



TOWN OF HUDSON

Planning Board

Vincent Russo, Chairman

Rick Maddox, Selectmen Liaison



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HUDSON PLANNING BOARD MEETING MINUTES September 11, 2013

I. CALL TO ORDER

Chairman Russo called this Planning Board meeting to order at 7:08 p.m. on Wednesday, September 11, 2013, in the Paul Buxton meeting room in the Hudson Town Hall basement.

II. PLEDGE OF ALLEGIANCE

Chairman Russo asked Mr. Barnes to lead the assembly in pledging allegiance to the Flag of the United States of America.

III. ROLL CALL

Chairman Russo asked Secretary van der Veen to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

Present: James Barnes, Glenn Della-Monica, George Hall, Vincent Russo, Ed van der Veen, and Richard Maddox (Selectmen's Representative).

Members

Absent: Tim Malley (excused).

Alternates

Present: Irene Merrill, Marilyn McGrath, Jordan Ulery, and Nancy Bruckerman (Selectmen's Representative Alternate, arrived at 7:17 p.m.).

Alternates

Absent: None. (All present.)

Staff

Present: Town Planner John Cashell.

Recorder: J. Bradford Seabury.

IV. SEATING OF ALTERNATES AND ANNOUNCEMENTS

Chairman Russo seated Mr. Ulery in place of the absent Mr. Malley.

V. MINUTES OF PREVIOUS MEETING(S)

Chairman Russo addressed the minutes for the meeting of July 24, 2013, asking if there were any changes or corrections.

Mr. Della-Monica requested the following changes:

- Page 5, the 4th paragraph appeared to be repeated as the first part of the following paragraph.
- Page 13, 1st line — word “if” is misspelled.
- Page 15, 3rd paragraph from bottom, 5th line — word “perk” should be “perc” (from percolate)
- Page 16, 4th paragraph from bottom — last line trails off without ending.

Mr. Barnes said he believed the missing statement Mr. Della-Monica had referenced was that the developer had agreed to the change.

Mr. Barnes requested the following changes:

- The heading for Correspondence Item A on Page 2 was unrelated to the following text, and he requested that a more appropriate title be provided.
- Several references to Haffner’s in that text were misspelled.

No further changes or corrections being brought forward, Mr. Della-Monica moved to accept the 07-24-13 minutes as amended; Mr. Barnes seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. All members present voted in favor, and Chairman Russo declared the motion to have carried (7–0).

VI. CASES REQUESTED FOR DEFERRAL

No cases had requested deferral from this scheduled date.

VII. CORRESPONDENCE

Chairman Russo stated that items of correspondence received in tonight's handouts would be taken up in conjunction with the associated cases, with any remaining items being taken up under **Other Business** at the end of the meeting.

VIII. PERFORMANCE SURETIES

No **Performance Sureties** items were addressed this evening.

VIX. ZBA INPUT ONLY

No **ZBA Input Only** items were addressed this evening.

X. DESIGN REVIEW PHASE

No **Design Review Phase** items were addressed this evening.

Chairman Russo stated that, without objection, the Board would take up the DRED discussion under **Other Business** first.

XV. OTHER BUSINESS

A. New Hampshire Department of Economic Development (DRED) – Discussion with DRED officials on State and Local Economic Development Issues.

Chairman Russo read aloud the published notice, as repeated above.

Town Planner Cashell

Mr. Michal Bergeron, from the New Hampshire Department of Resources, Division of Economic Development (DRED), accompanied by Mr. Gary Bergeral, his partner, gave a PowerPoint presentation, reviewing the nature of his department and his background. He noted that Mr. Bergeral had a real estate background, as well. He said things were looking better than a year ago, saying they were seeing a lot more inquiries for New Hampshire, including from some unusual companies, mostly involved in distribution. He said he saw an increase in consumer purchasing for all the backed up things that they could not buy during the recent depression.

He then reviewed some graphs showing that things were picking up in terms of manufacturing, both here and worldwide.

Selectman Brucker arrived at 7:17 p.m. and took her regular seat at the table as a nonvoting alternate at that time.

Mr. Bergeron presented a chart of employment, saying it was going up but was still very, very slow, noting that most of the people being hired were working part-time—adding that there was also an issue of people not being counted and a large number of people who had given up and were not looking for work.

Mr. Bergeron said there was a tendency of towns to say things were coming back, but he warned that things would never again be that great in our generation. He discussed the ways used by his department to reach out to people and companies and following leads, saying it normally took about two years to reach a closing. He discussed the chief reasons why people wanted to move to New Hampshire,

suggesting that Hudson should be taking a regional approach. He said the high-tax states came up with a lot of federal monetary incentives (although Texas had a surplus, he reported).

Discussing what people looking at Hudson would be looking for, he said the Town's representatives should be well dressed and well-informed, saying Hudson should have a go-to person. He suggested Hudson should lead with its strength, saying it should be a small group in the early stages so as not to mess things up. He said the Selectmen had to have good communication and goals, pointing out that confidential things should not be talked about. He said companies were taking a long time to make a decision, but then only had a short period of time to do actual construction. He said slow permitting processes were a hindrance, and he spoke against voice-mail messages as a real holdup, saying there should be consideration on good customer service. He said companies would come into Town Hall to see how they were treated and what the attitude was. He noted the limited parking in front of Town Hall, asking if it were clear to outsiders where they could park, but he added that he thought the Hudson Town Hall was open and well designed. He warned about going into too much detail on shrubbery and plantings, saying this was not a seller's market. He suggested that each town needed to make it easy for businesses to work through the approval process.

Mr. Bergeron suggested Hudson needed to elevate its strategy to let outside markets know what was available in Hudson—what the demographics were, what the workforce was, etc., and he emphasized the importance of the Town's website, suggesting what colors would be most attractive; he spoke in denigration of other town's websites that had pictures of cemeteries and snow. He said having a map was very important. He cited the Claremont Website as an example, saying economic development was really shown up front. He recommended including pictures of family life, the new library, noting that the link for economic development on the current Hudson website was way up in a corner, hard to see. He suggested featuring the two industrial parks more, saying the website should show where they were, using less text, and he suggested showing them on an aerial view to show where they were. Similarly, he suggested there was a need to show how close Hudson was to the Boston market. He suggested much of the text on the Hudson website could be made easier to read, noting that some contacts were not listed. He said things should be made easier, especially with respect to identifying people who could be contacted. He noted that the Hudson website page for the Planning Board did not give much information, pointing out that the Nashua website by contrast provided a lot more information. He then spoke in favor of an active social media presence as a way of elevating the Town's exposure to business, saying attitude was much more important than water and sewer.

He said Hudson had much going for it, but he recommended taking a stronger look at the Town's website.

Ms. McGrath asked if Mr. Bergeron could send a copy of the presentation to Town Planner Cashell, so that the Board of Selectmen could review it. She said she did not think Hudson could have a better point of contact than Town Planner Cashell. She questioned the advisability of personal contact phone numbers for Planning Board members, saying she did not know if she would want developers looking for approval to be contacting her at her home, and she suggested that Board members could be

unduly influenced. Mr. Bergeron said that was an individual decision, saying it was up to the discretion of each member.

Ms. McGrath referenced Mr. Bergeron's comments about the permitting process, asking how to balance the rights of the residents, who might be concerned about traffic issues. Mr. Bergeron referenced Seabrook, saying that community also had issues, but the difference was that the town had said right up front in a recent case what things would have to be addressed, such as a traffic study—but had said they loved the company and wanted to see it move to Seabrook.

Selectman Maddox said this was preaching to the wrong choir, as the Planning Board did not control the Town's website. He said there had to be a balance, as Ms. McGrath had suggested, noting that the State's website implied that the IRZ (Industrial Revitalization Zone) zone expired after five years. Mr. Bergeron said that was a mistake, telling Mr. Bergeron to look into it. Selectman Maddox suggested that the DRED department could get vendors that all the towns could use to improve their websites. Mr. Bergeron said one issue was money, saying some towns would not want DRED to be involved.

Mr. van der Veen asked if there were many long-term benefits from Quebec Hydro going through New Hampshire. Mr. Bergeron said that was a political question and he was not allowed to talk about that.

Ms. McGrath asked if DRED would be in a position to identify website vendors who would be in a position to provide assistance. Mr. Bergeron noted that most towns had websites created by volunteers, but he would be happy to provide a list of vendors who could help and also to work with them.

Mr. John Wolters, speaking from the audience, noted that one of the things Mr. Bergeron had not touched upon was that, when the Planning Board was doing approvals, a lot of companies were concerned about how long it took employees to get to the office or leave the office. He said every time a new traffic light was put up it produced delay, and companies would look at every minute of the commute travel time. He noted that Hudson had two separate electric grids, one coming from Boston and another coming from Canada—saying this was significant for data processing. He noted that one company had just made connections to the two separate grids, saying this was a huge benefit for some companies in the industrial parks. He said the presence of attractive entrances to towns was very important, saying most companies wanted to be in nice facilities with nice surroundings, and to be able to conduct their business and operations without much interference, and they wanted to have nice restaurants nearby.

Mr. Bergeron expressed appreciation for the Board having listened to him. Chairman Russo thanked the DRED representatives for coming.

He said the site's parking lot had been modified, saying some of the parking area had been placed adjacent to the building area, apart from the overhead doors, so that the parking lot could be pulled back just about parallel with the building edge, which allowed them to pull the grading away from the west property line. He said there was a topographical mound along the west boundary line, with a lot of hemlock trees, which previously had been planned to be removed, but the changes let them salvage that high point with that existing vegetation on it. He noted that Mr. Barnes had suggested relocating the overhead doors to the opposite side so that the activity associated with utilizing those doors was further away from the Life Is Good business, and he said they had done that.

Mr. Merritt referenced Sheet 7 in the plan set, identifying it as the landscaping plan, with a substantial buffer having been added along Hudson Park Drive, largely of evergreen trees, but also with some deciduous shrubs on the north side of the buffer.

Mr. Merritt said the stormwater system had been redesigned, and the new plan met the requirements of DES, saying that new plan had gone through engineering review with no comments back from CLD,

Mr. Merritt said Century Park had submitted a plan of a preferred layout, and his firm had made every change that was realistic to address Mr. Wolters' concerns. He said Mr. Jamer had made the \$13,000 contribution to the Town for revision of Wall Street, which he said now looked like a new road.

Atty. J. Bradford Westgate, of the firm of Winer & Bennett, 111 Concord Street, Nashua, NH, legal representative for the applicant, posted a tax map sheet on the meeting room wall (Tax Map 170), noting that Mr. Merritt was distributing copies of the same thing along with some pictures they had taken to illustrate some of their points. He noted that he had submitted both a lengthy and a shorter memo, which had been included in the meeting packet, including a detailed analysis of the four waiver requests remaining before the Board, saying he wanted to address those.

With reference to a 50-foot setback from Hudson Park Drive, Atty. Westgate said he did not believe that was needed, saying the key point was where in the Zoning Ordinance did the setback requirement derive, which he said was only from the Table of Minimum Dimensional Requirements, noting that setback dimensions were not set forth in definitions of front lot line, side lot line, rear lot line, corner lot, or frontage. He read from the table, saying there were two categories of setbacks, from arterial and local roadways, both of which required 50-foot front-yard setbacks. He said the question then became what was this section of Hudson Park drive, which certainly was not an arterial collector road, which were defined and listed, so the question became whether Hudson Park Drive was a local roadway—because, if it was not, it was not going to impose a 50-yard setback. He pointed out there was no definition of a local roadway, but Section 334.5 gave guidance for undefined terms, saying they were to have the meaning in standard usage as defined in standard American dictionaries. He said common usage suggested the road had to be open for the public and physically traveled on—not a paper street, and not a way dedicated to public servitude. Saying Hudson Park Drive was nothing of the sort in this section, he referred to Sheet 1 of the plan set, using a yellow marker to show where Hudson Park Drive was, saying this section of the road along the north property line of the applicant's property was either

pavement or parking lot or grass, which was not open to public travel. He noted there was a landscaping feature a little further to the west, exactly in the locus of Hudson Park Drive, as was an edge of one of Century Park's buildings. He said this could not possibly constitute a local roadway for the sake of zoning purposes. He noted that the abutter was saying a 50-foot setback must be imposed on Mr. Jamer's property for a road that was either grass or a parking lot, but the abutter was putting part of his building in it. He said this made no sense, saying it could not constitute a local roadway. He said Atty. Sokul had maintained throughout that the Board had to look at the definitions of frontage or lot lines, but those definitions had no mention of setback requirements. He then read from those definitions, saying that, if front lot line had bearing on this analysis, it could only be in the context of the Table of Dimensional Requirements' setback standards from local roadways, but it did not tie into the setback notion whatsoever in those definitions. He said Hudson Park Drive was a way dedicated to public servitude, as designated on a recorded plan, but it did not rise to the level of a local roadway for setback purposes. If anything, he said, these sections must be read in the concept of a local roadway, because that was the standard. He pointed out that the Board had said Wall Street did not rise to that concept, arguing that so neither did Hudson Park Drive.

He then referenced the appraisal report by Mr. Webster Collins, from March 2010, saying it was submitted in the context of Subparagraph a of Section 275-6 of the Site Plan Regulations. Reading from the cited HTC paragraph, Atty. Westgate said this notion of diminishing of surrounding property values was not the equivalent of a variance case in which an applicant must demonstrate that granting the variance will not adversely affect surrounding property values. In this case, he said, the applicant was seeking site plan approval for a permitted use in an industrial district. He said there were about 45 uses permitted in this district, and he suggested that the proper context was health and safety. He said he felt Mr. Collins' report had a number of fatal flaws, including that it was out of date. He said it talked as if Century Park were solely an office park, saying Century Park was really a mixed use, containing office use, warehousing, and distribution. He described some of the buildings, saying they did not have an office façade—adding that the somewhat nondescript building located right in Hudson Park Drive was not of an office park nature. He noted that Mr. Collins basically said that Mr. Jamer's building would knock the value of Century Park down by a third, if built. Referring to the comparable rental figures provided by Mr. Collins, he said the report converted Century Park into a Manchester setting. He noted that the proposed building would be 300+ feet from the 1 Wall Street building and 400+ feet from the Life Is Good building, whereas the Princeton Manufacturing firm on Constitution Drive was about 120 feet from the Life Is Good building and the Sunshine Paving building was about 167 feet away. He said the Collins report extracted rent rates, interpolating them over a building's size—in effect taking a small percentage of the building's effective rent rate and applying it to the building as a whole. He said no current data was presented, saying the report did not demonstrate the point being argued by Century Park.

Addressing the four waiver requests, Atty. Westgate said the planning statutes set up two alternative tests under RSA 44-2E for granting waivers, which said the Planning Board could grant a waiver if the Board found that strict conformity could impose an unnecessary hardship to the applicant *or* that the waiver would probably carry out the intent of the regulations.

With respect to the traffic study, he said, the uses were undefined at this point, and the traffic studies that the Board usually required were for larger-scale projects that had material and significant impact on traffic generation, which was not the case here, as the user would be the only user of this section of Wall Street, which after the recent improvements to which Mr. Jamer had contributed could easily handle the traffic, so imposing the traffic study requirement would impose an unnecessary hardship on the applicant. He said the traffic study would not give any guidance to the Board.

With reference to the fiscal impact study, he continued, this proposed building did not have a negative impact on the Town services, saying any impact would be to the plus, not the negative.

With respect to the noise study, he added, this was in the heart of an industrial park, not a mixed-use area. He said requiring a noise study imposed a hardship.

Finally, with respect to the sight distance, he said they were coming out onto a road of which they were the only user, so the notion of a 35-foot shortage in sight distance was really academic—adding that this was typical of any subdivision.

Atty. Westgate then referenced the memorandum he had submitted providing motions for granting the waivers, saying they set up three elements—saying why the waiver was appropriate, why the particular study was not necessary, and explaining how the standards for granting the waiver were met—and then noted what the basis was for the waiver. He noted that the fiscal study was not really cast in the way of a report, but suggested the impact had to be acceptable to the Board. He then offered to pass out extra copies of the proposed motions. Selectman Maddox suggested he wait until the Board got to that point.

Chairman Russo declared a break at 8:55 p.m., calling the meeting back to order at 9:13 p.m.

Chairman Russo opened the meeting for public input and comment, in favor of the application.

Atty. John Sokul, the legal representative for Century Park LLC, noted that he was accompanied by Mr. Richard Maynard, and Mr. John Wolters. He noted that he had posted three plans on the meeting room wall:

- An aerial view showing where the proposed building would go.
- A landscaping plan that this team had put together (***Suggested Buffer Sketch***, dated August 9, 2012)
- ***Century Park Wall Street, Hudson Park Drive, Plan Number 963***, dated November 17, 1975, revised through March 17, 1976, recorded on May 3, 1976.

Chairman Russo asked if Atty. Sokul had copies of any of these for the Board members. Atty. Sokul said he had the landscaping plan, but the recorded plan had been in his earlier packet, provided for a previous meeting.

Atty. Sokul said some of the notes on the plans provided by the applicant labeled Wall Street as dedicated and unaccepted, which he believed to be inconsistent with the recorded plan, and the applicant's engineers had agreed to remove those labels.

He acknowledged that the applicant had made several changes, especially with respect to the side facing the Life Is Good business, and they felt that had been reasonable, but they still had some misgivings and were asking that the Town's regulations be applied as written. He said he thought it was clear from the definitions of front yard and side yard and rear yard that a setback was required. He said the setbacks were the same in the industrial zoning district, saying the requirements for front yard and side yard and rear yard must mean something, and there was a distinction between a street and a public way. He noted that things change, noting the pictures the applicant had provided for the revised Wall Street, saying this was an example of why requirements should be met.

Mr. Richard Maynard, Professional Engineer, of Maynard & Paquette Engineering Associates, LLC., appearing before the Board as a representative of the applicant, said Hudson Park Drive and Wall Street, with regard to Century Park, were two different classifications. He noted that Plan 962 had no notations on it with respect to Hudson Park Drive, but Wall Street was designated as private, adding that Hudson Park Drive was open to public travel. He said this Board had reviewed several site plans on Hudson Park Drive, all of which had been required to have a 50-foot setback from Hudson Park Drive. He said the requirement was for "any" roadway or public right-of-way, so this site should be subject to the same requirements as Poole's Auto and Specialty Kitchens. He then referenced Heron Pond Way, located off Ponderosa Drive, saying it was a driveway to a dubious standard, but the residents had been subject to a setback.

Atty. Sokul said they thought not only that it was required but also that it was the right thing to do in this circumstance. He then referenced the diminution in value standard in HTC 275-6.A, reading from the text. He said he agreed this case was not subject to the variance standard, but he argued that was not the point, which was that the requirements should be applied, and the abutting property should be accounted for in the design of the plan. He said he had sent Atty. Westgate's memo to their appraiser, and they had received an updated addenda this afternoon, taking into account some of Atty. Westgate's comments. He said the appraiser had eliminated discussion of the Life Is Good building, which had a lease with several years remaining on it and two options to extend, so it would not be appropriate to apply a market rate for a fixed-rate lease with rights to extend. He said the appraiser had looked at the building which faced the property and focused on the impacts that he could foresee, concluding that the releasing of the Century Park space if this proposed project were built would as a result be more toward industrial, reducing its value from about \$7/ft² to \$5/ft², dropping the value of the building by about \$1.4 million—from its current value of \$5,688,000 to about \$4,272,000.

That said, he continued, they had proposed to the applicant several suggestions designed to mitigate the impact to Century Park, and Mr. Wolters would cease his opposition if the applicant would accept them. One was the 50-foot setback from Hudson Park Drive, one was for enhanced buffer and screening—noting that the applicant had proposed what was essentially a straight line of evergreen and deciduous

trees, but they had proposed a more intensive and staggered buffering, to provide more screening, with a berm in the middle to give some of the trees a running head start. He added that the applicant had proposed 6 to 7 feet in tree height, but he would like to see trees that were 8 to 10 feet tall. He noted they had proposed additional buffering to accommodate the view from Life Is Good. He said they had proposed that the building be constructed from architectural brick, but the applicant had refused, even though less buffering would be needed. He said they had asked for sound attenuation for the loading bays, with nothing having been proposed—adding that Mr. Wolters had some specific things he would like to raise. He then concluded his discussion of the waiver requirements, saying it was awfully hard to judge the waiver requests when not knowing what the actual use of the property was going to be—adding that the noise issue was the most significant thing. He suggested that the Board should assume the worst.

Mr. Maynard referenced his letter, saying he was also bothered by the fact that no specific building or use was being proposed. He recalled earlier Planning Board discussions about Clement Road, saying he thought there had been an intent to do a traffic study. Noting that the proposed building had six large overhead doors, he said that showed a significant trucking operation, and the Board should want to know about that. He said this was a very generic building that could be anything under the sun allowed in the Industrial zoning district. He said there clearly was a difference between this section of Wall Street and the other, saying it was his contention that Century Park owned Wall Street—adding that he did not know where the gate should be.

Mr. John Wolters expressed thanks for the applicant having made some changes, saying this building had very specific attributes, including six large doors, and this could very well impact his property values in the future. He noted that Atty. Westgate had mentioned compatible uses, saying this could not be any further from the truth, saying there would be trucks coming in and out with a lot of associated noises, which would not be a compatible use with other uses in Century Park. He said these were very significant noise issues. He showed a foam board, saying these provided some insulation but did not provide sound buffering. He noted that the call center for the Life Is Good building was at the front of the building, about 20 feet in the air, so any noise would come in, and the proposed project would have both visible issues and sound issues with the Life Is Good corporate center as well as other buildings. He noted that Atty. Westgate had mentioned that there were loading doors on the Life Is Good building, saying Atty. Westgate was mistaken, as there were none. He said Atty. Westgate had asked the Board to interpret a reading of a report by one of the most respected people in the world with respect to appraisals, C. V. Richard Ellis—adding that Atty. Westgate certainly was not an appraiser and certainly had not hired one. He said he had spent tens of thousands of dollars having to protect his investment and his future. He said these waivers should not be addressed until everyone knew who was going in there. He said the applicant did not have anyone coming in today, saying this was all conceptual, and he was concerned that dealing with this without having the proper safeguards would affect Century Park. He asked that a blasting survey be asked of the applicant and that a schedule be provided for when the blasting would occur, noting the possible impact on the call center. He said he had been hoping to get back comments from the applicant on the landscaping plan he had put forward, noting that the one-day notice had been tight. He noted that Atty. Sokul had commented on a

privacy fence issue, saying the buffering provided by trees would be very limited, so he had hoped the fence would be extended over to Wall Street with beefed-up landscaping. He then referred to the Dark Skies limitation of light pollution, adding that all the operations should be contained inside the building—certainly during working hours, so as not to impact the call center. He noted that on his proposed plan the dumpster had been placed elsewhere, and he asked that it be moved.

Mr. Wolters asked if the applicant could put doors on the other side of the building without coming back before the Planning Board. Selectman Maddox expressed a belief that it would require a site plan. Mr. Wolters said another condition would be that no doors be placed on the north end of the building. He said he assumed that there would be oil and gas separators, noting that the drainage came onto his property, and he asked that no fueling of vehicles be allowed on the site, reiterating that it was tough to plan without knowing what the use would be.

Mr. Basso said 20,000 ft² had been allowed by the Planning Board in the past over by Ms. McGrath's house with no specific user, and 20,000 ft² on Candy Lane for Mr. Sousa with no specific user. He said Mr. Jamer had had prospective users come and go because of the length of time taken by this process. He said they had proposed an enhanced landscape plan, saying they had made every effort to work with Mr. Wolters, but this was industrial land. He noted that the development at 75 River Road had been done without specific users, and it was now 90% complete, having brought in jobs.

Mr. Merritt said they felt the buffer being proposed along Hudson Park Drive was adequate for the proposed use, saying it was not intended to hide the building but to break up the view. He said a landscape plan of the caliber required by Mr. Wolters was beyond practical costs. As far as moving the building further to the south, he said, that would face various issues, including a wetland setback in excess of what they had received permission to fill, so they would have to start the wetland process all over again. He noted this was an October 2008 plan, and starting over for several feet of unused area did not seem warranted. He said there was also a larger wetland, noting there was a detention basin south of the parking, which would then have to move into the buffer, which did not make sense. He said they were burdened by the fact that runoff from Wall Street came onto this property, which was why the detention basin had to be as large as proposed. He said the drainage was almost 1:1, which was not practical, saying they had to provide for the storage that was there today in order to maintain future runoff. He said the applicant was willing to put standard insulation on the walls facing the Century Park, but this would be a typical industrial building, with nothing out of the ordinary. He said it was the Town which had put up the gate, saying the question of whether there was a lot line on the northeast corner of the applicant's property across Wall Street was irrelevant to this plan, saying nothing was proposed out there and surveyors did not survey abutting properties, noting it did not show on the tax map. He said the State of New Hampshire had specific regulations with respect to blasting, and any blasters would have to offer a pre-blast survey—but added that he did not actually believe they were going to find a lot of ledge on the property. If warranted, however, he said, a blasting survey would be done. Mr. Merritt concluded by saying the primary access would be on the portion of the lot facing Wall Street.

Atty. Westgate said he would touch on some of the points raised by the other side, but not all, as they had been discussed. He said setbacks were set by the Table of

Minimum Dimensions for local roadways, and this section was not a physically used roadway in any manner, having grass and a building on it. When one went to the definitions cited by Atty. Sokul, he said, they did not mention setback at all. He noted that Mr. Maynard had alluded to the frontage definition, saying it had to apply to any roadway, but the word "any" did not appear in the definition; if anything, he said, that definition supported the notion that Hudson Park Drive did not constitute a road for setback purposes. Regarding the updated appraisal, which he said he had received tonight, he said they had gone from a \$7 million impact to a \$1,4 million impact. He noted they had tried to accommodate the Life Is Good building by moving the building. He said that Mr. Collins had noted that there was 97,000 ft² of vacant spaces in the 1 Wall Street building, which Mr. Collins effectively claimed could not be offered for office space any more if Mr. Jamer's building were built, but would have to go to warehousing; Atty. Westgate pointed out that that space was not rented now.

He said the analysis of property value had to be read in the context of the Zoning Ordinance, which allowed industrial uses in the Industrial District, which by definition were compatible uses in that district, and did not give the Planning Board the ability to decide if adjacent uses would be impacted, when it was a permitted use to begin with. He said common sense had to be kept in mind, noting that there was already an odd building already sitting in the middle of the parking lot of the Century Park complex, whereas they were proposing a nice and screened building that would be much further away. He said they were trying to attract tenants to a modern building in an industrial park, and he questioned if a noise study was really required—adding that it was difficult to do a noise study for theoretical noise sources. He said he did not think knowing the specific user should affect the other waiver requests, noting that this was a case of one user on a road.

Atty. Westgate at this time again offered to pass out his memo providing motions for granting the waivers, and he asked that the waivers be addressed tonight, adding that he felt the plan was ready for acceptance, as well.

Atty. Sokul said the unfortunate fact of the matter was that out of a lot that looked like Century Park, they had chosen to put the building in the center. He said they had proposed a site plan that did not meet the 50-foot setback, but they could have designed it to meet that setback, and they had made their choices, which had forced Mr. Wolters to react to them to protect his investment and his existing tenants. He said Mr. Merritt had essentially admitted that the row of trees was not intended to buffer anything but to break up the view. He said he was the only one who had submitted any evidence as to what the impact would be on Century Park, but the applicant could not do so. He asked the Board members to take a common sense look at it, saying a heavy industrial use being proposed to be plunked smack down in the parking lot of a higher-order office park was going to have a negative impact on value, saying he did not need an appraisal to prove that but he had provided two. He said Mr. Collins had decided not to include the Life Is Good building because of time restraints but had focused on the easy piece—and the easy piece itself had given the \$1.4 million drop in value.

Mr. Wolters said he was asking that the Board not take action on the waivers this evening but ask Town Counsel to take a look at them. He said the applicant could have proposed an office use, but that clearly was not what the intent was. He asked that the Board members take a look at the landscaping that he had provided, noting

that there was no tenant for the proposed building, asking why the end could not be taken off to provide the 50-foot setback, adding that they had shortened it but made it wider.

Chairman Russo asked for questions or comments from the Board members.

Selectman Maddox said the applicant would have no problem putting on the drawing that there would be no outside storage or that no work would be provided outside. He said he felt the applicant had hurt himself in designing this building, but those two items would be helpful. He said the Board was stuck between two businesses, noting that this was an allowed use in an industrial zone, adding that he felt the applicant had jumped through the hoops, and he felt the Town had a Town Planner who had done a good job in writing up waiver motions.

Mr. Della-Monica said, if there had to be a 50-foot setback, then there could not be a building in the road, which should have been built 50 feet back—adding that that piece of Hudson Park drive could not be built unless Mr. Wolters tore down a corner of his building. He said Mr. Wolters could resolve some of his parking concerns by getting his parking out of the right-of-way. On the diminutions, he continued, he had not realized it until it was read tonight, but he now had pause as to what the original intent of the section on diminution had been. He said the Board had to take the most broad interpretation, and it had not been shown that the proposed building would be unattractive. He said he agreed that extra care should be taken because of the phone center, saying the extra insulation should be in the inside of the building and not out on the parking lot. He then said the landscaping plan was either inadvertent or really fiendishly clever, as right now the corner of the building closest to Hudson Park Drive was not in wetland but in poorly-drained soggy soil—but what the applicant was asking for was to seed it with hydrophilic plant life that would create a wetland. He said an extreme case would be putting a skunk plant next to a restaurant, but this was not like that, saying a reasonable accommodation was what was required, and the applicant had moved his building back but changed the shape to keep the same number of square feet—and did not have a tenant because no one knew what he was going to be allowed to put in. He said discussion of possible truck traffic was hypothetical at this point. He asked about the allowed decibel level; Town Planner Cashell said the ambient decibel level allowed would be about 55 dB. If activities were going on at the site that raised the decibel level at the distance of the Life Is Good building, Mr. Della-Monica said, that would be cause for citation, so that was how that would be enforced.

Mr. Della-Monica noted that they could not get 400 feet of sight distance on the road but only the traffic for this site would use that portion of Wall Street, noting that there was a STOP sign at the end with 400-foot visibility on both sides.

Mr. Barnes said he agreed with Selectman Maddox that Atty. Westgate had put a lot of work in on his proposed motions, but he would be uncomfortable with them, whereas he was very comfortable with what Town Planner Cashell had drafted. Whatever heavy traffic there would be, he noted, would be going away from Century Park. He asked how tall the proposed building would be; Mr. Merritt said it would be 20 feet, maximum. Mr. Barnes then noted that Mr. Wolters had said the two existing buildings to the east of the Life Is Good building had not caused any problems. Mr. Maynard interjected that those buildings were made out of block. Mr. Barnes noted that one of those buildings

was a welding operation. Mr. Wolters responded that the welding work was done inside.

Ms. McGrath said she wanted to agree with the comments that Mr. Cashell had made with respect to the buildings at 75 River Road, but this Board had applied restrictions as to what those buildings could and could not be used for. She noted that one of the things brought up tonight was that this site could be used for transportation—which, if so, she felt this Board would want to know, because of the noise that would be created by such a use. She said she agreed with what Selectman Maddox and Mr. Barnes had said concerning the waivers submitted by Atty. Westgate.

Mr. Ulery said this was an industrial zone; he asked if a transportation use was allowed. Town Planner Cashell said the Zoning Ordinance was very open-ended, suggesting that the Board should be looking at that, and saying the Board had to be particular with the language. Mr. Ulery said there were certain recycling operations, saying this might not be a transfer operation but a rather clean recycling business. He then noted that the abutter had brought up a question about external fuel tanks, and he expressed a belief that they were not allowed. Chairman Russo said he could not comment on that. Town Planner Cashell said that use was allowed in the Industrial District. Mr. Ulery said it would have to be on this plan to begin with, and any such change would have to come back before the Planning Board. He concluded by saying he did not think the abutter had to worry about this turning into a large gas station.

Mr. Della-Monica said there were different kinds of recycling operations—adding that unloading unsorted materials was really, really noisy, but handling presorted material was no different from other material. Chairman Russo noted that the plans would have a note saying there would be no outside storage.

Ms. McGrath said she had toured a recycling site many years ago, and it was incredibly noisy, with the doors being left open because material was being taken inside. She noted that what was being proposed was large overhead doors, which she expected would have to be kept open. She expressed a belief that putting a restriction on the plan against that type of use would be a smart thing to do.

Mr. Ulery said the design of this building did not match the design of a building used for a recycling type of use. He then asked Selectman Maddox what the cost to the abutter would be, if the Town of Hudson asserted its right to make that portion of Hudson Park Drive, to remove the asphalt and to remove part of that building. Selectman Maddox said even he would not attempt to answer that question. Mr. Ulery said the Town had been lenient with respect to exerting its rights on that paper street.

Selectman Maddox said the Board had fallen into the trap and was now talking about transfer stations. He said he would vote to deny the traffic study waiver because they had no idea what the traffic would be. Selectman Maddox said the Board was guessing on what the worst use could be.

Mr. Della-Monica asked if the situation could be made contingent, once Mr. Jamer obtained a tenant—adding that the Board could not approve the plan without either a traffic study or a waiver. Several members expressed a negative reaction. Chairman Russo suggested that was unless the applicant would make a stipulation as to what type of tenants he would use. Mr. Della-Monica said he would love that.

Mr. Ulery suggesting addressing the waivers in opposite order. Chairman Russo said he could do them in any order Mr. Ulery wished.

Mr. Ulery then moved to grant the requested waiver from the requirements of HTC 10.B–10.E, *Sight Distance*, citing the reason for granting this waiver as being because the proposed driveway location provided the most sight distance (365 feet versus the required 400 feet) available for this development site, leading to the intersection of Wall Street and Constitution Drive—and, as such, the granting of this waiver was not contrary to the spirit and intent of the Site Plan Review regulations.

Mr. van der Veen seconded the motion.

VOTE: No discussion being brought forward, Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).

Mr. Ulery moved to grant the requested waiver from the requirements of HTC 275-9.D, *Fiscal Impact Study*, citing the reason for granting this waiver as being because, in addition to the submitted plans, CAP fee, and other submitted application materials, the said study was unnecessary in order to evaluate the fiscal impact of this development—and, as such, the granting of this waiver was not contrary to the spirit and intent of the Site Plan Review regulations. Town Planner Cashell said the reference to CAP fees should be stricken. Mr. Ulery expressed agreement.

Mr. van der Veen seconded the motion.

VOTE: No discussion being brought forward, Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).

Mr. Ulery moved to grant the requested waiver from the requirements of HTC 275-9.C, *Noise Study*, citing the reason for granting that waiver as being because such a study was unnecessary, taking into consideration that the majority of the industrial activity associated with the proposed use shall be conducted inside the building, thus reducing the noise impact upon abutting properties, which are existing industrial/commercial uses, all of which are located in the same Industrial Zoning District—and, as such, the granting of this waiver was not contrary to the spirit and intent of the Site Plan Review regulations.

Mr. van der Veen seconded the motion.

VOTE: No discussion being brought forward, Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).

Mr. Ulery moved to grant the requested waiver from the requirements of HTC 275-9.B, *Traffic Study*, citing the reason for granting that waiver as being because this

project was expected to create minimal traffic increase within the affected roadway system—and, as such, the granting of this waiver was not contrary to the spirit and intent of the Site Plan Review regulations.

Mr. van der Veen seconded the motion.

Mr. Hall said it sounded as if, if this waiver were denied, they would identify some business. He said he did not think that would happen, but they would use the Trip Manual, spending a bunch of money that would not tell the Board anything. He pointed out that there could be a different business on the property two weeks, two months, or two years from now, and to ask them to spend money on a traffic study was meaningless.

Selectman Maddox said he had just been trying to eliminate the possibility of a transfer station. Mr. Merritt said they could add a restriction in the plan notes that this would not be a transfer station, saying they would be okay with that.

Mr. Della-Monica said Mr. Hall's comments about where traffic studies came from should be enshrined.

VOTE: No further discussion being brought forward, Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).

Mr. Barnes noted there was a discrepancy in the two CAP Fee amounts designated in the draft motion; Town Planner Cashell said the correct one (\$4,752) was on the plan.

Mr. Ulery moved to grant approval for the Site Plan entitled ***Non-Residential Site Plan Unicorn Industrial Park Map 170, Lot 038, Hudson, New Hampshire***, prepared by Keach-Nordstrom Associates, Inc.; dated: October 22, 2008, last revised on August 26, 2013, consisting of Sheets 1 through 15 and Notes 1 through 28, in accordance with the following terms and conditions:

1. All stipulations of approval shall be incorporated into the Development Agreement, which shall be recorded at the Hillsborough County Registry of Deeds, together with the Site Plan-of-Record (hereinafter referred to as the Plan).
2. Prior to the Planning Board endorsement of the Plan, the Development Agreement shall be favorably reviewed and recommended on by Town Counsel together with the turnaround easement on the subject lot (Map 170/Lot 038).
3. All improvements shown on the Plan, including Notes 1 through 28, shall be completed in their entirety and at the expense of the Applicant or his assigns.
4. After the issuance of the foundation permit and prior to the issuance of the framing permit, the applicant shall submit to the Hudson Community Development Department a foundation "As-Built" plan on a transparency and to the same scale as the approved site plan. The foundation "As-Built" plan shall include all structural dimensions and lot-line setback measurements to the

foundation and be stamped by a licensed land surveyor. Any discrepancy between the approved site plan and foundation "As-Built" plans shall be documented by the applicant and be part of the foundation "As-Built" submission.

5. Prior to the issuance of a final certificate of occupancy, an LLS-certified "As Built" site plan shall be provided to the Town of Hudson Community Development Department, confirming that the site conforms with the Planning Board approved Plan.
6. Onsite landscaping shall be provided for in accordance with the plant and tree species specified on Sheet 7 of 15 of the Plan.
7. Construction activities on the site shall be limited to between 7:00 a.m. and 7:00 p.m., Monday through Saturday. No construction activities shall occur on Sunday.
8. This approval shall be subject to final engineering review, including approval of the Stormwater Pollution Prevention Plan (SWPPP).
9. The Applicant shall be responsible for implementing and maintaining the SWPPP.
10. The Applicant has paid the Town of Hudson the sum of \$13,000.00, which was used by the Town of Hudson for improvements to the southerly portion of Wall Street, in accordance with action taken by the Board of Selectmen on June 25, 2013. Accordingly, the CAP fee of \$4,752.00 is deemed paid.
11. A transfer station associated with refuse removal shall be prohibited on the subject lot.
12. There shall be no outside storage of materials on the subject lot nor outside business activities—i.e., other than the moving and parking of vehicles associated with the uses.

Mr. Barnes seconded the motion.

Mr. Della-Monica asked if the last two stipulations would be added as notes on the plan. Town Planner Cashell said the final plan should include those. Mr. Della-Monica then said the motion and Stipulation 3 should say stipulations 1 through 30. Mr. Ulery and Mr. Barnes accepted these changes, making it a friendly amendment.

Selectman Maddox said this site did not have an approved road at this point, as the south end of wall street had not been approved at this point.

Mr. van der Veen and Mr. Hall agreed to add a Note 13, saying the approval was subject to final acceptance of the southern end of Wall street. Mr. Ulery and Mr. Barnes, concurred, making it a friendly amendment.

13. Approval shall be subject to final acceptance of Wall Street by the Hudson Board of Selectmen.

VOTE: No further comments being brought forward, Chairman Russo called for a verbal vote on the motion to grant the application with 13 stipulations. All members voted in favor, and

Chairman Russo declared the motion to have carried unanimously (7-0).

XII. DESIGN REVIEW PHASE

No **Design Review Phase** items were addressed this evening.

XIII. CONCEPTUAL REVIEW ONLY

No **Old Business** items were addressed this evening.

XIV. NEW BUSINESS/PUBLIC HEARINGS

**A. Fairview Nursing Home (Amended) 203 Lowell Road
SP# 05-13 Map 21/Lot 2**

Purpose of plan: To amend the May 11, 2011, site plan approved by the Town of Hudson Planning Board. Improvements include a lot-line adjustment and additional parking spaces. Application Acceptance & Hearing.

Chairman Russo read aloud the published notice, as repeated above.

Mr. Tim Boulier, owner of the Fairview Nursing Center, said he was proposing to swap 4,000 ft² for Nash Family land behind the site, which would allow him to add 18 additional parking spaces, continuing parking all the way along the back.

Selectman Maddox noted a need for Application Acceptance. Mr. Hall so moved; Mr. Della-Monica seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion to grant Application Acceptance. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7-0).

Mr. Boulier addressed the plan posted on the meeting room wall, identified as ***Lot-Line Adjustment Plan Fairview Nursing Home Map 216; Lots 1, 2 & 3, 205 & 203 Lowell Road, Hudson, New Hampshire***, prepared by Keach-Nordstrom Associates, Inc. dated: August 13, 2013. He said he was proposing to swap a sliver, which he pointed to on the plan, for another sliver owned by Nash Family Properties.

Mr. Tony Basso, of the firm of Keach-Nordstrom Associates, Inc., Bedford, New Hampshire, serving as the engineering representative of the applicant, said the Nash property netted out exactly where they were today, so the vacant lot lost a little, and the Fairview lot gained a little bit, but nothing had changed. He said no waivers had been requested. as everything they had asked for previously was still on file.

Selectman Maddox moved to approve the ***Lot-Line Adjustment Plan Fairview Nursing Home Map 216; Lots 1, 2 & 3, 205 & 203 Lowell Road, Hudson, New Hampshire***, prepared by Keach-Nordstrom Associates, Inc.; dated: August 21, 2013,

consisting of a Cover Sheet and Sheets 1 through 4 and Notes 1 through 7, in accordance with the following terms and conditions:

1. All stipulations of approval shall be incorporated into the Decision of Approval, which shall be recorded at the Hillsborough County Registry of Deeds, together with the Plan.
2. All monumentation shall be set or bonded prior to the Planning Board endorsing the Plan-of-Record.

Mr. Hall seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7-0).

**B. Fairview Nursing Home LLA
SB# 06-13**

**203 Lowell Road
Map 216/Lot 002**

Purpose of plan: lot-line adjustment to provide the additional real estate required to accommodate the proposed parking expansion. Application Acceptance & Hearing.

Chairman Russo read aloud the published notice, as repeated above.

Mr. Basso said this swap better distributed the parking around the site, saying they still met all requirements.

Selectman Maddox moved to approve the Amended Site Plan entitled ***Amended Master Site Plan Fairview Nursing Home Map 216; Lot 2, 203 Lowell Road, Hudson, New Hampshire***, prepared by Keach-Nordstrom Associates, Inc. dated: August 13, 2013 (no revision date), consisting of said Master Site Plan, which includes Notes 1 through 32, and Sheet Two, entitled: ***Amended Non-Residential Site Layout Plan Fairview Nursing Home***, dated August 13, 2013, in accordance with the following terms and conditions:

1. All stipulations of approval shall be incorporated into the Development Agreement, which shall be recorded at the Hillsborough County Registry of Deeds, together with the Amended Site Plan-of-Record (hereinafter referred to as the Plan).
2. Prior to the Planning Board endorsement of the Plan, the Development Agreement and all easement documents shall be favorably reviewed and recommended on by Town Counsel.
3. All improvements shown on the Plan, including Notes 1 through 32, shall be completed in their entirety and at the expense of the Applicant or his assigns.
4. As approved with the Site Plan previous to this Plan, a cost allocation procedure (CAP) amount of \$41,733.60 shall be paid prior to the issuance of a Certificate of Occupancy, as provided in the 2012 CAP Fee Matrix.
5. After the issuance of the foundation permit for the proposed expansion structure, as shown on the Plan, and prior to the issuance of each framing permit, the applicant shall submit to the Hudson Community Development

Department a foundation "As-Built" plan on a transparency and to the same scale as the approved Plan. The foundation "As-Built" plan shall include all structural dimensions and lot-line setback measurements to the foundation and be stamped by a licensed land surveyor. Any discrepancy between the approved Plan and Foundation "As-Built" plan shall be documented by the applicant and become part of the foundation "As-Built" submission—and, in addition, shall be submitted in Electronic Form PDF.

6. Prior to the issuance of a final certificate of occupancy for the expansion, an LLS-certified "As-Built" Site Plan shall be provided to the Town of Hudson Community Development Department, confirming that the site conforms with the Site Plan-of-Record.
7. Exterior construction activities on the site shall be limited to between 7:00 a.m. and 7:00 p.m., Monday through Saturday. No exterior construction activities shall occur on Sunday.
8. This approval shall be subject to final engineering review, including approval of the Stormwater Pollution Prevention Plan (SWPPP).
9. The applicant or his assigns, at his/her expense, shall be responsible for repairing all construction cuts, on Lowell Rd. (Route 3-A), and this work shall be properly bonded with the Town of Hudson.
10. Signage shall be installed at the Lowell Road intersection, indicating, "Access Fairview Nursing Home at signal ahead."
11. Other terms and conditions of approval are inscribed in Notes 1 through 32 of the Plan.

Mr. Hall seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7-0).

XVI. ADJOURNMENT

All scheduled items having been addressed, Mr. Hall moved to adjourn; Mr. Della-Monica seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor.

Chairman Russo then declared the meeting to be adjourned at 11:10 p.m.

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**HUDSON PLANNING BOARD Meeting Minutes
September 11, 2013**

Page 22

Date: October 23, 2013

Vincent Russo, Chairman

J. Bradford Seabury, Recorder

Edward van der Veen, Secretary

These minutes were accepted as amended following review at the 11-13-13 Planning Board meeting.

-- FILE COPY --

**HUDSON PLANNING BOARD Meeting Minutes
September 11, 2013**

Page 23

The following changes were made to the draft copy in accordance with review comments at the Planning Board meeting of 11-13-13:

Page 5, 3rd paragraph from bottom, 3rd line from bottom — changed allowed decibel level from 5 to 55 dB.

Pages 21/22 — reformatted so that both signatures would appear on same page.