

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

**Public Hearing**

**January 13, 2010**

**Minutes**

Present: Members: Judy Ryerson, Natt King, Joanne Coppinger, Jane Fairchild,  
Jim Bakas –arrived at 7:26 PM, Ed Charest (Selectmen’s Representative);  
Alternate: Peter Jensen; Town Planner: Dan Merhalski  
Excused: Member: Eric Taussig; Alternate: Keith Nelson

Ms. Ryerson called the meeting to order at 5:00 P.M. stating that this was a Public Hearing for the Proposed Amendments to the Zoning Ordinance to be included on the ballot for March 2010. This is the first Public Hearing and if there are any substantive changes made to the proposals it would require a second Public Hearing. At the second Public Hearing editorial changes may be made, but no substantive changes may be made. At that hearing the Board will vote to either forward the proposal on to be included on the ballot for 2010 or withdraw the proposal. If needed, the second Public Hearing will be held on Wednesday, January 27, 2010 starting at 5 PM.

Dan Merhalski, Town Planner gave a brief Power Point presentation of the six proposed ordinance amendments, with questions to 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.

Ms. Ryerson commented the majority of the proposed amendments came out of the Master Plan process. They were recommendations from the survey and further refined through the various committees that worked with the Master Plan. The committees and the Planning Board have worked on the proposals off and on for the past year, with serious input from the Conservation Commission for the “Water Ordinances”.

As there was a large number of members in the audience for the Public Hearings, Ms. Ryerson asked if there was any order the public wished to address the Public Hearing for each of the proposals. Hearing no over whelming reply, the proposals will be taken in order. The first three proposals are a result of the over whelming interest expressed in the Master Plan Survey in which respondents stated the most important thing for them in Moultonborough is to preserve the quality of the water. The proposed amendments are in no way an attempt to control or stifle development, but an attempt to make sure development is done in such a way that it does not degrade the water for the Town of Moultonborough.

Ms. Ryerson opened the first Public Hearing listed on the agenda, and asked for any comments on the first proposal, Stormwater Management.

Robert Jones submitted a letter dated January 13, 2010, and asked that it be read into the record. Ms. Ryerson read Mr. Jones letter (see attachment) in which he requests the Planning Board scrap all six of the proposals in their entirety.

Mel Borrin stated he was in agreement with Mr. Jones letter, noting he was against anything that would result in more costs for existing development, engineering cost and creating more codes/ordinances that the tax payers will need to pay for enforcement. Mr. Borrin referred to one slide from Mr. Merhalskis presentation which said “The Planning Board shall approve at the next meeting.” Mr. Borrin stated the Planning Board has the ability of approving or rejecting; they are not forced to approve.

**Stormwater Management Ordinance** –The requirements of this article shall apply to all subdivisions, commercial and multi-family developments and redevelopments which disturb 20,000 square feet or more in all zoning district(s).

Mr. Borrin raised a few questions and concerns with the proposed Stormwater Management Ordinance. He questioned who it would affect. He feels it will affect more people with a few acres, than the people this will frighten and never come to Moultonborough. He is concerned for those who have property and what future development that may be prohibited as a result of the increased costs due to the proposed amendment. Mr. Merhalski responded that the intention behind this proposal is because of the importance to the town for the ground water resources, and the effect that has been with the increase in nitrate levels, e-coli and other contaminants in our ground water levels, the Board wants to make sure that development from this date forward is going to be responsible development that will contain its contaminants on site and/or treat them before they enter into the aquifers.

Bob Stephens questioned how the proposed water ordinances lined up with the state. Ms. Ryerson stated the proposals started with the states model ordinances to protect water quality.

Mrs. Coppinger stated that the state regulations say if you disturb 100,000 square feet or more of non-water front or 50, 000 square feet on a waterfront property you need a state permit. The state recognized that towns needed something to have local control over water protection and came up with the model ordinances which provide the town the ability to enact their own water protection ordinances. The proposed amendments are more restrictive than the States current regulations.

Joel Mudgett referred to the proposal, questioning what the definition of redevelopment is. Board members looked at this section and were in agreement that needed further clarification. Mrs. Coppinger stated that it refers to new disturbance.

Mark Richter questioned what the difference was between commercial or multi-family verses a single dwelling if you are disturbing 20,000 square feet, approximately a half acre, why are single family being exempted? Mr. Merhalski replied the Planning Board's authority to regulate comes from site plans and subdivisions which get triggered by a certain threshold, a single family home isn't required to come in for site plan, and most single family homes are not going to disturb greater than 20,000 square feet.

Mrs. Coppinger commented the Board did not want to trigger the home owner, as they thought people would think it hugely unfair to target the single family home owner who wants to build a house.

Peter Jensen stated that there currently is a House Bill in the legislature being proposed relating to water quality at the time of real estate transfer.

Bill Page noted his concerns with Section VIII, A "The applicant shall submit a fee" stating that is open ended. You do not know what the conclusion is and do not know where the end might be to meet the requirement. Mr. Page also noted his concerns regarding Section VI, E. Why would this be a cost incurred to a property owner creating a maintenance plan and recording at the registry? Mr. Merhalski stated this is necessary to ensure proper maintenance for the operation of stormwater management systems and that it will not be installed and never maintained in a working manner. This will be recorded at the Registry of Deeds so if the property gets transferred, the buyer will know that the maintenance is required with the lot and runs with the land.

Ms. Ryerson stated the Board had six ordinances to cover and based on the fact they had spent an hour on the first ordinance, it appears they may go beyond the allotted 2 ½ hours for the Public Hearing.

The assumption is they will break around 7:20, open the regular meeting 7:30 and reconvene the Public Hearings after that if they do not complete the Public Hearings prior to 7:20.

Terrene Jatko noted his concerns with Section VI, A “There shall be no negative impact...” and would like it to read there shall be minimal impact.

Joel Mudgett questioned subdivisions, if they would require engineering studies for driveways. Mr. Merhalski referred to Item IV. Definitions: Development, noting items that would be reviewed would be the infrastructure of a roadway, sidewalks, stormwater infiltration units, fire protection. Whatever creates an impervious area is what the Board would be looking at. If the disturbance is greater than 20,000 square feet this would apply.

Mr. Borrin requested the Board change the order of the hearings, moving to the last item backwards, as there may be more people in the audience interested in the ordinances at the end, rather than the groundwater ordinances. Stating, if need be the Board could recess the hearing to another time and date specific. Mr. Merhalski stated the statue prevents that and gave the reason why. It was noted the Board has the ability to open the regular meeting at 7:30 and continue it to a later time this evening, and continue with the Public Hearings.

**Motion:** Mr. King moved that the Board move onto Item #6 and sequentially work back towards one. Seconded by Ms. Fairchild, carried unanimously.

**Repeal of Special Exceptions for Commercial Uses in Agricultural Residential (AR) Zoning District** – This proposal will eliminate Special Exceptions for Commercial Uses outside of the thee (3) Commercial Zoning Districts. Commercial Uses wishing to be located outside of these districts will be required to apply for a Variance.

Ms. Ryerson stated the next Public Hearing was for the Repeal of Special Exceptions, which is very similar to what was presented last year. Ms. Ryerson noted this was defeated last year, and is not to distain the vote of the townspeople. The Board felt that the voters did not understand the reasoning behind the proposed change. Ms. Ryerson gave a brief overview and purpose for the proposed amendment.

Tim Tinel stated that he agreed 100% with Mr. Borrin and Mr. Jones comments, stating the Board should table all of the proposed amendments until next year. Mr. King commented the Board has worked hard all year on the proposals, using the Master Plan as a guide. All work sessions and meetings have been properly noticed and have not been attended by members of the public.

Bob Stephens questioned if there was the ability to include a non-binding referendum before the voters to show the intent or concept for which the Board is proposing the changes. This would educate the voters as to what the impact would be for the changes proposed. Mr. Merhalski stated that a Town meeting a resolution could be proposed where everyone could have an input.

Mr. Borrin stated this was voted down last year, and questioned how many events have taken place over the last year that may have not taken place if this were enacted last year. Mr. Stephens, Chair of the ZBA stated he did not believe that there were any. Mr. Stephens requested this be tabled until next year for revised language.

Mr. Mudgett stated when the commercial zone was voted in people were told not to worry. If you were located in the Residential/Agricultural Zone you could apply for a Special Exception or a Variance. This change will take away the ability to apply for a Special Exception.

Ron Davis noted his concerns, stating the Town voted on this last year, expressed their opinion on this article and voted it down. Mr. Davis questioned if this was something that was going to keep reappearing every year until the Board finds enough people to vote it in? Ms. Ryerson stated that it was a very close vote last year and it was the sense that maybe people did not understand the purposed behind it.

Jerry Hopkins questioned how the Board was going to deal with a lot that is split by the Commercial Zone and Residential/Agricultural Zone? Would this require a variance for the portion of the lot that is not within the commercial zone? Currently it is dealt with through a special exception. Mr. Merhalski stated as proposed, you would need a variance for the section in the residential portion if this passes.

Mark Richter questioned the reason for removing the special exception. Mr. King stated a variance has a higher threshold, many feel that there are circumstances that warrant some form of a commercial use within a residential zone, and a variance is a way to allow this. The Master Plan indicated that a majority of the people wanted to maintain the rural residential areas and encourage commercial use in the commercial zone. While a variance is harder to get, it still allows a commercial use in a residential area. It may be harder, but it will maintain that area.

Don LeMien commented while he served on the Zoning Board, the Board did deny quite a few applications for commercial use within residential areas, and the Board still has the power to stop it.

Mr. Hopkins suggested the Board amend the proposal and allow the special exception to remain for parcels that are located in two zones, split by the Commercial Zone and Residential/Agricultural Zone.

Mr. Jensen and Mrs. Coppinger left the Public Hearing at 6:25. Mr. Mudgett questioned if the Board was down to four members. It was noted they were, but there still was a quorum of the Board and they continued at this time.

**Motion:** Mr. King moved to amend the proposal to maintain the ability to apply for a Special Exception for lots split by both the Commercial Zone and Residential / Agricultural Zone, seconded by Ms. Fairchild, carried unanimously.

**Motion:** Mr. King moved to continued Item #6, Repeal of Special Exceptions to January 27, 2010, seconded by Ms. Fairchild. Motion carried 3 to 1 in favor to for continuance, with Mr. Charest opposing.

**Dimensional and Other Requirements in Commercial Zoning Districts** – This proposal amends the dimensional requirements of setbacks and other elements of the three (3) existing Commercial Districts, as well as parking and other elements of commercial uses.

Ms. Ryerson stated the next Public Hearing was for Item #5 relating to Dimensional Requirements. Ms. Ryerson gave a brief overview noting the changes being proposed are to reduce the setback requirements in the Commercial Zones, remove the screening requirements in the Village Zone and introduce access management.

Bill Blackadar agreed with reducing the 100 foot setback, but does not feel it is conducive to commercial use. You need a storefront that will attract people into your business, not looking at the back of your business from the highway.

Mr. Borrin commented that the parking should be left to the applicant, whether to place it in front of the building or to the back of the building.

Don LeMien questioned what type of screening is required within the first 50 feet? It was noted that the word screening has been removed and was replaced as a vegetative buffer, natural or landscaped.

Mr. Blackadar questioned the Section F (2) a, relating to signs. After discussion the Board was in agreement to strike “One (1) sign for the business may be erected within this buffer”.

**Motion:** Ms. Fairchild moved to amend the proposal to strike the sentence “One (1) sign for the business may be erected within this buffer”, seconded by Mr. Charest,

Mr. Jensen returned to the Board at 6:55 and Ms. Ryerson appointed him to sit on the board with full voting privileges in place of Jim Bakas. Mrs. Coppinger returned to the Board at 7:12.

The Board discussed Section F (6) f, and it was the decision to not make any changes. Mr. Merhalski will remove the changes as proposed with it remaining the same.

**Motion:** Mr. King moved to amend the proposal to strike the sentence “One (1) sign for the business may be erected within this buffer”, seconded by Mr. Charest, carried unanimously.

**Motion:** Mr. King moved to continue Item #5, Repeal of Special Exceptions as amended to January 27, 2010, seconded by Mr. Jensen, carried unanimously.

**Signs Ordinance** – This proposal amends the current Sign Ordinance (Article V) and effects uses and types of signage permitted in the Town.

The Chair next opened the Public Hearing for the proposed changes to the sign ordinance. Ms. Ryerson gave a brief history and explanation of the proposed change, noting there are two or three small changes to the existing sign ordinance.

Mr. Borrin commented on Section H. Directional signs. Mr. Borrin would like the language to include either each or individual so it would read “Directional signs on Town roads, no greater in size than four (4) square feet for *each or individual* business identification and direction only, may be allowed by permit for *each* businesses off site....”

There was a lengthy discussion on temporary signs with members of the public opposing the addition of “not more than once in any 90 day period”. It was the decision of the Board to strike the proposal relating to Section G, keeping it the same.

**Motion:** Mr. King moved to amend the proposal to strike the addition of the language “not more than once in any 90 day period”

**Motion:** Mr. King moved to continue Item #4, Sign Ordinance as amended to January 27, 2010, seconded by Ms. Fairchild, carried unanimously.

The Board took a break from 7:22 to 7:26. Mr. Bakas arrived at 7:26 and Ms. Ryerson appointed him to sit on the board with full voting privileges in place of Eric Taussig.

**Steep Slopes Protection Ordinance** - This Article shall apply to all development requiring a Building Permit, Subdivision Approval and/or a Site Plan Review Permit,

with a slope of 15 percent or greater, and where the proposed site disturbance is greater than 20,000 square feet.

The Chair then moved onto the next Public Hearing relating to ground water protection. Mr. Merhalski gave a brief overview of the proposed ordinance.

Mr. Borrin commented while he was not opposed to the proposal, he feels that this was coming on pretty fast and does not think it is fair and suggested this should have an effective date of July 1, 2010 in order to give any individuals some warning that there is a significant change proposed.

There was a discussion with the Board and public explaining the threshold for the triggering of this proposal and the reasoning for the proposal.

Ms. Ryerson noted the time was after 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:** Mr. King moved to continue the Three Public Hearings still to be discussed to 7:43PM, seconded by Ms. Fairchild, carried unanimously.

**Motion:** Mr. King moved to open the regular meeting of January 13, 2010 and to suspend the agenda to 8:15 PM, seconded by Ms. Fairchild, carried unanimously.

Ben Bullard commented on the proposed ordinance relating to steep slopes, noting that there is a minimum 10% slope for the driveway access and questioned if it applied to all single family residential lots. Mr. Merhalski stated this is just if the ordinance is triggered by the development. You have to be developing first on 15% or greater slopes and impacting 20,000 square feet, and then no section of any driveway may exceed a 10 percent slope for residential subdivisions or 8 percent slope for nonresidential site plans.

**Motion:** Mr. King moved to reopen the Public Hearings at 7:43 PM, seconded by Ms. Fairchild, carried unanimously.

Mr. Bullard questioned if you could apply for a variance, and if it were granted, could then exceed the 10% slope. Mr. Merhalski stated it depends on what is specifically applied for in the application for variance and if granted you would no longer be bound to meet that standard, or the ZBA could condition the variance upon a certain percentage, they could do so.

Mr. King questioned if the Board would like to consider an effective date for all three of the proposed groundwater protection ordinances. He would be looking for input from the Board making the effective date July 1<sup>st</sup> as opposed to Town meeting.

The Board discussed the effective date for all three of the proposed groundwater ordinances, with Mr. Bakas suggesting an effective date of December 31, 2010.

**Motion:** Mr. King moved to continue Item #3, Steep Slopes to January 27, 2010, with an amendment of an effective date of December 31, 2010, seconded by Mr. Bakas, carried unanimously.

**Groundwater Protection Ordinance-** This article shall create an overlay district which is superimposed over the existing underlying zoning and includes within its boundaries:  
(1) all of the Wellhead Protection Areas for public water supply wells as defined in the

draft ordinance and on the map entitled, “Water Resources, Natural Resource Inventory, Moultonborough NH, dated February 10, 2007”, and (2) the Stratified Drift Aquifer(s) shown on the map entitled, “Water Resources, Natural Resource Inventory, Moultonborough NH, dated February 10, 2007”.

Ms. Ryerson next opened the Public Hearing for the proposed changes relating to Groundwater Protection and briefly described the proposed ordinance.

Mr. Borrin recommended an effective date of 60 days, as it is important to protect the water and if this proposal was approved at Town Meeting would not affect any pending site plans or subdivisions that may be in the works.

**Motion:** Mr. King moved to continue Item #2, Ground Water Protection to January 27, 2010, amending the effective date to June 30, 2020, seconded by Ms. Fairchild, carried unanimously.

**Stormwater Management Ordinance** –The requirements of this article shall apply to all subdivisions, commercial and multi-family developments and redevelopments which disturb 20,000 square feet or more in all zoning district(s).

The last item was to reopen the Public Hearing for the proposed Stormwater Management Ordinance. Ms. Ryerson stated this was discussed at length at the beginning of the evening.

Marie Samaha spoke in favor of the proposed ordinance, stating is on the Conservation Commission and worked on this draft ordinance. Mrs. Samaha noted they had started with the model ordinance from the state, which is sixteen pages. This proposal has been pared down to two pages which they feel is very fair and applicable to Moultonborough.

Mrs. Coppinger suggested as clarification that they add “creating new roads” to the first sentence under III. Applicability, along with a definition for disturbed area and re-development.

The Board discussed adding an effective date of June 30, 2010 to the proposed ordinance.

**Motion:** Mr. King moved to continue Item #1, Stormwater Management to January 27, 2010, amended to read “creating new roads” under Applicability, adding Re-development and disturbed land to the Definitions, with an effective date of June 30, 2010, seconded by Mrs. Coppinger, carried unanimously.

**Adjournment:** Mr. King made the motion to close the Public Hearing at 8:18 PM, seconded by Mrs. Coppinger, carried unanimously.

Respectfully Submitted,  
Bonnie L. Whitney  
Administrative Assistant