

**TOWN OF NEW BOSTON
NEW BOSTON PLANNING BOARD
Minutes of 2020**

01/28/2020

The meeting was called to order at 6:30 p.m. by Planning Board Chairman Peter Hogan. Present were Vice Chairman Mark Suennen, Ex-Officio Joe Constance, regular Board members David Litwinovich, Ed Carroll and Alternate Board member Amy Sanders.

Also present were Planning Coordinator Shannon Silver and Planning Board Assistant Nadine Scholes.

Absent was Planning Consultant Mark Fougere.

Present in the audience for all or part of the meeting were Robert Kilmer, Michael Dahlberg, Louis Nixon, Laura Bernard, Barbara Thompson, Ellen Ruggles, Robert Fehsinger, Police Chief Jim Brace, Audrey Anastasia, Elaine Hamel, Sheila Cleveland and Emily Shellenberger.

WALTER H. HOUGHTON, TRUSTEE (OWNER) **Adjourned from January 14, 2020**
FRANK WHIPPLE (APPLICANT)
SANDFORD SURVEYING & ENGINEERING, INC. (AGENT)

Public Hearing/Minor Subdivision/3 Lots

Location: Weare Road (NH Route 77)

Tax Map/Lot #5/32

Residential-Agricultural "R-A" District

Robert Kilmer presented the proposed subdivision of Tax Map/Lot #5/32. The 19.22 acre lot would be subdivided into 3 lots, creating 2 new building lots. The existing house and two out buildings would be left with a total of 2.1 acres. Lot #5/32-1, would consist of 15 acres and the third Lot #5/32-2, would be 2.1 acres. The Suitable Building Envelope (SBE) on Lot #5/32-2, is .9 acres and Lot #5/32-1, has .65 acres SBE towards the front and another SBE of 1.2 acres towards the back of the lot. The lot currently has a total frontage of 694' along Weare Road (NH Route 77). The State has approved the driveway permits. Still waiting for State Subdivision approval.

Robert Kilmer explained that the lot is mostly wooded and has a wetland running through the middle of the lot. The proposed development sites on both of the new lots, do not propose any disturbance to the wetlands but would be accessed through steep slopes and ISWMPs were submitted for both lots.

Mark Suennen mentioned that if the house ends up being developed in the SBE towards the back of Lot #5/32-1, that would require a Conditional Use Permit in order to construct a driveway through the wetland and he suggested that should be noted on the plan.

Mark Suennen asked Amy Sanders if she had a chance to review the letter submitted by Northpoint Engineering. She said she had reviewed it quickly but would first like to see how Sandford responds to the letter.

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WALTER H. HOUGHTON, TRUSTEE (OWNER)
FRANK WHIPPLE (APPLICANT)
SANDFORD SURVEYING & ENGINEERING, INC. (AGENT), cont.

Mark Suennen noted that there are a few items that Northpoint asked for the Planning Board's input, specifically '#12. Per Section V-U E.p. of the Subdivision Regulations, "All stormwater management basins shall be constructed with an outlet control structure which conforms to the New Boston Typical...detail provided herein." The Board should discuss how they feel this scenario should be treated. The proposed design is an upside down 'T' fitting with a plastic end cap installed with a 1" orifice.' Mark Suennen noted that the Town Engineer noted that this fitting design had concerns with owner maintenance and questioned if there are other possible alternatives to this kind of fitting. Robert Kilmer replied that he would need to look into that with the engineer.

Mark Suennen opined that he would not feel comfortable with moving forward on a decision until Sandford had a chance to review the letter received from Northpoint. Peter Hogan agreed that the Board should hold off on an approval, but he personally did not have any concerns with the proposed subdivision.

Joe Constance questioned if it would be easier to just remove the stumps that are proposed to be buried on the lots at the toe of the slopes. Robert Kilmer noted that he would also look into that with the engineer.

Mark Suennen noted that the applicant should consider what items would be recommended for the completion of the active and substantial improvements. That would be discussed prior to an approval.

There were no other comments.

The Planning Coordinator, Shannon Silver said the hearing would be adjourned to +/- 7:00 p.m. on February 11, 2020, because there is a Public Hearing already scheduled for 6:30 p.m., on February 11, 2020.

Mark Suennen **MOVED** to adjourn the hearing to February 11, 2020, at +/- 7:00 p.m. David Litwinovich seconded the motion and it **PASSED** unanimously.

EDWARDS, JOSHUA W. (OWNER)
EDWARDS, JESSICA L. (OWNER)
KEACH-NORDSTORM ASSOCIATES, INC. (APPLICANT)
Submission of Application/Public Hearing/Major Subdivision/4 Lots
Location: Tucker Mill Road & Dougherty Lane

Adjourned from November 26, 2019

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Tax Map/Lot #2/151

Residential-Agricultural "R-A" District

Michael Dahlberg noted that the owners had met with the Conservation Commission a few times and he had submitted revised plans reflecting what the owners would like to accomplish. The revised plan would be for a 4 lot subdivision instead of the 6 lots originally proposed, keeping the 1 lot with the existing camp and creating 2 new buildable lots on Tucker Mill Road and +/- 11 acres cut out to convey for protection through either Town Conservation or the PLC.

Mark Suennen asked how far the discussions had gone between the owners and the Conservation Commission. Michael Dahlberg explained that the owners are truly committed to protecting the land and at the last meeting with the Conservation Commission there had been discussions that a conditional approval from the Planning Board would be necessary in order to have the land properly appraised. The Board has been presented with two separate sets of plans. The original 6 lot subdivision, which required traffic and environmental studies and the revised 4 lot subdivision that was submitted after discussions with the Conservation Commission.

Michael Dahlberg noted that this would be the first time he made a request like this and knew this is an unusual request but questioned if the Board would consider granting a conditional approval with conditions precedent to be able to get an appraisal, negotiate a deal and make a final decision with the Conservation Commission. Peter Hogan asked if this would accomplish being able to appraise the lots as buildable lots. Michael Dahlberg said yes, this was the only way to assess the true value of the land. He noted that there are 3 potential options, 1) Developing a Conservation Easement on the whole piece with development rights; 2) Keep 1 lot with the camp and sell the remainder to the Town; 3) The proposed 4 lot subdivision cutting out 11 acres to sell to Conservation.

Mark Suennen clarified that Michael Dahlberg was requesting the Board conditionally approve the original 6 lot or the 4 lot subdivision plan to allow an appraiser to assess the true value to come to an agreement between the owners and the Conservation Commission. Conservation Chairman, Laura Bernard said their appraiser, Ian McSweeney told them that he could not use the 4 lot subdivision plan to get a true value on the buildable land. The 11 acres cut out for conservation was not a good buildable lot. The Conservation Commission needs to go through the process to get the real land value appraised before they can agree on a price for the land and that requires an approved subdivision plan from the Planning Board.

Joe Constance asked the Planning Coordinator, Shannon Silver if she knew of this ever happening in the past. She replied no, this would be setting a precedent, but she was curious why an approval would be needed to come up with an agreement with the Conservation Commission. She continued that a conditional approval like this could be messy and most likely that approval would need to be revoked and then a new application would need to be submitted to provide a proper approval.

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EDWARDS, JOSHUA W. (OWNER)

EDWARDS, JESSICA L. (OWNER)

KEACH-NORDSTORM ASSOCIATES, INC. (APPLICANT), cont.

Mark Suennen noted that he personally was not in favor of providing a conditional approval on the 6 lot subdivision without seeing the results of the items requested by the Board for the application to even be considered and accepted as complete.

Robert Fehsinger, 69 Dougherty Lane, noted that he previously was an appraiser and there is no reason an appraisal cannot be done with the appraisal noting that the value is based on the land being buildable or not. There shouldn't need to be an approved subdivision plan to get an appraised land value.

The Board discussed further and explained that the owners and the Conservation Commission would need to come to an agreement before they come back to with a finalized subdivision plan based on that agreement.

Michael Dahlberg asked if the Board would be willing to table and continue the hearing to a later date. Laura Bernard said that she would try to reach out to other appraisers the Town worked with in the past and see if they are willing to appraise the land without an approved subdivision plan. Ian McSweeney said that some type of approval would be necessary in order for him to properly appraise the property. Laura Bernard stated that the Conservation Commission has a procedure to follow in order to get land appraised. Mark Suennen replied that the Planning Board also has procedures to follow and more information is required than what has been provided for the Board to even accept this application as complete.

Mark Suennen noted that the Board would be willing to accept the applicants request to adjourn to a later date to be able to finalize an agreement with the Conservation Commission. He asked Michael Dahlberg how much time would be needed. Michael Dahlberg and the Board agreed to adjourn to the March 24, 2020, meeting and materials would need to be submitted at least 1 week prior to the meeting.

Mark Suennen **MOVED** to adjourn the hearing, per the applicants request, to March 24, 2020, at +/- 7:00 p.m. Ed Carroll seconded the motion and it **PASSED** unanimously.

Miscellaneous Business and correspondence for the meeting of January 28, 2020, including, but not limited to:

1. Approval of the December 10, 2019, meeting minutes, with or without changes. (distributed by email)

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Miscellaneous Business and correspondence, cont.

Mark Suennen **MOVED** to approve the December 10, 2019, meeting minutes as amended. Joe Constance seconded the motion and it **PASSED**.

2. Distribution of the January 14, 2020, meeting minutes, for approval at the February 11, 2020, meeting, with or without changes. (distributed by email)

3. Discussion with Audrey Anastasia, re: Current Site Plan and Operations at Pro-Line Powersports, Tax Map/Lot #3/150, 636 North Mast Road. (Audrey Anastasia to be present)

Audrey Anastasia, 612 North Mast Road, noted that she is an abutter to Proline Powersports, located at 636 North Mast Road. She read from the letter she had written to the Board as follows:

I am writing this letter of complaint regarding Proline Powersports. On November 19, 2019, I attended a meeting with the Zoning Board of Adjustment (ZBA) regarding a special exemption (New Boston Zoning Board refers to as special exception) request made by William Lambert on behalf of Proline Powersports.

Before I continue, I would like to state for the record, that I am not opposed to the business trying to improve its standing. However, I am opposed to changes that adversely affect the character of the area and also those not within the guidelines set by the ZBA during that special exemption hearing.

In their request for the special exemption, the test applied, as set forth by Town guidelines is "what is reasonable for the neighborhood". The reasonableness test is further outlined in section 'D' under criteria for special exemption which states: "Proposed use shall not adversely affect the character of the area affected."

In legal terms, shall equals "must" and is mandatory. Accordingly, proposed uses - therefore - "must not" adversely affect the character of the area.

I am writing to advise this board that their current use, has, and continues to adversely affect the character of the area.

At the November meeting, the ZBA advised that the Town has jurisdiction over three of my five reported complaints: Noise, Wetlands, and Light.

This area is in mixed use as a commercial business that abuts residential property. Based upon the testimony of Shannon Silver at the November 19th ZBA meeting, a site plan was established in 1996 outlining three separate units (A, B, C) at 636 North Mast Road. The middle unit (B)

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was approved for “RV” sales and is still permitted for sales, however, it is not specified for type.

In 1990, there was a special exception for parts and services, for small on and off-road vehicles, motorcycles, snowmobiles, and ATV’s.

Mr. Lambert purchased the entire building within the last 24 months with plans to utilize all three units for sales and service. He came before the ZBA for a special exception in November. In doing so, he also provided testimony that he has been operating on site for the past 4 years and acknowledged many of the complaints brought forth to the ZBA.

In his request, Mr. Lambert wanted to add vehicle sales and the approval to position vehicles along the State Route 114 right of way. Ms. Silver advised that there was no spot delineated on the current plan as a specific area of display. She added that as long as he was not infringing on the State right of way or buffer, there was nothing prohibiting him from doing so. The ZBA offered a different opinion adding that unless expressly permitted, it would not be allowed.

It was further noted the front area of the property that was involved in the request for special exception was in fact currently being used to display vehicles and had been used throughout the summer month of 2019. Mr. Lambert told the board, upon this information being discussed, that he would be removing the vehicles “tomorrow”.

The ZBA also noted that they had “nothing that showed existing conditions”. As stated in testimony at the November meeting, the property has been used for OHRV riding, snowmobile riding and reckless behavior. This includes shooting along the east side of the property in the direction of my home, burnouts within the parking lot which is adjacent to another business, and burnouts onto the State right of way, a 50 mph roadway. Individuals were living at the business and they were operating outside of the approved business hours.

Additionally, the front area has also been used other than for display (ATV riding) and it has been used throughout 2019 within the State right of way.

A business sign has been placed within the right of way, and additional lighting has been added to the building since my complaint from November.

In response to my testimony that was corroborated by the Chief of Police, and acknowledged by Mr. Lambert himself, the ZBA set forth specific guidelines when the special exception was approved.

Regarding noise and glare, “necessary buffers - maintained in a sufficient manner or replanted if not sufficient, must be shown on the site plan.

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Miscellaneous Business and correspondence, cont.

Regarding the riding of vehicles:

No test rides on the Southeast side of the building.

No test rides on Sunday.

No test rides before 9am.

No test rides outside of business hours or after 6pm on Thursday.

No possible way headlight glare from any vehicles could touch the abutters house.

I was encouraged by the guidelines set forth by the ZBA as well as the statement of Mr. Lambert that, "I am going to do the right thing" and "do whatever we need to do to do the right thing" as it pertained to lighting.

I am writing this letter to notify the board that he has not complied with the guidelines and appears to be defiantly violating the guidelines set by the ZBA.

While I understand many of these issues are planning or zoning issues, on the advice of Chief Brace, I have notified he or the Police Department when these incidents were occurring. All these incidents occurred after Mr. Lambert was provided direction from the ZBA.

I provide the following as evidence.

November 21, 2019 Abandoned Vehicle, Registered to William Lambert, left running, headlights on, facing my residence. NBPD CFS 19-17766. No one located on property. Vehicle was observed by Chief Brace @ 2245 hours (10:45pm) and Officer Moran observed a vehicle enter the lot and suspect mv leave after 2342 hours (11:42pm).

November 22, 2019, 8:24am Display vehicles still within State set back of 50 feet, not removed and now accompanied by 5 boats. The boats are not vehicles, they are vessels and pursuant to the site plan, should not have been permitted there. They remained in this area until a snow-storm on December 2nd. (IMAGE)

December 7, 2019, 5:58pm Snowmobiles riders riding in the front lot at Pro-line in defiance of the "no riding rule outside of business hours" (2pm) and also no riding on the east side of the property. (VIDEO)

December 10, 2019, 8:46am Photos of the front lot @ Proline taken to show snowmobile tracks within the lot, on the east side, and within the State set back. (IMAGE)'

Peter Hogan said he wanted to stop Audrey Anastasia before she continued with the noted complaints to advise her that this would be an enforcement matter and the first step would

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be to notify the Building Inspector/Code Enforcement Officer of the issues and to visit the site. If the site is not in compliance with the existing approved site plan, a summons could be issued. Then, if the summons is ignored, the Planning Board would be notified and could use that information to be able to revoke the existing site plan. Enforcement would be the first step necessary to certify that the site is not in compliance.

Joe Constance asked if any of the information had been provided to the Building Inspector, so he could do a site visit. Audrey Anastasia replied no.

The Planning Coordinator, Shannon Silver explained that this Commercial zoned property was originally approved back in the 1990s for all the current uses, specifically for Parts & Service for ATVs, snowmobiles, etc., but not for sales. Shannon Silver explained that Mr. Lambert understood that he would be required after being granted the Special Exception to add Sales, to come to the Planning Board to update the site plan by adding sales prior to operating with that use. He said Meridian would do a whole new site plan because he now owned the building and would be utilizing all 3 of the units for Proline. Mark Suennen asked Shannon Silver to clarify exactly what the Special Exception was approved for. Shannon Silver replied the approval added Vehicular Sales to the Parts, Service and Repair use that already exists. Shannon Silver noted that after the Zoning Board hearing in November, she notified the Building Inspector of the issues. The Building Inspector did go out to the site at that time and advised Mr. Lambert that all the vehicles displayed on the lawn would need to be moved to the parking spaces along the building. He also went over signage, which she believed Audrey Anastasia had referred to a sign within the State right of way which is a portable sign and the problem with that is there is no regulation for portable signs and no permitting process with the Town. There is a permanent sign that is shown on the plan and currently permitted but the portable sign is not.

Mark Suennen noted that in Ms. Anastasia's testimony, the property was used in a recreational manor after the snow storm in December. Mark Suennen confirmed that there are no restrictions currently for recreational use on COM zoned properties. The Planning Coordinator, Shannon Silver replied that was correct, there are no restrictions for any property, whether zoned Commercial or Residential that restricts someone from riding around on an ATV, snowmobile, etc., on their property.

Peter Hogan noted that if the snowmobiles are excessively loud, it most likely has a modification to the exhaust, which is absolutely forbidden and a major Fish & Game violation. They have more jurisdiction and could even take someone's vehicle if they wanted. He explained that Fish & Game has far more power than even the New Boston Police Department. Joe Constance noted that because there is no noise ordinance at this time in New Boston, the Police cannot issue a violation for noise. Peter Hogan agreed that New Boston may not have a noise ordinance, but Fish & Game does and it is a big deal.

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Peter Hogan noted that although the Special Exception to add Sales was granted by the Zoning Board with conditions, the Planning Board has not reviewed a site plan and other than the uses that are currently approved under the existing site plan, they should not be operating any other way until they have an approval from the Planning Board with the additional use. The Planning Coordinator, Shannon Silver noted that as far as enforcement was concerned they have stopped doing anything extra than what's allowed. The vehicles that were displayed had been moved.

Police Chief Jim Brace, 83 Styles Road, noted that the vehicles are moved back and forth from the display area, he drives by Proline every day. There are recent photos with the vehicles displayed at the front of the property. Jim Brace said that although noise is clearly part of conducting this type of business, the noise has been excessive but without a noise ordinance, there is nothing for the Police to enforce. He explained that when he reached out to the Planning Coordinator, Shannon Silver, she advised that the Building Inspector could enforce conditions of site plans, but the Zoning Board specifically said it would be the Planning Board that had the teeth to enforce the restrictions put in place by the Zoning Board. Shannon Silver explained that could only happen once the new site plan is approved. The Planning Board may add to the restrictions set forth by the Zoning Board when approving the site plan, but only then would the Planning Board have the right to enforce that plan. Peter Hogan added that enforcement of an approved site plan would still be handled through the Building Inspector.

Chief Jim Brace mentioned that these issues have been going on for many years, starting back in 2015.

The Board discussed the filed complaints further with the Police Chief and noted that they will consider all the complaints when reviewing the site plan. The State could be notified about there being vehicles and signs within the State setbacks according to the State issued driveway permit restrictions.

Joe Constance asked the Planning Coordinator, Shannon Silver if she knew when the site plan application would be submitted. She replied that she was unsure, but she could verify that Meridian Land Services was in process of creating the site plan. David Litwinovich asked if there is a noted time frame that they must update the site plan. Shannon Silver replied no, but they cannot operate outside of the current site plan, whether or not the Zoning Board granted a Special Exception to add sales. David Litwinovich believed it seemed like the site is violating the current site plan. Shannon Silver said it would be a violation if they are moving vehicles back and forth to display out front for sales, they had been told that no vehicles can be displayed for sales until there is a new site plan approved to add sales and delineate a display area.

Chief Jim Brace and Audrey Anastasia mentioned that there had been new LED lighting added to the entire front of building after the Zoning Board hearing. The lighting is extremely

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Miscellaneous Business and correspondence, cont.

bright, and offensive especially compared to other businesses or commercial properties in this area.

Mark Suennen noted that the complaint is now registered before the Planning Board, so when the site plan is reviewed these concerns can be addressed. Mark Suennen recommended that Audrey Anastasia attend the hearings which she will be noticed by certified mail as an abutter when the application will be reviewed by the Planning Board.

Mark Suennen thanked the Chief for attending and verifying the complaints. In the meantime the Building Inspector / Code Enforcement Officer will be asked to visit the site for compliance.

Mark Suennen asked Audrey Anastasia to provide the letter that she read and any photos/videos to the Planning Department.

Elaine Hamel, 463 Riverdale Road, asked if the recent behavior and lack of compliance at Proline Powersports will affect the next step for approval. Mark Suennen assured that he personally would take all the information into account when reviewing the site plan.

4. Discussion with Emily Shellenberger, re: Hosting a Farm to Table Dinner, at Live Bee, or Die Farm, Tax Map/Lot #6/40-1, 7 Byam Road.

Emily Shellenberger explained that she was approached by Green Leaf in Milford to host a farm to table dinner this fall on her farm. Green Leaf would bring everything that would be needed from the food, the tables and chairs, even the portable restroom facilities for the event. She wanted to come in to ask the Planning Board if this would be allowed on her property. The Planning Coordinator, Shannon Silver asked how often this event would be held on her property. Emily Shellenberger replied this would be a one-time event. Mark Suennen asked how large of an event would this be and if it would be indoors or outdoors. Emily Shellenberger said it would be seating for 60 ppl and Green Leaf asked to setup the seating in her 30x60' green house.

Peter Hogan and Mark Suennen questioned where the cars would park for the event. Emily Shellenberger said she had some room for parking on her property and that her parents owned EcoSmith which abuts her property and had extra room for parking.

The Board explained that there would be no approval / permit required with the Town or the Planning Board for a one-time 60-person event.

Emily Shellenberger then asked what would be needed to get an approval for a wedding type venue on her farm. She explained that she had several people approach her about having

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weddings on her property. The Board noted that there was a use added for ‘Outdoor Event Venue’ and there were specific regulations added for that use.

Mark Suennen noted that because the property is zoned Commercial, a professional site plan would be necessary if the site plan previously approved were to be expanded, especially if there would be buildings added.

Emily Shellenberger asked if there would be any restrictions for music or bands. Peter Hogan said an engineered sound system would be ideal on this property.

Mark Suennen explained that when Emily Shellenberger is ready to proceed with the application she could submit a preliminary application to discuss exactly what the Board would be looking for on the site plan before she finalized the plan with a professional.

Emily Shellenberger thanked the Board for their time.

5. Copy of ISWMP Adherence Statement and Revised Worksheet, received January 15, 2020, from Richard J. Kohler, Kohler Environmental, LLC, re: Partial Release of ISWMP Bond, for Tax Map/Lot #11/51-3, Bailey Pond Road, for the Board’s action.

Mark Suennen noted that the request would be to release the amount of \$10,068.00, and hold \$1,880.00, for final stabilization of vegetation growth.

The Board discussed and agreed to release the amount requested and hold the remaining balance until the final adherence statement is received.

Mark Suennen **MOVED** to grant the partial release of \$10,068.00, from the original ISWMP bond submitted for Tax Map/Lot #11/51-3. Joe Constance seconded the motion and it **PASSED** unanimously.

6. Email copy with attachment, received January 22, 2020, from David Litwinovich, re: NHMA Webinar, Retooling Your Zoning to Improve Housing Affordability and Supply, for the Board’s information.

- 7a. Letter received November 26, 2019, from Kevin M. Leonard, P.E., Northpoint Engineering, LLC, to Planning Coordinator, Shannon Silver, re: Forest View II, Lorden and McCurdy Roads, Tax Map/Lot #12/19, 12/96 & 12/93-34, AoT & Wetlands Revisions, 3rd Review, for the Board’s information.

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- 7b. Letter received January 23, 2020, from Earl Sandford, LLS, Sandford Surveying & Engineering, Inc., re: Forest View II, Lorden and McCurdy Roads, Tax Map/Lot #12/19, 12/96 & 12/93-34, Sandford Engineering, Inc., response to Kevin M. Leonard, P.E., Northpoint Engineering, LLC, letter of November 26, 2019, for the Board's information.

The Planning Coordinator, Shannon Silver noted that 7a. and 7b. were provided to keep the Board informed and up to date with the current status of this project. Mark Suennen noted that he specifically would be interested in the Town Engineer's comments on item #10, #27, and #36.

David Litwinovich noted that there was a meeting regarding the New Boston Tracking Station and provided the Board with a printout of the slide show that was presented at the meeting.

Joe Constance **MOVED** to adjourn the meeting at 8:28 p.m.
Mark Suennen seconded the motion and it **PASSED** unanimously.

Respectfully submitted,
Nadine Scholes, Planning Board Assistant

Minutes Approved: 02/25/2020