

TOWN OF NEWTON
PLANNING BOARD
May 15, 2019
MINUTES

The regular meeting of the Newton Planning Board took place on the above date. Chairman Le Frois read the Open Public Meetings Act and requested Mrs. Citterbart to call the roll. Board Secretary Mrs. Citterbart stated there was a quorum.

SALUTE TO THE FLAG: Was recited.

OATH OF OFFICE:

None

ROLL CALL: Was taken

Attendance: Mr. Flaherty, Mr. Marion, Mr. Wink, Mrs. Vrahnos, Mr. Ragsdale, Ms. Hall, Mr. Le Frois

Excused: Mr. Couce, Mr. Flynn, Mr. Russo, Mrs. Le Frois

Professionals present: David H. Soloway, Esq. of Vogel, Chait, Collins & Schneider
Matthew Morris, Harold E. Pellow and Associates
Jessica Caldwell, J. Caldwell & Associates
David Simmons, Harold E. Pellow and Associates

THE SUNSHINE STATEMENT: Was read.

CONSIDERATION OF MINUTES

April 17, 2019

A motion was made by Mr. Flaherty and seconded by Mr. Marion to approve the April 17, 2019 meeting minutes.

AYE: Mr. Flaherty, Mr. Marion, Mr. Wink, Mrs. Vrahnos, Mr. Ragsdale, Ms. Hall, Mr. Le Frois

The motion was carried.

HISTORIC RESOLUTIONS

KWest Properties, LLC (HPC-01-2019)
Block 8.08, Lots 10 & 23
134 Spring Street

The applicant is requesting to demolish a one-story building and construct a four-story building with mansard roof for commercial use on the first floor and residential on the second, third and fourth floors. The exterior will be brick.

A motion was made by Mr. Flaherty and seconded by Mrs. Vrahnos to approve the resolution with corrections.

AYE: Mr. Flaherty, Mr. Marion, Mr. Wink, Mrs. Vrahnos, Ms. Hall, Mr. Le Frois

RECUSED: Mr. Ragsdale

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The resolution was approved.

RESOLUTIONS

Thorlabs (#PB-1-2019)
Block 18.02, Lots 2, 3, 19-23, 31 & 32

The resolution is granting preliminary and final site plan approval relating to properties known as Block 18.02, Lots 2, 3, 19-23, 31 and 32.

A motion was made by Mrs. Vrahnos and seconded by Mr. Ragsdale to approve the resolution.

AYE: Mr. Flaherty, Mr. Marion, Mr. Wink, Mrs. Vrahnos, Mr. Ragsdale, Ms. Hall, Mr. Le Frois

The resolution was approved.

NEW BUSINESS

**KWest Properties, LLC (#PB-3-2019)
Block 8.08, Lots 10 and 23
134 Spring Street**

-Applicant requested to be carried to the June 19, 2019 meeting at 7 PM with no further notice-

The applicant is requesting a minor subdivision and site plan approval to construct a four-story building with commercial on the first floor and residential on the second, third and fourth floors.

**Nouvelle, Inc (#PB-5-2019)
Block 14.03, Lot 11.01
30 Madison Avenue**

-Notice deficient. To be re-noticed to June 19, 2019 at 7 PM.

The applicant is requesting bulk variances in connection with the construction of a one-story community residence.

**PERCC Group, LLC (#PB-4-2019)
4 – 6 Pine Street
T-3 Zone**

The applicant is requesting a Certification of a Pre-existing Non-conforming Use.

Mr. Kevin Brundage, Esq. of Morristown is representing the applicant. Mr. Wayne McCabe from McCabe and McCabe will be providing expert testimony.

Mr. Soloway gave an overview of what certification of a pre-existing, non-conforming use means.

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Mr. Soloway stated: Under MLUL, if you have a use that was legal under the zoning ordinance and later amend the ordinance so it's no longer a permitted use you get what's commonly called "grandfathered". You're entitled to continue that use as long as it's not destroyed. That's why it is called a pre-existing, non-conforming use. There is actually a procedure in the Land Use Law for getting an official endorsement from the municipality that you enjoy current existing non-conforming use status. The way this ordinance was adopted the property became a use that is not permitted. What the applicant is looking for is a determination that they enjoy protected pre-existing, non-conforming use status. Under the Land Use Law you can apply for that to the Zoning Officer within one year of the change. Thereafter it can only be granted by the Zoning Board of Adjustment. That is what the applicant is here for tonight.

Mr. Brundage gave overview of application and stated: As you know Mr. McCabe is here as an expert witness. I also have the homeowners, and Lisa Fairclough who is the contract purchase for 4-6 Pine Street, LLC and Joanne Sorrentino, Esq. on the pending contract.

Mr. Brundage stated: The property at 4-6 Pine Street is a four family residential building which is duplex style with two apartments on one side and two on the other side. Mr. and Mrs. ??? have never lived there. They've owned the property since 2003. Since 1985 they've lived in Oak Ridge. They bought the property in 2003. In 2004 they transferred the property to their LLC name PERCC Group. Paula, Edward, Ryan, Caitlin, Christin. It was many years as a four family. It had four existing tenancies. This is in Exhibit C of the application. They were unaware that it wasn't zoned for a four family and have been using it continuously, uninterrupted as a four family since 2003. It was in June of 2018 that they entered into a contract to sell the property. During the pre-closing process it came out that the property is not zoned as a four family. It's my understanding that the contract purchaser does intend to continue to use the property as a four family. In the application we provided proof that the property has been registered with the NJ Department of Community Affairs as a four family residence since 1975. It has been assessed in tax as a four family residence by the Town of Newton since 1967. Our expert witness Mr. McCabe has a report, Exhibit N in the application, shows that the building existed at least since 1903 and that its use as a four family existed prior to the adoption of a municipal Master Plan Zoning Ordinance in the Town of Newton. It conforms to the existing neighborhood which is a mix of multi and single family homes. It's part of the Pine Street streetscape which is in the 2008 Master Plan. I want to read a short section from the Master Plan, which states in regards to the Pine Street streetscape. "There have been no inappropriate additions and there are no significant intrusions into the integrity of the area. In addition, the properties have been extremely well-maintained. The streetscape represents the lifestyle of the middle class working man and his family. It has remained an unspoiled example of the link between middle class life. No threat is apparent at this time". In conclusion, the owner of the property has incurred substantial financial expenses over the 16 years that they've owned the property to maintain it as a four family residence to provide suitable housing. This would result in a serious financial hardship if they're not able to sell the property as a four family. I believe they have met all the proof necessary and I respectfully request that the application be granted. I want to confirm that it will remain as a four family use in a future sale if that were to occur.

Mr. Le Frois questioned Mr. Soloway: If the Board grants this will it remain with the property for a certain time period or until the next sale?

Mr. Soloway stated: If the Board finds in favor of the applicant they are determining that the building is a four family residence that qualifies as a pre-existing, non-conforming use which means that the four family use was legal at its inception, which I'm sure Mr. McCabe will provide

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us with a little more detail. And since that time it has continually been maintained as that use. In this case since the late 1950s. Newton didn't have zoning until 1960 or 1961. If the Board notes that finding that will cover any future ordinance changes as well.

Mr. Le Frois stated: In perpetuity?

Mr. Soloway stated: Yes. Unless the use is abandoned or destroyed.

Sworn in:

Mr. Wayne McCabe, 125 High Street. Licensed Professional Planner since 1972 and his license is current.

The Board accepted his credentials.

Mr. McCabe gave overview of Exhibit N and stated: You have a copy of my report dated April 20, 2019 in your packets. Basically my job is to determine and document that this was a pre-existing non-conforming use. We have to look at was this use dated before the establishment and adoption of the Municipal Master Plan or the Zoning Ordinance in Town. In my report I've set down the parameters of where the building is located. It's in the T-3 zone. I've included the tax map with the location of the property. It's slightly south east at the intersection of Woodside Avenue and Pine Street. We looked at the Municipal Master Plan. There are two sections of our first plan that were prepared for us by the State of NJ. The first transmittal from the Department of Conservation in Trenton is dated January of 1959. The Master Plan was finally adopted by the Planning Board in 1961. That was basically predicated on the State Planning Enabling Act. This was known as the NJ Municipal Planning Enabling Act 1953 that became effective in January 1 of 1954. Shortly after the Town entered into some sort of a legal agreement with the State Department of Conservation, which was the precursor to the Department of Community Affairs, that actually prepared the plan. The current Master Plan was adopted in 2008 and was prepared by Jessica Caldwell and Harold Pellow and Associates. Ordinances for Zoning were adopted by Town Council in 2012. That is when the T-3 neighborhood residential zone was created. In that case there are certain requirements in terms of lot size and permitted use. You have to look at the historical development patterns for that neighborhood. What I've done is given you three different maps. They are all from the Sanborne Fire Insurance Map Company. These are online in the Firestone Library down in Princeton. They show development in the Town in terms of how it extended out. These are actually drawings by this company to show what the fire problems would be in this specific neighborhood for fire insurance purposes. This is from the 1903 map. You can see the series of yellow buildings that would indicate the construction in wood frame. These are made for dwellings. It shows how many stories, and the porches. So you can see in the 1903 map the double twin building. If it had been built that year it would have been noted with a dotted line around it stating it was under construction. So we assume that it would have been built at least in 1902. Take a look at figure 4 which is from the January 1911 map which shows the same configuration of all the buildings with only the possible addition of a couple of small sheds in the back. Figure 5 shows a map from 1960 which shows the same configuration of the subject property. So what we've done now is established the fact that by at least 1903, the building that stands there today was sitting on that property. We then have to take a look at the actual intensity of use. So we start looking at sources of information on the people who actually resided there. Up until the 1890s the Ohio Polk Company from the Midwest would publish annually or biannually directories of the community. They would list every property in the Town. First by street alphabetically and then numerically down, and then put down who resided there. They also then had a flipside with an alphabetical listing giving the

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name of the person and the address that they live at. So first, from 1917 to 1918 there was a director from the Bree Publishing Company. I went through a personal collection the Sussex County Historical Society. What we were able to show for the list of occupants for 4-6 Pine Street is a list of the people who resided at each of those addresses. As you can see from 1917 to 1918 there is only one family on each side. By 1923-25 you see two families living in Pine Street number 6 and one in number 4. The same thing happened in 1933-1934. In 1954 I found only one name on 4 Pine Street. When 1946 and 1947 roll around we have two families occupying 4 Pine and two families occupying 6 Pine. This continues all the way through 1965 with different families. In 1946, we know that there were two families on each side. This concludes and shows that there were four families residing there at least 10 years before the Master Plan was prepared and the Ordinance adopted. In that regard our conclusion is very simple. The use started out as a single family on each side and ultimately evolved in the next 30 years to two families on each side. This was well before the adoption of the Master Plan or the Zoning Ordinance.

Mr. Soloway stated: Page 11 is missing in my copy of the report. Is there a page 11?

Mr. McCabe stated: I will enter page 11 as Exhibit A-1 dated 5/15/2019.

Mr. Soloway described page 11 and stated: In 1954 to 1956 it shows one at 4 Pine and two at 6 Pine. Same in 1957. In 1958 it shows two at each. In 1961 it has two in each. 1963 is two in each. 1964 has nobody at 4 Pine and two at 6 Pine. In 1965 there are two in each.

Mr. McCabe stated: Ms. Caldwell, the Board Planner, issued a letter dated May 9, 2019 and basically concurs with my conclusion.

Mr. Le Frois stated: She is not here but noted that based on your report and the other information presented it appears to her as well that 4-6 Pine Street meets the criteria for certification of a preexisting nonconforming use.

Mr. Soloway stated: There should be some testimony from someone stating that it has been a 4 dwelling unit since 1964.

Mr. McCabe stated: When I moved here in 1974, I drove around the Town as the County Planning Officer and it was still a four family. Then I lived at 15 Sussex Street for 28 years which is a block and a half away. It has been a four family since.

Mr. Soloway stated: Just for the record, Mr. McCabe, when did the Town of Newton first adopt the Zoning Ordinance?

Mr. McCabe stated: The Master Plan was adopted in 1961. So it was sometime shortly after that. I was fortunate that I had copies of the original Master Plan in my office files. I don't have a copy of the original Zoning Ordinance. But it is safe to assume 1962.

Mr. Soloway stated: So it is your testimony that prior to 1961 or 1962 there was no zoning ordinance in effect in the Town of Newton. Therefore the four family use, before the adoption of that ordinance was a lawful use.

Mr. McCabe stated: Yes. It was.

Portion opened to the public. None stepping forward. Portion closed.

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Mr. Marion made a motion to approve the Certification of a Pre-existing Non-conforming use. Mr. Flaherty seconded the motion.

Aye: Mr. Flaherty, Mr. Marion, Mr. Wink, Mrs. Vrahnos, Mr. Ragsdale, Ms. Hall, Mr. Le Frois

Motion carried.

Mr. Soloway stated: I will do a very brief resolution for the next meeting so there is a paper record. If you are the buyer and you want to buy the four family dwelling and look at the Zoning Ordinance it is not a permitted use. They want to make sure they're legal. I think there ought to be something in writing. There is a quirk in the ordinance that there aren't any fees on this. So I am not going to do a 10 page resolution and charge the Town for it. I will do something very brief, a page or so. If anyone wants to ask they can call the Zoning Officer and she can confirm what the Board voted tonight. But it will be confirmed by resolution.

DISCUSSION:

Review of Ordinances:

Mr. Soloway described the Planning Board's role in ordinance reviews and stated: You have to review the proposed ordinance for consistency with the Master Plan. As well as make any recommendations or comments that you care to. The only thing you have to do is review it for consistency with the Master Plan. You have three separate ordinances here tonight. The large part of one of them is not a development regulation. It is the one having to do with animals. It would partially amend the Zoning Ordinance. But the rest of it amends the animal ordinance. You also have a second amendment to the Zoning Ordinance and the third ordinance deals with soil importation and grading. Which is arguably a development regulation and certainly not a zoning ordinance.

Ordinance 2019-A – An Ordinance amending Sections 320.2 & 320.3 of the Code of the Town of Newton.

Mr. Soloway stated: Usually Ms. Caldwell explains this, but I will try. I think this was prompted by something that hasn't come here yet. It is changing the definition of "institutional use" so it provides that any non-profit or quasi-public use such as religious institution, library, public or private school, hospital, government owned or government operated structure or land used for public purpose including office use related to such public purpose. There's an application that's in the pipeline by the Board of Education for BOE offices. The zone in which the property is located and they are going to enter into a contract to buy it, permits schools but doesn't permit institutional uses. The way the current institutional use definition reads, it wouldn't be allowed. This just expands it to include an office relating to a school or public institution. When you think about that particular case in a residential district, a school would probably be a much greater impact use on a residential neighborhood than an office for the BOE would bring. So that's what prompted this.

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Mr. Le Frois stated: I don't see any problem with that at all. I don't think it is contrary or not consistent with the Master Plan. I think it still serves the purpose of adequately defining the institutional uses that were permitted to start with and adding that definition in my mind is not a major change.

Portion opened to public. None stepping forward. Portion closed.

Mr. Flaherty made a motion to find the ordinance 2019-A not inconsistent with the Town's Master Plan and to direct the Board's Secretary to transmit that finding to the Town Council. Mrs. Vrahnos seconded it.

Aye: Mr. Flaherty, Mr. Marion, Mr. Wink, Mrs. Vrahnos, Mr. Ragsdale, Ms. Hall, Mr. Le Frois

Finding approved.

Ordinance 2019-B – An Ordinance revising Article 1 of Chapter 57, Animals and Chapter 320, Zoning, of the Code of the Town of Newton regarding Animals.

Mr. Soloway stated: The Board may recall in January when the Board made a report to the Town Council for zoning items to be addressed. One was the treatment of animals in the Zoning Ordinance. It was noted by Ms. Caldwell and Ms. Citterbart that the ordinance was a mess and very confusing and didn't make sense in some places. Most of the ordinance relates to domestic animals which are regulated under Chapter 57 dealing with animals running at large and what the definition of a domestic animal should be. Certain changes are proposed. That is not a development regulation and it doesn't have to do with the Zoning Ordinance. Section 2 of the ordinance does propose an amendment to the Zoning Ordinance by putting in a provision which isn't very different from the way it is now that says all animals should be provided shelter for containment. The premises should be maintained in such a way as to regularly remove waste and prevent odor and the attraction of rodents and insects. No building or structure used for shelter or enclosure of fowl, game, horses or farmed livestock shall be closer to any property line than 200'. I should add to put that in context that Section 320-28 of the Zoning Ordinance is the conditional use section of the ordinance. Certain uses are permitted in certain districts as conditional uses. Which means that in order for the use to be permitted it has to meet certain conditions. One of the categories of permitted, conditional uses in certain districts is farm or agricultural use. That is the section of the ordinance that is amended. This is no different from what exists now except that the language stating that animals shall be provided shelter for containment and the premises to be maintained in such a way as to regularly remove waste has been added because it was taken out of title 57 and it was thought that it should be appropriately put into this section of the ordinance to make clear that they are permitted, animals on farms or agricultural use properties have to be provided shelter. The rest of the provision exists the way it's written today. The second change states that one horse for the personal use of the occupants of the residence may be maintained on any lot at least 3 acres in size. That basically also exists today but what's changed is that the way it's written in the current ordinance is it says one domestic horse. The word domestic has been taken out to make clear that horses aren't domestic animals. The animals ordinance is really dealing with pets. You can't have a horse unless you meet the conditional use standards.

Mr. Le Frois stated: I'm aware of the application we listened to last year when the issue of farm animals came up in the town. I understand why we are making these changes. These changes

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come from the Town Council. The Planning Board does not create them. We enforce them. Our role is to determine whether or not it is consistent with the Master Plan.

Mr. Marion questioned: If there's a building now for the purposes of fowl or game within 200' of the property line is that grandfathered in?

Mr. Soloway stated: It would be grandfathered under the Zoning Ordinance but that doesn't mean that you're exempt from the requirements of Chapter 57 on how you keep your animals. Kind of like the application you just heard. If somebody has a barn that qualifies as a pre-existing non-conforming use and or structure, it can be grandfathered.

Mr. Marion stated: But if it was abandoned and then all of a sudden they want to start using it, they can't.

Mr. Soloway stated: Correct. We had one that was used during the Depression and it was clearly abandoned. The application was for a conditional use variance as part of a farm and agricultural use. The Board granted part of it but denied that part. The Board determined that the structure was too close to adjoining residential properties and that reinstating that kind of use in that building in this day and age did not meet the criteria for a variance for that part of the application.

Portion opened to the public.

1st Public – Teresa Marquina, 7 Liberty Street, Newton. Has resided at this location for 2 and ½ years. A year and a half ago she bought chickens for health reasons, home schooling kids, and got chickens to bring lesson to life. Using this as a classroom tool and have become attached to named chickens. They love the chicks. They have hatched eggs. They have five roosters. They planned to get rid of the roosters because they are very loud. Last week the neighbors called the police because of the noise. They were not aware that was a zoning issue. They bought these chickens without knowing they were zoning violations. They are devastated because the chickens are pets. Our house is our classroom and it has helped kids to be responsible. Requesting that the Planning Board add notes to this ordinance. They don't fit the criteria. They have a coop right by fence by the property line, next to a parking lot. We've had them for a year and not one neighbor has ever complained about them. We take care of them. We have neighborhood children who come and help take care of them. We are vested and very involved in the community. It was a bit of a shock finding out on Monday that we were doing anything wrong. If we are not allowed to have them outside we do have a space in our basement underneath the door that would be ok to hold them in there. We have a fenced in yard. If you can write notes so we can fit into this in anyway.

Mr. Soloway stated: The ordinance is not written or approved by this Board. Under Land Use it gets referred to this Board. This Board is required to review the ordinance for consistency with the Town's Master Plan. After the Board does that it goes back to the Town Council for a second reading and an actual hearing on the merits of the ordinance. That's where you should bring your comments. This will be on May 29. The section of this ordinance that is most impacted is Chapter 57 because it does not appear that chickens meet the definition of a domestic animal or a pet. That is the problem. I understand that this is your home and you don't have a big enough property. I think what you are trying to say here is that you should be able to keep your chickens as a pet. I don't think you can under the current ordinance. If

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somebody cited you, that's what they cited you under. But the Council is in the process of addressing this right now. That's who you need to speak with.

No more public stepping forward. Portion closed.

Mr. Flaherty stated: Being a 4H person and appreciating the clubs throughout the County that raise fowl, making a finding that's not inconsistent with the Master Plan but possibly making the recommendation to the Council that they try and entertain some limited exemptions for educational purposes.

Mr. Ragsdale stated: I lived next to somebody who had chickens and they were not well-kept. I'd be concerned that you might have one neighbor that is a great neighbor and keep the chickens inside. But you also might have one that is not a good neighbor.

Mrs. Vrahnos stated: I agree. I wouldn't want chickens next to me.

Ms. Hall stated: It says you would have to prevent odor and attraction of rodents and insects. So the expectation is if you keep chickens you need to maintain them and if you don't you'd be violating the ordinance.

Mr. Ragsdale stated: You would still have noise issues with the roosters. It's a residential neighborhood and not a farm.

Mrs. Vrahnos stated: It's up to us to ensure that properties abide by the ordinances. It's not up to us to entertain saying let's have chickens for educational use. That's not up to us, but up to the Town Council.

Mr. Le Frois stated: Yes. But we can make a recommendation to the Council and we would need to vote on it and pass it.

Mr. Flaherty stated: I think we should ask them to give consideration to it. We had a program called Love on the Leash which is permitted but chickens aren't. Both have significant value to the youth. If they can possibly consider some restrictive use it would be my preference.

Mr. Soloway stated: If you are going to consider it an educational use that may not work in this situation. For what it's worth, I was told that a few years back the Council tried to address this subject and found it so impossible.

Straw vote taken on adding recommendation that we potentially ask the Council to consider a limited exemption for fowl for educational purposes. Only two would vote yes.

Mr. Flaherty made a motion made to recommend the amendment to the Zoning Ordinance, to the extent the Animal Ordinance is a development regulation, is not inconsistent with the Master Plan with no recommendations one way or the other and to direct the Board Secretary to transmit that finding to the Town Council. Mr. Marion seconded the motion.

Aye: Mr. Flaherty, Mr. Marion, Mr. Wink, Mrs. Vrahnos, Mr. Ragsdale, Ms. Hall, Mr. Le Frois

Motion carried.

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Ordinance 2019-C- An Ordinance adopting a new Chapter 241, "Soil Importation and Grading" to the Town of Newton and Section 100-24.0 regarding Soil Importation and Grading Fees.

Mr. Soloway stated: This is not an amendment to the Zoning Ordinance but I think it does touch on development and it makes more sense to have Mr. Simmons summarize it.

Mr. Simmons stated: Basically there's two components to this. A lot of this ordinance is being produced because of the recent happenings with contaminated soil in other municipalities in this County and creating large mounds of soil and running out of control. The first portion on page one basically starts with several definitions of contaminated sites and soil and acceptable soil so everyone's on the same page. Part A talks about soil importation which is bringing in contaminated or unwholesome material. We don't want contaminated soil in the Town of Newton. We say what soil can be brought in and there are certain limits as far as routine landscape activities that don't require an excess of 50 cubic yards of soil. To put that in perspective, a tandem dump truck will hold 15 to 16 cubic yards. So up to three container truck loads with the soil would be exempted from this. I think the Town has tried to have a reasonable figure for somebody who is doing landscaping in their backyard. But in the same token not importing truck load after truck load with potential problems if any of the material is contaminated. It includes suggested work hours when it can take place. Also proof of compliance in regards to soil cleanup. The onus is put on the owner of the property that is accepting the soil to make sure it is tested to ensure it is not contaminated. The second part is related to soil grading. That is the part where they are bringing in uncontaminated material, especially on a smaller lot; you don't want 100' high stock pile in your neighbor's back yard. So it gives the criteria in there as far as the information that's needed to show how they will get the material and what heights so it won't adversely affect the drainage area. Basically there is criteria in there depending on how big a property is and what you're doing on it. Usually when it's a larger area it gets involved with a site plan. The last part is the fees. Basically the fees provide a certain amount of money for the Town Engineer to go out with the information provided by the applicant to do a preliminary site visit and then to follow up with an inspection to make sure that things are being done in a reasonable fashion and in accordance with the approved plan. If it is a larger property and it does get involved with substantially more inspection it will have a separate escrow account based on the size of the project. It's one thing not to over burden a property owner bringing in 5 truckloads of material. It's another thing for people moving acres of material around that could potentially involve wetlands and other restricted areas. You have to spend a lot more time on it. That's why we suggest that they put the cost for that inspection in a separate escrow account based on the anticipated amount of work involved to check that out. For the Town of Newton most of the properties would fit in the first category. But just when you think you've seen everything all of a sudden there's a bigger piece of property with a large mound of dirt to deal with. This is the fairest way to come up with as far as the fee structure to cover both ends of the spectrum. So it's not overly burdensome to an individual property owner with an average size lot, but that the Town will be covered if any larger projects come through.

Mr. Ragsdale questioned: It looks like the threshold is 50 cubic yards to trigger a review by the Town. I am just curious because a page down where you have the fee schedule it says up to 50 cubic yards and they are looking for a \$150 fee. I would think that would apply or would that contradict?

Mr. Simmons stated: I think that is for the grading part. We will have to check that to see if it has to get tweaked. Let's take it to the extreme, let's say it's a very small lot and I mentioned a

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traditional tandem holds 15 cubic yards so that's about three tandems. Three tandems on a three acres lot is not such a big deal, but if it's a really confined backyard and they divert something it's more of a big deal.

Mr. Ragsdale questioned: So what triggers the review?

Mr. Simmons stated: Any amount of soil imported to the site requires a permit. The concern is twofold. One is to make sure it's not contaminated soil. And two that they don't bring it in in such a fashion that it causes an adverse effect on the surrounding properties.

Mr. Ragsdale stated: It is not clear.

Mr. Simmons stated: We can review it.

Mr. Soloway stated: To clarify on the fees, I think the fee provision is applicable only when you apply for a lot grading permit. So it ties into the permit applications. The permit is required prior to the commencement of any land disturbance involving the construction of 1000 square feet of new impervious area or 2500 square feet or more of new soil disturbance. If I'm reading that correctly, if you're landscaper brings in a couple of wheelbarrows of topsoil for your garden, you don't need a permit for that.

Mr. Marion questioned: If somebody bought a piece of property and was building a house and digging a foundation and wanted to spread the soil around the property would this apply?

Mr. Simmons stated: I think there's an exemption.

Mr. Soloway stated: Even if there is, I'm not sure we could tell.

Mr. Simmons stated: From a realistic perspective, you will have a plot plan and it will be over 5000 square feet you are going to have a soil erosion and sediment control permit anyway.

Portion opened to public. None stepping forward, portion closed.

Mrs. Vrahnos made a motion to find it not inconsistent with the Master Plan but that the Board expressed concerned that when a homeowner is performing normal gardening and landscaping type activities on their property it is not being subject to permitting and to direct the Board Secretary to transmit that finding to the Town Council. Mr. Ragsdale seconded the motion.

Aye: Mr. Flaherty, Mr. Marion, Mr. Wink, Mrs. Vrahnos, Mr. Ragsdale, Ms. Hall, Mr. Le Frois

Motion carried.

CORRESPONDENCE: -

None

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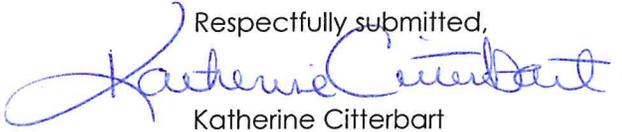
None

PUBLIC PORTION –

None

ADJOURNMENT

Mr. Le Frois made a motion to adjourn the meeting. The meeting was adjourned at 8:29 PM with a unanimous "aye" vote. The next meeting will be held on June 19, 2019 in the Council Chambers of the Municipal Building.

Respectfully submitted,

Katherine Citterbart
Planning Board Secretary