

**Town of North Yarmouth**  
**Planning Board**  
**Meeting Minutes of April 12, 2023**  
**Special Business Meeting**  
(recording is available via [Town Hall Streams](#))

**Call to order: (20:37)** Board Chair Paul Whitmarsh called meeting to order at 6:35pm.

Board Chair Paul Whitmarsh, Board Member Sanford Peabody, Board Member Jeff Brown, and Board Member Trey Milam were present at the start of meeting. Board Member Kimry Corrette, Board Member Paul Metevier, and Alternate Board Member Alexandra Urquhart were absent at the start of the meeting.

**Minutes Approval: (20:25 - 21:12)** Board Member Trey Milam, seconded by Board Chair Paul Whitmarsh, motioned to approve the March 29<sup>th</sup> minutes. Vote 3 yes/0 no.

**Public Hearing @ 5:30: (21:17 - 37:29)** Byron Kern gave a brief overview about Well and Good Brewing. He said that the focus of Well and Good Brewing is to give back to local nonprofit businesses. He explained that production will be on site, run off wastewater will be captured in a holding tank and then removed so that it does not go into the ground, and clarified that the business plans to be open Wednesday - Sunday, 5 days a week, closing at 8pm.

Board Member Kimry Corrette and Board Member Paul Metevier joined the meeting.

Ken Fowler, 20 Pea Lane, brought up questions that he and his neighbor, Glenn Butler, have. He asked about the noise at night, outside lighting, potential for outside dining, if there would be music outside, size of parking lot, water supply issues, septic and waste, how it would affect his property value, and what precedent this would set for other businesses going in once Well and Good is gone.

Board Chair Paul Whitmarsh read a letter from John Trainor, 0 Walnut Hill. John would like a buffer between the seating area and his property. He questioned if the level spreader approach is sufficient and asked that the business operating hours be a condition of approval.

Byron Kern addressed the questions. He said that screening would be reasonable if the property gets developed but he feels it does not need to be done for undeveloped woods. He said that water runoff would increase but they do not anticipate much runoff to leave the site. He said that he does not believe it is appropriate for an abutter to dictate their business hours so it should not be part of the condition of approval. He does not anticipate there being much noise because it is not a bar or a music venue. He said that people would be sitting at the picnic tables talking so any music that they play would be quiet. There will be minimal lighting in the back. He noted that the Yarmouth Water District had no issues with their water usage. He ended by saying that he cannot speak to property value.

Board Chair Paul Whitmarsh closed public hearing at 5:52pm

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Board Chair Paul Whitmarsh, seconded by Board Member Paul Metevier, motioned to move the old business site plan review for Well and Good to before the Deacon Hayes public hearing. Vote 5 yes/0 no.

**Old Business (38:03 - 49:37)** Board Member Kimry Corrette said that she feels that there should be screening to the vacant wooded lot so that there would be a visual buffer that separates the properties.

Byron Kern said that there is brush where the seating area would start, and it is about 3 feet tall. He said that it is a natural buffer.

Board Member Jeff Brown said that he drove by and verified that it is a wooded area. He agreed with Byron that it is not the type of place that you would throw a ball to your kids in.

Board Member Trey Milam said that per the plan the outdoor seating area is about 100 feet off of the property line.

Board Chair Paul Whitmarsh asked for any other questions. He said that in the past the Planning Board has required a change of use when a business wants to extend its days or hours of operation.

Planner Kate Burch said that the Planning Board cannot put operating hours on as a condition because it would be signaling out the company. She said that noise would be an enforcement issue.

Board Member Paul Metevier motioned to accept the plan.

Board Chair Paul Whitmarsh said that he wanted to add an amendment where Well and Good would need to add a buffer if the wooded lot is developed.

Byron Kern said that he will be using environmentally friendly de-icing and would like to see it used more widely.

The two conditions of approval are using environmentally friendly de-icing and to add screening in the back if the wooded lot is developed.

Board Member Paul Metevier, seconded by Board Member Sanford Peabody, motioned to modify his motion to approve the site plan for Well and Good with conditions. Vote 5 yes/0 no.

Board Chair Paul Whitmarsh confirmed that Board Member Paul Metevier reviewed all of the material and meetings for well and good so that he can be a voting member.



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The Planning Board took a break.

**Public Hearing @ 6:30: (1:15:49 - 2:23:28)** Board Chair Paul Whitmarsh resumed the meeting and gave instructions for the public hearing.

Board Member Trey Milam recused himself as his law firm represents a member of the applicant.

Board Member Jeff Brown, seconded by Board Member Kimry Corrette, motioned to allow Board Member Trey Milam to be recused. Vote 4 yes/0 no.

Board Chair Paul Whitmarsh announced that he would be acting as a full member.

Attorney Kristin Collins representing the Deacon Hayes Commons Development, objected to Board Chair Paul Whitmarsh acting as a full member and said that Board Chair Paul Whitmarsh should recuse himself. She read a Facebook post of his from March 5, 2022. She said that as the Planning Board has a quorum of the original voting members and that he should at the very least seed his chairship if not recuse himself.

Board Chair Paul Whitmarsh said that the post was during campaign season and that he does not hold any bias towards any development.

Board Member Kimry Corrette said that she does not see the comments as bias and only sees the comments as factual.

Board Member Paul Metevier asked if there would still be a quorum if Board Chair Paul Whitmarsh was recused.

Board Member Kimry Corrette and Board Chair Paul Whitmarsh clarified that Board Chair Paul Whitmarsh was not on the board at that time.

Board Member Jeff Brown said that he felt like Board Chair Paul Whitmarsh would not have a bias and felt the Planning Board should vote if Board Chair Paul Whitmarsh should be recused.

Board Chair Paul Whitmarsh said that he felt that he could be unbiased and that he follows the rules even if he does not like them.

Board Member Kimry Corrette said that she didn't want to do anything that could later nullify everything they do at the meeting.

Board Member Jeff Brown mentioned that the ZBA had two members recused per the request of the applicant.

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Attorney Dan Stockford, representing the town, said that the question is whether Board Chair Paul Whitmarsh could be impartial and that it is up to the Planning Board to vote. If Board Chair Paul Whitmarsh were recused, then he would not sit as chair.

Attorney Kristin Collins asked Board Chair Paul Whitmarsh if he still felt that the project does not fit the rural town/rural village.

Board Chair Paul Whitmarsh said that he doesn't agree with a lot of developments but that he is not actively protesting them.

Attorney Dan Stockford said that there is an interest in making a decision that cannot be challenged.

Board Member Jeff Brown, seconded by Board Member Kimry Corrette, motioned to keep Board Chair Paul Whitmarsh on as chair and voting member. Board Member Sanford Peabody said that Board Chair Paul Whitmarsh has shown in the past that he is not biased. Vote 3 yes/1 no.

Board Chair Paul Whitmarsh asked if everyone was on the board at the time of the initial application.

Board Chair Paul Whitmarsh announced the start of the public hearing (1:32:33).

Attorney Kristin Collins explained why the project was back in front of the Planning Board. She said that they wanted to address that the applicant reserves the right to determine how will own the townhomes. She said that they chose ownership which allows them to create documents for a HOA. She said that open space was proposed. They would be submitting a request for an amendment and there is new material. She said that Mark Cenci, soil scientist, was there to discuss.

Board Chair Paul Whitmarsh said that they can discuss that after the public comment. He said that they are only looking at what has been remanded back and the amended portions.

Sol Dostilio, 15 Parsonage Road, wanted to speak to a couple of the ZBA remands. He mentioned the letter that his attorney sent on March 29th. He said that they wanted to discuss the septic situation as it had changed since the first application. He said that they found the data on the system to be incomplete and insufficient. He asked the Planning Board to require a technical peer review of the system as there was not one comprehensive analysis of the system. He also said that he wanted to talk about the impact of the tanks being filled and the analysis of the system by Mark Cenci.



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Sol Dostilio said that the applicant would need to remove a large chunk of the natural soil to place the tanks and that this would create a situation where the tanks would become part of the septic area. He thinks that the end of the tank should be the start of the town's setbacks. He expressed more concerns regarding the septic system and its analysis.

Sol Dostilio also noted the two new structures on the plan. He wanted the Planning Board to require the applicant to provide more information on the structures.

Sol Dostilio wanted to discuss the impact of developing the pond. He felt that the applicant was not compliant with the LUO regarding the stream and said that the pond is not set up to be a retention pond.

Sol Dostilio also mentioned screening. He said that he knew that it was not remanded but noted that it was amended. Board Chair Paul Whitmarsh interrupted him and said that it was something that the ZBA addressed so it would not be discussed at this meeting.

Attorney Dan Stockford said that the ZBA did not remand the screening issue.

Sol Dostilio said that part of Attorney Kristin Collins' letter was asking for clarification on screening.

Board Member Kimry Corrette asked what he was looking for.

Sol Dostilio said that he was asking the Planning Board to revisit their determination that the screening plan adequately screens the parking lot from the abutting properties. He said that he wants the trees to be put back.

Board Chair Paul Whitmarsh said that parking lot screening was addressed by the ZBA and was not remanded back.

Board Member Kimry Corrette asked what authority the Planning Board has regarding the trees being taken down.

Sol Dostilio added that the tree removal was against the findings of fact and that the screening is not adequate.

Attorney Kristin Collins said that Board Chair Paul Whitmarsh had already said that they would not be discussing this.

Board Chair Paul Whitmarsh repeated the screening has already been discussed and that the ZBA ruled that the parking lot screening was in compliance with the Land Use Ordinance.

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Sol Dostilio said that they are not revisiting this since the tree removal is new.

Board Chair Paul Whitmarsh repeated that the screening was addressed.

Board Chair Paul Whitmarsh noted that he has been asking questions for 15 minutes.

Sol Dostilio asked for the findings of fact regarding tree removal.

David Reed, 9 Country Creek, said that the Planning Board has one job and that is to review the application and to follow the Land Use Ordinance. He stated that he did not feel that there was any bias in the Facebook post.

Board Chair Paul Whitmarsh said that the Planning Board was only discussing the ZBA remand, not about a recusal.

David Reed asked if there have been any changes to the applicant's proposal due to the ZBA remand.

Judy Potter, Walnut Hill Road, said that there have been a lot of changes to the project. She said that she had a lot of concerns with the septic. She noted that there are 8 tanks in the property and that there are subsurface wastewater rules that the applicant is not following. She stated her concern about the water not going down in the pit. She said that none of the testing sites were where the septic system was going to go. She wanted to know if the property line problem had been resolved. She also mentioned the screening issues.

Board Chair Paul Whitmarsh repeated that the screening had already been addressed by the ZBA.

Chris Byers, 8 Quarry Ridge, asked if the board has asked for a third-party reviewer.

Board Chair Paul Whitmarsh read an email from Lincoln Merrill. Lincoln addressed the common open space and the pond that has been around for 70 years and is not actually a stormwater runoff retention pond.

Attorney Kristin Collins said that there are no trees on the plan. She said that the pond is old, but it is manmade. She said that there are multiple stormwater controls in the project and that the pond is not integral to this. She said that nothing is being channeled to the pond and that the pond is not a waterbody because it is manmade.

Attorney Kristin Collins said that Planning Boards typically require a peer review when two expert reports are conflicting. She also notes that the rules previously pointed out were already looked at by DHHS.



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Mark Cenci has been a licensed septic system designer since 1987 and a certified Maine geologist since 2004. He has had his own business as a consulting geologist and septic system designer since 2006. He wanted to remind everyone that this was a successful review.

Mark Cenci said that he originally made the wrong assumption that was then challenged by the Yarmouth Water District. He said that the purpose of the standpipes was to determine the depth of the water at representative positions and tie them into a survey to determine which way the water flows. He said that this was why the septic system changed. He said that it became an engineered system that underwent extensive review by the state and included the input of a civil engineer. Nitrogen removing components were added to the treatment process. He said that all of the changes were made to protect the neighborhood and the environment.

Mark Cenci mentioned that the minimum lot size law mentioned by Ms. Potter was created to protect groundwater from intensive development where people were using water wells.

Mark Cenci said that with this system, nitrogen would be taken out and the water would be hit with UV light before it went into the ground.

Mark Cenci informed the Planning Board that the site had been disturbed and that the water looked high, but it was not that high. He said once the top layer of the pit was removed, the water level went down. He said that all the problems have been addressed and studied.

Mark Cenci said that he cannot speak to the air blower but that it is not something that is noisy.

Mark Cenci said that the mounding study was taken care of in the revised nitrogen analysis. He also further discussed the findings and the septic system.

Board Chair Paul Whitmarsh mentioned the location of test pits.

Mark Cenci discussed the test pits.

Mark Cenci said that they were not discounting the manmade pond and that there was no stormwater discharge into the pond. He said that it is the same precipitation, snow melt, and rainwater that was already on the property.

Attorney Kristin Collins noted a mistake on page 4 of her letter and clarified that there is no ditching or pipes going into the pond.

Paul Hodgetts, 1095 Sligo Rd, said that none of the test sites were where the system is. He asked how they will know if the UV system fails and what will happen if the system fails.

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Mike Mallory, Walnut Hill Rd, said that if you look at the groundwater protection overlay over the Village Center, it described a plume going east not south.

Sol Dostilio said that in the final application it was noted that the water flowed into the pond. He again mentioned that the water flow changed three times. He said that he would rather have one formal thorough review done of the system. He wants to see more data. He said that the state reviewed it for state ordinances not for town ordinances. He said that the system is not going to meet setbacks.

Board Chair Paul Whitmarsh closed the public hearing at 7:50pm.

The Planning Board took a break.

**Old Business Continued: (2:47:36 - 4:41:06)** Board Member Kimry Corrette felt that there was an overwhelming pressure to approve the project and that is why the Planning Board missed so much.

Board Chair Paul Whitmarsh introduced the first ZBA remand.

Board Member Kimry Corrette stated that she felt that the first remand, performance guarantees, was supposed to go to the Select Board and that the Select Board was going to handle it.

Board Members discussed.

Board Member Jeff Brown said that he felt that they have satisfied 3.8 and 4.4 E.3. g.9.

Planner Kate Burch clarified that the improvements referred to were public improvements not total cost.

Board Chair Paul Whitmarsh asked if the Planning Board felt that \$100k was sufficient to cover the costs.

Board Members discussed.

Board Member Paul Metevier felt comfortable with the figure.

Attorney Dan Stockford asked if the Planning Board wanted to include the planner memos.

Planner Kate Burch said that the ordinance is asking for a cost estimate, not for the Planning Board to put a timeline on it.



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Board Member Kimry Corrette, seconded by Board Member Paul Metevier, motioned to approve the amended findings of fact number 7 and site plan conclusions of law number 6 as updated to reflect the most current information about the performance guarantee. Vote 5 yes/0 no.

Board Chair Paul Whitmarsh read the next remand item.

Board Member Jeff Brown said that as long as the applicant is compliant with the conditions set forth by the DHHS approval letter then it satisfies 5.7 A.3.c and he wanted it to be added as a condition before C/O's were issued.

Planner Kate Burch clarified that Board Member Jeff Brown was referring to the letter with the subject line Approval Deacon Hayes Commons Engineered SWW System.

Board Chair Paul Whitmarsh said that the remand was just on the submission deadlines. He said that what Board Member Jeff Brown falls better under remand item number four.

Board Member Jeff Brown said that the Planning Board has had the letter since November.

Board Members discussed.

Planner Kate Burch said that the Planning Board needs to consider if the letters were submitted in advance for the current meeting.

Attorney Dan Stockford said that there were reasons as to why the information was not available in the beginning and that the Planning Board could consider a waiver.

Board Chair Paul Whitmarsh, seconded by Board Member Jeff Brown, motioned to waive requirement of DHHS letter for an engineered system prior to site plan application being complete and find the Site Plan Findings of Fact #2, the Subdivision Findings of Fact #5 and the Subdivision Conclusions of Law #3 have been updated to reflect the inclusion of these letters. Board Member Paul Metevier said that as long as the Planning Board has what they need then everything else should be moot.

Sol Dostilio said that remand number two is not only about deadlines.

Board Member Kimry Corrette said that the Planning Board was approving the timeline, not what was in the letters.

Board Chair Paul Whitmarsh rescinded his motion.

Board Member Jeff Brown stated again that the applicant, prior to the issuance of certificate of occupancy permits, must comply with the conditions set forth with the DHHS approval letter

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with the subject line Deacon Hayes Commons Engineered SSW System. He said that the Planning Board had the information and that the state gave their input and provided 15 conditions.

Code Enforcement Officer Ben said that there was no reason to not do this.

Sol Dostilio noted the additional findings of fact section of the ZBA remand.

Board Chair Paul Whitmarsh said that “moot” is referring to when the letters were received.

Attorney Kristin Collins suggested adding the DHHS review of the system to the finding.

Sol Dostilio said that it was about sufficiency per town standards.

Board Member Paul Metevier says that if the Planning Board had everything they need then they were fine.

Attorney Kristin Collins clarified what the ZBA remand was discussing. She said that if the Planning Board did not have the letters how could they determine that the plan is sufficient.

Board Member Kimry Corrette said that the Planning Board had a new system and letters from the state.

Board Chair Paul Whitmarsh, seconded by Board Member Jeff Brown, motioned that the Planning Board waives the requirement to have DHHS letters prior to the application being voted complete, and The Site Plan Findings of Fact #2, the Subdivision Findings of Fact #5 and the Subdivision Conclusions of Law #3 have been updated to reflect the inclusion of these letters, with the condition that the applicant follows the conditions from the DHHS approval letter with the subject line Deacon Hayes Commons Engineered SSW System. Vote 5 yes/0 no.

Board Chair Paul Whitmarsh explained remand item number 3.

Board Member Jeff Brown said that it was an error on the Planning Board to not create the waiver, but the Yarmouth Water District had approved the system.

Planner Kate Burch noted that the letter was dated 2022 and that was a typo. It was provided in 2023.

Board Member Jeff Brown, seconded by Board Member Paul Metevier, motioned to approve pursuant to letter dated 2/23/22 which should be 2/23/23, the Subdivision Findings of Fact #8 and Subdivision Conclusions of Law #3 shall be amended to reflect the inclusion of this letter. Vote 5 yes/0 no.



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Board Chair Paul Whitmarsh read remand item number 4.

Board Chair Paul Whitmarsh asked Mark Cenci why the flow changed directions multiple times.

Mark Cenci said that he took the information from the water district and after that he measured the direction again. This refined the direction even more.

Mark Cenci said that the most recent information was the best.

Board Chair Paul Whitmarsh asked Mark Cenci why he came to two different conclusions.

Board Chair Paul Whitmarsh and Mark Cenci discussed.

Planner Kate Burch and Mark Cenci clarified that the latest letter from Mark Cenci was what the DHHS approval letters were based on.

Board Member Kimry Corrette asked if DHHS approved it based on what Mark Cenci provided them or if they gathered data on their own.

Mark Cenci discussed the approval process by the Yarmouth Water District.

Board Member Paul Metevier asked what the purpose of the pond was.

Board Chair Paul Whitmarsh said that the pond was part of a different remand item.

Board Chair Paul Whitmarsh stated that the Planning Board would not get to everything on the agenda.

Board Chair Paul Whitmarsh brought up the test pits.

Mark Cenci said that he did multiple test pits.

Board Members discussed the property line and setbacks.

Attorney Kristin Collins said that the plan was based on the deeds and the survey. She said that the Planning Board needs to rely on what was in front of them.

Code Enforcement Officer Ben said that it had been established that they own the land.

Planner Kate Burch said that property lines disputes are not for the Planning Board to determine. The Planning Board needs to rely on the plans that they have.

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Attorney Kristin Collins said that the remand is not asking them to get more evidence.

Board Chair Paul Whitmarsh said that this was a new system and it was new information that the Planning Board needed to review.

Members and Attorney Kristin Collins discussed.

Attorney Dan Stockford said that he agreed with the applicant on the property line issue.

Board Member Jeff Brown said that the system was compliant.

Code Enforcement Officer Ben said that the state had approved the system meaning that the setbacks are met. Mark Cenci submitted a plan that meets town standards. He reiterated that the Planning Board is supposed to be looking at what was in front of them.

Code Enforcement Officer Ben reminded the Planning Board that they need to schedule a public hearing at the meeting.

Board Member Jeff Brown said again that the system does not cross the property line.

Board Member Jeff Brown motioned that the Site Plan Findings of Fact #2 and Subdivision Findings of Fact #5 have been updated, and Subdivision Conclusions of Law #22 have been added, to describe this information, and to approve this finding of fact that the groundwater standard has been met.

Sol Dostilio said that the plan and the analysis had changed. He brought up having a peer review again.

Board Member Jeff Brown withdrew his motion as he felt that he motioned on the wrong thing.

Board members discussed.

Planner Kate Burch said that the Planning Board could add the Mark Cenci letter to the findings of fact.

Board Member Jeff Brown, seconded by Board Member Sanford Peabody, motioned to find LUO 5.12B(12) compliant based upon the revised nitrate study represented by Mark Cenci in a letter dated 11/29. Members discussed.

Paul Hodgetts said that he had a problem with the pits because he knew someone that does this and they said they are supposed to be done in the 4 corners and in the center.



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Board Member Jeff Brown's motion was suspended, and a hold was placed on the ZBA remand.

Board Chair Paul Whitmarsh, seconded by Board Member Sanford Peabody, motioned to table this until April 26th. Vote 5 yes/0 no.

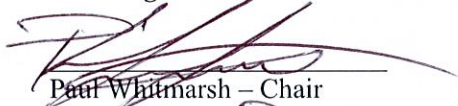
**Any other business: (4:41:09 - 4:44:29)** Code Enforcement Officer Ben said that the public hearing needs to be scheduled for May 9th.

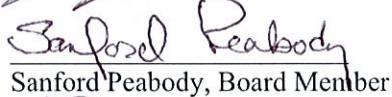
Board Chair Paul Whitmarsh, seconded by Board Member Jeff Brown, motioned for public hearing on May 9th. Vote 6 yes/0 no.

**Adjournment (4:44:32 - 4:44:36)** Board Member Sanford Peabody, seconded by Board Member Jeff Brown, motioned to adjourn, at 9:59pm

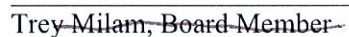
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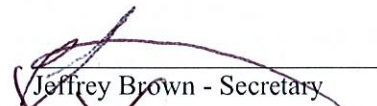
**Planning Board Members**

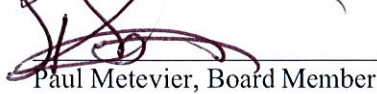
  
Paul Whitmarsh – Chair

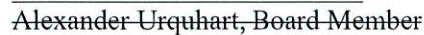
  
Sanford Peabody, Board Member

  
Kimry Corrette, Board Member

  
~~Trey Milam, Board Member~~

  
Jeffrey Brown - Secretary

  
Paul Metevier, Board Member

  
~~Alexander Urquhart, Board Member~~