

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

Regular Meeting and Public Hearing

January 23, 2013

Minutes

Present: Members: Tom Howard, Chair; Peter Jensen, Chris Maroun, Paul Punturieri, Josh Bartlett; Russ Wakefield (Selectmen's Representative)
Alternates: Keith Nelson, Natt King, Bob Goffredo
Excused: Member: Judy Ryerson
Staff Present: Town Planner, Bruce W. Woodruff; Administrative Assistant, Bonnie Whitney

I. Pledge of Allegiance

Mr. Howard called the regular meeting to order at 7:00 P.M and then appointed Mr. Nelson to sit on the board with full voting privileges in place of Judy Ryerson.

II. Approval of Minutes

Motion: Mr. Jensen moved to approve the Planning Board Minutes of January 9, 2013, as amended, seconded by Mr. Jensen, carried unanimously.

III. New Submissions

IV. Boundary Line Adjustments

V. Hearings

Mr. Howard stated that this was the second Public Hearing on proposed zoning changes and welcomed the public. He stated that at the first public hearing, held on January 9, 2013, there were substantial changes made to one of the six proposed amendments, requiring a second public hearing. Mr. Howard read the article language into the record.

1. Shoreland Protection Act: required by act revision change and strengthening change amendment

– This proposal will amend Zoning Article IV, G. by revising titles to reflect new name of act; clarifying that the Code Officer shall notify land owners of his visit in writing; adding clarifying language to the tree caliper section; deleting a sentence allowing an engineer to justify a greater than 30% impervious surface area; and increasing the point totals and reducing impervious surface percentages to strengthen this section of the act back to the requirements of the 2008 version.

Mr. Woodruff gave a brief overview of the proposed change, noting that through the Board's deliberations and discussions they had decided to amend the language for the Comprehensive Shoreland Protection Act section to increase the score requirements for trees and sapling diameters in a 50' x 50' segment to 100 points, but in another section it had remained 50 points by reference. As discussed at the first public hearing, they agreed to change the 50 points to 100, to bring it in line with the other change, so they both would be 100 points. This was pointed out by the Code Enforcement Officer (CEO) while reviewing the proposed amendments. The second change made at the public hearing was a change to the language in the article for clarification, adding the word "reducing" to the warrant article language.

Mr. Howard stated that this was a continuation of a public hearing and took a moment to bring

the board up to date, and to talk about information members had received, via e-mail, relative to proposed legislation that is expected to be introduced in the legislature and to outline the options the board had for acting on the proposed amendment, from moving it forward as is, moving forward with deletions or not forwarding. He stated that members and staff will have the opportunity to comment and weigh in on the discussion, and then it will be opened for public comment.

Mr. Howard gave a brief recap of how this proposed amendment came about. Starting with the Board's review of their 2012 Work Plan, in which the second highest item was to work on the Shoreland Protection Act. The Board has spent a lot of time on this since last February and arrived at the proposal presented this evening. During that time members talked with other towns and the members of the Shoreland Advisory Committee. There were guided discussions along the route of finding a commonality between towns. Mr. Howard noted that there is a proposed legislative to amend Chapter 483-B. Members reviewed the draft dated January 4, 2013. Mr. Howard pointed out that it addressed some of the same things that the Planning Board has tried to address in their proposed amendment. Mr. Howard noted a letter dated January 23, 2013 from Ames Associates, in which they expressed their comments on all of the proposed amendments. At this time Mr. Howard commented that after looking at the material presented this evening and in speaking with contractors he leaned towards not forwarding this amendment to be included on the warrant and waiting for legislation to take its course. He feels that the states proposed amendment brings balance. Mr. Howard listed several sponsors of the bill, noting it appears to have bipartisan support.

Mr. Bartlett again voiced his strong opposition to this proposal, reading a statement (see attached) into the record. Mr. Bartlett closed with urging the Board to reconsider making this change.

Mr. King questioned if the Board could go forward with the making the name changes this year? Mr. Howard stated that was correct. They could take portions out of the amendment. Mr. King would like to wait to see if the bill passes and see how the statute shakes out.

Mr. Nelsons question was, if and when legislation will act on this, which is an uncertainty. He questioned what if legislation takes a while to go through? He thinks the Board has put a lot of work into this and that the Board should go forward with the proposal.

Mr. Jensen stated that he personally thought the Board had done a good job on the "higher hurdle" and thought that they should go forward with the proposal. If and when the bill goes through the Planning Board could come back next year and propose a change to reflect the RSA.

Mr. Wakefield commented that he had little faith in the sponsors of the bill. He felt that the proposed amendment that was provided tonight would not be what goes forward. Mr. Wakefield was in agreement with Mr. Nelson and Mr. Jensen. The Board has debated this language and it is what's best for Moultonborough. He would like to go forward with what the Board has proposed and if something goes through legislation then the Board could make changes next year.

Mr. Goffredo was in agreement with going forward as proposed and making any changes, if necessary, next year.

Mr. Maroun commented that the Planning Board put a lot of work into their proposal and doesn't feel that it will go against Moultonborough, but will help, and that they should move this proposal forward tonight.

Mr. King commented that either proposal would work. What goes before the legislation may be more palatable and felt that the Board should wait.

Board members discussed the make-up of the Shoreland Advisory Committee. Mr. Howard read

the RSA, Shoreland Advisory Committee, and who it shall include. Members questioned if there was any information about the committee for the 2011 changes. It was noted they did not.

Mr. Howard opened the floor for public input. Jon Tolman spoke to the board, noting he was there as a general contractor on a personal level only. He commented that every zoning ordinance or permitting process is an impact on people's private property rights. He understands that there has to be ground rules and that continuity is a big deal when contractors are dealing with home owners. Mr. Tolman cautioned the board on making changes this year and then possibly again next year. He thinks that they should wait to see what happens at the state level and reflect accordingly to that.

Members went on to discuss the proposal and the purpose. Mr. Jensen commented that they should do the best they can to protect the water. Mr. Bartlett questioned what was the rush? Mr. Woodruff stated the board felt this was an important issue and had prioritized this on their 2012 Work Plan. He spoke to the proposed changes, some being the name, reference to the CEO etc. Through work sessions the board decided it was important to try and bring continuity with Moultonborough and other towns around the lake. He does not believe that the 100 points is onerous to the home owners or contractors. No one knows when or what the legislation may end up as. He recommended the board keep the change requiring that the CEO must provide 24 hour written notice, as it is in the current act, and changing the CSPA to SWQPA is only a housekeeping issue.

Motion: Mr. Nelson moved that the Board accept the language as amended and to forward it to the Town Clerk for posting on the warrant, seconded by Mr. Jensen.

Discussion prior to the vote on the motion:

Mr. Woodruff noted the letter submitted by Ames Associates dated January 23, 2013. In reviewing their comments, only one applies this evening and it is relating to the 100 point requirement.

Mr. Austin had several questions regarding the proposed amendment, asking if the definition for the shoreland was the same for both the state and the town. The state does not define shoreland in their definition section. He asked how the shoreland was measured. Mr. Howard stated that it was an average of the tie course and actual shore frontage in Moultonborough presently and actual lineal distance per the Shoreland Water Quality Protection Act. He then asked if the name is changed from the CSPA to the SWQPA who is responsible for enforcement. It was noted either the town, or the state, or both. Mr. Austin noted the phrase "caliper" and asked if there was a definition of that. Mr. Howard stated that the phrase caliper was a measuring device for the trees. Mr. Austin asked if that would be the same as the diameter. It was noted in the ordinance they are referring to it as the caliper. Mr. Austin commented that the property owners, property rights are at stake. He suggested that the board wait on this proposal and follows the states lead, and that property rights are best addressed at the state level. He recommended the board does not proceed with what is proposed. Mr. Austin stated that he would like to see specific examples of proof why the board needs to act so quickly, noting that this is a taking of property rights.

Mr. Wakefield commented that he believes that the proposed legislation will get watered down before it is passed. Mr. Bartlett did not agree with Mr. Wakefield's comment that it'll get watered down.

Mr. Howard commented that they need to find a balance and there needs to be things to balance, one was private property rights. A balance of private property rights, local land use regulations and States responsibility to hold the public of the waters in public trust.

Mr. Jensen commented that the board has not rushed into this. They have been working on this for quite a while. This is not a rush decision, it has been discussed at length and does not need to be deferred to a higher level.

Mr. Wakefield stated that this wasn't imposing something that is on the books, it is going back to what was similar in 2008.

Mr. Howard called for a vote on the motion on the floor made by Mr. Nelson and seconded by Mr. Jensen. Motion passed 6 to 1 in favor, with Mr. Bartlett opposing.

Mr. Howard closed the Public Hearings at this time.

VI. Informal Discussions

VII. Unfinished Business

VII. Other Business/Correspondence

1. Discussion on 2013 Work Plan - The Board began their discussion of the 2013 Work Plan, and reviewed a handout prepared by Mr. Woodruff. Mr. Woodruff advocated for a smaller work plan this year. He suggested they take a break on zoning ordinance amendments this year, noting they had proposed six each for the 2011 and 2012 warrants. He stated that they should focus their energy on the beginning of the Master Plan update process.

After a brief discussion it was noted that at the prior meeting items 6, 7 & 8 had been cut off the plan. The Board discussed the Context Sensitive Solution Process and it was felt that the items 4 & 5 could be put off until after the Master Plan process. Mr. Woodruff suggested putting off starting on these until after Town Meeting, and asked if the Board wanted to cancel the work session next week.

Motion: Mr. Bartlett moved to cancel the January 30, 2013 Work Session, Seconded by Mr. Maroun, carried unanimously.

IX. Committee Reports

X. Adjournment: Mr. Punturieri made the motion to adjourn at 9:01 PM, seconded by Mr. Bartlett, carried unanimously.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant

23 January 2013

Presented to the Public Hearing at Moultonborough, NH regarding the “Shore land Water Quality Protection Act” Changes to be Included in the Town Zoning Ordinance

Regulation of land use is a necessary part of the rules of a free society. Carefully crafted and properly enforced restriction of what may and what not may be legally allowed on private property is important to help protect the health, safety, quality of life and property values of those who live in or visit an area.

Those restrictions of freedom of the use of one’s property must be carefully weighed against private property rights; rights which are fundamental to a free society.

As I had stated at the last hearing on this subject, I am opposed to this change in our Zoning Ordinance. I remain so, for the following reasons:

1. The article is misnamed and misleading; the act it is based on purports to protect lake water quality but addresses few of the major causes for the degradation of water quality in developed areas. Failed septic systems and leaching of septage or other pollutants into the groundwater or directly into the lakes and ponds are not addressed in the State Act, or in the Town’s proposed modifications. It would be better named the “shore land view protection act.” It seems to be trying to legislate against the bad taste or the differing standards of aesthetics of shore front property owners.
2. The State Legislature is considering some changes to the 2011 statute; some remarkably close to what we are considering. It would be better to wait until this bill is voted upon to see if there are provisions we are required to adopt and not go through further changes to our Ordinance.
3. Our proposed Ordinance change, as written, seems to overrule the judgment of Licensed Professional Engineers with regard to storm water runoff. We are asking for a lawsuit by doing so. The suggested language of the potential changes at the state level does not prohibit the involvement of a P.E. to manage storm water runoff.

Some of the changes proposed are reasonable: changing the wording of the tree measurement, which I suggested and have also been picked up in the State’s version, as well as the bookkeeping of the name change are needed.

The balance of the changes proposed to this section of our Ordinance are not essential, so I urge the Board to reconsider making this change.

Private property rights should not be limited except as absolutely necessary.

Respectfully submitted,

Josh Bartlett