



**Stratham Planning Board Meeting Minutes**  
**May 17, 2023**  
**Stratham Municipal Center**  
**Time: 7:00 pm**

**Members Present:** Thomas House, Chair  
David Canada, Vice Chair  
Mike Houghton, Select Board's Representative  
Chris Zaremba, Regular Member  
John Kunowski, Regular Member  
Nate Allison, Alternate Member

**Members Absent:** None

**Staff Present:** Mark Connors, Town Planner

**1. Call to Order/Roll Call**

Mr. House called the meeting to order at 7:00 pm and took roll call.

**2. Approval of Minutes**

**a. April 19, 2023**

Mr. House stated that he does not recall making the motion on the Route 33 Heritage District application for 180 Portsmouth Avenue as noted on line 193 of the draft minutes. No other members recall making the motion. Mr. House recused himself from further discussion on the minutes as he is an abutter to one of the projects. Mr. House appointed Mr. Allison as a voting member for this discussion. Mr. Canada took over as Chair for this discussion.

Mr. Connors presented a letter from Attorney Eric Maher with requested changes to the April 19, 2023 draft meeting minutes. Mr. Connors highlighted three objections to the minutes raised by Mr. Maher. Mr. Connors noted that the meeting recorder malfunctioned during the first hour of the meeting and therefore the Aberdeen West discussion was not recorded. Minutes were prepared based on Mr. Connors' memory and notes from the meeting.

One change requested by Mr. Maher is with regards to a comment by Mr. Canada on Page 3, Line 94. Mr. Canada clarified his comment that he thought the whole situation reminded him of the Fred Emmanuel situation where Kevin King said he did not want trees, he wanted a forest. Mr. Canada believes his analogy was apt because the abutter for Aberdeen West is not satisfied with what was presented and they want what they think is adequate. Mr. Canada added that the Planning Board's job is not to satisfy the abutter but to satisfy the criteria that a reasonable effort be made to minimize the visual impact. Mr. Canada agrees with the paraphrasing of his comments in the meeting minutes.

Mr. Connors suggested the following edits:

*Mr. Canada stated that this matter reminds him of another application, in which case an abutter did not want trees [for screening purposes], but instead wanted a forest. He said that the Board needs to determine if reasonable efforts have been made to screen the panels and it is his opinion that the revised plan reflects a reasonable effort.*

Another requested change is regarding the paragraph on Page 2, Line 72 on assertions made by Attorney Jeannie Oliver. Mr. Maher asked that a statement by Ms. Oliver be added to the minutes. Mr. Connors emailed Ms. Oliver to ask her recollection and she responded with a letter. Mr. Connors highlighted two relevant parts of her letter – the third paragraph on the first page and a long paragraph on page 2. The board members reviewed the letter and Mr. Canada asked for comments. Mr. Zaremba recalls Ms. Oliver noting reasonable effort standards and she corrected her law student at the end when he was explaining the compromise. He does not recall her exact words. Mr. Connors stated that we just need a summary and we can say that she referenced that section of the ordinance. Mr. Canada's recollection is what Ms. Oliver stated here (her May 17, 2023 response to Mr. Maher's requested edits).

Mr. Zaremba asked if there is concern that we are reviewing letters from attorneys to adjust the minutes. These are Planning Board minutes that we want to ensure are accurate, but he questions if the process to accept comments and asked if we have accepted comments in the past. Mr. Connors replied that he has not received outside comments on meeting minutes before this case. Mr. Connors asked for clarification on Mr. Zaremba's concern. Mr. Zaremba responded that he believes we can update the minutes based on Board and staff recollection but not based on public comment. Mr. Houghton agrees with Mr. Zaremba and believes the Board should not paraphrase attorney's comments. Mr. Allison asked if we can include the letters as exhibits. Mr. Houghton replied that can be done but he believes the Board should discuss their recollection of events and not be influenced by public comments. Mr. Canada believes it is appropriate that the attorney stimulated the conversation because the Board is working off their memories and the public's memory may be different. Mr. Canada agrees with Mr. Houghton that the review of minutes should be based on the Board's recollection and not on the public's recollection.

Mr. Houghton asked if the Board should rehear the public hearing. Mr. Canada is not in favor of that. He does not think it is necessary. He added that Mr. Connors noted there is no requirement to record meetings and the Board is doing their best job to get it right. Mr. Houghton stated there may be no requirement to record it, but we did record it, and we relied on the recording to compile minutes. Mr. Canada believes a judge should determine if the issue is serious enough, the judge can order the Board to rehear the project. Mr. Houghton agrees with Mr. Canada but is seeking a means to head that off and say that there was an unfortunate set of events, the Board will repost for a public hearing, and use two recorders for a new hearing. Mr. Canada commented that if someone wants to challenge the minutes, then the burden is on them to prevail in the challenge. He added that none of the board members have a vested interest in the project.

Mr. Kunowski asked if the letters from the attorneys are now part of the public record. Mr. Connors replied yes, they are part of the record, but not part of the minutes. Mr. Allison again suggested including the letters as exhibits. Mr. Zaremba asked if we accept the letters, wouldn't that be accepting public comment. Mr. Allison clarified that he would include the letters as exhibits in an appeal and not exhibits to the minutes.

Mr. House asked Mr. Canada if he can ask a procedural question. Mr. Canada replied yes. Mr.

94 House asked if there is an RSA that addresses the topic of reopening a public hearing if the Board  
95 is not sure about what is going on like Mr. Houghton suggested. Mr. Connors replied he is not  
96 aware of an RSA for that. Mr. Allison suggested time extensions would need to be approved. Mr.  
97 Zaremba asked if the Planning Board can rehear an application within 30 days if they choose to.  
98 Mr. Connors replied that the Zoning Board of Adjustment can do that, but he is not sure that the  
99 Planning Board can. Mr. Canada commented that the Board does not need to rehear the application.  
100 The Board heard it, debated it, and now it's a matter of what that debate consisted of. The Board  
101 will do its best job to review the minutes, and if the abutter wants to challenge it, a judge can  
102 determine the next steps.

103  
104 Mr. Canada asked if there are any comments on the letter submitted by Ms. Oliver. Mr. Zaremba  
105 reviewed his personal notes and replied that he recorded Ms. Oliver said this is not a compromised  
106 standard when she corrected her student. Mr. Connors suggested adding a sentence stating Ms.  
107 Oliver noted the standard the Planning Board should follow which is "reasonable efforts, as  
108 determined by the Site Plan Review authority, shall be made to minimize visual impacts by  
109 preserving natural vegetation, screening abutting properties, or other appropriate measures." Mr.  
110 Connors suggested adding a second sentence, because the opposing attorneys have argued if the  
111 project needs to meet the full landscaping requirements, which states "Ms. Oliver said that full  
112 compliance with the Site Plan Review Regulations is not required for a medium scale solar array."  
113 Mr. Connors believes that covers the major points raised.

114  
115 Mr. Canada asked Mr. Connors to discuss the third comment from Mr. Maher. Mr. Connors stated  
116 that Mr. Maher contends that a section of the minutes did not occur. Mr. Connors read aloud the  
117 section from the draft minutes in question and stated it is where the Board deliberated before they  
118 made the decision. The minutes reference comments made by Mr. Kunowski so Mr. Canada asked  
119 Mr. Kunowski if the minutes are accurate. Mr. Kunowski recalls that after the public comment  
120 period was closed, there was a brief Board discussion as described in the draft minutes. He does  
121 not remember word for word, but he recalls that they moved quickly to the motion. Mr. Kunowski  
122 added that there was not a lot of discussion, but they did not go straight to the motion at the close  
123 of the public comment period. He commented that the second sentence relating to him seems  
124 repetitive of the first and he is not sure the second sentence is necessary but he is not uncomfortable  
125 with what is stated in the draft minutes. Mr. Connors asked if Mr. Kunowski prefers that the second  
126 sentence be deleted or kept. Mr. Kunowski replied that the first sentence says what is needed and  
127 the second does not add that much, so he would support streamlining it. He added that he thinks  
128 the entire board concluded that the applicant made an effort to increase the number of plantings  
129 and to create a better visual buffer and that is the criteria the Board was looking at. Mr. Canada  
130 recalls agreeing. Mr. Connors continued to read aloud the minutes which summarize Mr. Canada's  
131 comments. Mr. Canada stated that he can't swear to the statement but he can say that he offered  
132 support to the landscape plan. Mr. Connors added that he thinks this is the part of the minutes  
133 where Mr. Canada made the comments about the other project. Mr. Canada does not recall. Mr.  
134 Connors read aloud the minutes which summarize Mr. Houghton's comments. Mr. Houghton  
135 thinks he said what the minutes state and he would say it again. Mr. Kunowski commented that  
136 the discussion was quick, but there was a discussion and the implication that there was no  
137 discussion is false. Mr. Houghton agrees and added that the purpose of the hearing was to allow  
138 the applicant to submit a responsive plan to the February meeting and there was a lot of discussion  
139 in February. And to the extent that the Board found it responsive, Mr. Houghton does not know  
140 that there was a lot of discussion and does not find it startling that the discussion was short in April.  
141 Mr. Canada added that he was chair at April meeting and he typically looks to each Board member  
142 to seek comment. He cannot swear he did that in that instance, but it would be typical of him. Mr.

Houghton believes that was the case. Mr. Canada added that he is 99% certain that he made the motion to approve and the draft minutes and not Mr. Kunowski. Mr. Canada asked Mr. Kunowski if he agrees. Mr. Kunowski replied he agrees that Mr. Canada made the motion. Mr. Houghton stated that the assertion that lines 94 through 103 did not happen, he unequivocally denies. Mr. Zaremba agrees and recalls Mr. Canada's comment about the forest. Mr. Zaremba requested that a statement be added to the minutes that he read the minutes from the previous hearing because he was absent from the February meeting. He added that his recollection is he talked about reading the minutes and stated that he participated when Aberdeen West was in front of us before the appeal.

Mr. Canada asked if Mr. Connors wants to read the edits back to the Board tonight or hold off. Mr. Connors replied that he recommends the Board postpone voting on the minutes until the next meeting when he can have a revised version available. Mr. Connors asked if there are any other comments on the April 19<sup>th</sup> minutes. There were none. Mr. Canada asked if a motion is needed to table the minutes.

**Mr. Zaremba made a motion to table the April 19<sup>th</sup>, 2023 Planning Board minutes until the next meeting on June 7, 2023. Mr. Kunowski seconded. All voted in favor and the motion was approved.**

Mr. Canada invited Mr. House back to the chair position.

**b. May 3, 2023**

Mr. House made a comment that the date of the minutes should be changed from May 4 to May 3.

**Mr. Zaremba made a motion to approve the meeting minutes from May 3, 2023. Mr. Kunowski seconded the motion. All voted in favor and the motion was approved.**

**3. Old Business:**

- a. JP Morgan Chase & Co. (Applicant), NP Stratham, LLC c/o Northstar Centers, LLC (Owners) -- Request for Site Plan Review for a proposed 3,322 square-foot bank with drive-through service facilities and associated improvements at 20 Portsmouth Avenue, (Map 4, Lot 14), Zoned Gateway Commercial. Applicant's representative is Bohler Engineering, 352 Turnpike Road, Southborough, MA 01772.**

Mr. House stated that Bohler Engineering requested in writing a continuation to June 21 because the peer review comments have not yet been received. Mr. House asked the Board for comments. Mr. Kunowski asked what the peer review comments are for. Mr. House replied for the parking and traffic studies. Mr. Canada commented that is different from peer review. Mr. Connors corrected that it is a third party review.

**Mr. Canada made a motion to continue the application to the June 21, 2023 meeting. Mr. Kunowski seconded the motion. All voted in favor and the motion was approved.**

**4. New Business:**

- a. Discussion of outstanding performance bonds**

Mr. Connors presented the Board with an Excel table of performance bonds that the Town is holding. Most of them are related to Planning Board land use approvals. Some date back many years. The Town has made some banking changes and as part of that effort, Town staff agreed to look at the list and try to clean it up. In the future there should be a check in every 6 months or annually so that the Town is not perpetually holding money that they don't need to hold. Most of the funds are performance guarantees and the Town cannot spend the money unless the developer is deficient and doesn't complete something that was required.

The two most challenging are the two oldest: GCNE from 2004 and Jotaph Realty from 2005. The Town is required to hold the funds in interest bearing accounts. Mr. Canada commented that the golf club (GCNE) never finished paving; it's not a public road, but perhaps the Town should call them. Mr. Houghton asked if the development is finished. His recollection is that there are still some vacant lots and that could be why they haven't paved it. Mr. Connors agrees that might be the case. Mr. Canada asked Mr. Houghton if the road was built to town standards so that it could be a public road. Mr. Houghton does not know. Mr. Canada commented that if it was built to standards then GCNE might be thinking ahead of converting it to public so we should continue to hold the funds, but if it is going to be a private road, then the Town might not be concerned with the top coat. Mr. Connors stated that staff will need to review each file and with some being over 20 years old it will be challenging to find all of the documents related to the bonds. Mr. Canada asked which project is Jotaph Realty. Mr. Connors believes it is in the industrial park but he does not recall which project it is.

Mr. Connors continued on with the list and stated that the Town is no longer holding a bond for NHSPCA so that is removed from the list. The Treat Farm bond continues to be held as the Town has requested that some work be completed. Mr. Connors believes that the two Kennebunk Savings bonds can be released and that will probably go to the Select Board soon. Mr. Connors will research if the required landscaping for 200 Domain Drive has been installed and if so, that bond can be released. Mr. Houghton believes that Altid Enterprise and 200 Domain are the same property. Mr. Connors continued that the Lindt bond is small and he needs to research which project it is from, but he is not aware of any outstanding issues with Lindt. Mr. House asked if essentially the majority of bonds can be released. Mr. Connors replied yes, but he needs to complete more research on some.

With regards to the Foss Property Security Deposit Mr. Canada asked Mr. Houghton if the rent was increased as it is illegal to hold more than one month's rent for security and the amount is about two months' rent. Mr. Houghton replied not that he is aware of and wondered if the Town didn't return someone's security deposit. Mr. Canada recalls an issue with a previous tenant, so that could be the case. Mr. Houghton stated in that case the money should be moved to the general fund. Mr. Connors stated the Board can skip a discussion on the rental deposit escrow accounts as those will be discussed by the Select Board.

Mr. Connors continued that the Varsity Wireless Historic Sign is an impact fee from a cell phone tower project that was approved. Money was set aside for a heritage sign. Mr. Canada does not believe that is an impact fee. He thinks there was a requirement that they pay it and there was no time limit established. Impact fees have a five year time limit. Mr. Houghton agrees that it was not an impact fee, but a condition of approval.

Mr. Connors described the Green Solar Surety as one the Town would like to release and is the result of the recent amendment to the Zoning Ordinance. The Town no longer needs to hold a bond

241 for the life of a solar array. Instead Stratham Green will record a covenant against the deed to the  
242 property stating that the panels need to be removed once the panels are no longer active. It also  
243 gives the Town the right to remove the panels and put a lien on the property. The Town sent a copy  
244 of the covenant to Stratham Green's attorney and has not heard back yet. The Town will hold the  
245 bond until the agreement is signed and recorded.

246  
247 Mr. Connors believes the remaining six projects are not performance bonds, but are conditions of  
248 approval. He does not believe these are funds the Town is required to return, but he needs to  
249 research the projects. Mr. Houghton believes the Winterberry Cistern is no longer active if the  
250 development was connected to Aquarion Water.

251  
252 Mr. Houghton and Mr. Canada provided some background information on the Mobil Cistern. The  
253 Subaru dealership purchased an old Mobil Station and combined two lots. They are not sure if the  
254 cistern is required anymore or if it still exists once the gasoline tanks were removed from the former  
255 Mobil station. Mr. Connors noted that he is not sure how funds are released if the use no longer  
256 exists like with the Mobil station and the Winterberry cistern.

257  
258 Mr. Houghton stated that with Tansy Ave, the first developer went bankrupt and another developer  
259 took it over. Mr. Canada added that a cistern was installed on Point of Rocks but he is uncertain if  
260 it is the same project. Mr. Houghton suggested reviewing the Tansy Ave development file. Mr.  
261 Canada suggested checking with the fire department.

262  
263 Mr. Houghton stated that for Bunker Hill Commons, the fire cistern exists. Mr. Connors agreed.  
264 Mr. Canada stated it is a fire pond and questioned if it worked well in last year's drought.

265  
266 Mr. Houghton asked what the Fire Protection Fund is. Nobody knew and Mr. Connors added that  
267 it doesn't sound like a performance guarantee.

268  
269 Mr. House asked if there are any questions. Mr. Houghton made a comment that there should be a  
270 defined process with accountable parties so these are addressed on a timelier basis. Mr. Canada  
271 asked if there is a current process. Mr. Connors replied no, but he could create an annual calendar  
272 reminder.

#### 273 274 **b. Discussion of New Hampshire Statewide Zoning Atlas**

275  
276 Mr. Connors presented. There are over 200 towns in New Hampshire and the atlas is a way to  
277 compare zoning across communities without reading each individual ordinance. This is a project  
278 of Saint Anselm College, New Hampshire housing, and the New Hampshire Office of Planning.  
279 The atlas was recently released and includes basic information for comparison like minimum lot  
280 sizes. Stratham has a minimum 2-acre lot size for residential except that cluster developments  
281 allow smaller lot sizes. In a cluster development the developer must set aside open space and that  
282 will allow smaller lot sizes with less frontage and smaller setbacks. The developer must also create  
283 a yield plan showing the maximum amount of lots that can be constructed with the conventional  
284 2-acre minimum. The Town also allows density bonuses for open space cluster developments.  
285 Two-acre zoning is common across New Hampshire. Mr. Connors showed maps of towns that  
286 require between 1 and 3-acre lot size for single family homes, those that allow detached accessory  
287 dwelling units, and those that allow duplexes. New Hampshire is the third state to complete this  
288 atlas.

Mr. Canada asked if Stratham eliminated the bonus for keeping the front lot open. Mr. Connors replied that might be the case and that Stratham used to allow it. Mr. Houghton agreed that changes to the density bonuses were made.

Mr. Canada asked if there is any push for statewide zoning. Mr. Connors has not heard of any effort for that except for some specific subjects like stormwater control.

Mr. Allison asked if counties adopt master plans. Mr. Connors replied not for planning and zoning. Mr. Allison commented that the atlas is then very valuable information for planners. He explained in another state where he lived, the counties created master plans that towns would overlay on those plans. This allowed for more consistent zoning. Mr. Connors replied that New Hampshire has Regional Planning Commissions that are similar to that idea. Stratham is part of the Rockingham Regional Planning Commission and the RPC created an advisory master plan for their region.

c. Annual election of Planning Board Officers

Mr. Connors stated that the Board needs to elect a Chair, Vice Chair, and Planning Board representative to the Heritage Commission. Mr. House is the current Chair and Mr. Canada is the Vice Chair. Mr. House offered to continue in the Chair role but also offered it to other members. Mr. Canada stated he would very much like to remain in the Heritage Commission role and would remain as Vice Chair as well, but is happy to yield the Vice Chair role if someone would like it. Mr. Zaremba stated he is happy with the Chair, Vice Chair, and Heritage designee roles as they currently are. Mr. Kunowski is in full support of the candidates.

**Mr. Zaremba made a motion to retain the existing Planning Board officers and Heritage Commission representative. Mr. House abstained and Mr. Canada, Mr. Houghton, Mr. Zaremba and Mr. Kunowski voted in favor. The motion was approved by a vote of 4 to 0 with one abstention.**

5. Adjournment

**Mr. Zaremba made a motion to adjourn the meeting at 8:13 pm. Mr. Canada seconded the motion. All voted in favor and the motion was approved.**