

DEERFIELD PLANNING BOARD
DEERFIELD, NEW HAMPSHIRE
SEPTEMBER 25, 2013

MINUTES OF MEETING

PRESENT: Board members Fred McGarry, Kate Hartnett, Alan O'Neal, Lisa Wolford, Peter Schibbelhute. Also present Planning Consultant Gerald Coogan and secretary Jane Boucher.

Chair Fred McGarry called the meeting to order at 7PM.

APPROVAL OF MINUTES

Lisa Wolford moved to approve the minutes of September 11, 2013. Peter Schibbelhute seconded.

The following corrections were made to the minutes:

Page 2 Paragraph 2: Correct to read "...proposed subdivision and proposed common driveway."

Page 2 Paragraph 6: Correct to read "Applicant to provide..."

Page 2 Paragraph 6: Correct to read "...subsurface subdivision approval."

Page 3 Paragraph 3: Correct to read "...Phil Auger, UNH Cooperative Extension,..."

Chair McGarry called for a vote on the motion. Voted in favor with Kate Hartnett abstaining.

APPROVAL OF MANIFEST

Peter Schibbelhute moved to approve the manifest for \$229.50 (KNA 229.50 (Site Plan Regs), time sheet for Jane Boucher 15 1/2 hours). Lisa Wolford seconded.

During discussion Lisa Wolford questioned the invoice from KNA. Gerald Coogan advised that it was for final work on the Site Plan Regulations and putting them on the web site. Ms. Wolford noted that she was told that the final bill was approved for payment on August 13.

Chair McGarry called for a vote on the motion. Voted in favor with Lisa Wolford opposed.

7:15PM RICHARD PELLETIER; COMMERCIAL OVERLAY/HOME BUSINESS
Richard Pelletier was present.

Fred McGarry referred to a water study done in 2002 for several buildings in the proposed Village District relating to chloride and nitrate standards and water quality.

Lisa Wolford commented on a property located on the corner of South Road and Route 43. She noted that it had been discussed that a party was interested in purchasing the property to

operate a retail business and was told they needed a special exception before going to the Planning Board for Site Plan Review. Ms. Wolford questioned why Mr. Pelletier advised the party that he needed a special exception. She felt that the applicant should have been told he needed to go to the Planning Board for Commercial/Overlay.

Mr. Pelletier referred to 204.1 of the ordinance and noted that listed in "Allowed by Special Exception" was Establishments Selling at Wholesale Retail".

Richard Pelletier said that there are many discrepancies in our ordinance. He cited a situation where neighbors are complaining about lights from an adjacent home. He noted that while our ordinance addresses business lighting but does not address home lighting.

Lisa Wolford mentioned "home business" and how they are regulated. Alan O'Neal said that perhaps we should require that home business be required to submit a "baseline" identifying the business.

Richard Pelletier said that a number of areas in our ordinance lack clarity.

Lisa Wolford suggested that we go through the ordinance and identify the problems. She added that her fear is that if problems are large enough, there would be an arbitrary enforcement.

Fred McGarry suggested reviewing the Table in 204.1 outlining "Allowed by Special Exception" and striking those uses outlined in the Commercial/Overlay.

It was noted that Jack Mettee will be reviewing the Commercial /Overlay and making suggestions to the Board.

Kate Hartnett referred to Section 212 Commercial/Industrial Flexible Overlay District: "The purpose of the Commercial/Industrial Overlay District is to encourage flexibility and creativity for compatible commercial or industrial development to occur throughout the Town of Deerfield and to attract environmentally acceptable commercial and industrial uses to the town that meet a set of standards that maintain Deerfield's rural character."

Richard Pelletier said that most people that approach him with the possibility of opening a business want a definite answer as to if they can do it

Kate Hartnett commented that there are three areas that need to

be addressed:

1. Identify overlap with Commercial / Industrial and Special Exceptions
2. Definitions
3. Improve Criteria

Gerald Coogan and Richard Pelletier were asked to make a list of those who have come in for Commercial/Industrial Overlay and those who, after hearing that Commercial/Industrial Overlay is necessary, have elected not to proceed.

Alan O'Neal commented that existing businesses should be asked to submit a baseline for their business.

PLEASANT LAKE WATERSHED OVERLAY ORDINANCE

Tom Brennan, Joe Farrelly , Ann Farrelly and Richard Pelletier were present.

Chair McGarry noted that portions of the Watershed Ordinance are difficult to enforce. There is no criteria in the ordinance for issuing permits. He added that he had e-mailed DES for information that they may have received and considered "model" ordinances.

Kate Hartnett commented that she had copies of the Webster Lake, Keezar Lake and Deering Lake Ordinances.

Joe Farrelly noted that the ordinances mentioned by Ms. Hartnett were reviewed when drafting the Pleasant Lake Ordinance.

Alan O'Neal said that there was no mention of the buffer zone.

It was noted that Shoreland Protection addressed the buffer zones.

Lisa Wolford referred to a memo from Town Counsel dated December, 2012. Town Counsel reviewed the ordinance and basically found it was unenforceable. A copy of the memo is attached to these minutes. Ms. Wolford referred to "In short, the ordinance creates a confusing picture of conflicting and overlapping jurisdictions, sometimes outside of the statutory authority of the board or official charged with enforcing the ordinance."

Joe Farrelly noted that when this was presented to the Board , the notion was to get an ordinance in place and to clean it up later and make it what it has to be.

Lisa Wolford commented that perhaps we should try to obtain grants and work with knowledgeable people or a committee to

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meet and develop a new ordinance.

Joe Farrelly said that they did apply for and receive a \$9000.00 federal grant administered by DES to do a study. As a result of the study a report was written.

Lisa Wolford commented that she felt she was not qualified to sit down and write a new ordinance but she felt that we need someone knowledgeable to lead the process.

Richard Pelletier noted that , upon reading the ordinance, he realized that there were no enforceability provisions.

Tom Brennan said that perhaps Town Counsel should be approached to comment on enforcing buffer zones, small streams, impervious surface and fernal development.

Gerald Coogan referred to Section 330-3 "With regard to subdivision and site plan proposals, the Planning Board shall have the primary authority to administer the provisions of the Watershed protection Ordinance."

Mr. Coogan said that he had spoken with Attorney Raymond, who said it felt the Ordinance was enforceable, but had several enforcement issues.

Lisa Wolford suggested that a committee consisting of 5-7 people be appointed to study the ordinance;

Joe Farrelly noted that he had been working with Karen Smith of Northwood and said that without coordinating with Northwood, the work would be counter productive.

Lisa Wolford, along with Fred McGarry, volunteered to work on a committee to compare the ordinance with those of other towns. Lisa Wolford said she would contact the Northwood Planning Board to schedule an appointment with them.

The Watershed Ordinance will be put on the October 23, 2013 Agenda for further discussion.

HARLEY STEVENS SUBDIVISION/PERRY ROAD

Gerald Coogan advised that Town Counsel will be submitting a report on the proposed subdivision. He noted that Attorney Raymond had indicated the application was poor planning but legal.

The meeting was adjourned at 9:30PM.

Recorded and transcribed by Jane Boucher
Pending Approval by the Planning Board

Memo

TO: Deerfield Planning Board

FROM: James Raymond
Upton & Hatfield, LLP

RE: Pleasant Lake Watershed Ordinance

DATE: December 12, 2012

You requested our comments on the Pleasant Lake Watershed Ordinance which appears in Section 330 of the Zoning Ordinance, and which we understand that the Board may be reviewing for possible amendments. This ordinance, adopted in 2007, creates a buffer around wetlands and tributaries to the lake (although apparently not expressly around the lake itself), imposes use restrictions, and creates an enforcement mechanism to protect the lake. The Board can assess whether the goals of the ordinance and the extent of the buffer and other provisions are appropriate. Our comments address its mechanics.

The ordinance appears in the town zoning ordinance. Unlike site plan and subdivision regulations, which permit some discretionary interpretation by the Planning Board, standards in zoning ordinances are typically absolute on their face. They may permit some exceptions or alteration, typically either through special exceptions granted by the ZBA or conditional use permits granted by the Planning Board. Both ZBA and

Planning Board, though, are boards with limited and defined jurisdictions, so the procedures in the ordinance for any variance from the standards should fit within the statutory jurisdiction of the board or official reviewing the use or application.

The Pleasant Lake Ordinance, however, mixes concepts of a zoning ordinance and of site plan and subdivision regulations. For example, it requires that all developments in the Overlay District must meet specified standards, with certain prohibited uses. It then creates a review process by ZBA and planning board and evaluation by the Code Enforcement Officer, in section in Section 330.6.1. It then requires a hydrological study, and certain controls on runoff for subdivisions and site plans acceptable to the Code Enforcement Officer, Section 330.7.1.e. The one hundred foot buffer may be reduced by the Planning Board, Section 330.8.B, but there is no provision for reducing the buffer for development proposals that do not come before the Planning Board. In short, the ordinance creates a confusing picture of conflicting and overlapping jurisdictions, sometimes outside of the statutory authority of the board or official charged with enforcing the ordinance.

Overlay districts typically create an issue of how they should be applied to existing uses and structures. This ordinance is silent. The silence could be a problem, for example, if the owner of a preexisting house within the buffer wants to make a change that requires a building permit, which the ordinance as strictly interpreted would prohibit. Although the Planning Board is charged with allowing reductions in the buffer, the Planning Board would have no statutory jurisdiction to grant the reduction, and the home owner would have to apply for a variance. A variance, however, has a higher bar than for the Planning Board's approval of a reduction in the buffer. More confusing is the

delegation to the Code Enforcement Officer of review obligations in projects that must go before the Planning Board. See *e.g.*, Section 330.6.E and 330.7.1.e. Typically, and by statutory authority, the Code Enforcement Officer does not advise the Planning Board or make decisions for the Planning Board.

When the Board reviews the ordinance for possible revisions, it might want to think through how the ordinance will be enforced, by whom, and who will have the power to modify it, either by special exceptions or conditional use permits. The standards for granting the special exception or conditional use permit should be expressly stated. This ordinance throws more discretion into the lap of the Code Enforcement Officer. See, *e.g.*, Section 330.7(e) and 330.6.1.B. We question whether it is appropriate for the code enforcement officer to be required to make qualitative judgments, particularly of the scope described in Section 330.6.1.B.

In short, the Board should consider how to structure this ordinance so it provides a review and enforcement mechanism that fits within the jurisdictions of the ZBA and Planning Board and the authority of the Code Enforcement Officer, and clearly separates their roles. In addition, it should recognize that only site plans and subdivision applications, and, if allowed by the ordinance, conditional use permits, go before the Planning Board, as its jurisdiction is limited. The Code Enforcement Officer should not typically be involved in reviewing projects that appear before the Planning Board, and his review authority should have clear standards that do not require substantial interpretation, as that is typically not within the code enforcement officer's area of expertise or statutory authority.

You also inquired about what forms of development are subject to the buffer requirements. As noted, the Planning Board is given authority to reduce the buffer, in Section 330.8B, suggesting the buffer applies only to subdivisions or site plans. The provisions on applicability, in Section 330.2, however, are not so limited. Similarly, the remainder of Section 330.8, and particularly 330.8C, appear to apply the buffer setback to all buildings, and not only new subdivisions or site plans.