

TOWN OF NEWPORT, NH
Minutes of the Planning Board Meeting
August 9, 2016 – 6:00 P.M.
Board of Selectmen's Room
15 Sunapee Street
Regular Meeting and Public Hearing

MEMBERS PRESENT: David Burnham, Chairman; Howard Dunn, Bill Walsh, Bert Spaulding, Sr.; Ray Kibbey, David Kibbey, Alternate; David Hoyt, BOS Representative

MEMBERS ABSENT: Erna McCormick, Alternate; Ken Merrow, Vice Chairman

VIDEOGRAPHER: Louis Cassorla, NCTV

STAFF PRESENT: Julie M. Magnuson, Planning and Zoning Administrator

COMMUNITY MEMEBERS PRESENT: none

CALL TO ORDER: Chairman Burnham called the meeting to order at 6:00 p.m. followed by a roll call. Mr. David Kibbey was appointed to sit for absent member Ken Merrow.

MINUTES: July 12, 2016

Mr. Dunn made a motion, seconded by Mr. Walsh; for *the Board to approve the minutes of the July 12, 2016 meeting*. Mr. Spaulding addressed Chairman Burnham and stated he had the following corrections: page four paragraph six line two should read...lot of humanity admit...page four paragraph six line five should read...court case...and on page four paragraph six line two...motion was that he...should read...motion was that Mr. Walsh...and for clarification on the same line...standard: he had to be impartial...should read...standard: Mr. Walsh had to be impartial...Mr. Dunn again made a motion to *approve the minutes of the July 12, 2016 Planning Board meeting as amended*. Mr. Spaulding, Sr. seconded it. *The motion passed 5-0-1 (David Kibbey abstained, Ray Kibbey did not vote).*

Chairman Burnham stated that ADMINISTRATION would be moved to after case 2016-SPFP-003 to accommodate the applicants and recording secretary. Ms. Magnuson concurred and requested that the Board add AGENDA REVIEW to their agenda before administration. Mr. Spaulding, Sr. addressed Ms. Magnuson and asked for clarification. He referred to a conversation they had had prior to the Planning Board meeting in which he claimed that Ms. Magnuson stated agenda review should be in the agenda. He then raised the question to the Board and asked if the AGENDA REVIEW should become part of the monthly meeting agenda the Planning Board members received.

Mr. Spaulding made a motion that *AGENDA REVIEW be added to subsequent meeting agendas as an agenda item. For clarification, AGENDA REVIEW would be #4 on all agendas in the future.* The motion was seconded by Mr. Hoyt.

Mr. Dunn asked for discussion. Mr. Dunn asked what agenda review meant.

Ms. Magnuson stated that she believed in other Board meetings it was an opportunity for Board members to bring up additional topics with the Board members present that they wanted to discuss and which they felt would be pertinent to the meeting.

Mr. Dunn stated that agenda review was a review of the agenda and a modification of it if needed. Ms. Magnuson stated that it would be a time at the meeting where an issue raised by a Board member could be added that they thought should be discussed. Mr. Hoyt stated that the order of agenda items could also be changed.

Mr. Spaulding, Sr. stated the following could be done: add, subtract or reorganize.

Chairman Burnham called for a vote. On a motion by Mr. Spaulding, Sr.; seconded by Mr. Hoyt; ***the Board voted to add AGENDA REVIEW to subsequent meeting agendas as an agenda item. The motion passed 6-0-0 (Ray Kibbey did not vote).***

Chairman Burnham stated that AGENDA REVIEW would be #4 and ADMINISTRATION would be #5 on all agendas in the future. Ms. Magnuson concurred and stated that when the Board voted on the new Rules of Procedure it could be added to the document.

CONTINUED BUSINESS: none

NEW BUSINESS:

2016-SPFP-002: Orion Prevention Information & Education, Inc. (Owner) and Jonathan Burnham (Agent) request review of a site plan that will allow for the construction of a 36 x 60 accessory garage. The property is identified as Map 115 Lot 017 and located at 135 Elm Street in the Rural (R) and Single Family (R-1) Zoning Districts.

Chairman Burnham opened Case 2016-SPFP-002 and read the Administrative Review into the record. Chairman Burnham stated that the applicant was requesting a waiver of a Mylar.

Mr. Jonathan Burnham explained the purpose and the area of the proposed construction to the Board members. He stated that it would be built on lot 17 and indicated it on a posted site plan. Continuing, he explained that the lot was adjacent to a private road which ended at property beyond the school property. The proposed building would be set back 50 feet from the road. The driveway for the new building was an existing one and came in from the private road to the construction location. Electrical power for the proposed building would come from the pole directly across the street. No sanitary facilities were planned for the building at this time and the area surrounding the proposed building allowed for movement of emergency vehicles of all kinds.

Mr. Jonathan Burnham explained the current drainage to Board members, stating Orion House had had a topographical map done just for drainage of the site. Using the site plan, he stated that the building would be 500+ feet from Elm Street.

Mr. J. Burnham reviewed the drainage of the building for the Board members, explaining the amount and direction flowing water would take when on the property. A topographical map of the adjacent lot had been made to assist with the review of potential drainage of water off the site.

Mr. J. Burnham stated there would be one small outdoor light. It would be downcast, on a motion sensor and would only be 18 watts.

Mr. Spaulding, Sr. asked if there would be a new foundation. He was told yes, the old (existing) one would be ripped out.

Mr. Spaulding, Sr. stated that the Board had been told there would be no sanitary facilities at this time. He asked if the building would be plumbed. He was told no.

Mr. Spaulding, Sr. asked if there would be floor drains. He was told no.

Mr. Spaulding, Sr. asked if there would be running water. He was told no.

Chairman Burnham asked, for clarification, if the current concrete slab would be taken out. He was told that was correct.

Ms. Magnuson addressed the Chair with a Point of Order. She asked if the application had been accepted as complete.

Chairman Burnham asked for a motion to accept the application as complete. On a motion by Mr. David Kibbey, seconded by Mr. Spaulding, Sr.; ***the Board voted to accept the application as complete. The motion passed 6-0-0 (Ray Kibbey did not vote).***

Chairman Burnham opened the hearing to the public.

There were no comments or questions from the public. Chairman Burnham returned to the Board members and asked if they had additional comments or questions.

Mr. Hoyt addressed Mr. Jonathan Burnham and asked whose vehicles and machines would be serviced at the building. Mr. Jonathan Burnham stated emphatically that it would be for the light maintenance of Orion House vehicles and machinery only.

Mr. Spaulding, Sr. asked if there was a deeded right-of-way. Mr. J. Burnham did not know, he presumed yes, because it went to other properties behind the applicant's lot. Mr. J. Burnham addressed Mr. McCutcheon and asked if he was aware of a deeded right of way. Mr. McCutcheon was not.

Mr. Spaulding asked if the applicant had a document stating they could use the private way for access. Mr. J. Burnham explained the history of the land lot and its use of the private way for access to the main road.

Mr. Spaulding, Sr. reiterated his question of the applicant having written authority to use the private way. Mr. J. Burnham stated he could not answer the question at this time.

Mr. Dunn addressed Mr. J. Burnham and asked if the applicant had an agreement for maintenance for the private way. Mr. J. Burnham stated it was his understanding that whoever used the road first plowed it.

Mr. Dunn stated that normally he would have trouble with the plans, but the applicant had frontage on Elm Street. In a worst case scenario the applicant could use Elm Street as an ingress/egress.

There was a long discussion on the use of Elm Street during which Mr. Spaulding, Sr. reiterated his question of a maintenance agreement. Mr. J. Burnham stated he could not answer any specific questions. He also stated there weren't plans (drawn up at this time) to use Elm Street. Mr. McCutcheon addressed the Board and stated that the private way had been used by its previous owners in excess of twenty years.

Mr. Spaulding, Sr. asked Mr. J. Burnham if construction was ready to happen (shovel ready) if the Planning Board gave conditional approval of a maintenance agreement. There was a discussion between Mr. J. Burnham and Mr. Spaulding, Sr.

Mr. Dunn addressed Mr. J. Burnham and asked, for clarification, if the applicant did not get access for the private way if they had another means of access. Mr. Dunn stated they did. Mr. J. Burnham concurred. Mr. Dunn explained the historical procedure of the Planning Board when met with the situation of a private way was that they insisted on having a maintenance agreement as a matter of course between the applicant and the other landowner. There were unknowns with the case. Mr. J. Burnham told Mr. Dunn that it was a good point.

Mr. Spaulding, Sr. asked if the lot where Orion House was had a right-of-way agreement. Mr. J. Burnham stated he did not know, clarifying that no one he knew was aware of the status of Orion House and Bowelan Lane.

Addressing the Board, Mr. Spaulding, Sr. stated that one problem would be future conveyance. Mr. Dunn stated he would agree, except the applicant had another way to exit the property. There was a discussion on the subject among Board members and Mr. J. Burnham. Mr. J. Burnham stated he could not answer questions of alternative egress/ingress for the applicant.

Mr. Dunn addressed Mr. J. Burnham and asked if the Board postponed action on the case for a month, if it would be a serious impediment to the applicant's project. Mr. J. Burnham could not give a definitive answer.

Mr. Walsh asked if a problem would arise with the principal building if new egress was incorporated into the plans. Mr. J. Burnham stated that he believed there was a secondary egress to the building from Elm Street. Mr. McCutcheon concurred with his statement. Mr. J. Burnham stated that the maintenance problem was null and void if they used that egress.

Mr. Walsh stated that he did not know if the Planning Board should get involved and protect the applicant from himself. He did not believe it should be postponed for a month over an existing condition.

Mr. Dunn reiterated that the Planning Board had always required a maintenance agreement when a private way was involved in accessing a property. The applicant had shown that they did not need the private way to access the property. There was therefore no need to postpone the Board's decision for a month.

There was a general discussion among the Planning Board members on whether it was a necessity to postpone the case for a month. Board members listed the various reasons the Board would postpone a case.

Mr. Spaulding, Sr. addressed Mr. J. Burnham and asked if he would accept a conditional approval. He then directed questions to the Chair with his concerns.

There were questions asked as to whether the land beyond the school lots was inhabited. Mr. J. Burnham said yes.

Mr. Dunn asked for the dimensions of the building. He was told 36' x 60'.

Mr. Walsh asked the Chair if it was proper for the Planning Board to ask for a condition that the applicant might not be able to get (maintenance agreement). There was a discussion between the Chair and Mr. Walsh on the subject.

Chairman Burnham addressed Mr. J. Burnham and asked if the Planning Board put a condition of a road maintenance agreement into the approval, would it be satisfactory to the applicants. There was a short discussion between Mr. McCutcheon, Mr. J. Burnham and the Chair concerning maintenance agreements.

Mr. Hoyt asked if there was electricity to the pole across from the lot and proposed garage. He was told yes. Mr. Spaulding, Sr. asked if it was a private or public utility pole. Mr. J. Burnham did not know. Mr. McCutcheon stated there was a public utility marking on the pole; it was a public utility pole.

Mr. Spaulding, Sr. stated, "Then you need to look for an easement for that pole and if there is an easement for that pole; who signed that easement is the property owner."

There being no questions from the public, Chairman Burnham returned to the Board for questions. He then asked the pleasure of the Board. For clarification, Mr. Dunn asked if there was any condition being asked for the case. He was told there wasn't.

On a motion by Mr. Spaulding, Sr., seconded by Mr. Dunn; ***the Board voted to approve 2016-SPFP-002 as presented with the condition that the purchase or underlying fee for a written maintenance agreement and that the waiver of a Mylar be approved for his site plan. The motion passed 5-1-0 (Mr. Walsh voted no; Mr. Ray Kibbey did not vote).***

Mr. Spaulding, Sr. asked who would confirm the written maintenance agreement. Chairman Burnham stated that the Planning and Zoning Administrator would confirm the document. The applicant would also need to present it when applying for a building permit.

Chairman Burnham appointed himself and Mr. Dunn to sign the Notice of Decision and the three sets of site plans.

The Board thanked Mr. Jonathan Burnham for attending the meeting. Mr. McCutcheon told the Board that as soon as they had the pole number they would get the requested information to the Planning and Zoning Office.

2016-SPFP-003: McDonald's Corporation (Owner) and Bohler Engineering (Eric Dubrule, Agent) request review of a site plan to replace the existing single order drive-thru with a dual order tandem drive-thru; improvements and modifications to the parking layout and building. The property is identified as Map 114 Lot 128 and located at 20 John Stark Highway in the Heavy Commercial (B-2) Zoning District.

Chairman Burnham opened the public hearing and read the Administrative Review into the record.

Mr. Spaulding, Sr. addressed Ms. Magnuson and asked what items in the application (2016-SPFP-003) triggered a site plan review.

Ms. Magnuson listed the following:

- ❖ Change in the parking lot layout
- ❖ The additional drive-up

Mr. Spaulding, Sr. questioned the parking lot layout as a necessity. Ms. Magnuson stated that it was a

change in the original layout and was historically required to come back before the Planning Board as an amendment for approval. Also the additional drive-up was a change. The applicant had come in to her office specifically requesting a site plan review.

Mr. Dunn stated that there were new structures. There was a new sign and the second drive-up would have a roof over it. He asked Mr. Dubrule if there would be a roof over the new drive-up. Mr. Dubrule stated there would be.

Chairman Burnham addressed the Board and asked that before they discussed the case further if they would vote on accepting the application as complete. Mr. Spaulding, Sr. argued against such a motion. The Board needed to know whether the case required a site plan review based on the Town of Newport's ordinance. He stated that the parking lot needed to change the painted lines.

Addressing Mr. Dubrule he asked if there would be an additional, third window on the drive-up window side. Mr. Dubrule said he was correct. Mr. Spaulding, Sr. asked Mr. Dubrule if the applicant would be tearing down part of the building. He was told no that the applicant would be adding to the building.

Mr. Spaulding, Sr. said that what was before the Board was a development of a tract as opposed to modification (which the Town said no to) and change of use (which the Town said no to). Mr. Spaulding, Sr. continued with his argument, stating that an additional window in the building was a Building Permit, not a development issue. Relining the parking lot was not a development. Mr. Spaulding, Sr. concluded by stating he felt that the application before the Board was unnecessary.

Chairman Burnham acknowledged Ms. Magnuson. She stated that she had checked with her boss. He also felt that the case needed site plan review as a development of the property.

For clarification, Mr. Spaulding, Sr. asked the name of her boss. Ms. Magnuson replied Shane O'Keefe.

Chairman Burnham stated that the applicant was decreasing the parking spaces, a decrease in sign area, decrease in impervious area, a small decrease in the area of run-off and no changes to the existing infrastructure.

Mr. Dunn addressed the Chair and made a motion *to accept the application as complete*. Mr. Walsh seconded the motion.

There was a short discussion on accepting the application as complete and not to subvert Mr. Spaulding, Sr.'s request to not have the motion.

On a motion by Mr. Dunn, seconded by Mr. Walsh; ***the Board accepted the application as complete. The motion passed 6-0-0(Ray Kibbey did not vote).***

Mr. Spaulding addressed the Board members and stated the Board should entertain the 124 feet of addition. He cited a court case in which parking spaces were involved. Mr. Spaulding, Sr. stated that the Board needed to consider, in his opinion, whether the 124 feet would be considered development.

Mr. Dunn addressed the Board and stated that the sign (change) was also considered a structure. It would also be a site plan change. Mr. Spaulding, Sr. debated whether it would be considered a structure and necessitate a site plan change. Mr. Dunn stated that he had read the court case that Mr. Spaulding, Sr. referred to. The 2016-SPFP-003 case was appropriately before them (Planning Board).

There was a lengthy debate between Board members as to whether it was necessary for the case to go before the Planning Board. When asked, Mr. Spaulding, Sr. stated he would not deny Mr. Dubrule the opportunity to give his presentation to the Planning Board.

Chairman Burnham addressed Mr. Eric Dubrule of Bohler Engineering and asked for his presentation. Using an aerial photograph and site plans Mr. Dubrule explained what their client, the McDonald's Company, proposed to do.

Addressing the Board, Mr. Eric Dubrule stated that the applicant was compliant with the number of parking spaces required by Newport zoning.

- He stated that with the proposed construction they are making sure that the restaurant was compliant with the latest ADA parking requirements as well as slopes to entrances/exits.
- Mr. Dubrule explained the location of the new drive-up window and additional order board as well as reasons for them.
- The trash receptacle area would be replaced due to age and disrepair.
- The freestanding sign (200 sq. ft.) would be replaced with a freestanding sign of 64 sq. ft. (The company was hesitant to reduce the sign's size, but they wanted to work with the Town)
- Increase the amount of green space.
- They were proposing new elevations and exterior aesthetics (red brick similar to Advanced Auto)

Mr. Dunn asked for the elevation of the sign. Mr. Dubrule stated he did not know offhand, but that it was stated in the packet the Board members had been given.

Mr. Dubrule concluded, stating that was what his client was proposing.

There being no further questions from the Board, the Chair opened questions to the public present. There were no questions.

Returning to the Board, Chairman Burnham asked their pleasure.

On a motion by Mr. Dunn, seconded by Mr. Walsh; ***the Board voted to approve the application as presented and to waive the Mylar. The motion passed 6-0-0 (Ray Kibbey did not vote).***

Ms. Magnuson addressed the Chair asked about signing the site plans. Chairman Burnham stated he and Mr. Walsh would sign the site plans (he would sign the Notice of Decision) after the meeting.

After a short discussion, the Notice was signed by Chairman Burnham and the plans were signed by Burnham, Dunn, Walsh and Kibbey at the meeting.

Mr. Dubrule thanked the Board and Ms. Magnuson.

ADMINISTRATION:

Chairman Burnham stated the Planning Board would discuss Administration.

He stated the first item to be discussed...Mr. Spaulding, Sr. interjected and stated that agenda review was going to be discussed. Mr. Spaulding, Sr. stated that it was his opinion that the Board should give a definition of site plan review so the Administrator knew that the townspeople had spoken (twice) and that the intent of the voters would not be extrapolated. He gave an intensive dialogue to back his opinion.

He asked that the subject be put on the agenda for the next meeting for discussion. He also asked that all cases go before anything else at the meeting.

He proposed adding a Rules of Procedure discussion to the September 13, 2016 meeting for a public hearing in the future.

Ms. Magnuson stated that if it was an amendment it would be part of the public meeting, it did not have to be a public hearing.

Ms. Magnuson stated that she had researched the need for site plan review in cases such as the McDonald's one they had heard in tonight's meeting. She gave a synopsis of what she had found and what Planning Boards in the past had recommended. She also stated that decisions for procedural changes could be brought to the voters.

Ms. Magnuson said she had contacted the Town Attorney when presented with the McDonald's case and gotten advice from her. There was a discussion as to how to or if to divulge information from Town Counsel to Board members.

Mr. Dunn suggested that Ms. Magnuson distribute the letter/opinion to the Planning Board members and the Board would discuss it at their next meeting.

Ms. Magnuson gave a synopsis of the conversations with Mr. Dubrule concerning site plan review. Chairman Burnham stated that he believed that if an individual wanted to come before the Board, he should be allowed. He explained his reasoning. Other members gave their opinions.

Ms. Magnuson asked if the Planning Board had the authority to establish the parameters. They were in the current (2016) regulations, but Newport was working under 1987 regulations. Mr. Spaulding, Sr. gave his opinion of Ms. Magnuson's statement.

Mr. Spaulding, Sr. addressed Chairman Burnham, referenced a letter between the Planning Board and BOS, and gave an intense dialogue on its contents.

Mr. Spaulding, Sr. asked if he had to make a motion on agenda review changes, or had everyone agreed on it. Chairman Burnham told him Agenda Review was done. There was a debate as to the order of items on future agendas. Mr. Spaulding, Sr. requested that site plan review be put on a future agenda for discussion.

There was further discussion on the order of agenda items by Board members and Ms. Magnuson.

A motion was made by Mr. David Kibbey *for the Board to take Ms. Magnuson's recommendation of the order of items on agendas for future Planning Board meetings.*

Mr. Spaulding, Sr. disagreed with Mr. David Kibbey's motion and explained. It was questioned as to whether Mr. David Kibbey's motion had been seconded. Mr. Spaulding said he would second it with an amendment.

Chairman Burnham listed the proposed agenda order. Ms. Magnuson asked how AGENDA REVIEW would function if it was one of the last items on the agenda.

There was a long discussion concerning the placement, necessity and reasoning for an agenda review item on the agenda. Ms. Magnuson asked if agenda review would be for future meetings and if it should be called Future Agenda Review. There was discussion among the Board.

Mr. Burnham addressed Mr. David Kibbey and asked if he still agreed with the motion. Mr. David Kibbey stated that his motion stood. On a motion by Mr. Kibbey, seconded by Mr. Spaulding, Sr.; ***the Board voted to take Ms. Magnuson's recommendation of the order of items on agendas for future Planning Board meetings. The motion passed 6-0-0 (Ray Kibbey did not vote).***

Ms. Magnuson addressed the Chair and asked, since the vote was taken in a public meeting, if it became an amendment to their Rules of Procedure. Mr. Dunn stated that it could not be and explained the procedure to amending the Rules of Procedure.

The amendment of the Rules of Procedure (agenda order change) would be on the next Planning Board agenda.

There was a debate by Mr. Spaulding, Sr. concerning the amendment to the Rules of Procedure.

For clarification, Ms. Magnuson asked if her directive was to have the amendment of the Rules of Procedure (agenda order change) be on the next Planning Board agenda. Chairman Burnham stated yes.

Discussion of updating Subdivision Regulations

Ms. Magnuson explained her process in researching updating Newport's Subdivision Regulations. She asked, due to amount of work involved, if the Board would consider having a subcommittee (two Board members and Ms. Magnuson) work on them. Mr. Dunn requested that Ms. Magnuson send them to Board members in pdf format. Ms. Magnuson stated she was capable of sending the Board members the link to the Subdivision Regulations.

Mr. Spaulding, Sr. stated he disagreed with Ms. Magnuson and her proposed plans to begin updating the Newport Subdivision Regulations. He stated he wanted the proposed list of items the Planning Board was going to work on and what the Board of Selectmen (BOS) had discussed in their retreat and see both documents and have the Board decide what to do first. He debated whether the items the Planning Board had on its to-do list were what the BOS wanted and he wanted to straighten them out. He reiterated that he wanted to see the printed list from Ms. Magnuson and the list from the BOS retreat.

Ms. Magnuson addressed Mr. Spaulding and stated that at a meeting she had presented a list of items and the Planning Board had adopted it as a working agenda.

Mr. Spaulding, Sr. addressed Ms. Magnuson and stated that the BOS list was not entertained. It (a list) went from TM to Ms. Magnuson to the Planning Board. Ms. Magnuson agreed with his statement. Mr. Spaulding, Sr. stated he wanted to see the BOS list as well. Ms. Magnuson stated that there was a BOS representative on the Planning Board; he would be a good avenue from whom to acquire the list. Mr. Dunn asked if the Board had seen the list. Ms. Magnuson stated the Planning Board had not seen it and she had not seen it. Mr. Spaulding, Sr. stated he had not seen it and expressed his frustration in not having acquired the list through the Town.

There was a discussion on the assistance that should be given by the BOS members as well as the input by other town's subdivision regulations. Mr. Dunn explained the process and the importance of the positive input by Ms. Magnuson up to this point.

Mr. Walsh addressed Mr. Hoyt and asked for a thumbnail sketch of what was on the BOS list. Mr. Hoyt stated that he could not tell without reviewing the minutes of the meeting. Mr. Walsh repeated his question. Mr. Hoyt said that without reviewing (the minutes) he could not comment at this time.

On a motion by Mr. Spaulding, Sr., seconded by Mr. Dunn; ***the board tabled reviewing the rest of the minutes until the October Meeting. The motion passed 6-0-0.***

Mr. Spaulding, Sr. made a motion that *they request a list of items that the Planning Board should be attending to and a request to the BOS for items that they might want to add to the list as well as any other source that has recommendations.* It was seconded by Mr. David Kibbey.

Mr. Dunn stated he would be voting against the motion. He explained the reason was because Mr. Spaulding stated in his dialogue, "what the Selectmen feel we (Planning Board) should be doing". Mr. Dunn did not think that was the issue. He was opposed to that issue. The Selectmen should not tell the Planning Board what to do. If Mr. Spaulding, Sr. would change his motion to "what the Selectmen want us to do" then he would vote for it.

Mr. Hoyt addressed Mr. Dunn and stated that the BOS did not say what the Planning Board had to do, he believed they had stated, "this is what we recommend". There was a discussion on wording of the motion. Mr. Spaulding, Sr. agreed to the revision of his motion.

Mr. Spaulding, Sr.'s motion then read, ***we request a list of items that the BOS want us to do as well as a list from the Office of Planning and Zoning and any other entity or person that has recommendations.*** It was seconded by Mr. David Kibbey.

Mr. David Kibbey requested that local surveyors and others know that their input was welcome. Ms. Magnuson stated she had tried in the past and received no input. There was a short discussion among the Board members on this topic.

Chairman Burnham called for a vote. ***The motion passed 6-0-0 (Ray Kibbey did not vote).***

CIP Committee

The Town Manager had offered to advertise committee openings to the appropriate groups as outlined in the Town of Newport's Capital Improvements Program. Therefore, Ms. Magnuson did not advertise because the Town Manager had offered to do it. She addressed the Board to ensure her action was okay. Chairman Burnham stated it was.

Planning Board Rules of Procedure:

Ms. Magnuson thanked Mr. Spaulding, Sr. for pointing out the errors in the Planning Board's Rules of Procedure. She stated:

There are two corrections that have been sighted in the Planning Board's Rules Of Procedure. 1) On page 5, Amendment-- it stated that the "amended procedures shall be filed in the TOPAZ office at the Town Office. *It should state that the amended procedures will be filed with the Town Clerk.* 2) On page 5, it states that, "These ***Site Plan Review Regulations*** were amended by a majority of the Planning Board on..." It should read that, "These ***Rules of Procedure*** were amended by a majority of the Planning Board on..." If the Board would like to vote to correct that error, the Chairman will be given a new document for signing.

On a motion by Mr. Dunn, seconded by Mr. Spaulding, Sr.; ***the Board voted to amend the Rules of Procedure as indicated in the agenda of August 9, 2016.***

Mr. Spaulding, Sr. asked if it would be voted on at the next meeting. Mr. Dunn stated it was on the agenda for the August 9, 2016 meeting. Mr. Spaulding, Sr. reiterated a lengthy discourse from an earlier BOS meeting in which he voiced his concern of Planning Board members not catching the errors in the

document before signing it. Chairman Burnham addressed Mr. Spaulding, Sr. and reviewed the lengthy process that the Planning Board members took before they signed the Rules of Procedure in May 2016. Mr. Dunn added, "And it does not matter whether it is okay or not (undetected terminology errors in drafted document)." Mr. Spaulding, Sr. stated it did to him.

Chairman Burnham called for a vote. ***The motion passed 6-0-0 (Ray Kibbey did not vote).***

Ms. Magnuson stated she had one statement to make before adjournment. She read a statement into the record clarifying her statement to the Board last month concerning Administrative Reviews.

A motion was made by Mr. Dunn, seconded by Mr. Walsh; *to adjourn at 7:57 pm.*

Mr. Spaulding, Sr. asked to speak to the motion. He stated, "No way in hell" would he vote on the motion. He was told that it was not a discussable motion. Mr. Spaulding, Sr. then said that he would vote no to the motion and that he encouraged others to vote no also.

Mr. Spaulding, Sr. began an intense discourse on the meeting agenda. He held a discussion on content and the motion.

Mr. Dunn withdrew his motion. Mr. Walsh withdrew his second.

Mr. Spaulding, Sr. stated he wanted to add changes to the Rules of Procedure for next month. Board members had an intense lengthy discussion on the procedure to discuss the rules. Mr. Dunn stated he was not ready to discuss the Rules of Procedure at the meeting. Mr. Dunn and Mr. Spaulding, Sr. had a discussion on when the discussion would take place. Mr. Spaulding, Sr. made a motion that ***the Board vote to go forward and discuss possible changes to the Rules of Procedure tonight (8/9/2016). To be thoroughly discussed after people have had time to analyze it at the next meeting.*** Mr. David Kibbey seconded the motion. A hand vote was called for. Mr. Spaulding, Sr.; Mr. David Kibbey and Mr. Hoyt voted yea. Mr. Dunn, Mr. Walsh, Chairman Burnham voted no. Ray Kibbey did not vote. The motion was tied 3-3-0.

Mr. Ray Kibbey was asked why he did not vote (he was the tie breaker). He showed the minutes and stated emphatically that he was an alternate and stated he could not vote. Ms. Magnuson read aloud the minutes and explained that it stated that David Kibbey was the alternate and that Ray Kibbey was a full member with voting privileges. Mr. Ray Kibbey stated he had not voted throughout the whole meeting; he did not think that he could.

Chairman Burnham called for a second hand vote on the motion. Mr. Spaulding, Sr.; Mr. David Kibbey, Mr. Hoyt and Mr. Ray Kibbey voted yea. Mr. Dunn, Mr. Walsh and Chairman Burnham voted no. ***The motion passed 4-3-0.***

Chairman Burnham returned to the topic of Rules of Procedure and what to discuss at the September 2016 Planning Board meeting.

Mr. Spaulding requested that the following be added to the agenda: The ability for citizens to address this Board in a Forum as it was. Chairman Burnham looked to Mr. Spaulding, Sr. Mr. Spaulding stated that he was waiting for others to speak to the topic, but that he would speak to it.

He gave his opinion of the Planning Board removing the Public Forum from their agenda, calling it a travesty. Chairman Burnham stated that citizens were able to address the Board on any topics that came

before them related to Zoning. He gave examples of inappropriate subjects to be brought to the Planning Board. There was a short discussion. Chairman Burnham acknowledged Mr. Dunn.

Mr. Dunn stated that the Town or he had been sued by a member of the public who wanted to speak at Planning Board meetings. There was litigation in Federal District Court and professionally, many times he (Mr. Dunn) had given advice to individuals to not talk to the other party about it (the litigation). That is where, Mr. Dunn believed, the request to discuss and add Public Forum to the Rules of Procedure came from.

Mr. David Kibbey asked if Mr. Dunn was open to discussion on the topic. Mr. Dunn said yes; he was not against putting the topic on the agenda for next month.

Mr. David Kibbey stated it was on, it was done and he asked that the Board move on to the next item of business. Mr. Spaulding, Sr. continued with the discussion concerning his use of the work travesty and the topic of adding Public Forum to the agenda. Mr. Dunn addressed Mr. Spaulding, Sr. and stated that the Planning Board would discuss it next month (at the September 2016 meeting).

Mr. Spaulding, Sr. again took the floor and gave a dialogue on his opinion of events dealing with litigation.

There was an exchange between Mr. Spaulding, Sr. and Mr. Dunn.

Chairman Burnham addressed the Planning Board and stated that there was one item requested for next month's agenda. He asked if there was another.

There being none, on a motion by Mr. Dunn, seconded by Mr. Walsh; *the Board adjourned at 8:03 p.m. The motion passed 7-0-0.*

Respectfully submitted,

Maura Stetson
Scribe

Approved on: December 13, 2016