of the requirement.

Selectman Maddox moved to approve the Conditional Use Permit for the Public Service Company of New Hampshire Radio Service Facility Map 167/Lot 9, 15 Power Street, Hudson, NH, in accordance with the following:

1. Pursuant to NH RSA 674:21(II) and Article XVIII of the Town's Zoning Ordinance, the Planning Board is authorized to issue this Conditional Use Permit; said authority is further provided by the Table of Conditionally Permitted Facilities, as set forth in §334-96.1 of said ordinance.
2. The Planning Board finds that this application satisfies the general guidelines and the siting standards, as set forth in Sections §334-92 and §334-95 respectively of said zoning ordinance.
3. This Conditional Use Permit application has been submitted and acted on by the Planning Board concurrently with the Site Plan application, with the latter application approved on this day, the 27th day of May 2009.

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 (6 -0).

### **XIII. OTHER BUSINESS**

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

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

Town Planner Cashell identified the location of the two driveways for the subject lot on a projected aerial view, noting that the second driveway in question led into the rear of the lot. He said the original driveway used to go into the back of the property but had been shortened when the addition to the house was built, sometime in the 1990s — adding that the applicant claimed that the longer driveway had existed in some fashion in the past but now was paved to provide access to the back of the property. Mr. Cashell noted that there were three other properties within approximately 300 yards of this property having two or more driveways associated with them. Ms. Quinlan asked how big the lot was; Mr. Cashell said it was 1.079 acres. Ms. Quinlan asked what was in the rear that needed driveway access. Town Planner Cashell said there was an inground pool and another garage, currently under construction. Mr. Hall asked if a second garage was shown in the aerial view; the applicant, sitting in the audience, said it was a shed. Ms. Quinlan said there appeared to be other buildings in the photograph; Mr. Cashell noted that the aerial photo was from 2006, with the Zoning Officer having addressed the buildings. The applicant said the buildings were mostly all gone. Ms. Quinlan asked if the Zoning Office were still addressing the violations, to have them removed. Mr. Cashell answered in the affirmative, saying the Zoning Officer was doing so actively.

Town Planner Cashell showed an aerial view of another lot with two driveways, at the end of Hartson Circle. Chairman Russo noted that the property shown had a single apron accessing the street, which then broke off into two driveways inside the lot.

Mr. Cashell showed an aerial view of another lot with two driveways, located at the intersection of Cheney Drive and Sullivan Road. Ms. Quinlan asked what was in the large barn-like building. Chairman Russo said there was a dwelling on the second floor; Town Planner Cashell concurred, saying there were two dwelling units on this lot.

Mr. Cashell showed an aerial view of another lot with two driveways, on Sullivan Road.

Mr. Hall said the driveway of the subject property for this hearing appeared to be right next to the property line in the aerial view, but the provided sketch said the line was 18.5 feet from the center line of the driveway —adding that either way a significant portion of the driveway appeared to be in the setback and needed a waiver for encroachment. Town Planner Cashell said the property owner had not supplied a

surveyed plot plan to the Planning Board—adding that the bold line marked on the aerial views by the GIS system did not properly identify the lot line. Mr. Hall reiterated that the sketch provided by the owner indicated that part of the driveway was in the setback.

Selectman Maddox expressed puzzlement as to why the Town Planner was presenting for the applicant and making other violations sound okay. Mr. Cashell said he was not presenting but was simply responding to Chairman Russo's question. Ms. Quinlan said she believed that Mr. Cashell had just been presenting information for the Board about the lot and the area—adding that she had noted that the second driveways of the other three sites were of the type that the Planning Board typically approved, going to a secondary use or another living unit, both of which were absent in this application.

Mr. Mike Lashua, 4 Hartson Circle, said he moved there in 1990, with a parking lot existing at that time that had extended from the first driveway to the second. He said he had removed the center area, but both driveways were still paved. He said there had been stone gravel on the driveway going to the rear, which was very treacherous in the winter, so he had paved it. He said there was a driveway in the rear, where there was a garage, almost finished, where he would store his antique cars as soon as it was finished. Chairman Russo questioned the statement that the garage was almost finished, saying he had seen framing. Mr. Lashua said he was still working on it, adding that the shed behind the house would be removed.

Chairman Russo asked about the vehicles back there. Mr. Lashua said he had three antique vehicles, adding that they would be stored inside the garage and that he was working with Building Inspector Oleksak to get them licensed. He stated that this was a hobby, not a commercial pursuit. He said there was no other way to get around to the back of the house in case of fire.

Ms. Quinlan asked if abutters had been notified. Town Planner Cashell said abutter notifications had been sent out, just as if this were a subdivision, even though there was no obligation to do so.

Chairman Russo asked if there were no certified plot plan relative to the driveway. Mr. Lashua said the rear part had been dirt. Chairman Russo said that driveway should have been on the plot plan. Mr. Lashua repeated that it had been dirt, except for the front portion of some 30 feet, which had been on a piece of asphalt. Chairman Russo said that should be on the plot plan as well; Mr. Lashua said it was not. Town Planner Cashell said he had looked at some historical aerial photographs, but they were not clear enough to say whether the structures were there then. Mr. Lashua said he had taken out the parking lot, where four or five cars could be parked.

Ms. Quinlan asked how many other cars, other than the antique cars, were on the lot that needed to be removed. Mr. Lashua said the others had been taken out already.

Selectman Maddox asked what the draft motion was moving to approve—adding that it certainly was not a sketch that violated the side setback. Town Planner Cashell said the discussion had been that any driveway should have the minimum setback, but

the question was whether this driveway were grandfathered, or whether the Board would require a certified plot plan from this applicant at this time .

Mr. Hall said he would take the position that it was grandfathered for setback , and also probably grandfathered for the second driveway . The applicant said the ordinance was changed in 1997. Mr. Hall then asked why the applicant was here.

Town Planner Cashell said the applicant was here because of concerns of abutters with certain Town officials then making it known to the Community Development Staff that they should look into this matter, with the best course of action having been determined for the applicant to come before the Planning Board to seek sanction for the second driveway. He said the applicant could have challenged the Town, but the applicant had decided to come in. Mr. Hall noted that there was nothing indicating that the Building Inspector had found this to be a violation. Mr. Cashell said it had been determined by Gary Webster, the Acting Civil Engineer, who only had authority to allow one driveway per lot. Mr. Hall said only the Code Enforcement Officer had the right to cite a violation —adding that his point was to question why the Board should talk about this if the driveway (and hence the setback infringement) were grandfathered. Town Planner Cashell said it was a paved area now, with this having taken place recently, which had stirred up the abutters .

Ms. Quinlan referenced Mr. Webster's memorandum , citing his authority for granting only one driveway . She noted that the Board typically allowed second driveways to second living units, but not to ALUs or other things, but she might be willing to allow this as it had been there in the past, when this applicant purchased the property —but she was concerned about the continuing violations, as denying the second driveway would hamper cleaning up the rear of the property. She said she liked granting waivers for applicants who were in perfect compliance , but was less likely to do that for applicants with issues, adding that the Planning Board members were less likely to know what the issues were .

Chairman Russo asked about the certified plot plan referenced by the applicant . Mr. Lashua said he had one for the septic, done in 2003, but the building was on the plan. Chairman Russo asked Mr. Cashell to look for that plan in the files upstairs .

Selectman Maddox said it would help to get something more detailed. He then asked how much it would take to move the driveway. Mr. Lashua said he had removed part of the parking lot, but he had paved the driveway, from 15 feet in to the back.

Selectman Massey asked when Mr. Lashua had applied for the building permit for the garage. Mr. Lashua said he had done it in 1999, saying he had the foundation in but the house addition had taken precedence. Selectman Massey expressed a belief that, if the driveway existed in 1999 and he was granted a building permit at that time, he thought the Board had to say that the applicant was relying on the good faith of the Town that the garage was a permitted use and that he had a legal right to access it.

Mr. Hall said he felt it was none of the Planning Board's business that violations existed; saying the Board was here about the driveway . He then asked if the applicant could provide any other evidenced that could document that the driveway existed before 1997 . Mr. Lashua said he could not find any. Mr. Hall noted that the building

permit had not been supplied; he then said his opinion was pretty much along the line of Selectman Massey's—that the driveway preexisted and the applicant had gotten a permit, so only one way was left to get to the rear. He said he felt the driveway was pre-existing the regulation.

Chairman Russo said his only concern was that, if the Board approved the second driveway, there was no approval to be had here, saying he did not see it cited as a violation by the Zoning Officer. Mr. Lashua said it had been recommended that he come before the Board. Selectman Maddox stated that 15-foot setbacks had been required from back in the early 1980s. Town Planner Cashell noted that the driveways on Flying Rock Road had been allowed because that development preceded the 15-foot setback.

Mr. Hall said he could not approve a new driveway permit but felt that the driveway pre-existed the second driveway permit requirements and therefore did not need a permit. He then moved that this driveway pre-existed the second driveway permit requirement and therefore did not need a permit. Mr. Malley seconded the motion.

Ms. Quinlan said she did not feel the Board had any proof that the driveway in fact did precede the regulation, so she would be in opposition to the motion. She said it was one thing to say that the Board was going to permit it because it was grandfathered and pre-existing, but that would be spurious if there were no information to that, and she would be in opposition.

Mr. Hall pointed out that the Board did not have any testimony to refute it, as Mr. Lashua was the only person testifying to the fact that the driveway had been there, no violation from the Code Enforcement Officer was presented—adding that the abutter was notified but he was not present.

Numerous members of the audience expressed sharp objection, saying they were present but had not been given an opportunity to speak.

Chairman Russo acknowledged that this was his fault; he then ruled that the Board would hold its vote on the motion on the floor and hear from the abutters first. He then opened the meeting for public input and comment, in favor or opposition.

Ms. Jeanine Leblanc, 35 Sullivan Road, said she was opposed, because the driveway had been used to transmit commercial equipment, which had caused significant damage to her property—adding that the damages were subject to pending litigation. She said there had been excessive noise and other disturbances, with the applicant operating his crane at night, causing disturbances to people and dogs. She said the driveway permitted the transportation of commercial equipment that had been used to alter the terrain on her property. She said some of the material had disappeared, with some of the neighbors having filed written complaints which now could not be found in the Town's files. She said there was no purpose for the driveway except to transport commercial equipment to the back yard, where they were stored. She noted that former Community Development Director Sean Sullivan had provided a 2-page letter listing the violations. She contended that it would be irresponsible to provide a permit for a second driveway whose sole purpose was to transport commercial equipment. She said there was a commercial steel building back there,

very close to the property line, saying the applicant had continued to damage her property, where trees had been removed because of what the applicant was doing on his property. She noted that Google had dated satellite pictures that should show what his yard looked like. She said she had lived there since 2008, noting that the applicant had nothing to prove that the driveway was there—adding that the driveway had been paved in 2004, according to Building Inspector Oleksak.

Ms. Quinlan asked the nature of the damages. Ms. LeBlanc listed mudslides, 10 inches of ice, sand trucked in because of erosion, and drainage from the applicant's back yard, causing damages; she added that she had had to have a drainage system put in because the applicant had altered the terrain of the back yard.

Mr. Hall said which way the Planning Board went with the driveway had not had to do with what the driveway was used for—adding however, that a residential driveway should be for residential vehicles. Ms. LeBlanc asked about the crane. Mr. Hall said what the property owner put on the driveway was not in the Planning Board's control, saying what the Planning Board gave a permit had nothing to do with what property owners used the driveway for.

Town Planner Cashell said the files pertaining to this property included Mr. Sullivan's letters, letters from DES, etc. saying those issues had been corrected. Ms. LeBlanc asserted they had not been. Mr. Cashell said there were letters in the file from Ms. LeBlanc, Gary Webster, and others. He said the issues were being addressed. Ms. LeBlanc said nothing had been done, and this driveway would be used to damage her property further, claiming that more than \$100,000 worth of damage already had been done. She said the 15 feet of setback at the rear was "in the air," from a cliff. She said the driveway was allowing her property to be damaged, adding that she wanted the Board to see the whole picture. Chairman Russo asked if she had any information that the driveway had not been there. Ms. LeBlanc said she had neighbors present, who had lived in the area longer, adding that she would be willing to subpoena the Google satellite views and get them dated. She said the Board needed proof that the driveway pre-existed the regulation change, and she did not think the Board had it. Ms. Quinlan expressed agreement.

Chairman Russo said the plot plan dated October 23, 2000 only showed one driveway, leading to the house, adding that approval from the Planning Board was required for a second driveway after 1997.

Mr. Hall withdrew his motion. Mr. Malley withdrew his second.

Mr. John Watkins 10 Hartson Circle, said he had lived on his property for 33 years, noting that it was the next lot down the hill. He noted that the first occupant of the subject property had been Harry Piper's niece, the next two were both gay couples, and there had never been a second driveway there, and never any need for a parking lot, as there was never a business there that would have required that, with never more than two people living in the house at any one time. He stated that the permit for the garage, issued in 1999, was when the back of the lot was accessed by the initial driveway, but the new driveway was put in after Mr. Lashua had blocked that original driveway by building his house addition.

Mr. Hall asked when Mr. Watkins thought the second paved driveway was built, noting that Mr. Lashua had testified the second driveway came off from a common parking area. Mr. Watkins said there had been a slope there when Mr. Lashua moved in, and Mr. Lashua had brought in about 100 or more truckloads of fill to level it off, which was why Ms. Leblanc's property was affected. He said he had recently discovered that the stake on his own property line had also been buried. Mr. Hall asked what year Mr. Watkins thought the second driveway appeared. Mr. Watkins said he did not know, but all he was saying was that there had never been an existing driveway when Mr. Lashua moved in. A gentleman in the audience said it was 2003 or 2004. Mr. Hall said, if Mr. Lashua moved in in 1990, the second driveway could have been built before 1997. Mr. Watkins said he did not know; he then asked if there should not have been a permit. Mr. Hall said there would not have been a permit needed if the driveway were built before 1997. Mr. Hall asked if the fill had been brought in before the addition was built; Mr. Watkins said it was before.

Chairman Russo said he was confused by a plot plan that showed an existing barn in the setback. Mr. Hall said that was a septic system plan, not a certified plot plan. Ms. Quinlan noted that the 10-23-2000 plan was the septic plan, with the certified plot plan being dated April 28, 2004, showing the building in the setback. Mr. Hall noted that the certified plot plan, dated April 28, 2004, showed a couple of encroachments—one for the barn and one for the addition to the house. Mr. Hall asked if there had been variances for the encroachments. Town Planner Cashell said he was looking for them in the file, adding nothing further.

Mr. Tim Remt, 14 Hartson Circle, said he had lived there since 1997, adding that the second driveway was never there prior to 2003 or 2004, and that the applicant used to skirt around the house where the shed currently was located. He said more than construction vehicles used the second driveway, saying 18-wheelers went back there, friends of the company that Mr. Lashua worked with, along with ATVs and others. He said the driveway came very close to his property line, adding that he had contacted the Town when they started paving it, and the Town did come down, but the paving continued. He said there was a problem of constant noise, saying he had to keep his windows shut and could not use his backyard because of the vehicles and dust.

Mr. Hall asked about the paved parking lot. Mr. Remt said he remembered seeing that, but it connected the original driveway, adding that it never touched the location of the second driveway. Mr. Lashua interjected that the original pavement, connecting to the road, was still there. Mr. Remt then submitted a photograph showing what he called a "tighter view" of the area, noting that it had been taken within the past year, from the satellite display.

Mr. Hall asked Mr. Watkins about the parking area, asking if he remembered that. Mr. Watkins answered in the negative, saying he did not recall any paved parking area there, and that there was no need for it. He said the people who lived there before had not had any reason for a paved parking lot.

Mr. Hall asked if Mr. Lashua had any comments after hearing what his neighbors had said. Mr. Lashua said the parking lot had been there, with railroad ties around it. He said the pavement was still there from the original parking lot, extending 18 or 20

feet. Mr. Hall asked when the second driveway was built. Mr. Lashua said there was always a path, but it never got used a whole lot. He had driven down there once in a while from the parking lot, he said, but had paved it after putting in the addition.

Selectman Massey said the 2004 certified plot plan showed an existing barn in the right-hand corner of the property; he asked Mr. Lashua what this existing barn was for. Mr. Hall said this was a foundation plan, showing the foundation for the garage for which the permit was being granted.

No one coming forward to provide further input, Chairman Russo noted that the board had a certified plot plan that did not show the driveway in the setback but did show an existing barn which was in the setback. He then questioned why this was not a code enforcement issue, on the barn itself. Town Planner Cashell said the Zoning Code Enforcement Officer and Mark Pearson were dealing with this site on a daily basis. He noted that the Board had heard tonight that the property was subject to litigation already, adding that he did not believe the Board had been presented with sufficient evidence to make a decision. He then suggested that the driveway should be handled by litigation, rather than by the Board, as this was not in the Board's bailiwick, unless the Board wanted staff to continue to investigate.

Ms. Quinlan expressed disagreement, saying the Hudson Town Code said it was the Board's business, as the Board was charged by HTC §193-7 with preventing unsafe conditions from improper placement of any driveway, wall, structure, or any other combination thereof. She said this driveway was in the setback and causing damage to three if not four adjoining properties. She then cited HTC §193-15 G, saying the Board was charged with permitting only one driveway per parcel having adequate frontage except in the case of a two-unit residential building, but there was no evidence that this was the case here. Under subpart H, she continued, driveways were not permitted in a side or setback unless access was permitted by the Planning Board. She then expressed a belief that the Board should vote on this, saying it would be difficult for a judge across the river to decide this, and adding that she felt it would hamper the litigation. She said the Town was more exposed, and the Board needed to make a call.

Town Planner Cashell said the file indicated that one of the previous property owners was given a Home Occupation permit for a hair salon, and the parking area may have been for that. He said there were a lot of facts involved, and he thought it was beyond the comprehension of reasonable people to come up with a decision.

Mr. Hall said it was not the staff's job to do the research and testimony. He said the property owner and the abutters had presented information and this was all the Board could go on, saying he agreed with Ms. Quinlan that a judge could not decide this. Until he heard from the abutters, he continued, the applicant's presentation was all the information he had, but it was now clear to him that the driveway was constructed some time after 2003 and it was in the side setback, so he could not approve a driveway that had been constructed after 1997 and in the setback.

Selectman Maddox said he felt the applicant should be given time to provide that information or a sketch of existing or proposed conditions and come back with another presentation.

Ms. Quinlan said the septic design system plan in 2000 showed no driveway, and the certified foundation plan of 2004 showed no driveway. Mr. Hall said these were not driveway plans. Ms. Quinlan questioned why the Board should not take a stand on this, saying it was a "no-brainer," and she asked why it was not being denied outright, as other second-driveway requests had been in the past.

Selectman Maddox said the discussion had been about the timeline, but the applicant could still present an application. He said it was obvious that this driveway did not exist before the second-driveway permit process.

Mr. Lashua provided photographs provided by someone who had just entered the room, dating from 1991 and later, discussing these in detail with Mr. Schneiderman.

Chairman Russo suggested that the Board take a break. Mr. Hall said he thought Selectman Maddox was correct, that the applicant should be provided more time.

Mr. Schneiderman called for a point of order, asking if Mr. Lashua could apply for a second driveway at a later date.

Selectman Massey said he recalled that a judge had rejected a case pertaining to something that had been denied previously. Mr. Seabury expressed a belief that the case referenced by Selectman Massey pertained only to zoning issues.

Mr. Schneiderman said he had not seen good evidence of a second driveway, adding that he felt the Board needed to deny the application.

Ms. Quinlan moved to deny the application for a second driveway. Mr. Schneiderman seconded the motion.

Mr. Hall asked Mr. Lashua if, after hearing the issues, he wished to provide additional evidence beyond what had been supplied. Mr. Lashua said he would like that opportunity, saying he had not been informed that he would be making a presentation. Mr. Hall said there was potential for grandfathering, if Mr. Lashua could prove it had existed before 1997. He then said he would vote in the negative on the motion now before the Board, but noted that the applicant could still come back with a different application. Mr. Lashua protested that one could drive around town and see lots of properties worse than his.

A member of the audience asked to speak, to ask a question. Chairman Russo demurred, saying there was a motion on the floor, unless some member of the Board wished to recognize the speaker. Mr. Schneiderman said he would like to hear the question.

Ms. Leblanc asked whether, if Mr. Lashua would be given an opportunity to come back, the abutters would be notified. Town Planner Cashell said the abutters would be notified. Ms. Leblanc said she was aware that it was not required, but that the only reason they had been informed this time was that she had previously been told they would be. She said the litigation was hers.

Town Planner Cashell referenced Ms. Leblanc's claim that there were items missing from the file, saying he had found letters while looking at it. She said her comment had



**-- FILE COPY --**

been based on conversation with Selectman Ben Nadeau, adding that there had been nothing in the file before she started her complaints this past year.

Mr. Schneiderman called a point of order, asking if the question could be moved.

**VOTE:** Chairman Russo called for a hand vote on the motion. Ms. Quinlan and Mr. Schneiderman voted in favor; all other members present voted in opposition except for Chairman Russo, who abstained, and Chairman Russo declared the motion to have failed (2-3-1).

Mr. Hall moved to defer this matter to the meeting of June 24<sup>th</sup>, noting that the information would have to be given to the Town Planner within one week. Mr. Lashua confirmed that he could provide the material by that time. Mr. Malley 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 and Ms., who voted in opposition, and Chairman Russo declared the motion to have carried (4 -2).

Town Planner Cashell said any member of the public was entitled to look at the record.

**XIV. ADJOURNMENT**

All scheduled items having been addressed, Selectman Maddox moved to adjourn; Mr. Hall 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 9:21 p.m.

Date: May 29, 2008

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

J. Bradford Seabury, Recorder

\_\_\_\_\_  
Suellen Quinlan, Acting Secretary

These minutes were accepted as submitted following review at the 06-24-09 Planning Board meeting.