

# Enfield Planning Board – Meeting Minutes

## DEPT OF PUBLIC WORKS/MICROSOFT TEAMS

### PLATFORM

### August 24, 2022

**PLANNING BOARD MEMBERS PRESENT:** David Fracht (Chair), Dan Kiley (Vice-Chair), Linda Jones, Kate Plumley Stewart (Selectboard Representative, via Microsoft Teams), Phil Vermeer (Secretary), Tim Jennings, Brad Rich, Jim Bonner (Alternate and Videographer), Whitney Banker (Alternate)

**PLANNING BOARD MEMBERS ABSENT:** Kurt Gotthardt (Alternate)

**STAFF PRESENT:** Rob Taylor- Land Use and Community Development Administrator, Whitney Banker-Recording Secretary

**GUESTS:** Daniel Bekele (via Microsoft Teams), Monique Bekele (via Microsoft Teams), Scott Sanborn (Cardigan Mountain Land Surveys LLC)

#### I. CALL MEETING TO ORDER:

Chair Fracht called the meeting to order at 7:01 p.m. and took a “roll call” of members present for attendance.

#### II. PUBLIC COMMENTS:

None.

#### III. SELECTBOARD REPORT: Kate Plumley Stewart

Ms. Stewart said that the last Selectboard meeting was canceled so there is no report.

She said that this coming Friday there will be a celebration and viewing of the new fire truck at the Union Street fire station from 6-8 pm. There will be a traditional pushing of the truck into service. All community members are invited to attend.

#### IV. HEARINGS

**Enfield Land Use Case # P22-08-01, The Mirski 2008 Irrevocable Trust is seeking Boundary Line Adjustment (BLA) approval to simply split Tax Map 43, Lot 6 which is 1.20 acres, annexing half to each of the adjacent properties, resulting in two larger lots where there are now three. As a result of the annexations, Tax Map 43, Lot 5 (owned by the Mirski/Spencer Living Trust) will increase from 0.52± acre to 1.12± acres, and Tax Map 43, Lot 7-1 (owned by Daniel and Monique Bekele) from 0.83± acre to 1.43± acres. All properties are located on Algonquin Road in the R3 Residential District.**

Chair Fracht read the case. Mr. Sanborn shared that as the case points out there is a vacant lot between the two existing lots. The owners of each abutting lot plan to split that vacant lot, to make their lots more conforming (and the third non-conforming lot will cease to exist).

Mr. Taylor projected the lots on the GIS map. Mr. Sanborn said there is a ridge down the middle of the lot where they plan to run the new property line. There are some easements that will run with the vacant lot.

Chair Fracht asked if Mr. Sanborn has any idea when the three lots were created. Mr. Sanborn said that he was unsure, but they do go back prior to zoning. Mr. Fracht said the issue is there are three grandfathered, non-conforming lots and the proposal is to make two new non-conforming lots. He said, can the planning board create non-conforming lots from grandfathered lots, or do they have to go to the ZBA to get a variance? Mr. Sanborn said he had never seen a case where they had not allowed a lot to become less non-conforming. Mr. Taylor said technically they are not creating, the two lots exist. Vice-Chair Kiley and Chair Fracht said they are new lots after the vacant lot is split. Ms. Jones suggested that they are facilitating not creating. Mr. Sanborn said they are altering the boundary, not creating a new lot. Vice-Chair Kiley said he could see this. Mr. Sanborn said that the State of NH normal approval does not apply when they have lots under 5-acres that are being made larger. The state's position is that making the lots less non-conforming is a good thing. Vice-Chair Kiley agreed that this made sense.

Ms. Jones asked Mr. Sanborn, in his letter to the Planning Board it says there are some "proposed restrictive covenants that will protect the state of undeveloped portions between the existing residences". Mr. Sanborn said there would be restrictions on the top of the ridge, with the proposed new line, that would not allow the construction of new buildings by either lot owner. He said there is another small area in the southernly corner that would be restricted from having any septic system placement. Ms. Jones said that making these two one-acre lots, would this allow an ADU? Mr. Taylor said the ADU is excepted from acreage requirements.

Chair Fracht closed the public hearing. He asked for board members to discuss.

Secretary Vermeer said it was straightforward.

Move – approve the lot line adjustment

Second – Jennings

Unanimous

## V. CONCEPTUALS

A. Peter Weaver – did not attend

**B. Susan Brown – Depot Street: Lots 46, 47, and 48.**

Mr. Taylor projected Ms. Brown's lot on the GIS map. He said that Ms. Brown had been working with the DOT to sell her the triangle of land that goes from her current lot line to the road front.

Ms. Brown said that her house was built in 1841 and she believed it was originally a full acre. She is trying to buy that triangle of land to have an acre. She said that she bought the home in 2009 and had rented it for a while from the previous owner. That owner did not realize he did not own that 1/10<sup>th</sup> of an acre in front of the street – it is owned by the state. Ms. Brown said that the price has an \$1100 service fee and is then \$1500 for the 1/10<sup>th</sup> of an acre. That piece of land has an easement for utilities as well as town water/sewer. Ms. Brown would like to have a one-acre lot to make settling her estate an easier task for her children.

Ms. Brown said that she has a draft deed. The purchase will make her estate much easier to settle. Ms. Brown asked Mr. Taylor to explain his question about the state's land. Mr. Taylor said can the state sub-divide? He would assume yes. Vice-Chair Kiley agreed yes. Mr. Taylor said that his preference would be for the state to clean up the situation with these lots all at one time, including lots 47 and 48 (the latter has a building owned by the town).

Ms. Brown said she plans to send the state their money tomorrow and obtain a deed from them. Once she has that deed, her plan is to ask the Planning Board to merge the two pieces of land. Vice-Chair Kiley said that this would make sense.

Chair Fracht said that what she wants to do makes all the sense in the world. He said from the town's point of view, once she has the deed for the purchase, they have to merge the new lot with her current lot. He said, how does the state effect the subdivision so that the town's records are up to date. Vice-Chair Kiley said that the state can make the subdivision, they don't have to do anything with the town. Mr. Taylor said the state had done this before, as well with the recent Main Street property purchased by Mr. Kelleher. Vice-Chair Kiley said that the updated deeds would be given to the town by the state.

Chair Fracht said it would be a voluntary lot merger. Ms. Brown explained that there are posts from a recent survey she had done. She said that neither her realtors nor the realtors of the owner of lot 47 were told that the state-owned those front portions of land.

Mr. Rich asked how long it had been that Ms. Brown had been working on this. She said it had been 3 years so far. At this point, she is told as soon as they receive her check, they will send her a deed which will then be recorded with the county.

**VI. REVIEW MEETING MINUTES: August 10, 2022**

There are quite a few minor grammatical errors. Chair Fracht had sent a marked copy to Ms. Banker to update. Ms. Banker will make the updates and send them to Mr. Taylor to circulate to the board.

***Ms. Jones MOVED to table the August 10, 2022, Minutes presented in the August 24, 2022, agenda to review at the September 14, 2022, meeting.***

***Seconded by Secretary Vermeer***

**Roll Call Vote:**

David Fracht (Chair), Dan Kiley (Vice-Chair), Linda Jones, Kate Plumley Stewart (Selectboard Representative, via Microsoft Teams), Phil Vermeer (Secretary), Tim Jennings, Brad Rich, **all voting Yea.**

**None voted Nay.**

**None Abstained.**

***\* The Vote on the MOTION was approved (7-0).***

**VII. UPDATE ON MASTER PLANNING TASK FORCE WORK: David Fracht**

Co-Chair Fracht said the next meeting will be on September 12. He hopes that the momentum will pick back up for this work at that time. Mr. Taylor was still waiting for an updated quote from the drone photographer. Co-Chair Fracht said he was disappointed that they did not make the late July/early August public meeting goal, but things move slowly. Vice-Chair Kiley said that they may get more community participation in the fall than the summer.

Mr. Jennings asked if the Planning Board can have a copy of the draft master plan. Chair Fracht asked Mr. Taylor to send the copy to Planning Board members when he sends it to the Master Plan Task Force members for the upcoming September meeting.

**VIII. OLD BUSINESS:**

Mr. Rich said at like 159/160/161 from there was a reference to a previous neighboring property and issues with Dr. Theis. He said he did not understand what this was about and asked for clarification. Mr. Taylor said that a neighboring pit owned by the Crates that had been used for firearm training which he believed was what they were referring to. Mr. Jennings said that this would be something that would go to the Selectboard. Mr. Taylor said he believed that the town's officers have a membership at the Enfield Outing Club to do their firearms training. Ms. Stewart said that she believed so.

Ms. Stewart said that she believed the comment was in reference to a conservation issue where Dr. Theis was an abutter to a property whose owner was trying to build a home, and the

163 Conservation Commission was concerned about the location. Dr. Theis did not recuse himself as  
164 a member of the Conservation Commission in dealing with that case.

166 Chair Fracht said that at the last meeting he misspoke in saying that any decision the Planning  
167 Board makes can be appealed to the ZBA. This is incorrect. Any decision that the Planning  
168 Board makes, if a community member disagrees, they can ask for a re-hearing or they can go  
169 directly to the state court. The ZBA has nothing to do with it.

171 Chair Fracht also said that he had found a handbook on excavation which he sent to Mr. Taylor.  
172 He asked Mr. Taylor to circulate this to the board. The handbook includes regulations, some  
173 court cases (though none that mimic the Conkey gravel pit situation), and suggested regulations  
174 for possible future consideration. Mr. Jennings asked if the handbook is small enough that it  
175 could be printed? Chair Fracht said it was about 88 pages. Mr. Taylor said if Mr. Jennings would  
176 like a printed copy, he is happy to print a few (double-sided).

178 Ms. Jones said that at the Conkey hearing she was surprised that when Eastman residents were  
179 talking about concern for their aquifer and it being only at 10' – she was wondering how close  
180 the firearms practice was because they would be shooting lead which would then leech into the  
181 aquifer. Vice-Chair Kiley said this would not be discussed for tonight as the hearing was  
182 continued, and the applicant and abutters would need to be here for further discussion.

184 Chair Fracht said that for Mr. Jennings and Ms. Jones, since they were not present at the first  
185 hearing meeting, if they would like to sit on the hearing, they need to view the recording of the  
186 meeting ahead of time. He would ask them at the beginning of the meeting if they reviewed the  
187 hearing and have a good understanding of it. If they do not have an understanding of it, one or  
188 both of the alternates would continue as a board member. Ms. Jones said she had already  
189 reviewed all the meetings she missed. Mr. Jennings said this sounds like a procedure that should  
190 be part of the policy. Chair Fracht said he believed it was in the policies and procedures, but if it  
191 is not it was taken from the state planning handbook which Mr. Jennings should have a copy of.

193 Mr. Jennings said that the situation occurs when an applicant comes before the board with an  
194 incomplete application – it seems like the board would not want to make a decision at that point.  
195 Time has been used to determine that the application hearing must continue. Mr. Jennings said  
196 that it would seem that a judgement could be rendered when the application is received – likely  
197 by Mr. Taylor – that the application is incomplete. This would then be communicated to the  
198 applicant, and they could decide to go to the Planning Board anyway or decide to make changes  
199 before going to the board. He asked how this has played out in the past and is there anything they  
200 can do about this going forward? Chair Fracht said Mr. Taylor does the initial screening and  
201 makes a decision if the application is complete or not. If there are questions, Chair Fracht is  
202 happy to review and discuss with Mr. Taylor. He said that he thinks the Conkey application was  
203 particularly incomplete, and he would certainly entertain a motion from anyone at the outset of

the hearing to say the application is not complete. The board could then discuss and vote. Chair Fracht agreed an application like that should not get to the board's table, and we will try to do better going forward. Mr. Jennings said at the beginning of the hearing, this may be a question to ask ourselves – before we get involved in the hearing do we feel this is a complete application. Secretary Vermeer said a problem, however, is that abutters are notified ahead of time, and they may come out and be waiting for the hearing – only to be sent home. Mr. Rich agreed timing-wise this may not work. Vice-Chair Kiley said that the law says abutters don't need to be notified until 5 days before the hearing. This could then cause problems with short notice. Mr. Jennings said there is a deadline by which the application has to be received. He said that perhaps Mr. Taylor could review the application to ensure it is complete and may suggest applicants submit their material a week ahead of time for him to review and ask for more information if needed. Mr. Taylor said part of the issue with Mr. Conkey is that he believed he checked all the boxes and had a complete application. Vice-Chair Kiley said that they then discovered during the hearing that it was incomplete. Mr. Jennings asked, do we think we communicated to Mr. Conkey what it is he is lacking. Board members agreed they felt he had.

Ms. Jones said, another procedural thing, since I spoke on an ongoing issue that is not on the table tonight. Can I retract my statement and not have them in the minutes? Chair Fracht said no. The minutes are a recording of what actually happened during the meeting.

#### **B. Kelleher**

Chair Fracht said another thing that recently came up with the Kelleher hearing was including all important information in the motion that ZBA makes for cases that then go to Planning Board. Chair Fracht said that he spoke with the ZBA Chair, Mr. Mike Diehn, and asked if it would be possible to include dimensions in their decision. Currently when the ZBA makes a motion to grant a dimensional waiver, the amount of the waiver is not part of the motion. ZBA Chair Diehn agreed this was a good idea and will be discussed at the next meeting he believes. Mr. Taylor said that the ZBA Chair agreed this is something they will do going forward.

Mr. Jennings asked, the ZBA makes a decision, and it is signed by their chair, and the Planning Board gets a copy; could we also get a copy of the minutes? Mr. Taylor said that all minutes are also published online, but he can include them in the packet as well.

Mr. Jennings said on the other end, once the Planning Board makes a decision what happens? Chair Fracht said he writes the decision, sends to Mr. Taylor to fill in detail like when mailings and advertising were done. The final version is then signed and mailed out. Mr. Jennings asked if this appears on the town website. Mr. Taylor said decisions are not posted, they go into the permanent record of the file. Mr. Jennings said he would like to get a copy of the decision to close the loop. He said he also thinks a copy should be online, like the minutes. Chair Fracht said he thinks this is a reasonable request. He said that in Vermont, the entire development review board would actually have to sign decisions. He said he does not see any reason why a final

signed copy of the decision couldn't be sent to all Planning Board members. Mr. Taylor said as of now they do not publish the packets of all cases, but he would love to see this in the future for transparency. Chair Fracht asked what is holding this up. Mr. Taylor said he believes it may be website capability, but there will be a new website where this may be possible. Mr. Jennings asked what happens in 15 years when someone wants to know what the decision was, what is part of the case, etc. Chair Fracht said Mr. Taylor keeps property files with these. Mr. Taylor said he has files that go back probably 50 years. Mr. Jennings asked if the lot with Mr. Conkey's case has a file with prior information. Mr. Taylor said yes, one of the abutters went to the town's assessor to obtain the intent to excavate documents. Mr. Jennings said he would like to see this go another step further in the future but now is not the time. Mr. Taylor said he has been reviewing software that can do these things. A decision has not been made, but it can help with the paper-heavy situation. The town's goal is to make the process more electronic in nature (fill out the form online, with a routing system, and that it will be available electronically).

## **IX. NEW BUSINESS:**

### **A. Planning Board Member Certification**

Chair Fracht said that the State of New Hampshire has a new certification that can be done online. He said that it would be nice if members would take the time to take the test. Chair Fracht said one thing he was reminded of taking the test, was that if there is a motion to approve something that fails, a motion then has to be made to not approve (and hopefully that passes) as this is what the state wants to be done.

## **X. NEXT MEETING: September 14, 2022**

## **XI. ADJOURNMENT:**

*A MOTION was made by Mr. Jennings to adjourn the meeting at 7:30 p.m.*

*The MOTION was seconded by Vice-Chair Kiley*

### **Roll Call Vote:**

David Fracht (Chair), Dan Kiley (Vice-Chair), Linda Jones, Kate Plumley Stewart (Selectboard Representative, via Microsoft Teams), Phil Vermeer (Secretary), Tim Jennings, Brad Rich **all voting Yea.**

**None voted Nay.**

**None Abstained.**

*\* The Vote on the MOTION was approved (7-0).*

Respectfully submitted,

Whitney Banker

Recording Secretary