



# TOWN OF NEW LONDON, NEW HAMPSHIRE

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## PLANNING BOARD APPROVED MEETING MINUTES November 12, 2013

**MEMBERS PRESENT:** Tom Cottrill (Chair), Paul Gorman (Secretary), Peter Bianchi (Board of Selectmen's Representative), Emma Crane (Conservation Commission Representative), Michelle Holton, John Tilley, Bill Helm (Alternate), Deirdre Sheerr-Gross (Alternate)

**MEMBERS ABSENT:** Jeff Hollinger (Vice-Chair), Michael Doheny (Alternate),

**STAFF:** Lucy St. John (Planning and Zoning Administrator), Kristy Heath (Recording Secretary)

Chair Cottrill called the meeting to order at 7:02pm. Mr. Helm, alternate, was asked to sit in for Jeff Hollinger, Vice Chair, who was absent.

### **Tax Map Corrections – Norm Bernaiche, Tri-Town Assessor, Tim Fountain, CAI Technologies:**

Mr. Bernaiche said that he and Tim Fountain would provide a brief overview of the mapping process and address any questions the Board may have. He explained that several years ago, when former Planning and Zoning Administrator Peter Stanley was with the Town, annual funding was established to fund GIS mapping. However, in 2012 funding was not included in the CIP or budget. Mr. Bernaiche said he would like to ask the Planning Board to again support funding for the mapping project in the CIP and Town Budget. The Town had been putting money away in the CIP to fund this project which, when completed, would never have to be done again, but no money was put away last year when Mr. Bernaiche had briefly stopped working for the Town.

A brief explanation was provided regarding how the mapping will help to correct the visual representation of flat surfaces when the earth is really curved. He explained that aerial photographs were previously used with visual controls on ground. This information is then manipulated to correct for the natural earth's curvature. The current maps do not accurately reflect what is on the ground. He provided an illustration of the current mapping showing a lakefront property with a dock, when the property doesn't have a dock. He explained that having accurate mapping is helpful in so many ways- assessing, used in legal presentations, local boards, realtors and residents rely on the maps. Without the accurate maps this can create embarrassing situations when property owners want to inquire about their parcels or when considering parcel boundaries.

Mr. Fountain explained that the update would be conducted in phases, updating the maps in conjunction with reviewing deeds and survey plan, and other helpful documentation. Ms. Sheerr-Gross said people need to remember they can't consider the tax map to be perfect. Mr. Fountain agreed and noted that this investment will only appreciate as the more data that is found over time only makes the information more accurate. Noting that once the update is complete it wouldn't need to be done again.

Mr. Bernaiche said before the updating is even started they would need to present all the information to the public as they do with re-evaluation hearings. The public would have their opportunity to give input.

Mr. Bianchi stated he felt the deviation from flat to curved mapping was inconsequential due to the magnitude of the distortion based on the size of the Earth. He felt it was a minor problem. Mr. Fountain said the data they have now was compiled on uncontrolled photography. The images and maps were put together; the further

they get from the center of the photograph, the more distorted they get because the curvature of the Earth is not taken into consideration.

Mr. Helm wondered if they were present at the meeting because they were asking to use the money that had been put aside. Mr. Bernaiche said there is \$25,000 saved now and they figured it would cost \$75,000 to do the entire project. Mr. Bernaiche wanted to bring the conversation back to where it started and get the project moving forward. He noted that half of the value of the town is waterfront property, and having accurate mapping is important for tax and assessing purposes, as well as for everyday use of the maps.

Ms. Holton wondered if all the towns with maps like these are going to have to be educated and urged to correct them. Mr. Bernaiche said that Sunapee and Newbury have already adjusted their maps. They do and can work with these incorrect maps, but he thought it would be best to get them right and they'll never have to do it again.

Chair Cottrill asked if the boundary of the Town could be affected by the new maps. Mr. Bernaiche said yes and that for homes that are very close to a town line, they could end up in the neighboring town as was the case between Sunapee and Newport.

Mr. Bernaiche expected they would do the work over a two to three year period. If they were to get a commitment to do the first phase of the project and not for the others, the first phase would be worthless. He was there to explain why the process was started a few years ago. They have 1/3 of the funds put aside already. Mr. Bernaiche said he would be willing to meet with anyone to answer any questions they may have about the project.

Mr. Helm thought if it had been voted on to do this in the past, it should be continued. The money was appropriated for it and can't be spent for anything else so it is just sitting there.

**Home Business Application – Robert Minaert, 144 Barrett Road (Tax Map/Lot 084-036-000):**

Ms. St. John said the abutters have been notified and referred to the staff report provided to the Board.

Mr. Minaert explained that he and his wife Paula moved to New London less than a year ago from Maryland where he became a certified hypnotist and had a small home business. They would like to have the same kind of home business in New London. Mr. Minaert said he would like to work his business no more than 20 hours/week. The business would service one person at a time in one room of the home on the lower level. The clients would park in the driveway.

Ms. St. John was asked if the application was complete, she referred to the staff report, and explained that the basic information was included. Mr. Minaert said the Fire Chief had come by and found everything to be OK.

Mr. Helm commented that the Planning Board should be more specific with such terms as "generally" which was noted in the proposed hours of operation. Mr. Minaert agreed to limit the hours of operation specifically to 10:00am – 4:00pm, Monday through Friday rather than "generally."

Abutter, Rosemarie Bernard from 149 Barrett Road, said she was fine with this plan. She said the couple had explained everything to her and she had no questions.

**IT WAS MOVED (Michele Holton) AND SECONDED (Paul Gorman) to approve the home business for Robert Minaert of 144 Barrett Road with the condition that the hours of operation be limited to between 10am–4pm, Monday-Friday. THE MOTION WAS APPROVED UNANIMOUSLY.**

**Site Plan Request – Flying Goose Brew Pub. Located at 40 Andover Road. Tom Mills (Tax Map/Lot 122-001-000):**

Mr. Mills said he would like a building permit to replace the dumpster enclosure that is currently on site as this was one of the issues that the abutters brought to his attention when the site plan application was discussed at the October 22<sup>nd</sup> Planning Board meeting. He hoped to get the work done before the ground freezes and would like to have a site plan review waived in order to do so. He indicated that the abutters were strongly in favor of this being done and that he had met with some of them since the Oct 22<sup>nd</sup> meeting. He proposed that the dumpster would be relocated across the parking lot about 40-50’.

Mr. Mills said he envisioned the enclosure having a double-gated opening to give access to a dumpster and recycling bins. It would be positioned on a cement slab with posts. It would have galvanized fencing with privacy slats. Ms. Sheerr-Gross asked if the enclosure was within the setbacks. Mr. Mills said it was. Chair Cottrill requested an updated plan of the site. Mr. Bianchi noted that this information would come forth upon their submitting a building permit application.

**IT WAS MOVED (Michele Holton) AND SECONDED (Paul Gorman) to approve the request of the Flying Goose Brew Pub located at 40 Andover Road for the relocation of the dumpster and to enclose the dumpster with screening as proposed and shown and to waive site plan review. THE MOTION WAS APPROVED UNANIMOUSLY.**

**Shoreland Application — Muller, 138 Herrick Cove Lane, Represented by Pierre Bedard (Tax Map/Lot 091-020-000):**

Mr. Bedard said Mr. Muller is planning to convey the property to his son-in-law, who would like to build a 3-bedroom dwelling and attached garage which would be larger than the current structure. Permits were submitted to the state in October and they received an approved State Shoreland Permit on October 23<sup>rd</sup>. The impervious surface had been 22.1% of the area within 250’ of the reference line. To mitigate the 2.1% above the 20%, a drip-edge infiltration trench would be installed. Mr. Bedard thought this was a good option as it needs very little maintenance and would last a long time.

Chair Cottrill said zoning regulations require applicants to appear before the Planning Board if the proposed impervious area falls between 20% and 30%. Ms. St. John said the initial application totaled over 20%. They were there to show that they were mitigating the 2.1% to get just below 20% to be at 19.8%. It was noted that the State also approved the plan with an impervious surface of 19.8%. **There were no comments from the Board.**

**Shoreland Application – Williamson and Stampfer, 678 Lakeshore Drive, Represented by Pierre Bedard (Tax Map/Lot 050-001-000):**

Mr. Bedard explained that the Williamsons were at 25.6% impervious area on the site. The State approved the State Shoreland Permit on September 25<sup>th</sup>. Since then, the owners made some changes as they are trying to keep the property feeling natural. They decreased the size of the parking area and the width of the driveway. They also increased the size of their house a bit. They plan on mitigating the excess 6.5% with drip edge infiltration trenches. The total impervious is now at 16.3%. Since the new impervious surface area is now less than 20%, **there were no further comments from the Board.**

**Tree-Cutting Application – Chapin, 267 Lamson Lane, Represented by Pierre Bedard (Tax Map/Lot 062-007-000):**

Mr. Bedard provided a brief history of the situation. Noting that once the property owners learned that there were some issues, they contacted the Town staff, met with them, and then retained him to prepare the tree cutting application, and subsequent after-the-fact NHDES Shoreland Permit to NHDES. Mr. Bedard commented that the work would have qualified under the State Permit By Notification process but since the work was done without NHDES approval a formal Shoreland Permit was required.

He discussed the details included in the Shoreland permit application and the tree cutting application. He explained that two trees that were dead or dying were cut earlier in the fall. He could tell by the stumps and debris left that they were, in fact, dead or on their way to being as such. Low shrubs were also cut and loam was added to an area of 800' square feet. Apparently, the owner had no knowledge of the Town's shoreland requirements. The site has since been stabilized with straw. Mr. Bedard noted the tree point count meets or exceeds the 50 point requirement even after these two trees were cut.

Ms. Deirdre Sheerr-Gross commented that it is surprising that someone doesn't know about the local and State Shoreland Regulations.

Mr. Bedard said the area would be replanted with low-bush blueberry bushes, Dogwood, Wintergreen and other native low-bush plants. They will re-plant as soon as the growing season begins in 2014.

Mr. Bianchi worried about the possibility of a State and a New London approval not matching. Mr. Bedard thought the State would either approve the plan or ask for more information. He didn't expect there to be conflicting approvals.

The planting plan is 8' of depth and would be about 40 -45' in length of continual plantings.

**IT WAS MOVED (John Tilley) AND SECONDED (Michele Holton) to approve the tree-cutting by Chapin (267 Lamson Lane) contingent upon the re-planting of the specified area to be completed by July 1, 2014. THE MOTION WAS APPROVED UNANIMOUSLY.**

**Tom Thomas of 838 103-A , VICSI 2003 Revocable Trust - Represented by Peter Blakeman, (Tax Map/Lot 103-108-000):**

Mr. Blakeman said the home was built in 2005 and the owner is planning to construct a new garage. The site includes wetlands, which were delineated by John Sissen who is a licensed wetlands scientist. There is an ephemeral stream that bisects the property. The driveway bridges and connector between the house and the garage will span the wetlands and stream, with no impacts to jurisdictional areas. Mr. Blakeman noted that neither the stream nor the wetland will be impacted and a permit from the State is not needed however a State Shoreland Permit is needed, and the impervious areas allowed in the waterfront buffer exceed the 20% allowed in New London without Planning Board approval. There had been 16% impervious surface prior but after adding the driveway, garage and connector, this increased to about 27%. The garage was made a little smaller and the impervious percentage was brought down to 26%. Mitigating is being done by drip edges off the garage, and two rain gardens that will treat water that comes from the garage. Taking these measures would make impervious closer to 15%.

Ms. Sheerr-Gross recued herself from the discussion because she designed the home and was good friends with the owners.

Mr. Tilley wondered if they needed calculations of flow in the stream in the event of a storm. Ms. St. John said the stream and wetlands are not even identified on the Town's maps. Mr. Blakeman said by treating the water

from the impervious surfaces and recharging it into the ground water, this will keep excess water from going into the stream(s) and surface waters nearby. Ms. St. John said the Conservation Commission had some concern with the wetlands, referring to the Conservation Commission minutes provided to the Planning Board. Neither the streams nor wetlands are identified on the Town's Streams and Wetland Protection Map.

**IT WAS MOVED (Bill Helm) AND SECONDED (Paul Gorman) to approve the application for Tom Thomas (VICSI 2003 Revocable Trust) at 838 Rte. 103-A. THE MOTION WAS APPROVED UNANIMOUSLY.**

**Tree-Cutting Request for Arthur & Jane Boland (Tax Map/Lot 030-005-000):**

Ms. St. John said it didn't appear that anyone was there to represent the Bolands. She noted that they are requesting the removal of seven trees. Ms. St. John had not made a site visit.

Mr. Tilley said the trees to be cut were tagged in orange in the photos. It was noted that some of the trees were close to structures. Each segment would be in excess of the 50 point requirement even after the cutting. There were two pines, four birches and one hemlock to be cut.

**IT WAS MOVED (Bill Helm) AND SECONDED (Peter Bianchi) to approve the tree-cutting application for Arthur & Jane Boland (Tax Map/Lot 030-005-000). THE MOTION WAS APPROVED UNANIMOUSLY.**

**Marshall's Garage – Continued Discussion (Tax Map 077-037):**

Chair Cottrill provided a review of the Marshall Garage discussion, including the letters from the Planning and Zoning Administrator dated August 13, 2013 and the letter of November 5, 2013 regarding the action taken by the Planning Board at the Oct 22, 2013 meeting. He focused on addressing if there have been changes to the site and the uses on the site warranting Site Plan Review (SPR).

He explained that there had been some confusion early on when deciding how to handle this situation. After two meetings the case was referred by the Planning Board to the Board of Selectmen. The Planning Board, since then, met with Town Counsel and was advised that the Planning Board should determine whether a SPR is necessary. It was put on the agenda for the October 22nd meeting. Chair Cottrill noted that the October 22nd agenda was posted as required, and was posted as a public meeting and not as a public hearing.

He explained that Attorney Arnold representing the McChesney's was in attendance at the October 22nd meeting, however Mr. Marshall was not in attendance at this meeting. It was noted that neither party was notified as the agenda was posted as a public meeting and not a public hearing. If it were a public hearing Marshall's Garage and abutters would had been notified. At the meeting, the Planning Board proceeded to review each allegation brought forth by abutter McChesney's, one by one, as noted in the minutes. David Marshall conveyed in a letter dated Nov 4, 2013 to the Planning Board that he was not aware that Marshall's Garage was going to be discussed at the October 22nd meeting.

Chair Cottrill explained that since David Marshall wasn't aware of the October 22 meeting, he didn't attend. He has since prepared a response to the concerns raised at that meeting, and is here this evening to discuss the issues with Board.

Chair Cottrill explained that he would hear from David Marshall and didn't want to rehear all the issues that were previously identified by McChesney's attorney at this time.

Chair Cottrill said at the last PB meeting, the Board agreed that cutting trees did not warrant a SPR but sales and/or rentals of cars may be a new Use since the last site plan review of 1998, which would require SPR. However, Chair Cottrill referred to Mr. Marshall's Letter dated Nov 4, 2013. He said Mr. Marshall's letter explains that they have been selling cars since 1947.

Chair Cottrill noted for the record that Attorney Arnold of Hinckley Allen representing the McChesney's submitted a letter dated November 11, 2013 rebutting issues raised in Mr. Marshall's letter dated Nov 4, 2013. Mr. Bianchi explained that the Planning Board voted on October 22 to require a Site Plan Review (SPR), and communicated this to the Marshalls in the letter dated Nov 5, 2013.

Mr. Bianchi questioned why the Planning Board was opening this up for discussion again, as the Planning Board had made a decision at the Oct 22nd meeting. Chair Cottrill said there were two things that could possibly trigger a SPR, which were the rental and sales of cars and the temporary structure on the site. He felt it was necessary to hear from Mr. Marshall since he had not been present at the October 22nd meeting and that David Marshall's letter of Nov 4, 2013 provided some clarification and additional information which would be helpful as the Board discusses these issues.

Attorney Kevin Baum, of Devine Millimet Attorneys, explained that he is now representing Mr. Marshall. He presented a letter to the Board dated Nov 12, 2013 with attachments and a site sketch of the property showing the location of the existing buildings on the property. Copies were distributed to the Board.

Mr. Bianchi commented that the Board received Attorney Arnold's letter dated November 11, 2013 and now is receiving Attorney Baum's letter dated Nov 12, 2013 and that he didn't feel it was fair or reasonable for the Board to review and process the information contained in either letter at this meeting. There just wasn't enough time to do this.

David Marshall explained that he recently retained Attorney Baum and that they didn't have much time to respond since they only received the letter from the Town dated November 5, 2013, last week.

Attorney Baum asked that the Planning Board consider rescinding their decision of October 22, 2013 to require SPR per the information he would like to present this evening. Attorney Baum noted that SPR was approved in 1998. All the buildings and layouts from 1998 were vested and are allowed to continue. Mr. Marshall's letter said there have been no changes made to the property, except ones that were allowed through the Zoning Ordinance since 1998.

Attorney Baum, referring to the sketch map distributed at the meeting, discussed the history of each building. He explained that the main garage along Elkins Road was constructed in 1947 (identified on the sketch as existing garage) and the interior has not changed. The annex garage (identified on the sketch as existing annex building) located behind the main garage was constructed in 1967 and has remained unchanged except for a wall that was constructed to create an office, as noted in the November 4, 2013 letter. The only change in the main garage is that they added one side door for egress and employee traffic only. He explained that there is an existing residence (identified on the sketch as existing house) on the property, constructed before 1998. There is a temporary canvas tent structure (identified on the sketch as existing shelter) which was erected in 2002. This houses oil and windshield washer fluid for the business. The structure is movable and is not fixed to the ground. Their contention is that the existing buildings were all in place at the time of the 1998 site plan approval and they also contend that it complied with the Ordinance in affect at that time. The tent was added in 2002 after consultation with Peter Stanley, the previous Zoning Administrator. The ordinance at that time said only new buildings would require SPR. The ordinance doesn't define a tent as a building as it isn't in a fixed location.

Mr. Stanley then provided his recollection of the site history to the Board. Mr. Stanley explained that he was in the area for another reason some 10 years ago and noticed that the canopy-tent structure was installed on the property next to the annex garage. He asked Mr. Marshall about the tent structure and Mr. Marshall told him it

was put up in 2002. Mr. Stanley said that the tent like structure didn't need SPR then, as the regulation for approval for temporary structures started in either 2003-2004 and thus, did not apply. Mr. Marshall said he had a credit card receipt for the tent and it was purchased in October of 2002. A copy of the receipt is included with the items attached to the letter from Attorney Baum.

Attorney Baum said that a side door was added to the main garage in the mid-2000 as a fire exit and it does not change traffic flow. Mr. Marshall said technicians use this point of access, noting that customers never use it and deliveries are not made through this side door. He explained that it was installed as a means of secondary egress. He also noted that in front of the main garage a tire rack and often times a golf cart is placed to as to discourage foot traffic to the side door. When asked, Mr. Marshall said there is 4 feet from the side of the building to the property line. Attorney Baum offered that no walls had moved, but there was an upgrade to the heating system in 2005. There was no requirement to get SPR for that type of change.

Attorney Baum then discussed the drainage. The drainage changes that were alleged by the McChesney's were incorrect, he felt. The rear of the property has an existing ditch. To improve flow, a perforated pipe and pea stone were added. This did not change the layout of the property but was done in an effort to maintain and improve the drainage structures on the site. Mr. Marshall said he re-dug the ditch because after plowing snow into that area for so long, debris had filled the ditch rendering it useless.

Attorney Baum said that no additional parking had been added. The use of the property is consistent with what was explained in the Executive Summary from 1998. If anything there has been some reduction in use because of the economy and the fact that the gas pumps had been removed. Ms. Marshall said there had also been a 24-hour wrecker business but he no longer offers that service.

Attorney Baum said Marshall's Garage have been selling cars since 1947. He referenced Marshall's auto dealer's license from 1996. There are older licenses available but they believed this showed that the use was vested because it was held prior to the 1998 SPR. Ms. Marshall said that car leasing is limited and they lease about three cars per month, which is consistent with an auto garage. These are not loaner cars but are rental cars. Mr. Marshall explained that car rentals began in about 2007 to provide a service to vacationers and others who visit the Town, especially the summer folks who often have family and friends visiting. He explained it is not a big business and if it came down to it, he would let it go. They currently have four loaner cars and they sold three cars last year. It isn't a big portion of their business.

Chair Cottrill went through the allegations one more time for questions/comments from the Planning Board:

- Temporary structure issue – there were no comments from the Board
- Car sales/leases – there were no comments from the Board
- Changes to building – there were no comments from the Board
- Drainage – Mr. Marshall explained that in 1998 they went through SPR because a competitor noticed he was putting the drainage in. The neighbors were not complaining about it.

Attorney Arnold, representing the McChesney's then asked to be able to respond to Attorney's Baum comments. He explained that the Planning Board made a vote on October 22 to require a SPR after holding three hearings. It was noted that there have been meetings, no public hearings. There has been ample opportunity for people to discuss and address these issues. He urged the Board not to re-open this issue, as the Planning Board determined that Site Plan Review was required per their decision of Oct **22nd**. He didn't think they needed more information. Chair Cottrill said he disagreed and felt more information was necessary.

Attorney Arnold went on to say that Ms. St. John had indicated in the letter of August 13, 2013 that SPR was required due to changes on the property. Chair Cottrill said Ms. St. John had been responding to a complaint that the trees had been cut. The Planning Board agreed that the cutting of trees in that location did not trigger a SPR. Attorney Arnold said the Board voted on October 22nd to require SPR due to other issues. He felt it was up to the Board to follow through on this decision.

Attorney Arnold said the temporary structure (tent) had been on the site for over 11 years. They believe the building was erected in 2004, not in 2002 thus missing the timeframe when such structures were allowed without a permit. He went on to say that the structure is not a typical tent that would normally be exempt from SPR, and fact that it has been there for 11 years suggests that it is not a temporary structure, and that it has an impact such that of a permanent building would have.

Attorney Arnold said the drainage on the site has changed. The fact that something was done to improve the drainage, shows that it was changed, thus triggering SPR.

Attorney Arnold explained that the addition of a side door on the main building does and has changed the circulation on the site, with people including staff and the general public entering and exiting the building. He explained that the McChesney's have witnessed traffic entering and exiting through that door. Deliveries are made through that door and photos will attest to this. He suggested that a change to the layout to the building was made due to the addition of this door. It is relevant under the regulations that a change was made; it is not relevant how high the volume in and out of the door is. This is a change of use and would trigger SPR. Again, they don't need to determine the degree of volume, but rather, that it is a new use.

Attorney Arnold urged the Board not to reopen these issues at length. There were no questions from the Board.

Attorney Baum responded that with regard to the drainage the issue wasn't that it was changed. He read from the Site Plan Regulation, Article 1, Section D (4) regarding the change in use for layout of property or buildings. There was an existing drainage area but the use or layout hasn't been changed or moved from where it was.

Attorney Baum said with respect to traffic volume, deliveries are not made through the side door. Mr. Marshall said historically cars have parked along the road frontage in front of McChesney's property, McChesney's driveway and other places along the road. This has been going on for years. Mr. Marshall explained that he has tried to be a good neighbor and asked the delivery vehicles not to park in front of McChesney's property or in his driveway. However sometimes the entrance (the front of Marshall's Garage) is already crowded with customers parking, and thus people park where they can find a space along the road. At one time, the McChesney's put three large stones up to deter people from parking there but later removed the stones. Mr. Marshall also explained that he has tried to curtail the parking along the road by placing a whiskey barrel filled with flowers. Vehicles have run into the whiskey barrel and the whiskey barrel was removed. David Marshall explained that he had requested some "no parking" signs be placed along the road. Mr. Lee (Public Works Director) was asked to put up some "No Parking" signs which he did. David Marshall explained that Mr. McChesney removed two of the three signs because he didn't want to see them. He said this area is in the town right-of-way and people have been parking there for decades. Mr. Marshall said it is rare that deliveries are made with a tractor-trailer truck and he tells anyone he sees not to park in that area. Ms. Marshall indicated that most parts delivery vehicles are passenger cars not trucks.

Mr. Helm asked the Marshalls what the downside to having a SPR would be at this point. He offered that it would clear the air going forward. He asked why not go through SPR if they think there are no issues. Mr. Marshall said it is because of the cost and because of Mr. McChesney's input. Mr. Marshall believed that Mr. McChesney would like to minimize the garage as much as he can. Mr. Helm said if the Marshalls had nothing to hide, this would certainly clear the air and update the 1998 status. Ms. Holton didn't think the Marshalls should have to go through SPR. Attorney Baum said it would be several thousand dollars to do everything necessary for SPR and they didn't feel it was necessary.

Mr. Bianchi said both sides disagree that SPR is necessary. He agreed with Mr. Helm that they should do a SPR to put everything to rest. In his mind, if the temporary tent was gone and the rental cars were stopped, there would be no problem. This was the advice he had gleaned through meeting with Town Counsel.

Attorney Baum conveyed he understood where Mr. Bianchi was coming from but said it was a significant expense.

Chair Cottrill asked, “What would going through the Site Plan Review Process for Marshall’s Garage achieve for the McChesney’s?” What if the Board determined that everything was fine? Attorney Arnold said that would mean the Planning Board had done their job, the slate was clean and they could move forward. He commented that the McChesney’s feel that there are some things going on that aren’t permitted under the regulations.

Attorney Arnold said the whole Town is bound to the regulations and the McChesney’s feel that the Marshalls have not abided by these regulations. They are just asking them to look at it. If nothing needs to happen, they’d disagree with it, but it would be the Planning Board’s decision. Chair Cottrill wondered what Mr. Marshall could do to make the McChesneys happy. Attorney Arnold commented that he is still concerned with the regulations. Mr. McChesney was asked to respond, he did not comment.

Ms. Holton said the business had been there a long time and she is not aware of any complaints. She said that she has occasionally used their rental car service and it is a good service to have in town. She didn’t see forcing someone to go through the expense whether it is \$100 or \$1,000.

Attorney Arnold responded that whether neighbors complain or not has nothing to do with the business complying with the Town Regulations. He said the minutes from 1998 show that there were complaints from neighbors at that time. Attorney Arnold said they just want the Town to go through the process.

Chair Cottrill asked when all is said and done and if the Planning Board has agreed to the site plan review as it is today, will the McChesney’s be happy? Attorney Arnold thought they wouldn’t be happy but the issue is the process and it needs to be followed as a forum for public input.

Chair Cottrill said the Board has addressed abutter concerns in the past and that such abutters typically describe specific issues requested for resolution and that more often than not, a resolution is found. He expressed disappointment that no specific items have been suggested that when resolved would satisfy any issue for abutter McChesney.

Attorney Arnold said he would let Mr. McChesney speak to what changes would make him happy. Mr. McChesney did not comment.

Ms. Holton opined that the McChesney’s simply have issues with a commercial garage being located right next to their property. If that is true, they shouldn’t have purchased near a garage. Attorney Arnold said the Site Plan Review process will determine if the concerns are valid and if regulations are not being followed. Ms. Holton asked for proof that regulations had not been followed. Attorney Arnold said they have put up something called a tent when in actuality it is a permanent building. The other issue is that a new use is there for car rentals. Ms. Holton felt the renting of cars fell under “ancillary” uses for car sales. Attorney Arnold offered that under the Marshall’s own admissions, they were triggering SPR.

Mr. Stanley commented that the Planning Board should read its own Site Plan Regulations. The enforcement portion shows that the Planning Board has no power to enforce the SPR regulations. The Board of Selectmen can if they see a violation but the Planning Board has no authority to order someone to have a SPR. They may advise the Board of Selectmen that this would be appropriate but there is no authority under State statutes to do this. Mr. Stanley referenced RSA 674:43 showing that the Planning Board may review site plans and may require a preliminary SPR. Voting on requiring someone to have a SPR is nonsense and is totally inappropriate.

Mr. Stanley added that any time they consider one of these issues of violation they need to look at the violation through the regulatory scheme that was in force at the time, not what the current regulations are. At the time

that these things were going on (temporary structure and car rentals) the Town's regulations were fast and loose. Various people argued to tighten up the regulatory scheme, which was done in the 2000's. These things occurred way before that. There was no building permit required for these tent-like structures until 2004. If it didn't require a permit and wasn't considered a structure, it didn't need a SPR. Mr. Stanley said they have to follow the law.

Mr. Bianchi explained that the Planning Board had met with Town Counsel, and was advised on what to address and thanked Mr. Stanley for his comments.

Mr. Stanley expressed his beliefs about how and what the Planning Board should be doing. He commented that he recently had a meeting with the Town Administrator, Planning Board Chair and Vice Chair about the site plan process and they said the only thing the McChesney's were complaining about was the cutting of trees. He commented that he disagreed with them at that point and now they are considering all of these other issues. He commented that the Planning Board needs to pay attention to the framework of law that they are within.

Chair Cottrill said they have been advised by Town Counsel to have this meeting to discuss these issues and suggested that the Planning Board has the authority to ask for SPR.

**MOTION: IT WAS MOVED (Holton) to not require site plan review for Marshall's Garage. There was no second to this motion.**

Ms. Sheerr-Gross said she would like to hear Town Counsel's input and would like to read the letters that came in at the 11th hour (referring to the letters received from Attorney Arnold on Nov 12th and the letter from Attorney Baum distributed at the meeting). Some members of the Planning Board commented that they weren't at the last meeting or at the session with Town Counsel, and would like time to review the information submitted by Attorney Arnold and Attorney Baum. All of this should be reviewed before any decisions are made. Others on the Planning Board agreed with Ms. Sheerr-Gross.

**IT WAS MOVED (Peter Bianchi) AND SECONDED (Bill Helm) to continue the discussion until input is sought from Town Counsel regarding:**

- if renting of cars is a natural extension of selling vehicles;
- if rental of cars is an additional use and expansion of the car repair business;
- if the Marshall's agreed to remove the temporary structure – canopy tent, would this negate the need for SPR;
- does maintenance of a drainage ditch require SPR;
- does the installation of a new side door on the main garage building, which allows access by employees and a secondary means of egress, constitute a change in the layout of the building thus requiring SPR;
- does the Planning Board have the right to determine if SPR is needed in light of the issues raised by former Planning and Zoning Administrator Peter Stanley relative to the role of the Board of Selectmen in the enforcement of the Site Plan Regulations?

**...And to "stay" the letter of November 5, 2013 from the Planning & Zoning Administrator to Marshall's Garage until a decision is made. THE MOTION PASSED. Ms. Holton voted against the motion.**

It was further requested that Town Counsel be asked opinion of status of a temporary structure (canopy tent) that was placed on the property as "temporary" prior to any zoning requirement regarding such placement, that when a temporary structure still remains after 10 years, is it still considered "temporary?"

### **Updated and Other Business**

- Site Plan for Los Quatros Amigos (084-004-000) was approved with conditions on Sept 24<sup>th</sup>. A revised plan has been submitted. The Board could sign the site plan at the next meeting.
- Tree cutting for 101 Lamson Lane (049-015-00) approved with conditions. Applicant submitted photographs of the plantings.
- Colby-Sawyer College – Campus Master Plan presentation at the next meeting.
- CIP meetings: Update provided on the three meetings, and final meeting scheduled for Dec 3rd. The Conservation Commission and Assessing Department will be presenting at the Dec 3rd meeting. The draft CIP document will be presented to the Planning Board at the Dec 10th meeting. Ms. St. John conveyed that the 1941 Building was discussed at the recent CIP meeting. She asked the Planning Board if there are any projects they would like to include in the CIP documents. Mr. Helm thought they should really discuss the 1941 building as it is going to be a big issue this year. Mr. Bianchi gave some insight into what may be suggested for funding each year for the building. Mr. Helm suggested finding out what the Master Plan says about this kind of venture. Ms. St. John would review the Master Plan to determine if the 1941 Building was identified.
- Kearsarge Regional School District (KRSD)- Ms. St. John provided the Board a copy of the KRSD Strategic Plan 2012-2017 and other details of the District's own CIP plan. This was presented to the CIP committee. Many of the improvements are energy related improvements. Discussed the declining school population and other demographics of the community.
- 2014 Planning Board Meeting Calendar. Ms. St. John has incorporated the suggestions offered. The Planning Board agreed that the calendar was fine to post.
- NHDOT driveway permit applications received from Mr. Lee. One is for the Flying Goose Pub (Tom Mill's property), with access off of Route 11 and Route 114. She noted he withdrew his Site Plan application at the October 22<sup>nd</sup> meeting, which included expansion of the driveway areas. The other is for Dr. Wilson's dental office on Main Street to make an entrance/exit onto Main Street. She would ask Dr. Wilson to come forth to discuss and noted that the change of access -new driveway would require Site Plan Review.
- Signs- Two letter had been provided to the Planning Board regarding signs from the Messer Pond Association and the New London Garden Club. She asked the Planning Board if they would like to have either or both organizations come in to discuss their request with the Board, as neither type of sign is permitted under the current Zoning Ordinance. It was asked, why this is before the Planning Board. Ms. St. John explained that signs are addressed as a section of the Zoning Ordinance, and is one of the 10 items on the list to consider for possible amendments. Chair Cottrill wondered if "watershed" boundary signs should be considered as "municipal signs" and that staff should check with Richard Lee, Public Works Director. Emma Crane also showed the Planning Board an example of the type of signs the Garden Club would like to use, they are not permitted by the current sign provisions.

### **Minutes from 10/22**

**IT WAS MOVED (Emma Crane) AND SECONDED (Paul Gorman) to approve the minutes of October 22, 2013, as amended. THE MOTION WAS APPROVED UNANIMOUSLY.**

**IT WAS MOVED (Emma Crane) AND SECONDED (Peter Bianchi) to adjourn. THE MOTION WAS APPROVED UNANIMOUSLY.**

The meeting adjourned at 10:21pm.

Respectfully submitted,

Kristy Heath, Recording Secretary  
Town of New London