

Easton Planning Board Minutes
October 4, 2018

At 7:00 PM, the October meeting of the Easton Planning Board was called to order.

The October meeting of the Easton Planning Board was divided into two separate sections. Therefore the minutes will be written in the same way.

Part one of the Planning Board meeting was a public meeting with Tara Banford regarding the results of the recent survey that was sent out in conjunction with the revision of the Master Plan. The previous Master Plan was done in 2010. It is recommended by the State of New Hampshire that it be reviewed, revised, and/or rewritten every eight to ten years. That puts us right on schedule.

Ms. Banford presented a power point presentation on the statistical results of the survey. She stated that she was pleased with the amount of response that the board received.

After looking at the statistical results, it was determined that there was not a statistically significant change from the 2010 survey. The questions concerned what the people who live here would like the town to be like in the future. They addressed such ideas as businesses, roads, recreational opportunities, the school system, wildlife and the preservation of wild life habitat. It would appear, therefore, that for the most part, residents and property owners like Easton essentially the way it is.

The Planning Board will use this information as well as information gathered from State and Federal offices to revise the Master Plan.

We will do our best to keep you informed. Look for more meetings to discuss the Master Plan. The Planning Board wishes to thank all who participated in the survey.

The Planning Board wishes to thank Bob LaManna for heading up this project.

At this point, the meeting was temporarily recessed so that Ms. Banford would have time to collect her materials and for the Board to set up the room for the regular planning board meeting.

The Chairperson called the Planning Board back into session at 8:10 PM.

Attendance was taken and a determination of a quorum confirmed.

Members/ Alternates Present:

James Collier (alternate, not seated as a voting member)
Anita Craven, Vice Chair
Denys Draper, Chair
Bob LaManna,
Bob Thibault, *ex officio alternate (seated as Selectboard Alternate)*
Frank Woodruff

Absent

Claire Mei, Clerk
Zak Mei, *ex officio member*

Members of the Public Present:

Bunny Ford, Beth Harwood, John Hynes, Maria Hynes, Edward O'Brien, Deb Stever, Roy Stever, George Walters, Scot Viveros, Toni Woodruff

The first piece of business was for the Planning Board to go into non-public session as proscribed by NHRSA 91-A. The reason stated was to discuss legal advice from town counsel.

A Motion was made by Bob Thibault to go into non-public session.

This motion was seconded by Anita Craven.

As required, a roll call vote was taken. Anita Craven, yes; Bob Thibault, yes; Denys Draper, nay; Bob Lamanna, yes; Frank Woodruff, yes.

The audience was asked to leave the room and the room was secured.

At 8:15, the Planning Board went into non-public session.

The public meeting was reopened to the public at 8:27

A motion to seal the minutes of the non-public session was made by Robert Thibault and seconded by Anita Craven. A roll call vote was unanimous. The Minutes of the non-public session are sealed.

At this time the Chair recognized Robert Thibault to address the audience and the board.

Anita Craven seconded.

The floor was given to Mr. Thibault.

○ Town residents have brought to the Planning Board's attention concerns about compliance with RSA 91-A in connection with a non-public session held during the Planning Board's July 5 meeting. After consultation with legal counsel, and with the assent of a majority of this Board, I would like to make the following public statement in order to bring the Planning Board's records into compliance with RSA 91-A and to render further legal action

with regard to the July 5 non-public session unnecessary.

- I was in attendance at the July 5 meeting as a member of the public, because I was the ex-officio alternate but not seated. Zak Mei sat on the Board as the ex-officio member.
- Toni Woodruff was also in attendance at the July 5 meeting as a member of the public.
- At 9:20pm, the seated Planning Board went into a non-public session pursuant to RSA 91-A:3, II(c), “matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the public body itself, unless such person requests an open meeting.”
- I and Toni Woodruff were asked to join the Board for the non-public session.
- The general purpose of the non-public session was to discuss concerns raised by Scott Viveiros to the Selectboard at the Selectboard’s July 2 meeting concerning the Chair of the Planning Board, Denys Draper.
- Although the Planning Board went into non-public session with the good faith desire to not embarrass Ms. Draper or unduly harm her reputation, we now understand that it was not appropriate to go into non-public session because the Planning Board was discussing a member of the Planning Board itself, and because the discussion concerned Mr. Viveiros’s and the Stevers’ complaints about Ms. Draper’s official functions as Planning Board chair, and did not impact her reputation as a private citizen.
- We do not believe that my participation and Toni’s participation in the non-public session constituted a “meeting” of the Selectboard under 91-A, because we were only reporting information to the Planning Board, not deliberating. However, we also recognize that Toni and I should have been excused from the non-public session after reporting our information, and that our further participation in the non-public session after the discussion shifted from Ms. Draper to the Viveiros subdivision potentially renders the entire session open to the public.
- In light of all of the foregoing, I state for the record with the support of a majority of the Board that the non-public session held on July 5 should have been open to the public.
- Furthermore, I move that the Planning Board now vote to unseal the minutes of the July 5 non-public session and attach them to this meetings minutes as well as the July 5th meeting minutes.

The motion was seconded by Anita Craven. Roll Call Vote Unanimous

At the suggestion of several board members as well as the chair, a reference to tonight's minutes/ decision will be attached to the formal record for July 5th to aid in understanding the change in the status of the “non-public” session as stated in those minutes.

AT THIS POINT ROY STEVER OBJECTED TO THE REMEDIATION OF THE JULY MINUTES BECAUSE AT THE TIME HE HAD BEEN PREPARING HIS APPEAL TO THE ZBA ALONG WITH OTHER MATERIALS. HE STATED, WITHOUT SEEING THE JULY 5TH NON-PUBLIC MINUTES, HE COULD NOT PREPARE AN ADEQUATE CASE. HE WAS INFORMED BY THE CHAIR THAT THE MINUTES WERE UNSEALED AS OF OCT 4, 2018. HE COULD NOW VIEW THEM LEGALLY.

Notification from the ZBA

Stefan Nix's appeal on behalf of the Stevers was sent to the ZBA. The findings of the ZBA are as follows:

“... the appeal of Roy and Deborah Stevers be dismissed due to lack of standing by reason of their failure to identify any particularized harm to them from the action of the Easton Planning Board in approving the Viveiros subdivision application.”
(from ZBA minutes 9/24/2018). Roy Stever indicated that there would likely be further action taken on this issue.

Viveros 1. A letter from the Selectboard was read into the minutes by the chairperson. This letter was in response to the Planning Board's request that the Selectboard look at the road design plan submitted to the Planning Board. The Selectboard determined that the plan was not acceptable. A copy of that letter is included here.

As provided for in the Easton Subdivision Regulations IV-Ca, the Select Board and Road Agent have for the the Planning Board reviewed the Pine Needle Road construction plan as one of the conditions of a final subdivision approval.

The Select Board finds that the road plan as submitted is deficient in the following areas:

It fails to meet the requirements of section III – H:6; especially in that there is no cross sectional profile and has no certification seals. There is also no drainage design as required in this section as well as in section V-D:4.

The Select Board visited the proposed Road site on Tues, Sept 18, viewing the site from Paine Road.

The Board viewed obvious sediment runoff from the proposed roadway alongside and across Paine Road further highlighting the need to submit required drainage plan.

The Selectboard recommended to the Planning Board not to accept the Road Construction Plan as submitted until all applicable subdivision road criteria have been met.

Mr.s Craven made a motion to acknowledge receipt of the Selectboard letter Bob LaManna seconded the motion. After discussion, Mrs. Craven withdrew her motion.

It was the concensus of the planning board members present that the Planning Board could take no further action on this appllication at this time. The criteria for final approval have not been met.

Viveros II:

Mr. Viveros produced a map that he said met the required density test. Mrs. Craven disagreed that it was

sufficient. She pointed out that there was not a single number but rather average numbers. The chair, along with Mr. Lamanna determined that there were appropriate stamps present on the map. Also present was a north arrow and a legend.

The Planning Board also noted that there are inconsistencies with regard to the legends on the subdivision plat for this subdivision and the road plan. The map and lot numbers do not match. This needs to be remedied.

Anita Craven, vice chairperson, noted that the DES requirements in ENV- WQ 1005 had not been met. These rules apply to all subdivision applications in the SHRD District. It was determined by a consensus of members present that the board could not proceed.

At this point, Toni Woodruff complained that the Chair could not call the public hearing to order because she had not called one to order at the previous meeting, even though it had been noticed. There was discussion that a failure of the chairperson to do so made it impossible to call a continued hearing, even though that had been stated at the previous meeting. A new hearing could not be called, according to Mrs. Woodruff, without noticing it. Robert Thibault will check this with the town attorney.

In the meantime, to remedy the situation to which Mrs. Woodruff has objected, the chairperson will see that the hearing is renoticed and that the abutters are renotified as appropriate for the next regularly scheduled meeting of the Planning Board. The consensus of the Planning Board was that no more could be done without the required information.

The Planning Board labelled tonight's discussion as a preliminary consultation on how to proceed with the application.

Edward O'Brien objected to the chair person taking minutes in the absence of the clerk. The chairperson was directed to speak with the clerk to see if she intended to continue in her position. The chairperson will contact the clerk.

Mr. Lamanna made a motion to adjourn the meeting. This was seconded by Mr. Woodruff. The meeting was adjourned at 10:57 PM.

Denys Draper,
Chair

October 4, 2018 Re-convened Planning Board Minutes with amendments (in bold):

The Chairperson called the Planning Board back into session at 8:10 PM.

Attendance was taken and a determination of a quorum confirmed.

Members/ Alternates Present:

James Collier (alternate, not seated as a voting member)

Anita Craven, Vice Chair

Denys Draper, Chair

Bob Lamanna,

Bob Thibault, *ex officio alternate (seated as Selectboard Alternate)*

Frank Woodruff

Absent

Claire Mei, Clerk

Zak Mei, *ex officio member*

Members of the Public Present:

Bunny Ford, Beth Harwood, John Hynes, Maria Hynes, Edward O'Brien, Deb Stever, Roy Stever, **Tom** Walters, Scott Viveiros, Toni Woodruff

The first piece of business was for the Planning Board to go into non-public session as prescribed by NHRSA 91-A. The reason stated was to discuss legal advice from town counsel.

A Motion was made by Bob Thibault to go into non-public session.

This motion was seconded by Anita Craven.

As required, a roll call vote was taken. Anita Craven, yes; Bob Thibault, yes Denys Draper, nay; Bob Lamanna, yes: Frank Woodruff, yes.

The audience was asked to leave the room and the room was secured.

At 8:15, the Planning Board went into non-public session.

The public meeting was reopened to the public at 8:27

A motion to seal the minutes of the non-public session was made by Robert Thibault and seconded by Anita Craven. A roll call vote was unanimous. The Minutes of the non-public session are sealed.

At this time the Chair recognized Robert Thibault to address the audience and the Board. **Mr. Thibault moved to be allowed to read a statement.** Anita Craven seconded. **Motion passed.**

The floor was given to Mr. Thibault. Mr. Thibault read the following statement:

- o “Town residents have brought to the Planning Board’s attention concerns about compliance with RSA 91-A in connection with a non-public session held during the Planning Board’s July 5 meeting. After consultation with legal counsel, and with the assent of a majority of this Board, I would like to make the following public statement in order to bring the Planning Board’s records into compliance with RSA 91-A and to render further legal action with regard to the July 5 non-public session unnecessary.
- o I was in attendance at the July 5 meeting as a member of the public, because I was the ex-officio alternate but not seated. Zak Mei sat on the Board as the ex-officio member.

- o Toni Woodruff was also in attendance at the July 5 meeting as a member of the public.
- o At 9:20 pm, the seated Planning Board went into a non-public session pursuant to RSA 91-A:3, II(c), “matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the public body itself, unless such person requests an open meeting.”
- o I and Toni Woodruff were asked to join the Board for the non-public session.
- o The general purpose of the non-public session was to discuss concerns raised by Scott Viveiros to the Selectboard at the Selectboard’s July 2 meeting concerning the Chair of the Planning Board, Denys Draper.
- o Although the Planning Board went into non-public session with the good faith desire to not embarrass Ms. Draper or unduly harm her reputation, we now understand that it was not appropriate to go into non-public session because the Planning Board was discussing a member of the Planning Board itself, and because the discussion concerned Mr. Viveiros’s and the Stevers’ complaints about Ms. Draper’s official functions as Planning Board chair, and did not impact her reputation as a private citizen.
- o We do not believe that my participation and Toni’s participation in the non-public session constituted a “meeting” of the Selectboard under 91-A, because we were only reporting information to the Planning Board, not deliberating. However, we also recognize that Toni and I should have been excused from the non-public session after reporting our information, and that our further participation in the non-public session after the discussion shifted from Ms. Draper to the Viveiros subdivision potentially renders the entire session open to the public.
- o In light of all of the foregoing, I state for the record with the support of a majority of the Board that the non-public session held on July 5 should have been open to the public.
- o Furthermore, I move that the Planning Board now vote to unseal the minutes of the July 5 non-public session and attach them to this meetings minutes as well as the July 5th meeting minutes.”

The motion was seconded by Anita Craven. Roll Call Vote Unanimous **to unseal.**

~~At the suggestion of several board members as well as the chair, a reference to tonight's minutes/ decision will be attached to the formal record for July 5th to aid in understanding the change in the status of the “non-public” session as stated in those minutes.~~

As stated in the motion, the unsealed minutes will be attached to minutes for tonight and July 5th.

At this point Roy Stever objected to the remediation of the July minutes because at the time he had been preparing his appeal to the ZBA along with other materials. He stated, without seeing the July 5th non-public minutes, he could not prepare an adequate case. He was informed by the chair that the Minutes were unsealed as of Oct 4, 2018. He could now view them legally.

Notification from the ZBA

Stephan Nix's appeal on behalf of the Stevers was sent to the ZBA. The findings of the ZBA are as follows:

“... the appeal of Roy and Deborah Stevers be dismissed due to lack of standing by reason of their

*failure to identify any particularized harm to them from the action of the Easton Planning Board in approving the Viveros subdivision application.”
(from ZBA minutes 9/24/2018).*

Roy Stever indicated that there would likely be further action taken on this issue.

Viveiros 1

A letter from the Selectboard was read into the minutes by the chairperson. This letter was in response to the Planning Board's request that the Selectboard look at the road design plan submitted to the Planning Board. The Selectboard determined that the plan was not acceptable. A copy of that letter is included here.

“As provided for in the Easton Subdivision Regulations IV-Ca, the Select Board and Road Agent have for the the Planning Board reviewed the Pine Needle Road construction plan as one of the conditions of a final subdivision approval.

The Select Board finds that the road plan as submitted is deficient in the following areas:

It fails to meet the requirements of section III – H:6; especially in that there is no cross sectional profile and has no certification seals. There is also no drainage design as required in this section as well as in section V-D:4.

The Select Board visited the proposed Road site on Tues, Sept 18, viewing the site from Paine Road.

The Board viewed obvious sediment runoff from the proposed roadway alongside and across Paine Road further highlighting the need to submit required drainage plan.

The Selectboard recommended to the Planning Board not to accept the Road Construction Plan as submitted until all applicable subdivision road criteria have been met.”

Mrs. Craven made a motion to acknowledge receipt of the Selectboard letter. Bob Lamanna seconded the motion. After discussion, Mrs. Craven withdrew her motion.

The Planning Board directed the Chair to forward a copy of the letter to Mr. Viveiros along with a statement that “the Planning Board agrees with the Selectboard’s recommendation, and does not accept the road plan for the reasons given in the letter.”

The statement should also say that “the road plan title should reference and match the title on the conditionally approved subdivision plat, and the lot numbers on the road plan should match the lot numbers on that plat.”

It was the consensus of the planning board members present that the Planning Board could take no further action on this application at this time. The criteria for final approval have not been met.

Viveiros II:

Mr. Viveiros produced a map that he said met the required density test. Mrs. Craven disagreed that it was sufficient. She pointed out that there was not a single **average** number **for each lot** but rather **several**

average numbers. The chair, along with Mr. Lamanna determined that there were appropriate stamps present on the map. Also present was a north arrow and a legend.

~~The Planning Board also noted that there are inconsistencies with regard to the legends on the subdivision plat for this subdivision and the road plan. The map and lot numbers do not match. This needs to be remedied.~~

Anita Craven, vice chairperson, noted that the DES requirements in ENV- WQ 1005 had not been met. These rules apply to all subdivision applications in the SHRD District. It was determined by a consensus of members present that the board could not proceed.

At 8:42 the Chair opened a Hearing.

At this point, Toni Woodruff ~~complained~~ **observed** that the Chair could not call the public hearing to order because she had not called one to order at the previous meeting, even though it had been noticed. ~~There was discussion that a failure of the chairperson to do so made it impossible to call a continued hearing, even though that had been stated at the previous meeting. A new hearing could not be called, according to Mrs. Woodruff, without noticing it.~~ **Discussion followed. The Hearing was closed.** Robert Thibault will check this with the town attorney.

In the meantime, ~~to remedy the situation to which Mrs. Woodruff has objected~~, the chairperson will see that the hearing is renoticed and that the abutters are renotified as appropriate for *the next regularly scheduled meeting of the Planning Board*. The consensus of the Planning Board was that no more could be done without the required information.

The Planning Board labelled tonight's ~~as a continuation of discussion as a preliminary consultation~~ on how to proceed with the application.

Miscellaneous

Minutes of the September 6 Planning Board Meeting were approved with the following additions:

In the V-1 section, add a bullet that says "Anita Craven distributed average % slope data for of the three small lots."

In the 7th bullet, insert "with a list of assertions" after "Scott Viveiros responded to the Board"

Minutes of the August 5 Planning Board Meeting were approved as written.

Edward O'Brien objected to the chair person taking minutes in the absence of the clerk. ~~The chairperson was directed to speak with the clerk to see if she intended to continue in her position.~~ The chairperson **said she** will contact the clerk.

Mr. Lamanna made a motion to adjourn the meeting. This was seconded by Mr. Woodruff. The meeting was adjourned at 10:57 PM.

Denys Draper,
Chair