

Moultonborough Planning Board
P.O. Box 139
Moultonborough, NH 03254

Public Hearing

January 27, 2010

Minutes

Present: Members: Natt King, Joanne Coppinger, Jane Fairchild, Eric Taussig
Ed Charest (Selectmen's Representative); Alternates: Peter Jensen, Keith Nelson;
Town Planner: Dan Merhalski
Excused: Members: Judy Ryerson, Jim Bakas

Mr. King called the meeting to order at 5:00 P.M. stating that this was the second Public Hearing for the Proposed Amendments to the Zoning Ordinance to be included on the ballot for March 2010. The first Public Hearing was held on January 13, 2010.

Dan Merhalski, Town Planner gave a Power Point presentation and brief summary of the six proposed ordinance amendments, noting the changes made as discussed and agreed upon at the first Public Hearing. Mr. Merhalski asked that questions be taken at the end. The Board will open each Public Hearing separately where they can ask questions and discuss each of the six proposals.

Mr. King appointed Peter Jensen and Keith Nelson to sit on the board with full voting privileges in place of Jim Bakas and Judy Ryerson.

Mr. King opened the first Public Hearing, Stormwater Management Ordinance, noting the changes from the first hearing included defining Disturbance and Redevelopment, adding language "creating new roads" under Applicability and adding an effective date of June 30, 2010.

Mrs. Coppinger commented on the definition of Disturbance, stating she felt that it needed further clarification and asks that the Board consider adding "earth moving" before construction. Board members were in agreement with this recommendation.

Mel Borrin requested clarification regarding the change made to Applicability, the addition of "creating new roads". Mr. Borrin noted there are many plans/plats that have roads on them that were approved but have not been constructed, also range ways that have been discovered. Mr. Borrin suggested adding wording "that are not of record". Mr. Merhalski stated the only changes that could be made this evening were editorial changes, not substantive.

Ron Davis spoke regarding roads of record and rangeways, noting this has been a problem in the past where a surveyor had not identified the rangeway where the town shed is located. Noting the rangeway goes through the building.

Joel Mudgett questioned what happens if you have a ten acre parcel that was part of a prior subdivision that was approved with a road, but was never developed, and the lot owner wished to further subdivide. Would they be subject to this ordinance? It was stated if they were not creating a new road then they would not be subject to the ordinance.

Russ Wakefield commented that interpretation is the keyword, stating that Boards change and questioned if this would be interpreted the same by a subsequent board?

Mr. Taussig made the suggestion that the Board could add an intention of the Board as a resolution to the minutes.

There was a discussion that if there were any changes to the Applicability, it could be considered a substantial change. Mr. Borrin stated that it needed clarification and questioned if the Board was willing to take the risk of losing this amendment on the ballot.

Ed Ambrose commented that there are already measures in place with State Regulations that address lots greater than 100,000 s.f. and does not feel that local regulations are necessary. It is another cost that would be added to the price of an individual trying to develop a single family lot. It was pointed out to him that this ordinance would not apply to single family homes.

It was suggested changing the wording from “creating new roads” to “platting new roads”. Again, the question was raised if this was a substantial change.

Mr. King questioned if the Board should make the change if they feel that it might be a substantial change or leave it as proposed.

Mr. Nelson and Mr. Taussig suggested clarification could be done through the Subdivision Regulations. The public felt that was not a solution as it would not be put before the voters.

It was the consensus of the Board to make the change to read “platting new roads” and adding “earth moving” to the definition of Disturbance.

Motion: Ms. Fairchild motioned to change the word creating to platting, seconded by Mr. Charest, carried unanimously.

Cristina Ashjian spoke in favor of the three water protection ordinances. She stated while there are State and Federal requirements, the State realizes there are gaps in the development of smaller lots and the proposed ordinances were crafted from model ordinances suggested by the State.

Marie Samaha spoke in favor of the three water protection ordinances.

Mr. Ambrose agreed with Ms. Ashjian, that it is important to protect the lake, but it becomes a function of money and the Board needs to be realistic.

Mr. Jensen stated the intent of the Board is to protect our drinking water.

Josh Bartlett commented that ground water protection is very important and that it is essential that the rules apply to everyone and is applied equally. Mr. Bartlett stated that he is very much in favor of the groundwater protection ordinances.

Bob Clark stated he was the Chairman of the Conservation Commission and worked on the proposed amendments. Mr. Clark referred to the lakes, and the hazard of Blue/Green Algae that is in Hunkins Pond in Sanbornton, as well as Mascommma Lake. Mr. Clark gave his reasoning for proposing these groundwater protection ordinances.

Mr. King noted the Board was in receipt of four pieces of correspondence supporting the stormwater management ordinance.

Motion: Mr. Charest moved that the Board approve the final version of the **Stormwater Management Ordinance** as amended and forward it to the Town Clerk for posting on the warrant, seconded by Mr. Nelson, motion carried 7 to 0 in favor.

Mr. King opened the second Public Hearing, Groundwater Protection Ordinance, noting the only change was amending the effective date to June 30, 2010.

There was no input from the Board or the Public.

Motion: Mr. Jensen moved that the Board approve the final version of the Groundwater Protection Ordinance as amended and forward it to the Town Clerk for posting on the warrant, seconded by Mr. Charest, motion carried 7 to 0 in favor.

Mr. Charest stated due to an unforeseen situation, he would be leaving at 6:30, but would like his comments noted for the record regarding the proposal for the Repeal of Special Exceptions. Mr. Charest stated that if he were present at the time of voting he would not vote in favor of this proposal as this was put before the Town last year and did not feel the Board should be bringing it forward again this year.

Mr. King opened the third Public Hearing, Steep Slopes Protection Ordinance, noting the only change was adding an effective date of December 31, 2010.

Mr. Taussig questioned why there were two different effective dates in the ordinance. Mr. Merhalski stated that was an oversight on his part, adding section XI. He will remove section XI, and amend section II, to be effective December 31, 2010.

Mr. Mudgett stated there was a major problem with section VII, C. The town allows roads with a 12 percent slope, but this would limit driveways to 10 percent. If the Board would like control of driveways then they should propose a driveway ordinance. He feels that this proposal as written is putting a restriction on a certain number of lots and or individuals.

Mr. Ambrose stated his concerns with the proposal noting he was not in favor of this ordinance.

Brian Davis spoke to the proposal, questioning if the Board was aware of what a small area 20,000 s. f. was and how this would affect many lots in town. Mr. Davis stated he was not in favor of this ordinance.

Mr. Mudgett questioned why the Public Hearing began again this evening at 5 PM, when many could not attend at this time. Mr. Mudgett stated the Planner should go out and speak to these issues, such as at the Men's Club Breakfast and to the business owners. Mr. Mudgett stated he was not in favor of the Board putting this proposal forward this year.

Mr. Merhalski responded to Mr. Mudgett's suggestion that he speak to the proposed ordinances, stating that he would be happy to speak to any group of people or businesses, so long as he was invited.

Mr. Borrin stated he was not in favor of this ordinance.

There was a lengthy discussion regarding this proposal. Mr. Ambrose stated there are already regulations in place, and they just need to be enforced.

Glenn Davis stated that he agreed that something needs to be done, but does not feel that this proposal is ready at this time, and the Board scratch this year and come back when they have it right. Do it once and do it right.

Mrs. Coppinger noted that this proposal has an effective date of December 31, 2010. Would the Board be willing to stop this tonight to allow the Board additional time to make additional changes.

Motion: Mrs. Coppinger moved that the Board does NOT forward the final version of the Steep Slopes Protection Ordinance to the Town Clerk for posting on the warrant, and continue to work on it for next year, seconded by Mr. Taussig.

Mrs. Coppinger agrees with the Public that the ten percent driveway slope is an issue, that ten percent is not very steep. If you were to trigger the proposed ordinance it would be hard to build a driveway that would be ten percent. The Board can revisit the proposed ordinance and might be able to add language that if it were engineered properly, it can be more than ten percent.

Mr. Taussig stated that he would entertain amendments to the driveway piece had it been raised at the first hearing. It was noted that they were. Mr. Taussig feels the Board should work on this and bring it back next year. Board members encouraged the public to attend the work sessions in which these issues are discussed. The Board looks for input from the public.

Ms. Fairchild requested an amendment to the motion to shorten Joanne's motion removing the requirement that the Board continue to work on this for the next year. She was concerned about committing the Board for something a year out.

Motion: Mrs. Coppinger moved that the Board does NOT forward the final version of the Steep Slopes Protection Ordinance to the Town Clerk for posting on the warrant this year, seconded by Mr. Taussig, motion carried 4-1-1, with Mr. Jensen opposing and Mr. Taussig abstaining.

Mr. King opened the fourth Public Hearing, Signs Ordinance, noting changes that internally illuminated signs are not permitted in the Village Center Zoning District, as well as amendments made at the first Public Hearing which was to remove the language to limit temporary signs to not more than once in any 90 day period, the change to directional signs stating the reduced size shall apply to each off-premise business sign, and added "each business" as amended at the January 13th Public Hearing.

Mr. Mudgett questioned if you could have a directional sign on a State road. It was noted that that was not controlled by the Town.

Motion: Mr. Taussig moved that the Board approve the final version of the Signs Ordinance and forward it to the Town Clerk for posting on the warrant, seconded by Mr. Jensen, motion carried 6 to 0 in favor.

Mr. King opened the fifth Public Hearing, Dimensional and Other Requirements in Commercial Zoning Districts. Mr. Merhalski reviewed the changes that were made, noting the right-of-way section stayed the same. In Commercial Zones A & B there is a 25-foot wide buffer, and there was language for only allowing one (1) sign in the buffer, which was removed at the January 13th Public Hearing. Parking in the Village Zone has to be to the rear and sides. In Commercial Zones A & B the front setback has been reduced from 100 feet to 50 feet from the edge of the ROW and requires a twenty-five (25) foot vegetative buffer, natural or landscaped in Zones A & B. Where existing sites being proposed for redevelopment do not allow for sufficient space for this buffer, the Planning Board may waive this requirement. The Board agreed to remove language for only allowing one (1) sign in the buffer at the January 13th Public Hearing. You may park in the front in Commercial Zones A & B. Parking shall be screened on all commercial lots (in all districts) and to the rear and sides of buildings in the Village Zone. Lot coverage in the Village Zone increases from 50% to 65%.

Mr. Taussig stated he was not at the meeting on the 13th, and for his clarification, questioned if basically the proposal only reduces the commercial setbacks outside of the Village Zone without moving

the parking to the side or rear. It was noted it also requires the twenty-five (25) foot buffer. Mr. Taussig was not in agreement with the proposal as written and would like the setback to remain as it is.

Mrs. Coppinger stated she was not in agreement with this prior to the discussion on January 13th. She explained her reasoning. If you have a twenty-five (25) foot vegetative buffer and a fifty (50) foot setback for the building it only leaves twenty-five feet in front of the building for parking, which would give you an aisle and one row of parking, whereas if it were one hundred (100) feet, you could fit a whole parking lot in front of the building.

Mr. Taussig stated he was skeptical of this and feels this is an instance where there should be a comprehensive review of the whole thing. Mr. Taussig is not in favor of this and would like to go back to the drawing board on this proposal for further review.

Joe Sullo commented that there was a debate on this issue last year, noting there was a question as to where the road ended, is it twenty-five (25) feet from the centerline? The ordinance requires a minimum of 150 feet of frontage. Is that from the centerline of the road or from the edge of the road as determined by the State? Mr. Merhalski stated the frontage requirement is currently in the ordinance and is not proposed to be changed, that means your frontage along the ROW. The lot has to be at least 150 feet wide along the ROW. All of the setbacks go from the property line or the ROW line.

Mr. Sullo questioned who determines “aesthetically” appropriate? It was stated this is in the existing ordinance and there is no proposal to change it. It is up to the Board’s interpretation.

Motion: Mr. Jensen moved that the Board approve the final version of the **Dimensional and Other Requirements in Commercial Zoning Districts** and to forward it to the Town Clerk for posting on the warrant, seconded by Mrs. Coppinger, motion carried 4-1-1 in favor, with Mr. Nelson opposing and Mr. Taussig abstaining.

Mr. King noted the time, 7:30, and the need for the Board to continue the Public Hearings at this time in order to open their regularly scheduled meeting.

Motion: Ms. Fairchild moved to continue the last Public Hearing still to be discussed to 7:35PM, seconded by Mr. Jensen, carried unanimously.

Mr. King opened the regular meeting of the Planning Board at 7:31 PM and appointed Peter Jensen and Keith Nelson to sit on the board with full voting privileges in place of Jim Bakas and Judy Ryerson.

Motion: Mr. Jensen moved to open the regular meeting of January 27, 2010 and to suspend the agenda until the Public Hearings are complete, seconded by Mrs. Coppinger, carried unanimously.

Mr. King reopened the Public Hearing of January 27, 2010 at 7:37 PM. Mr. King opened the sixth and final Public Hearing for the **Repeal of Special Exceptions for Commercial Uses in Agricultural Residential (AR) Zoning District.**

Mr. Nelson noted that he was not present at the prior Public Hearing and commented that his understanding was initially the Board was going to tighten the special exceptions and still allow special exceptions. This essentially prohibits commercial development outside of the commercial zones completely, or almost completely. His reasoning for that conclusion is a lot owner would need to apply for a variance and meet the standards for a variance which is set by state statute. The board members

reviewed a copy of NH RSA 674:3, I, b with an effective date of January 1, 2010. Mr. Nelson stated he was not in favor of the proposal as written and feels the Board should further refine the requirements of the special exception process instead of throwing it out.

Mr. Taussig commented that his recollection was the last time around there was an extensive discussion on this subject and at that time all agreed that there was one thing they were troubled by, which was the continual proliferation of spot zoning and what special exceptions has given throughout the town is effectively spot zoning. Mr. Taussig stated when the zoning ordinance was enacted in 1985 there were no commercial zones, everything was Residential/Agricultural. There wasn't a choice, you needed a special exception. In 2000, the commercial zone was established. At that time special exceptions should have been eliminated, as they weren't needed anymore because you had a commercial zone.

Board members reviewed the handout from Mr. Nelson, and also referred to the New Hampshire Planning and Land Use Regulation 2009-2010 edition.

Mr. Stephens noted Mr. Charest's comments prior to leaving, stating that he was not in favor of this proposal. Mr. Stephens stated that he was not in favor of the proposal either.

Mr. Borrin stated that this was voted down last year, and that he was not in favor of the proposal.

Mr. Mudgett does not believe this proposal is fair to the voters. When the commercial zone was proposed, the voters were told they could still apply for a special exception, and now the board is proposing to remove that process. Mr. Mudgett is not in favor of this proposal.

Ron Davis agreed with Mr. Borrin, noting this was tried last year and voted down. He is not in favor of this proposal.

Tom Howard agreed with Mr. Nelson and feels that the special exception should remain and the board should work on tightening up the requirements of the special exception.

There were also three pieces of correspondence received that expressed support of the proposed Steep Slopes Amendment.

After a lengthy discussion Mr. Taussig made the following motion:

Motion: Mr. Taussig moved that the Board approve the final version of the **Repeal of Special Exceptions for Commercial Uses in Agricultural Residential (AR) Zoning District** and forward it to the Town Clerk for posting on the warrant, Mr. King seconded the motion to bring it to the floor for a vote. Motion failed On a 1 to 5 vote, with Mr. Taussig in favor of, and all other opposing.

Adjournment: Mr. Nelson made the motion to close the Public Hearing at 8:18 PM, seconded by Ms. Fairchild, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant