



# TOWN OF NEW LONDON, NEW HAMPSHIRE

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## **New London Planning Board MEETING MINUTES Tuesday, November 14, 2023 Whipple Memorial Town Hall, 6:30 PM**

**MEMBERS PRESENT:** Tim Paradis (Chair, voting), Paul Gorman (voting), Jeremy Bonin, David Royle (voting), Emily Campbell (voting), Paul Vance (voting), Marianne McEnrue, Bill Helm (Selectmen's Representative, voting)

**MEMBERS ABSENT:** Katie Vedova, Joe Kubit

**OTHERS PRESENT:** Town Planner, Adam Ricker, John Ellis, Rob Dietel, Peter Blakeman, Karen Epstein, Rich Epstein, Andrew Lubrano, Cindy Lubrano, Tom Poliseno, June Poliseno, Tim Sliter, Lizette Sliter, Jim Bruss, Don Elliott, Steve Root, Jerry Coogan, Suzy Gorgi, Elizabeth Kellet

1. **Call to Order** – Chair Paradis called the meeting to order at 6:32pm.
2. **Review of minutes: October 10, 2023 & October 24, 2023**

**IT WAS MOVED (Jeremy Bonin) AND SECONDED (Emily Campbell) to accept the minutes of the October 10 & October 24, 2023 meetings. THE MINUTES WERE APPROVED UNANIMOUSLY.**

3. **Public Comment - None**
4. **Tree Cutting** – Toy Revocable Trust, located at 510 Bunker Road, map lot 063-007-0-0-0, 1.270 acres, Zoned Residential (R-2) Shoreland Overlay District. The applicant is applying to remove two trees in the waterfront buffer.

**Withdrawn.**

5. **Tree Cutting** – **KJAM Trust, Habib Gorgi Trustee**, located at 812 Route 103A, Map/lot 103-014-0-0-0, +/-9.810 acres, zoned Residential (R-2), Shoreland Overlay District. The applicant is applying to remove five trees within the waterfront buffer.

Suzy Gorgi attended the meeting and stated she lives at 812 Route 103A in New London. The application submitted is to have Pine trees removed as they are in declining health and are leaning towards the house. Their property has high winds and in 2020 when the microburst hit it caused them to lose 42 trees. There is a planting plan.

Adam Ricker shared that he did a site visit with Dave Carey last week. He provided photos that show visible cracks and crown damage to the trees. The replanting plan has been submitted and includes a variety of shrubs and saplings. Ms. Gorgi stated they plan to remove the trees as soon as the permit is approved.

**IT WAS MOVED (Jeremy Bonin) AND SECONDED (Paul Gorman) approve the tree cutting application. THE MOTION WAS APPROVED UNANIMOUSLY.**

6. **Continued PUBLIC HEARING – Site Plan Review** – Timothy and Lizette Sliter, located at 431 Shaker Street, Map/lot 111-015-0-0-0, +/- 22.180 acres, Zoned Agricultural Rural Residential (ARR). The applicants are applying to amend their site plan approval of December 13, 2016, for a commercial farm and horticultural business. The modifications include, but are not limited to, the conversion of a portion of the property to an orchard, the installation of a pond, alteration to the parking area, and installation of two hoop houses.

Jeremy Bonin recused himself.

Robert Dietel, an attorney representing the Sliters attended the meeting. Attorney Dietel thanked everyone that was able to attend the site visit prior to tonight's meeting. At the close of the last meeting, abutters were given the opportunity to express their concerns and he would like to address them. The concerns that were voiced, raised a number of questions such as "why are there internal roadways, why is there fencing, why are there fewer trees, why is there heavy equipment, why are there materials onsite and what if this becomes a pick your own operation". The reality of those concerns goes back to the fundamental issue of the fact that this is a farm. The issues being described arise because this is a farm and this is an area in which farming is approved, by right, under the town's zoning ordinance. There is a statutory definition of what constitutes farming and that definition has been directly adopted by our zoning ordinance and it is extremely broad. It includes precisely the types of activities that the Sliters are doing on the site. The questions about what is allowed on the site is not what this application is about. It is an amendment of a previously approved site plan approval.

This application is about the things that have changed on the site since that 2016 approval. There are four things:

- The orchard area. This was intended to be for livestock and is now an area for cultivation.
- There is a different configuration of other areas that are for cultivation and this was driven in part by tree damage that occurred
- New configuration of mixed-use area which previously was proposed for barns, parking areas and material storage. Now it is reduced to two hoop houses, some material storage and a more defined space for the various uses that go on out there.
- The pond that is depicted on the site plan.

Attorney Dietel asked the Planning Board what conditions, if any, would be necessary to accommodate those changes that have occurred. There are several members in the audience tonight that have submitted letters of support to the board because generally the community recognizes that these are allowed uses that are occurring out on the site.

Attorney Dietel stated there are conditions that he would like to propose that relate to the four changes above. The first would be that there would be "no pick your own" operation on the site without a further site plan amendment. There are currently no plans for that. There have also been some questions about drainage and the pond. This is now part of this application because in order for the Sliters to proceed with this change, they will need an Alteration of Terrain (AoT) approval. They would propose that an approval be conditioned on receipt of those state approvals. They would add that prior to submission to NH DES, they would provide the planning staff with a draft of the proposed submission and then after, once they receive an approval from NH DES, before any construction of the pond or any associated drainage facilities could go in, they would come back before this board for review at a public

hearing. Another condition, so that there is a better understanding of how cultivation is going to occur, they propose that for the next three years, by June 30 each year, the Sliters will provide an update to the planning staff of the proposed plantings for that coming year and where they intend to be located on the site.

For the area of mixed-use staging, they propose that it be kept of a gravel area or some other similar material, and not pave it. They are seeking a waiver from article XI, section F.1 of the Site Plan Review regulations that pertains to the general requirement that parking areas and access drives be paved. This is a farm and that would be illogical to have that area be paved and would be counter productive to the site. Other proposed conditions could be that they provide an updated plan showing where snow would be stored and that dumpsters would be fenced with a three-sided fence that would allow access from the front but would screen them from the sides and the back. The Sliters want to be responsible land owners and want to use the land in a way that is consistent with the spirit of intent for a commercial/agricultural farm operation.

Adam Ricker stated at the last meeting, he reported he had not met with the department heads to discuss this the new materials of the application. He has now done that and the two comments that came forward were a request to include a Knox box on the gate and access points in the event of an emergency. The Fire Chief had comments with regards to the cistern/pond and is supportive but would like to work through that process. Another concern was about the burn pile area. Any debris or brush brought in from other sites cannot be burned on this site. Mr. Ricker referenced provided the Fire Chief's comments to the applicants. Attorney Dietel stated he read through these comments and has no objection.

Selectman Helm stated there is a lot of material in the staging area and there was concern about how that looks. He asked what will happen with those materials. Attorney Dietel responded some of those materials are stored where the hoop houses are proposed. There may need to be some changes and as part of the AoT process, the Sliters may need to reconfigure some of those materials to address drainage on the site if necessary. As part of the Ausbon Sargent Land Trust, one of the challenges is that as part of the conservation easement on the property, they cannot take those materials offsite. Part of the reason he mentioned the definition of agricultural uses is because materials such as these are not unusual on a farm. Having areas of stock pile are incidental to agricultural uses. Selectman Helm stated that some of those materials also relate to Garden Life's core business. Attorney Dietel responded that some of those materials will be addressed and moved. Some of the equipment is necessary for the agricultural use and may be duplicative. He doesn't want to suggest that there is an intent to remove all of the materials but the intent is to have the area more organized and structured. There needs to be an understanding that this is a commercial farm.

David Royle asked about produce grown on the site and asked if any of it would be sold to Spring Ledge etc. Attorney Dietel responded there are fruit bearing trees and bushes. They may pick fruits and vegetables and give to friends but they don't intend to sell to the fruit to the public. What will be grown and sold will be plants and materials that support the Garden Life business. David Royle asked about runoff to the pond. What will they do with that water and how will they control it from going on to someone else's property? Attorney Dietel stated the topography of the land slopes from North to South. There is a certain amount of drainage that is natural to the site but there is not going to be a change in any condition. If a pond is built, they don't believe there will be any changes and will provide a way to capture storm water that can be used on their site in a productive way. They will learn

more about all of this once Pete Blakeman does his preparation for the AoT permit. This is why one of the proposed conditions is that the Planning Board receives a draft of that report.

Tom Polisenio stated he would like to comment on two areas, the first being drainage. Mr. Blakeman's preliminary storm water summary presented at the October 12, 2023 Planning Board meeting noted that a state Alteration of Terrain permit should have been obtained prior to extensive disturbance of the soil on the Sliter property and that he had been obtained by the owners to apply for the permit. An expert that Mr. Polisenio asked to review Mr. Blakeman's summary stated "the current letter has no substance to review". Mr. Blakeman's summary is neither a drainage study, nor a completed AoT application. How can the board approve a new site plan without full knowledge of unauthorized changes that the Sliters have already done as well as any new changes to drainage that are being proposed? Mr. Polisenio addressed an email he sent to Adam Ricker dated June 8, 2022. The email states that Mr. Polisenio has just become aware that there is a new drain pipe from the Sliters property that drains directly into the empty lot next to them and about a foot away from the property line. Perhaps this explains some of the increased water and dead trees in the wetlands mid-way down their driveway. They've also seen several other drain pipes several months ago and they aren't sure where they went or for what purpose but this pipe is obvious.

In a second email to Mr. Ricker dated April 10, 2023, Mr. Polisenio summarized the findings of a site visit conducted by Mr. Ricker to the pipe. That email states "the visit revealed that the Sliters drainage pipe diverted significant amounts of water onto neighbors' properties, to wetland and my property." Clearly, drainage on the Sliter property is an issue. They haven't installed long drainage pipes and reconfigured the slope on the entire southern border of their property without reason or purpose. The drain pipes are collecting water and diverting it directly to abutting properties. Does the board consider it reasonable for the Sliters to transfer their drainage problems directly to abutters when other remedies or measures are available to them and could be implemented on their property? Does the board consider it reasonable for the Sliters to transfer their drainage problems directly to abutters when increased amounts of water, as pictured in videos, negatively affects wetlands, uproots trees and poses a safety hazard by limiting access and egress due to flooding to a homestead during some months? The changes that the Sliters made to drainage were done without prior approval from the Planning Board. Why would the board approve changes made that violate its site plan review regulations? Why would the board approve not only these unauthorized changes, but also allow new additional changes to drainage without adequate study?

The second comment is related to use of the easement property for landscape company parking, equipment and material storage. The Sliters are using an area subject to the conservation easement as a base of operations for their Garde Life business which includes parking for employees not remaining onsite, working in Concord and other areas. This includes materials and trucks used in the Garden life business. The conservation easement property wasn't intended to become a park n ride or storage area for workers and equipment. Its purpose was to preserve agricultural areas and open space for the public to enjoy. This disconnect is a violation of the proposed/approved 2016 site plan as well as the easement deed and should be stopped. He has many concerns about this and expressed them to the board. He urged the board to stipulate that only materials, cars, trucks and equipment that are only immediately engaged in agricultural/horticultural activities on the property be permitted. A small working farm is in keeping with the neighborhood, a commercial business is not. He is asking the board to once again champion agriculture by approving a site plan that does not include permission for a commercial business to operate from the easement.

June Poliseno commented that the Sliters have piles of loose dirt and other materials a few feet from the property line. In some cases, these piles, due to changes in topography, are over 30 feet higher than the original level on the property. Clearly a height restriction is needed. High winds during a microburst threw sand, stones and other debris onto other properties causing harm. The covers placed over the piles are inadequate. In an effort to protect property and safety, she is asking that the board require the piles of material be kept covered and at a minimum distance of 125' from the abutting property lines. The minimum 75' buffer per the 2016 site plan should be maintained for all materials and equipment.

Ms. Poliseno stated it has been seven years during which the Sliters have made many changes to their property and in many instances, without permit. They have not provided the Lubrano's with a privacy buffer. Now they want to expand a road that would put traffic in direct line with the Lubrano's home. Why would the board approve a revised site plan without requiring the Sliters to provide the Lubrano's with a significant privacy buffer?

Ms. Poliseno stated as the board is aware, about 18 acres of the Sliters property is subject to a conservation easement. Ms. Poliseno believes the current and proposed usage of the property directly contradicts the intent and requirements of the easement. The Ausbon Sargent Land Trust has not enforced the provisions of the conservation easement as it has supposed to. This board doesn't have the legal power or authority to permit a use of the property that is in direct contradiction of the existing conservation easement that governs this use of the same property. For that reason alone, the requested permits must be disallowed by this board. At the very least, this board cannot grant the permits until a determination has been made that the proposed use will not violate the terms of the conservation easement.

Elizabeth Kellet attended the meeting and is a resident of Shaker Street. Ms. Kellet is in support of the site plan and shared she is a veterinarian practicing in the state of New Hampshire. She travels to a large number of farms and stated it is a pleasure to drive by the Sliters farm. The farming practices that are proposed at this farm are so far ahead of any other agricultural practices used around the world and she is amazed that this is in her own community. It saddens her that they are trying to interpret the rules in ways that don't support it. Good and productive farmers look after the land first. Healthy animals come from soil management, land management and from a strong heart and passion. Farming is not easy. Many of the large animal farms that she has served have closed.

Don Elliot stated he has lived on Shaker Street for 24 years. They were happy when the Sliters bought the property and have enjoyed the house that was built and the view as you drive by. They are hopeful that the Planning Board and Ausbon Sargent will take it upon themselves to resolve this issue or at least find a compromise so this hardworking family can carry out their plan to farm and provide an income for their family.

Tim Center, a resident of Wilder Lane, lives directly behind the Sliters. He has lived there for 20+ years and stated water has been coming down the angled part of their property that comes down into his property for as long as he has lived there. Even though a pipe has been put in, the same amount of water is coming down. It's not any worse or any better, it is the same as it has always been so nothing they have done has had a negative impact. He has gotten to know the Sliters since they've lived there and he believes everything they've done

has complimented their property, the neighborhood and New London as a whole. He believes they've been trying to do everything correctly and what they are doing will be good for everybody in the area.

Andrew Lubrano, an abutter to the Sliters, stated from what he has heard tonight, everyone has come out in support of the farming on the property. The issue that he has is as nice as the property and the Sliters are, in 2016 they applied for and were approved for a certain plan. Attorney Dietel would like you to believe that these are minor changes to the plan but anyone that has been on the property can clearly see that this is not the land that was approved in 2016. There were changes that were not approved or that the board was notified about. These changes to the plan were made without notification to the town or abutters.

Although Mr. Center indicated he isn't having issues with water, Mr. Poliseno has stated that he does have water issues that need to be examined. The board previously discussed whether a third-party engineer review was necessary but Attorney Dietel recommended and convinced the board to come out to see the property first before a decision was made. Mr. Lubrano noted there was discussion about an additional two staging areas but he does not see them on the plan. Ms. Sliter stated the purpose of the staging areas would include parking, so really, they are additional parking areas. He also noted that 3 days after the last meeting, construction was done in the field and the road seen today was actually constructed after the board meeting.

Mr. Lubrano stated the issue they are having is that they are being asked by Attorney Dietel to trust that in the future the Sliters will tell them before any changes take place. So far, in the past seven years, they have not done that. They haven't notified the board that they have implemented a plan that no one had any oversight to and haven't been specific on what that plan is going to be. There will also be a significant impact to traffic on Mountain Road. He asked that the board deny the application at this time. It is not specific enough and is in violation of the approved plan that was implemented in 2016.

Selectman Helm would like to discuss possible conditions if we were to approve and he noted he is cognizant of the fact that the Planning Board is not authorized to tell the Ausbon Sargent Land Trust how to manage their easement.

Adam Ricker commented that RSA 673:32 that governs agricultural land use does allow for some use and farming activities to change. This is different than typical commercial operations that would be required to come back before the board. Agricultural uses do get more latitude to make changes to their set up, crops, location etc.

Mr. Ricker asked about the soil and log piles that are not depicted on the proposed site plan. Is there a plan to remove those or utilize them? Mr. Sliter responded the loam will be screened and used in the orchard for plantings so about half would be moved. It needs to stay in a relatively convenient spot for all the different areas. The stone will be used for the base of the pond if that is approved. Attorney Dietel responded the goal is to have the material used on the site; however, that is a conversation that needs to be had with the Ausbon Sargent Land Trust as to how they best see those materials being used on the site. David Royle asked if clarification would be made with Ausbon Sargent Land Trust about this. Adam Ricker shared he believes this is a discussion that is occurring with the property owners as he has been in communication with ASLPT and knows they are aware of the project and concerns. All abutters and easement holders are notified and have the opportunities to participate in these discussions.

The following conditions of approval were proposed:

1. The applicants will submit the Alteration of Terrain to the Town prior to the submission to the State.
2. Applicants will return for a Public Hearing of the Planning Board to review the pond plans and approved Alteration of Terrain prior to construction commencing.
3. The approval of the application is subject to the satisfactory approval of NH DES of the pond design as part of the Alteration of Terrain permit process. The implementation of the pond must not result in any additional runoff and compensate for any additional stormwater created by the previous land clearing.
4. The dumpsters must be adequately screened through the installation of a three-sided fence with the opening on the front for access. An updated site plan should be submitted to the Zoning Administrator that depicts the fencing and location of the dumpsters.
5. Snow storage areas must be depicted on an updated site plan and an updated plan delivered to the Zoning Administrator.
6. Items, equipment, and materials stored in the staging area must be related to the agricultural use and operation.
7. The owners will provide an annual update on their plantings by the end of June each year for a term of three years (2024-2026).
8. The operation must seek new approval to conduct pick your own orchard.
9. A Knox box on the gate must be added for access of emergency services.

The applicant is also requesting a waiver of the Site Plan Review Regulations, Article VI, Section F., 1. that drive and access ways should be paved.

Emily Campbell stated she would like someone to make a determination as to whether there is runoff coming from the Sliters property. Peter Blakeman stated that with the exception of the Polisenos, he has designed and worked on all of the septic systems along Wilder Lane that includes the vacant lot between the Polisenos and the Centers. There has always been a stream of water that runs through the Centers and diagonally down into a wetland. It then goes underneath the Polisenos' driveway and down along Wilder Lane. Mr. Blakeman looked at it again a few months ago and is not seeing any evidence of erosion along the road from that drainage area. It has been a very wet summer and if there was going to be a year where he would have seen something, this would have been the year. There is a drainage pipe that ends at the Center's property and he doesn't see a lot of water coming through that pipe. The end of the pipe is covered with stone and if there was a large amount of water going through there would be movement of that stone. Attorney Dietel shared in his experience as a land use attorney, one of the things he hears when there is an abutter that is in opposition of a project is an issue with drainage. But he is also mindful of the need for the board to be thorough and he is confident that there will not be drainage problems on this site. Attorney Dietel stated the process of preparing the AoT application is going to look at the property comprehensively and they are confident there isn't going to be an issue but in the event that there is, this will provide a mechanism for the board to look at the results of the permit application process and bring it back before the board. Mr. Blakeman is hoping to start the permit process in December.

Cindy Lubrano asked about boundaries and screening with regards to the 2016 plan. Mr. Ricker responded it is not specifically screening, it is landscaped open space and the interpretation from the applicant is that the plantings in the orchard is part of that landscaped

open space. There aren't buildings and infrastructure there. The application before them tonight is to amend the approvals from the 2016 plan. Ms. Lubrano asked if there was a regulation as far as access to a property line for a road. Adam Ricker stated driveway regulations are 10 feet. Andrew Lubrano stated it's clearly a driveway that they dropped a rock in front of. Prior to the last meeting, they altered the road so it makes a cul de sac in front of strawberry berms that were also completed shortly after the last meeting. Prior to that, the road was angled and headed towards the gate. In the 2016 site plan, all traffic and access were going to be on the Sliters side of the orchard. The concern the Lubrano's have is that if the board goes forward and allows the site plan, they aren't holding the Sliters to any standard for any kind of privacy buffer between his property and the Sliters commercial operation. Mr. Lubrano doesn't think it is the intention of the Planning Board to take a residential neighborhood and infringe upon the property rights of the abutters. Ms. Lubrano stated they are asking these questions because things changed and they weren't told about it.

Attorney Dietel responded it's difficult to listen to some of the comments from the abutters. He started the conversation tonight reminding everyone that this is a farm, in an area that is zoned for farming, in a community where the master plan speaks to a desire to encourage farming. The things we have just heard about how equipment moves around on the site happens on a farm. There are not roads out there with the exception of the path they walked on. Care has been taken to make sure when equipment is moving on the site it is being moved in the back area. They are trying to be respectful. An application like this is unique.

Mr. Polisenio asked what the board's position is with regards to checking the conservation easement. Does the board feel this is necessary or can be ignored? Selectman Helm stated he cannot speak for the board but it has already been stated that the applicant is having conversations with the holder of the conservation easement and the Town Planner has indicated that the town has no authority over the conservation easement. Paul Vance stated the easement holder got actual notice of this process and the Board is aware that there have been conversations between the land owner and Ausbon Sargent. It is totally in the purview of Ausbon Sargent in terms of enforcing it.

**IT WAS MOVED (Bill Helm) AND SECONDED (Emily Campbell) to approve the waiver of Article VI, Section F., 1. that drive and access ways should be paved. THE MOTION WAS APPROVED UNANIMOUSLY.**

**Findings of Fact:**

- The proposed amendments of the 2016 Site Plan approval as a Commercial Farm & Horticultural Business are allowed in the Agricultural Rural Residential Zone.
- The use of land formerly identified for grazing livestock proposed to be used as an area for crop production complies with the agricultural use.
- The addition of a pond to capture stormwater runoff and serve as irrigation for crops is an acceptable use of the land and accessory of the agricultural use.
  - As required by Article VI, Section C, 1. of the Site Plan Review Regulations the modification to the landscaped open space buffer is in keeping with the character of the area where the site is located. Additionally, the landscaped open space minimums of the Agricultural Rural Residential Zone are met or exceeded on all sides of the property.
- The construction of the hoop houses and plant storage areas are in support of the agricultural and horticultural use of the property.
  - The waste collection area in the parking area has been properly screened through the addition of three-sided fence.



- The Stormwater runoff has been determined to not increase the drainage onto any neighboring properties downstream of the site with the implementation of the proposed pond and will be confirmed by the forthcoming NH DES Alteration of Terrain permit.

**IT WAS MOVED (Bill Helm) AND SECONDED (Paul Gorman) to approve the application subject to the conditions enumerated above. THE MOTION WAS APPROVED UNANIMOUSLY.**

**7. Conceptual**

Jeremy Bonin presented a preliminary site plan review for 93 Newport Road which is currently a laundromat. The intent is to generally keep the shell of the building and put two stories on top of the building, staying under the height requirement in the zoning ordinance. The laundromat and drycleaners will separate uses but still remain on the first floor. With the increase of two stories, they would need more parking and they would request a waiver for the total amount of parking spaces. The second floor would be office space and the third floor would be a one bedroom and a two-bedroom apartment. Parking and traffic patterns were discussed. Open space and storm water management are still being looked at.

Adam Ricker stated this property has the potential to demonstrate exactly what the board wants to see in our commercial corridor with mixed-use, apartments, businesses and retail. This could be a good model.

**8. Future meeting Dates** – The next meeting will be held on Tuesday, November 28, 2023.

**9. Motion to Adjourn**

**IT WAS MOVED (Marianne McEnrue) AND SECONDED (Emily Campbell) to adjourn. THE MOTION WAS APPROVED UNANIMOUSLY.**

The meeting was adjourned at 9:04PM

Respectfully submitted,

Trina Dawson

Recording Secretary  
Town of New London