



BARRINGTON PLANNING BOARD MEETING
Barrington Annex (next to the Elementary School)
572 Calef Highway
Barrington, NH 03825
Tuesday January 20, 2015
6:30 p.m.

Meeting Minutes

Members Present

Anthony Gaudiello-Chair
Jason Pohopek Vice-Chair
Joshua Bouchard arrived at 6:40 p.m.
George Calef
Bob Williams
Dennis Malloy, Ex-officio

Members Absent

Jackie Kessler

Alternate Members Present

Daniel Ayer
Fred Nichols left at 7:40 p.m.

Alternate Member Absent

Richard Spinale

Town Planner: Marcia Gasses

MINUTES REVIEW AND APPROVAL

1. Approval of the January 6, 2015 Meeting Minutes.

Without objection the minutes were adopted as corrected.

ACTION ITEMS

- 2. Pursuant to NH RSA674:16;675:3 and 675:7 notice is hereby given of a public hearing to be held by the Town of Barrington Planning Board for the purpose of discussing proposed amendments to the Zoning Ordinance.**

A. Gaudiello asked if there was further comment from the Board.

A. Gaudiello expressed he had received two e-mails from the public. The first e-mail expressed concern that congestion could occur if sheds of 200 sq. ft. or less were allowed in the buffer on all properties where a wetland buffer existed. The e-mail also cited a court decision where a shed was located within 50' of a lake. The second e-mail questioned whether the proposed amendment was consistent with the Master Plan.

A. Gaudiello read from what he believed was a summary of a decision by Chief Justice Broderick regarding a shed placed within 50' of Crystal Lake. The decision had talked about multiple sheds placed within the 50' Shoreland could lead to congestion within the Shoreland.

A. Gaudiello expressed that he believed that the case was not on point given the size limitation of the sheds and the required size of the buffer for each wetland. The required buffer for each 3,000 square foot wetland was 17,000+ square feet. The 3,000 square feet was the minimal size and consequently the square footage of the buffer would be much larger for a larger wetland.

G. Calef questioned what was to prevent more than one shed from being placed in a particular buffer.

A. Gaudiello expressed that he believed the Code Enforcement Officer would send the applicant for the second shed to the Planning Board.

M. Gasses expressed that permits were looked at on a lot per lot basis and she did not believe that the Town could prevent one lot owner from having a shed based upon the actions of the owner of a different lot; that the buffer that was being referred to was on an individual lot. There was the small possibility that more than one shed could be in the buffer of a wetland that covered more than one lot.

J. Pohopek explained that the 200 sq. ft. was on a per lot basis. He expressed that much of the discussion the Board had on the size of the buffer of a 3,000 square foot wetland was for justification in the eyes of the Board on how small the overall impact to the buffer 200 square feet was, it was not the binding factor.

J. Pohopek did not believe the Crystal Lake case was relevant. A 50' State requirement under NHDES for a setback from a lake was not the same as a wetland buffer or relevant to the Boards conversation.

G. Calef believed that there could be relevance to the possibility of congestion depending on the siting of the wetland and the boundaries of the lots. Developers were very creative with the layout of lots in a subdivision. He expressed that he also believed that the wetland buffer was overly restrictive, but he was not comfortable with the circumstances around what the Board was doing.

A. Gaudiello read the inserted text from the proposed amendment, “sheds, and similar pole mounted structures with a combined area of 200 square feet or less shall be permitted within the wetland buffer areas, provided that: *[and continuing without further change through subparagraphs]*

A. Gaudiello expressed that as the proposed amendment was written the second person requesting a shed in the buffer would need to come to the Board.

M. Gasses expressed that when Code Enforcement looked at the request they would be looking at the buffer on a particular lot. She did not believe it would be legal to deny a property owner a shed based upon the fact their neighbor was granted a shed. The Board needed to decide whether they were willing to accept the possibility that more than one shed could be placed in the wetland of a buffer which covered multiple lots, if the Board did not accept the possibility than the Board should not go forward with the amendment.

J. Pohopek expressed that the intent was to allow people equal use of their property. The Board was never going to have a perfect rule. He expressed that one 200 sq. ft. shed should be allowed per lot in the buffer, if the lot contained a wetland buffer on it. He believed the shed should be allowed without the property owner having to submit a pile of paperwork or go through a lengthy process. The Board had to make a decision as a Board if that was what they wanted.

F. Nichols recused himself.

A. Gaudiello expressed that the Board’s understanding of the language of the amendment was that one lot owner’s action could not hold another property owner to a different standard.

A. Gaudiello opened public comment.

Fred Nichols expressed the Board had already voted twice to go forward with the language. The Board listened to the reading of an e-mail that they had decided did not apply. He explained the State did not require a buffer that it was up to the individual City or Town. The Town was allowed to regulate what went into the buffer and decide what limitations were placed upon the buffer.

A. Gaudiello expressed that G. Calef’s comment regarding more than one shed could potentially be constructed in a buffer was not necessarily a result of the e-mail. A. Gaudiello went on to say the Board had decided that it was unfair to deny one owner something that another property owner was allowed by right and in this case based upon the cost of the current application alone it could be construed as a denial.

The Board had agreed that they wanted to go forward with the amendment for fairness issues as well as other reasons.

Ken Grossman expressed that the Board should be comfortable and that G. Calef had expressed some discomfort. He believed the amendment should not pass by a small margin, but should have good support. He believed that there were people concerned about natural resources as well as the Board. There were also folks in Town concerned about resource extraction and they believe that a mistake had been made in the past, which allowed for an application to go forward. He was not sure that strong support existed for such an amendment. He believed like the Conservation Commission that the amendment was a small erosion of the protection of the Town's natural resources.

J. Pohopek asked if Ken Grossman believed that residents of the Town should be allowed to build a 200 sq. ft. shed in the buffer and was it reasonable use of their property.

Ken Grossman expressed he believed that residents of the Town should have to go through the 9.6 application process. He believed that the property owner should have to carefully consider the need which they have.

A. Gaudiello expressed that Mr. Grossman was correct in expressing that it was a small diminution in the protection of the wetland, but no factual evidence had been brought forward that there would be a negative effect on the functions of the wetland, which is the function of the buffer. The function of the buffer was to protect the wetland.

Stephen Jeffery believed that the amendment was going to allow an applicant to bypass going to the ZBA for a variance. He believed that if there was another location on the lot other than the buffer the property owner should be required to place the shed in an alternative location. He expressed that a gasoline container could leak into the wetland if stored in the buffer.

A. Gaudiello expressed that the Master Plan called for expansion of the buffer zone to protect natural resources. Action had been taken to change the 35' setback from the wetland to a 50' buffer. He explained that what was being proposed does not negatively impact water quality, which was the intent of the recommendation in 2001.

Stephen Jeffery wanted to know where in the Master Plan it called for the allowance of sheds in the buffer.

A. Gaudiello explained that the Board was trying to allow sheds so that we do not engage the 9.6. The Master Plan was a Guide where the Ordinance was the law. He was not sure the change being proposed ran up the backside of the Master Plan.

A. Gaudiello closed public comment.

M. Gasses explained to the Board that each time the proposed language had been revised the Town Attorney had review the language, he understood what the Board was trying to do and had not expressed any issue with the proposed language.

A. Gaudiello expressed that the Board understood that one property owners action could not affect another property owners rights and if the Board accepted that in the environment which the Board was working, the language might work.

B. Williams expressed he was comfortable with the language and was ready to move forward, especially given that legal had reviewed the language.

G. Calef read from an article that NH had the fourth most restrictive land use regulations in the country.

A. Gaudiello reopened public comment.

Ken Grossman expressed that the BIA in some instances had good comments.

D. Malloy expressed that the voters would decide on the proposed amendment in March if the amendment went forward. Regardless of how the vote went it would be interpreted as political.

Stephen Jeffery expressed the 2004 Master Plan described the current development pattern as not sensitive to natural resources.

A. Gaudiello closed public hearing.

A. Gaudiello expressed the attorney was fine with the language and that if the Board was comfortable that the actions of one property could not take away the rights from another property owner than the Board was ready to move forward. The question was on the language as proposed for the second public hearing.

A motion was made by J. Bouchard and seconded by B. Williams to move the Zoning Amendment Language forward to the Warrant as proposed for the second public hearing. The motion carried unanimously.

Roll Call

<i>A. Gaudiello</i>	<i>aye</i>
<i>J. Pohopek</i>	<i>aye</i>
<i>J. Bouchard</i>	<i>aye</i>
<i>G. Calef</i>	<i>aye</i>
<i>B. Williams</i>	<i>aye</i>
<i>D. Malloy</i>	<i>aye</i>

D. Ayer did not vote.

F. Nichols left at 7:40.

OTHER BUSINESS THAT MAY PROPERLY COME BEFORE THE BOARD

3. Report of Applications received in the Land Use office for the Public Hearing on February 3, 2015.

M. Gasses explained that the Land Use Office had received two new applications for the February 3, 2015 Public Hearing, a 9.6 Special Permit for a lot on Liberty Lane to construct a driveway and turnaround and a sign permit for 970 Calef Highway.

4. Presentation of certification of Cullen Woods Subdivision.

The Land Use Office had not received the necessary documents to proceed with certification.

5. Update on Annexation on New Bow Lake Road.

M. Gasses explained to the Board that NHDES was concerned that the prior operator of the abandon gravel pit had never received the needed permitting from them prior to disturbance of 100,000 square feet of area and would likely be sending a notice of violation to all parties involved. She would continue to work with NHDES and the Town's attorney and update the Board at the next meeting.

The Board had a general discussion on the voting process and the importance of casting a vote.

SETTING OF DATE, TIME AND PLACE OF NEXT MEETING AND ADJOURNMENT

February 3, 2015 at 6:30 p.m.

Without objection the meeting was adjourned at 8:30 p.m.

Respectfully submitted,

Marcia J. Gasses
Town Planner and Land Use Administrator