

**AMENDED AND APPROVED**  
**TOWN OF NEWPORT, NH**  
Minutes of the Planning Board meeting  
October 5, 2021- 6:00 P.M.  
Board of Selectmen's Room  
15 Sunapee Street  
Special Meeting

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**MEMBERS PRESENT:** Ken Merrow, Vice Chairman; Ray Kibbey, Tobin Menard, Bert Spaulding, Sr. alternate; Herbert Tellor, Jr., BOS Representative

**MEMBERS ABSENT:** David Burnham, Chairman; John Hooper II, BOS Representative Alternate; Sean Glasscock, David Kibbey, alternate

**VIDEOGRAPHER:** NCTV

**STAFF PRESENT:** Christina Donovan, Planning and Zoning Administrator

**COMMUNITY MEMBERS PRESENT:** Shaun Carroll, Jr.; Shaun Carroll III, Kathleen Carroll, Herbert Fisher, Sarah Fisher, Steven Mieg, Evelyn Brooke

**CALL TO ORDER:** Vice Chairman Merrow called the meeting to order at 6:03 p.m. followed by a roll call of sitting members. Mr. Spaulding, Sr. was appointed to sit for Sean Glasscock.

**AGENDA REVIEW:** Ms. Donovan stated it was a special meeting, thus the agenda was abbreviated to only those items needing immediate attention.

**CONTINUED BUSINESS:** none

**NEW BUSINESS:**

**2021-SDFP-003 – Robert & Barbara Lucas:** Request a final review for a minor subdivision, property identified as Map 242 Lot 010 located at 513 Bradford Road in the Rural (R) Zoning District.

On a motion by Mr. Kibbey, seconded by Mr. Menard; *the Board voted to accept the application as complete. The motion passed 4-0-0.*

Vice Chairman Merrow opened Case 2021-SDFP-003.  
He addressed Mr. and Mrs. Lucas and asked if they were representing themselves. He was told yes.

Mrs. Lucas stated that they were requesting a minor subdivision at 513 Bradford Road. They will split the land to create a 5.09 acres lot. She gave a historical reference, explaining that the land used to be this way years ago. Currently their property egress and ingress opens onto Moore Road because they have to have a primary residence due to their Well business. Mr. and Mrs. Lucas were selling the 5.09 acres (egress onto Bradford Road) and building a primary residence on the Moore Road lot.

Vice Chairman Merrow asked if there were questions from the Board.

Mr. Spaulding, Sr. asked if the five acre lot was the lot shown in the lower left hand corner of the site plan (provided to the Board members). He stated that the (road) frontage of that lot (tax map 242 lot 10.1) is on Bradford Road. Mrs. Lucas agreed.

Mr. Spaulding, Sr. addressed Ms. Donovan and asked if the applicants met all zoning requirements (for 5.09 acre lot). Ms. Donovan stated yes, and listed the requirements that they met.

Mr. Spaulding, Sr. then asked Ms. Donovan if the 10.73 acre lot met all requirements. Ms. Donovan stated that as long as the applicants built the home (as she referenced in her Administrative Review) they met all requirements. When asked why the condition was on the Administrative Review, Ms. Donovan stated that it is required in the Rural (R) Zoning District.

Mrs. Lucas said there was a business off of Moore Road. There has to be a residence as well; it is a residential property with a business on it (Mr. Lucas stated the use is grandfathered).

Mr. Spaulding, Sr. asked Ms. Donovan if it was grandfathered. He was told that the subdivision was as of 2021; she had to follow 2021 subdivision guidelines. The Board and Ms. Donovan discussed the need for a new residence per zoning regulations as necessitated by the creation of the subdivision. Building the residence would be a condition of the approval.

Vice Chairman Merrow stated that his thoughts were that Mr. and Mrs. Lucas needed to go to the ZBA for a variance. Planning Board approval could be conditional on the applicants getting a variance from the ZBA.

Mr. Kibbey asked if there ever was a residence on the second (10.73 acres) lot. He was told yes; Mr. Lucas' father (had a residence). The applicants again explained the history of the residences on the lot and the reason for the subdivision at this time. The Board and Ms. Donovan again discussed the need for a new residence per zoning regulations as necessitated by the creation of the subdivision, as well as the possible need for a variance.

Mr. Spaulding, Sr. said that the business predated the zoning. With the subdivision, the Planning Board is putting two primary functions on one lot (residence and business). He asked Ms. Donovan if they could do that. Ms. Donovan said yes. She then explained the scenario of the case for the Board.

Mr. Shaun Carroll, Jr. addressed Vice Chairman Merrow and stated that the business was grandfathered. The Planning Board had to treat the case as if there is no business; because it is grandfathered. If the 10.73 acres allows the applicants to put a house on the lot; that is what the Board is looking at. He stated the Planning Board members should technically forget the garages (on the property) are there. Concluding, he asked if the house the applicants are planning fits (on the ten acre lot) with Newport's zoning regulations.

Agreeing, Vice Chairman Merrow explained he was looking at the technicalities involved with ordinances. Mr. Carroll, Jr. said if the Board had the applicants consent to build within a year and it is a condition of the approval, they have a way to mitigate the situation. Vice Chairman Merrow thanked Mr. Carroll, Jr. The Board, Mr. Carroll, Jr. and Ms. Donovan continued to discuss all aspects of the case. Mr. Spaulding, Sr. asked Ms. Donovan if they could put a residence and business on one lot. Ms. Donovan said yes. Mr. Spaulding, Sr. moved to go into deliberations. Vice Chairman Merrow addressed the applicants and stated they were going into nonpublic.

Vice Chairman Merrow called for a motion. Mr. Menard made a motion to ***accept Case 2021- SDFP-003 contingent on the applicants building a house within one year (October 5, 2022).*** It was seconded by Mr. Kibbey. ***The motion passed 4-0-0.***

Mr. Tellor thanked the Lucas's for their patience.

#### **Class VI Road Application – Dana Olmsted:** Pike Hill

When asked, Ms. Donovan explained that Class VI Road Applications are seen by the Planning Board and their suggestions are sent to the BOS. The applicant was not in attendance. Ms. Donovan requested that the application be moved to the October 12, 2021 Planning Board meeting at 6 p.m.

Mr. Spaulding, Sr. asked Ms. Donovan to cite the statute for a Class VI road that requires the hearing (at the Planning Board). He wanted to know if the Planning Board could make the decision. Right now their suggestions go to the BOS for a final decision. He asked if Ms. Olmsted needed to come back to the Planning Board or if the Planning Board could just send the Case for a decision to the BOS. Ms. Donovan asked if he did not want the applicant present (at the Planning Board meeting to state her case). Mr. Spaulding, Sr. asked if what the applicant was doing (on her property) was before the Planning Board members at the October 5, 2021 meeting. He was told no, that the only question before the Board (at the October 5, 2021 meeting) was would the Planning Board recommend the applicant building on a Class VI Road. Mr. Spaulding, Sr. said the Planning Board could state whether they approved of her building on a Class VI Road.

Vice Chairman Merrow stated that building on a Class VI Road also required improvements to the road. Ms. Donovan concurred, stating the difficulty she had driving to the proposed building location and the fact that the applicant needed to get variances, too. Continuing, Ms. Donovan explained the applicant had to go through multiple layers of hearings with Town Boards. She was scheduled to be heard at the October 12, 2021 Planning Board meeting for a site plan review. That would be postponed, due to a ZBA hearing (in October) to apply for a variance. Vice Chairman Merrow stated that among other things the road needed improved drainage. Other residents on the road, Herbert Fisher and Sarah Fisher, were acknowledged as being in attendance.

Ms. Donovan stated in general terms, the recreational facility that the applicant was proposing. The Planning Board could stipulate any road improvements needed before any permits were allowed. That discussion and decision could be done with or without the applicant being present. Ms. Donovan agreed, but stated that what the applicant wanted to do was complex.

Mr. Spaulding, Sr. said if the applicant was willing to attend the October 12, 2021 meeting, the Board should continue it to then.

Vice Chairman Merrow again stated that building on a Class VI Road involved upgrades to the road. Ms. Donovan agreed. Vice Chairman Merrow stated the Board needed to know the requirements for building on a Class VI Road. He said that Mr. Carroll, Jr. and Mr. Fisher had made improvements to part of the Class VI Road. The Board and Ms. Donovan discussed the need for major improvements to the road leading to the applicant's building lot.

When asked by Mr. Carroll, Jr.; Vice Chairman Merrow stated that all the discussion on the Class VI Road was in the Case Administration. Reiterating, Ms. Donovan stated she did not know (the details); what the applicant needed to do for (building on) a Class VI Road. She knew the applicant could build as long as the requirements were met.

For clarification, Mr. Spaulding, Sr. asked for the date Ms. Donovan would like to move the case to. Ms. Donovan replied the following week (October 12, 2021) if possible. The Board could move it to date and time certain.

Vice Chairman Merrow requested that, with all the abutters in attendance, the Board open the discussion for initial conversation on the road issues on the Class VI road going to the lot. Nothing concerning the case on the lot proper would be discussed. After a brief discussion, the Board concurred to a discussion on the Class VI Road with the abutters.

Abutters were given Planning Board documentation on the Case to read and refer to.

Vice Chairman Merrow was asked if the Board could discuss the road, it was part of the case. Vice Chairman Merrow stated yes. He was opening discussion on the road with the abutters. They would only talk about the road.

Mr. Shaun Carroll, Jr.; representing Carroll Concrete addressed Vice Chairman Merrow and stated he would like to talk about the (Class VI) road. Mr. Carroll, Jr. stated that the company had done some work

on the road up to the Carroll (formerly Weed) quarry. Their work improved the mitigation of the water on the road. To be good neighbors, they had also assisted Herbert and Sarah Fisher by doing some work to improve the condition and water mitigation of the Class VI road up to the Fisher property. Their assistance allowed Mr. Fisher to maintain the road. Before the improvements the Fishers had to park their car down on the Class V road and walk to their property. The work the company had done was to be good neighbors. The concern Mr. Carroll, Jr. has is that he will now have to assume the responsibility to maintain the (entire) road. He knew of scenarios where he would now be required to maintain the road. He asked:

- 1) What are the Town regulations
- 2) If the road is fixed up too much, does it trigger something so you have to finish it?

Mr. Carroll, Jr. said that he was not the land owner that is interested in using it for purposes other than residential

- 3) Do the improvements trigger something for the applicant to improve the road standards the entire length of the road
- 4) Does it trigger something so the applicant has to maintain it so that it is passable?
- 5) Technically, what is “passable”: single lane?

If he was informed he would now be responsible to maintain the entire road, he will put the road back to its original state. He explained that there was a shooting range further down the road used by the police. By making improvements for his neighbors, the road is now passable for the police.

- 6) Mr. Carroll, Jr. again asked what level of road upgrade and maintenance would be required for the proposed usage. He didn’t want a lot of cars and potentially have cars parked on his property which would require company people up there to protect his property.

Vice Chairman Merrow also listed his concerns as vice chairman:

1. Overall use
2. Traffic year round
3. The Board needs to do some research on whether improvements change it from a Class VI to a Class III Road.

Mr. Kibbey said he has never heard of the term “passable” when describing a road. The Board has been through many private road cases and their requirements. He had never heard the term “passable”. All he has heard is “standards”. Research needs to be done to find out if the road will be held to a (Town) standard or not. Then the Board and applicant need to be told what the standard is. He asked Ms. Donovan to research what standard the road has to be built to. Ms. Donovan stated the standards are in the subdivision regulations. Mr. Kibbey asked if the standards were the same for private roads and Class VI roads.

Vice Chairman Merrow stated one requirement was a maintenance agreement. He didn’t know if Mr. Fisher and Mr. Carroll, Jr. had one. Mr. Fisher stated that work Mr. Carroll, Jr. did was to help him.

Ms. Donovan said there were several questions (on the case):

- ❖ What is allowed (on the property)? The applicant will be going to the ZBA to request a variance for what she wants to do.
- ❖ Come to the Planning Board (Class VI and site plan review)
- ❖ Get BOS permission
- ❖ Maintain the road so it can be used safely (to get to business)

There was a discussion on Town Class VI roads, the new use and potential new rating of the road due to the new use. Ms. Donovan said the Town did not maintain Class VI roads.

Mr. Spaulding, Sr. said a road maintenance agreement would be required for the last person on the road (same as a private road) as well as a waiver of liability to the Town. There was a general discussion on the use and maintenance requirements of a Class VI road. Mr. Spaulding, Sr. stated to go to a Class V road the Town would have to approve it. There was a brief discussion on the road.

Mr. Fisher asked the Board who refereed the (road) agreement. Mr. Kibbey said the people on the road. It was up to all the people on the road to come up with an agreement.

Vice Chairman Merrow stated that the maintenance agreement had to meet whatever the Town wanted.

Ms. Donovan stated she would look into the required regulations for upkeep of a Class VI road and a two lane road.

Mr. Carroll, Jr. repeated what Mr. Spaulding, Sr. said: abutters could not improve the road, change it from one lane to a two lane road. There was a general discussion on the road, the Town keeping it a Class VI road and the applicant improving the road in order to get (first and foremost) a building permit. In order to get a building permit, they have to bring the road up to a certain (Town) standard and have a (road maintenance) agreement. Agreements could be simple or complex. Example of an agreement: "you want to use the road, you can fix the road". In discussion, Mr. Spaulding, Sr. explained the reasons for the maintenance agreements, individual property and constitutional rights and the Town's rights, regulations for road standards and liability protection.

Mr. Carroll, Jr. stated that the same exact laws apply in Sunapee, NH. He agreed with Mr. Kibbey that the standard also depends upon the amount of traffic; if the traffic on the 14 foot wide road increases the standard has to be increased. Consulting the Newport Zoning Ordinances, Vice Chairman Merrow agreed.

Vice Chairman Merrow stated that the applicant needed to go to the ZBA for a variance because she wants to run a business and the zoning district does not permit it. Mr. Kibbey asked if (it states in the zoning ordinance) the road has to be a two way passable road to run a business. Vice Chairman Merrow stated that the recommendation the Planning Board sends to the BOS is that the road has to be brought up to meet whatever traffic there will be. The BOS would have to decide what the requirements are.

There was further discussion on the road configuration by Board members. Ms. Donovan was asked what the standard was if there was a business on a Class VI Road. If we know that, then the Planning Board understands the standards. There was a discussion (consulting the Newport zoning ordinance Subdivision Regulations, page 37) on reclassifying a Class VI Road to a Class V Road. Ms. Donovan stated the applicant is not asking for reclassifying the road.

Vice Chairman Merrow said that for what they are planning to do and the amount of traffic will increase up and down (the road); the idea needs to be presented to the applicant. The applicant needs to:

- Go for a variance (one condition should be they need the proper road and road conditions)
- Then at Planning Board the appropriate road standards (34 foot wide) and improvements
- Road Drainage

Ms. Donovan stated the applicant is strictly asking for building on a Class VI road, not asking for reclassifying it. Vice Chairman Merrow addressed Ms. Donovan and stated that a request to the ZBA for a variance has to include a discussion on the road. The Board and Ms. Donovan discussed the purview of the two Boards and whether the ZBA would use road access and safety to make their decision of granting the variance. Mr. Kibbey asked Ms. Donovan to find out about the number of vehicles and road access for a business. It all came down to the number of cars. There was further discussion on the upgrading to the road.

Mrs. Sarah Fisher stated that at times the Town roads are posted, the Class VI road is closed to motorized vehicles. Being a Class VI Road; the Town can keep it closed longer than other roads in Town. If there is a business, would the people (and visitors) get a special waiver and be allowed to travel on the road while it is technically closed to other landowners?

Mr. Fisher stated that Mr. Bill Ruger had applied to have a shooting range and the BOS had passed bylaws to allow it and travel on the Class VI road (for participants). Vice Chairman Merrow asked Ms. Donovan to look into it. Mr. Kibbey asked if Ms. Donovan believed the BOS wanted a recommendation on the use of the road during the posted times of the year. There was a discussion by the Board members and Ms. Donovan on this. Mrs. Fisher believed the Highway Department had signs with the RSA on them. Ms. Donovan reiterated that it was a complicated Class VI request. Mr. Spaulding, Sr. stated that if the applicant was granted a variance, they had a right to build the business and a responsibility to

maintain the roads for the business. The Town has the veto power if the work is not done to their specs (standards). Vice Chairman Merrow stated the conversation (on the road) was an important one. Ms. Donovan has information and questions to be answered (for all Boards).

Mr. Kibbey asked when the road closure(s) for the Class VI road was lifted by the Town. Mr. Fisher said it depended on road conditions. Generally it is a few weeks after the weight limit sign comes down (from other Town roads).

He explained the Town road agents inspections. Mr. Fisher also stated the assistance from neighbor Shaun Carroll in mitigating the water issue and improving the road conditions. Mr. Kibbey asked if the road was 14 feet wide. He was told no. Its looks were deceiving.

Ms. Donovan addressed the Board and stated she would get as much road information as she could as well as getting information on what was needed to upgrade to a better road (Class VI to a Class V). Mr. Kibbey stressed looking up what was needed for a business on a Class VI road not just a house.

Mr. Carroll, Jr. asked if the business development would be considered a subdivision with the multiple dwellings proposed. Ms. Donovan stated that as Mr. Kibbey stated traffic will trigger the road condition requirements. The safety advice comes from Highway, police and fire (departments). Mr. Carroll, Jr. and Ms. Donovan discussed scenarios of development on the road and what Town department reviews would be needed.

Mr. Fisher addressed Vice Chairman Merrow and stated that when they purchased their property on the Class VI Road they had to sign a waiver to their right of 9-1-1 (emergency services). The applicant would have to do the same thing if the road remained Class VI. Vice Chairman Merrow agreed; stating it was very complex for her case. Ms. Donovan reiterated that it would remain a Class VI Road. A waiver would be signed. The applicant could improve it to whatever standards are necessary, but the Town will not take it over; it will remain a Class VI Road. Vice Chairman Merrow stated it will remain consistent with what has been done (historically).

There being no further discussion by the Board or public in attendance, Vice Chairman Merrow asked for a motion to continue the conversation on Class VI Road Application – Dana Olmsted to October 12, 2021 at 6 p.m.

**MINUTES:** none

#### **ADMINISTRATION:**

##### **Susan Leavitt – Sign Mylar Fourth Street:**

- BOS Approval
- Confirmed property located in R1 district.

Vice Chairman Merrow stated that the Case 2021-SDFP-002: Susan Leavitt had been approved with two conditions. He asked if the conditions had been met.

Ms. Donovan reviewed the two conditions by the Planning Board on the Susan Leavitt case:

- 1) Confirm the property is located in the Residential (R1) District. It had been confirmed.
- 2) Voluntary merger by BOS. The Planning Board was told Town Manager Rieseberg told the BOS members not to touch approving the case. He had cited a legal opinion from Town counsel who stated it was not in the BOS purview to give their approval as the ‘governing body’.

Vice Chairman Merrow asked:

- ❖ For a RSA stating that the BOS should not approve the case. In the August 10, 2021 Planning Board minutes the RSA discussed was RSA 674:39-a.
- ❖ He also wanted to see the legal opinion from Town council.

The Planning Board was told the motion to accept the case. Mr. Spaulding, Sr. read aloud from RSA 674:39-aa I(c). The Planning Board and Ms. Donovan held a long discussion on the RSA, the merger, division and recording of lots at the Sullivan County Registry of Deeds (SCRD).

The Planning Board members were in a quandary. In order to officially close Case 2021-SDFP-002: Susan Leavitt, they needed the approval of the BOS. The BOS would not officially approve the case due to the legal opinion Town Manager Rieseberg claimed he had received from town counsel. There was heated discussion between the members to sign the Mylar for Case 2021-SDFP-002: Susan Leavitt without official approval.

Mr. Kibbey said the Planning Board approved it. The conditions were met. He wanted to sign it (the BOS had approved it and abstained from a vote). There was a discussion among the Board members on the way the agenda item had been brought up and whether Town Manager Rieseberg had the authority to prevent a vote by the BOS. Ms. Donovan stated the BOS had said to give the case back to the Planning Board (to sign the Mylar). The Planning Board members signed the Mylar.

#### **COMMUNICATIONS:**

##### **a) Board**

There was a discussion on BOS voluntary mergers and *attorney's* opinions. Mr. Kibbey said that the Board members were volunteers. They should not be put in this position (being asked to conduct business out of proper protocol). It is the responsibility of the Selectmen or Town Manager Rieseberg. Vice Chairman Merrow stated the Planning Board was fed erroneous information from the Town Manager and Legal. Based on information from the BOS meeting of August 30, 2021 the Planning Board had to make a decision on (a case), and we are not happy about it. Vice Chairman Merrow requested that Town Manager Rieseberg come to a Planning Board meeting and explain his and the BOS actions to the Planning Board members.

Vice Chairman Merrow made a motion *that Town Manager Rieseberg produces to the Planning Board members the Town Attorney's legal opinion that was given to the Town Manager for the BOS for Case 2021-SDFP-002*. It was seconded by Mr. Kibbey. *The motion passed unanimously.*

Mr. Spaulding, Sr. suggested that the Rules of Procedure adjustment (concerning participation of alternates) be addressed at the October 12, 2021 meeting.

Mr. Kibbey made a motion *that the Rules of Procedure adjustment (concerning participation of alternates) be addressed at the October 12, 2021 meeting*. It was seconded by Mr. Tellor. *The motion passed unanimously.*

##### **b) Public** (Public Participation shall pertain to topics within the purview of the Planning Board)

With no more business in the public meeting; on a motion by Mr. Kibbey, seconded by Mr. Menard; *the Board voted to adjourn at 8:02 p.m. The motion passed 4-0-1 (Spaulding abstained).*

Respectfully submitted,

Maura Stetson, Scribe

Approved on November 9, 2021

*The next meeting of the Planning Board will be on October 12, 2021 at 6 pm in the Board of Selectmen's Room.*