

Moultonborough Planning Board
P.O. Box 548
Moultonborough, NH 03254
(603) 476-2347
Minutes

February 2, 2009
Public Hearing - 7:00 P.M.
Moultonborough Town Offices

Present:	Members:	Judy Ryerson, Natt King, Keith Nelson, Eric Taussig, Joanne Coppinger, Ed Charest (Selectmen's Representative)
	Alternates:	Peter Jensen, Jane Fairchild
Excused:	Members:	Jim Bakas
	Alternates:	James Gray (Selectmen's Alternate)

Ms. Ryerson called the Public Hearing to order at 7:00 PM and welcomed the public. Ms. Ryerson appointed Peter Jensen to sit on the board with full voting privileges in place of Jim Bakas. Those present in the audience from the Board of Selectmen and the Zoning Board of Adjustment were Joel Mudgett and Russ Nolin. Other members of the audience included Hollis Austin, Janet Cutler, William Page, Jean Beadle, Herb Farnham and Mel Borrin.

Ms. Ryerson stated that this was the second Public Hearing on proposed zoning changes and welcomed the public.

Ms. Ryerson stated that at the first public hearing that was held on January 19, 2009 there were substantial changes made to four of the five proposed amendments. Also as the last meeting was held on Martin Luther King Day, the board went over the one proposed amendment to **Article VI; Commercial Uses A**, noting that the board did vote on it that evening recommending to the Selectmen that it be placed on the warrant.

This was the second item proposed at the first Public Hearing. The proposal was to add slight language to the ordinance on commercial uses so that the board could undertake access management changes and work with the NH DOT regarding access on Route 25. Ms. Ryerson reiterated what was stated on the 19th, because Route 25 is a such a high traffic area and it is the basic site of most of our commercial development in town, this is an area where, in part, because of the Route 25 Corridor Study, the board was strongly encouraged to work with the state to get a memorandum of understanding with the town and the state so that when commercial developers come before the board they can ask the state not to grant a driveway cut until the planning board has had a chance to review the request and work in common with the DOT.

The first proposed amendment was to **Article VI; Paragraph C.(1)** to change the boundaries of Commercial Zones and permitted uses. The change made at the Public Hearing on January 19, 2009 was a change the sunset provision. The new changes to the zones on Route 25 shall expire on March 31, 2010, and shall revert to the provisions of Article VI C. (1) as existing in the Moultonborough Zoning Ordinance on March 11, 2008.

Ms. Ryerson stated since this was a second hearing, the board would entertain all comments from the board or public, but noted the only option the board has this evening is to either recommend this to be forwarded to the Board of Selectmen to be included on the warrant, or if there are substantial objections

this evening the proposal would need to be withdrawn as time does not allow for an additional Public Hearing.

Mel Borrin questioned the rationale for the selection of the date. Ms. Ryerson stated that it was originally two years, and it was to give the planning board time to work through the access management business, look at the zones and what else may need to be done. At the meeting on the 19th it was the feeling of many that that was too long and that the board should be able to do something within one year. Mr. Borrin stated that it almost appears that the date of March was selected so the town could take action on another proposal that would come in at the town meeting. Mr. Borrin felt that tying it in to a date specific may not be the thing to do, and should be tied into the completion of a town meeting. If for any reason at all, the actual date of voting is changed in the state, the board may open themselves up to a timing issue. A plan may not be adopted and the proposal would expire. Ms. Ryerson stated that it would revert back to what it was in the ordinance of March 11, 2008. The board felt that the short term was holding the board to a shorter time to complete this in one year, and if they do not complete it then it will revert.

William Page commented that he feels the article is ill founded and that the board is not well prepared in formulating it. He feels that the proposal is going to affect a certain segment of people. Mr. Page feels that the board should have a plan in place before they start identifying areas that where changes are to occur. Mr. Page feels that that the planning board has specifically targeted certain individuals. Members of the board disagreed that this is targeted to certain individuals. Ms. Ryerson stated that there were representatives from various parts of town on a committee that looked very carefully at the full length of Route 25 and decided that those areas, because they included the dangerous intersections, and because there was very little commercial development in those areas would be the areas that should be addressed in some way. There were a couple of approaches, one was to make it a less intense commercial area, one to make it go back to residential and the last to leave it as it is. The two areas were looked at very close. The board has not just thrown darts in this selection. It was looked at very carefully and they excluded the areas that are heavily commercial, because they want to keep those and intensify the commercial within those areas. This is something that has come out of the Master Plan.

The Planning Board listened to Mr. Page's argument again this evening, noting that they had allowed him to voice his concerns and comments at length at the first public hearing. Mr. Page commented that he feels the Planning Board should have a plan in place first.

Mr. Nelson commented that the board had a very high response from the Master Plan Survey, noting that the town's people want to maintain the rural character of the town. The Planning Board has identified these areas as still looking rural and they are attempting to preserve these areas. Mr. Nelson stated that the plan is to maintain the rural character of those areas for a year. The plan is to look at those areas in the upcoming year and identify a better way to use those areas than they way that it is currently zoned. The plan is to maintain that area for the upcoming year, so that development does not occur that is going to be detrimental to the town.

Mr. Borrin questioned if it wouldn't have been easier just to put a one year moratorium on all commercial development. Mr. Borrin stated when this was being formulated they were aware of the economic crisis of the country and town. It would have been simple to place a one year moratorium along Route 25. The board disagreed with the statement made by Mr. Borrin.

Ms. Ryerson stated the question the board will be dealing with in the next year is how the areas will end up. Will it stay as Residential / Agricultural, will it become a different commercial category, such as professional or a lower intensity so that they don't have the Route 25 issues. Those are types of issues they will work through. *Ms. Ryerson noted the Board was in receipt of a letter dated January 15, 2009 from Ted Hilton noting he was in support of the proposed Route 25 Re-zoning amendment.*

Mr. Page noted his objection is that there is no plan and that this proposal is detrimental if the board has no plan.

There were no other comments from the board or public.

Ms. Ryerson polled the Board to see if they were in favor of recommending to the Selectmen this proposal for inclusion on the Town Warrant as presented at the Public Hearing: Eric – Aye; Ed – Aye; Natt – Aye; Judy – Aye; Keith – Aye; Peter – Aye; Joanne – Aye.
Recommended by the Planning Board 7 to 0 in favor.

The second item was a proposed amendment to **Articles VI A (3), VI D, VI E; Repeal of Authority to grant Special Exceptions for Commercial Use in Residential / Agricultural Zone under the Town of Moultonborough's Zoning Ordinance.** Ms. Ryerson gave a brief background on this proposal, stating that this was a left over from the days before the town had commercial zones. The only way you could have commercial activity at that time was by special exception. When the commercial zones were established, three now, and there will be four, these were considered by the board to be sufficient commercial area. You may still get commercial use in the Residential / Agricultural zone by applying to the Zoning Board of Adjustment for a Use Variance. The board feels that commercial development should be directed to those areas which are commercial now. The change made on the 19th was to add the language “as it applies to commercial development in Residential/ Agricultural Zones only” after VI E, and the same after and those portions of Article VII relating to Special Exceptions.

The board reviewed additional language which showed the actual language that will appear in the zoning ordinance. This will, one, Repeal D. Commercial Use within the Residential / Agricultural Zone and two Repeal in E, Special Exceptions conditions as they relate to Commercial Use within Residential/Agricultural Zone by inserting in E, after the words special exception in line 2 the words “except for Special Exceptions for Commercial Use in the Residential/Agricultural Zone which is not allowed” This will now read:

E. Special Exceptions

In any zone, when the Zoning Board of Adjustment is asked to approve a special exception other than for a Special Exception for Commercial Use in the Residential/Agricultural Zone which is not allowed, the Board ...

Mr. Borrin commented that this was something that should have been done a long time ago with the creation of the commercial zones.

There were no other comments from the board or public.

Ms. Ryerson polled the Board to see if they were in favor of recommending to the Selectmen this proposal for inclusion on the Town Warrant as presented at the Public Hearing: Eric – Aye; Ed – Aye; Natt – Aye; Judy – Aye; Keith – Aye; Peter – Aye; Joanne – Aye.
Recommended by the Planning Board 7 to 0 in favor.

The third item this evening was a proposed amendment to **Article V; Signs.** Ms. Ryerson stated that there were several questions at the meeting on the 19th, and the changes made were that they have removed the language that which gave the Planning Board the authority to approve signs. This authority would stay with the Board of Selectmen. The second change would remove the provisions for the Pre-Ordinance Sign Permit that was part of the original proposed amendment. There was some concern of

Town Counsel that this may not be enforceable and he recommended that it be removed along with any reference to that.

Mr. Borrin stated that he printed out the proposed amendment from the website, noting that the version on the website was not what was handed out this evening. Ms. Whitney stated that the changes made at the Public Hearing on January 19th were not posted to the website, but that they were available at Town Hall and the Library as stated in the Public Notice that was posted for the two Public Hearings.

Mr. Borrin had a list of comments and questions regarding this proposal. His comments were directed to the entire proposal, not just the changes that were made at the Public Hearing on the 19th. Mr. Borrin asked for clarification regarding the ability of the board to make changes this evening. Mr. Nelson stated that the board cannot make substantive changes to what has been proposed. Mr. Borrin questioned if the board could drop sections of the proposal. Mr. Nelson stated that it was his understanding that the board could not. Mr. Nelson reviewed the statute and noted that the board may not drop or remove sections of a proposed amendment.

Mr. Borrin stated that “from the outset that this board would be making a very costly mistake to the Town of Moultonborough in the area of future legal costs by advising the voters of this town to act on what is being presented.” Mr. Borrin pointed to the preamble that is in the proposal with the statement in there, calling for the eventual elimination of signs or signs that do not conform he believes is something that can really bite the Board. Mr. Borrin feels what this is saying is “if the sign is not conforming, we are going to keep after you in an ordinance manner and in changes so that at some point in time we going to make you conform to what we want.” Mr. Borrin does not think that is the spirit of what should be brought to the people. Mr. Borrin feels there is a lack of definition regarding the visual quality and aesthetics of the community. Mr. Borrin questioned the section that states this change is to protect property values and private/public investments in property. He feels this would be a problem in proving the private investment in property. Mr. Borrin questioned the sign allowance for a Home Occupation, noting that there could be an instance in a condominium development that would allow for every unit to each have a sign. Mr. Borrin questioned the section relating to Contractor Signs, noting the ordinance states the signs are promptly removed upon completion of the project. What is complete? This is undefined in the ordinance. Mr. Borrin questioned flag poles and the size of the flags. He feels that it should not be limited to size, but that there should be a ratio of height of pole to the size of the flag.

Mr. Borrin spoke to advertising posters lettering as regards to windows, noting it states that if it does not exceed 25% of each window area. What would you rather see if there were four windows, four little signs or one big one and leave the rest alone.

Mr. Borrin questioned the requirement of a sign permit to be renewed every five (5) years. The board noted that they had discussed this at the hearing on the 19th, and it was not clear what the final decision was at that meeting. It was noted that it still appears in the language this evening and that it could not be removed this evening without requiring an additional public hearing. If a sign is permitted, do they not have a record of it?

Mr. Borrin went on to question section 8, Non-Conforming Signs. The section referring to “A damaged, destroyed or deteriorated non-conforming Sign may not be restored if the cost of restoration exceeds 50% of the estimated replacement cost of a new Sign. However, a non-conforming Sign may be replaced if it can be demonstrated that it was intentionally damaged or destroyed by person(s) who are proven to be unconnected to the owner of the Sign or an agent of the owner of the Sign.” Mr. Borrin feels that this would never stand up in court.

Mr. Borrin questioned if the permitting process was to go before the Planning Board or the Board of Selectmen. It was noted that the board had discussed this at the meeting on the 19th, and that this was one of the changes made. The board changed the permitting authority back to what it is now, which is with the Board of Selectmen. It was noted that it had been changed in several areas throughout the ordinance, but that there were several that had been missed. This is confusing to the public. It was the consensus of the board that this is only clerical. That the board had discussed this at the hearing on the 19th and that it was their intention for the authority to be with the Board of Selectmen.

This proposed sign ordinance was discussed at length. The question that board members wrestled with was whether or not the proposal is an improvement over what we have today. They are aware that there are problems, but there are problems with our existing ordinance. Majority of board members felt that the proposal would be an improvement, but that it is confusing. If the board were to recommend to the Board of Selectmen to include this on the warrant this year, then there would still need to be an amendment for next year to correct and clarify issues discussed this evening.

Mr. Borrin suggested that this proposal go back to the sign committee to address these issues and present it to the public once.

Board members were all in agreement that a great amount of work has gone into this proposal and that if the board does not vote to send this to warrant this year, 99% of what is in the proposal will be used next year. Those are a few changes they need to address to make things less confusing.

The majority of the board would rather withdraw the proposal this year, make the changes made and present it next year, rather than have a proposal this year and another next year.

Ms. Ryerson polled the Board to see if they were in favor of recommending to the Selectmen this proposal for inclusion on the Town Warrant as presented at the Public Hearing: Eric – Aye; Ed – Nay; Natt – Nay; Peter – Nay; Joanne – Nay; Keith – Nay; Judy – Nay. The board voted 6 to 0 against forwarding this to the Board of Selectmen. The proposal was withdrawn at this time.

The fourth item is a proposed amendment for the inclusion of a new **Article X, Small Wind Energy Systems Ordinance.**

Ms. Ryerson noted that this is a proposal for an ordinance to regulate Wind Energy Systems (WES). The proposed language has been essentially based on the states model ordinance with two significant changes that were made at the hearing on the 19th. The first change is to Paragraph C.2(x) to read as follows: Small wind energy systems that will be connected to the power grid shall include a copy of the ~~application~~ approval for interconnection with their electric utility provider. The ordinance requires that the applicant have the approval from the electric utility provider to be included with their application for a building permit. The second change is to Paragraph D,1,a,ii as written. The original language in the model ordinance says “Guy wires are disfavored, but where they must be used to support the tower are exempt from the small wind energy system setback requirements.” The board has removed that sentence and replaced it with “Guy wires are prohibited.”

Mr. Taussig stated that he had reservations about two provisions that he thinks should be inserted into the proposal. The first is that there should be a provision for a minimum acreage and second a total prohibition in certain commercial zones, particularly in the village area. Ms. Ryerson pointed out that there is a provision in the language regarding the village zone which states “... are an accessory use permitted in all zoning districts where structures of any sort are allowed, except for Commercial Zone C, the Village Zone, where they are not allowed.” Mr. Taussig believes that there should be a minimum

acreage requirement because of the noise issue as it affects neighbors. Mr. Nelson stated that there is a sound level requirement for decibel level. Mr. Taussig has suggested a two (2) acre minimum. The board discussed this noting that would eliminate a lot of home owners on smaller lots and the intent of the legislation was to allow small wind energy as accessory uses in homes. It is to encourage it.

Ms. Ryerson polled the Board to see if they were in favor of recommending to the Selectmen this proposal for inclusion on the Town Warrant as presented at the Public Hearing: Eric – Aye; Ed – Aye; Natt – Aye; Judy – Aye; Keith – Aye; Peter – Aye; Joanne – Aye.
Recommended by the Planning Board 7 to 0 in favor.

Ms. Ryerson noted those were all of the items on the agenda and called for a motion to adjourn.

Motion: Mr. King moved to Adjourn at 9:35 P.M.
Mr. Jensen Seconded.
Motion Carried - Unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Land Use Coordinator

These Minutes have not been formally approved by the Moultonborough Planning Board. Please contact the secretary after the next regularly scheduled meeting of the Moultonborough Planning Board to be held on the 2nd and 4th Wednesday of each month, to learn if any corrections, additions or deletions were made.