



Minutes

NORTH HAMPTON PLANNING BOARD Work Session Monday, December 15, 2003

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These minutes were prepared as a reasonable summary of the essential content of this meeting, not as a transcription. An audio recording of the meeting is available in the Town Office. In the event that a question arises about verbatim comments, it can be answered by listening to the recording.

Attendance

Attendees: (1) Phil Wilson, Chairman, (2) Ron Todd, Vice-Chairman, (3) Don Gould, (4) Joseph Arena, (5) Judy Day, (6) Laurel Pohl, Alternate seated for Shep Kroner. (7) Jenifer Landman, Selectperson Representative; (8) Beth Church, Alternate; (9) Jill Robinson, RPC; and (10) Krystina Deren Arrain, Planning & Zoning Administrator/Recording Secretary.

Members Absent: (1) Shep Kroner and Richard Place, Alternate

Mr. Wilson called the meeting to order at 6:11 PM.

Items Considered

Minutes from prior meetings

Minutes of the October 28, 2003 Regular Meeting

Dr. Arena moved and Mr. Gould seconded the motion to accept the minutes as amended. The vote was 5-0 with Ms. Pohl abstaining because she was not present at the meeting.

Minutes of the November 4, 2003 Work Session Meeting

Dr. Arena moved and Mr. Gould seconded the motion to accept the minutes as amended. The vote was 5-0 with Ms. Pohl abstaining because she was not present at the meeting.

Minutes of the November 17, 2003 Work Session Meeting

Mr. Gould moved and Mr. Todd seconded the motion to accept the minutes as amended. The vote was 5-0 with Ms. Pohl abstaining because she was not present at the meeting.

Minutes of the December 2, 2003 Regular Meeting

Dr. Arena moved and Ms. Pohl seconded the motion to accept the minutes as amended including the correction of Mrs. Legassa's given name of Parthenia. The vote was 5-0 with Messrs. Gould and Todd abstaining because they not present at the meeting.

Heritage Commission Warrant Article Presentation [per request of Jenifer Landman].

Since Ms. Landman had not arrived, Mr. Wilson explained that Meg Baker of NHMA explained during a training session the basics of reserve fund formation. The Heritage Commission can set up a reserve fund. Since the Heritage Commission is a sub-committee of the Planning Board, the

Heritage Commission needed Planning Board approval before it could put the formation of a reserve fund on the town warrant. Further discussion was tabled with the expectation that Ms. Landman might arrive later.

Work on Subcommittee Projects

Revision of Section 405: I-B/R Permitted/Prohibited Uses and Special Exceptions

Ms. Day asked for clarification on what had transpired regarding the current version. Mr. Gould inquired about Section 405.2.3 commenting that the verbiage inferred that all special exceptions require a site plan. Was that true? Mr. Todd said it did not, but both he and Mr. Wilson agreed that a statement should be added that would clarify that a site plan would be required only under certain conditions.

Ms. Landman arrived at 7:00 PM and was seated.

Mr. Todd inquired if Mr. Krebs' changes to Section 405 uses were to be included into this revision? Mr. Todd read the list of changes. Mr. Gould suggested finishing the current discussion.

Mr. Gould moved and Mr. Todd seconded the motion to accept Section 405 as amended. The vote was unanimous (7-0).

The following are John Krebs' edits in which he suggested the deletion of items from Section 405 to which Mr. Todd and the Board made reference and discussed:

- 1) From R-1 District remove #7 Accessory Uses from Permitted Uses
- 2) From R-1 District remove #12 Fire Stations from Special Exceptions
- 3) From R-2 District remove #7 Accessory Uses from Permitted Uses
- 4) From R-2 District remove #12 Fire Stations from Special Exceptions
- 5) From R-3 District remove #7 Accessory Uses from Permitted Uses
- 6) From I-B/R District remove #5 Sewage Treatment Plants from Special Exceptions
- 7) From I-B/R District remove #9 Gasoline and Service Stations from Special Exceptions (as inconsistent with Section 512)

Discussion ensued surrounding the reason for the removal of Fire Stations and not Municipal Buildings and Libraries. Mr. Wilson asked Ms. Robinson to look into the logical reason for removing Fire Stations and not Municipal Buildings & Library. Ms. Robinson commented that she believed it was a population density issue, with fire stations located in more dense areas rather than in less dense population areas.

The Board decided to replace Item #9 "Gasoline and Service Stations" in the I-B/R Special Exception listing to "Refueling Facilities for On-Highway Motor Vehicles." Mr. Gould asked if service stations are now obsolete. Mr. Wilson suggested that instead, we make #10 Service Stations, including without limitations car wash, muffler, automotive repair, auto body, lube center and other similar-type facilities.

Mr. Todd suggested keeping titles simpler, but descriptive and suggested that “Motor Vehicle Re-Fueling Facilities” replace “Gasoline or Service Stations.” Mr. Wilson suggested we add the amended Table of Permitted Uses and Special Exception into the warrant.

Mr. Gould moved and Dr. Arena seconded the motion for Ms. Arrain and Mr. Wilson amend the text in time for submission at first public hearing.

The vote was unanimous (7-0).

Revision of 512: Gasoline and Service Stations

Mr. Wilson distributed an updated version of the proposed amendment. He indicated that he received updated information from the DES that verified there are only eight (8) tanks installed, rather than the 12 tanks originally thought to be installed. Thus, the fuel capacity is 93,000 gallons rather than 120,000 gallons.

Mr. Gould expressed his concern about the Board’s decision to amend Section 512 as stated in the latest version. He referenced the issues raised by the NHMA. Mr. Todd read the entire response from the NHMA letter that qualified NHMA’s position. Mr. Todd emphasized that the letter addresses the prohibition of certain businesses rather than the limitation of certain uses. Mr. Wilson stated there is not a denial of retail use, but a restriction of a retail use.

Mr. Gould commented that the Board had to establish and prove a public safety, welfare and health issue in order to create a zoning ordinance that establishes strict limitations. He noted that unless the Board establishes a condition or reason that addresses the above, the Board should perhaps reconsider and not move forward at this time. Ms. Robinson noted that a general, blanket statement is not sufficient. The number of tanks and gallons should be equated to real population numbers or statistics that would help the citizens understand the relationship to the zoning ordinance. She commented that if the Board addresses these types of questions, the ordinance is not speculation but substantive facts.

Mr. Gould added that when the Board addressed the Sexually-Oriented Business (SOB) ordinance, they conducted a thorough investigation before the ordinance was enacted. Mr. Gould remarked that he supported the ordinance in general terms, but he thought the Board needed additional, supportive data. He referenced that the Aquifer Protection Ordinance (APO) is also written on the presumption that certain businesses violate safety or cause environmental damage. Ms. Day commented that there is data available about the danger of MBTE contamination and asked if we could use that data.

Mr. Wilson commented that his family members who sell refueling facility equipment have confirmed that the probability of a gasoline spillage accident is very high. Ms. Pohl remarked that a recent United States Geological Survey (USGS) report indicated that at least 25% of the nation’s rivers, brooks and streams are contaminated. Ms. Robinson noted that a recent federal government survey, listed by state, could yield pertinent information to the Board. Ms. Day indicated that a concentration of gas stations would make it difficult to identify a violator in the case of a gasoline leakage/contamination. Ms. Landman stated the proposed amendment is better than what is currently in the zoning ordinance. Mr. Wilson observed that the current number of pumps is greater than the number that existed at the time of the original 1973 ordinance.

Mr. Wilson raised the concern that the Board has not researched this issue sufficiently. He felt the Board should locate additional information that should be readily available. Ms. Day inquired if the Board had sufficient time to gather the accessory data and still move forward with presenting the ordinance at the public hearing. Mr. Wilson said additional information could be brought to the first public meeting and if the research doesn't justify the current verbiage, the Board would still have enough time to make appropriate changes.

Ms. Day moved and Ms. Pohl seconded the motion that the Board move forward with the wording as presented along with the minor amendments, and the subcommittee would diligently research for data regarding the health, safety and welfare of the community in reference to showing the connection of the ordinance to the potential environmental damage which would be presented at the public hearing.

The vote was unanimous (7-0).

The meeting recessed at 8:55 PM.

The meeting reconvened at 9:00 PM.

Heritage Commission Warrant Article Presentation [per request of Jenifer Landman].

As a continuation of an earlier discussion, Ms. Landman read from an e-mail that stated the Heritage Commission had voted to establish a reserve fund for accumulating funds. She added that the Board has to recommend this warrant. Ms. Landman added that the Heritage Commission has not been able to accept gifts and retain them because the funds would go into the General Fund. The process to retain gifts would involve a warrant vote authorizing the Heritage Commission to retain those gifts. Ms. Landman noted that the Heritage Commission is coming before the Board in an advisory capacity. She asked for guidance on the most appropriate wording for the warrant.

Ms. Landman moved and Dr. Arena seconded the motion that the Board recommends that the Heritage Commission put a reserve fund formation warrant article on the ballot with the suggested wording of the NHMA.

The vote was unanimous (7-0.)

Mr. Todd moved and Dr. Arena seconded the motion that the Heritage Commission reserve fund warrant show a recommendation by the Planning Boarding.

The vote was unanimous (7-0).

Section 414.5: Aquifer Protection

Ms. Robinson commented that the major edit she made to the proposed amendment included moving Section 414.5.D in the place and number of Section 414.5B. She noted that the map information originated from a USGS 1992 survey map. Ms. Robinson remarked that although the map is out of print, she is confident that she can acquire additional copies or reproduce the map for distribution.

Mr. Wilson expressed his surprise that the town does not have an aquifer protection ordinance. Mr. Gould expressed his concern that certain sections of the ordinance appear draconian and he learned that a hydro-geological study requirement could cost an applicant, an average cost of \$25,000 - \$50,000. He added that this is a very expensive requirement. Ms. Robinson noted that this requirement might not be required often, but at the discretion of the Board.

Mr. Gould was also concerned that the proposed ordinance appeared to prohibit all industrial and commercial uses as special exception. He expressed concern that it could be construed that SB95 could be compromised because the ordinance prohibits septic systems beyond those of 1- or 2-family septic systems (414.5.E.3.c.) Ms. Day agreed that this ordinance appears very restrictive and that the Board has to be very cautious. She added that if components of the ordinance are so restrictive, how could the Board justify the restriction.

Dr. Arena expressed his opinion that anything that could contaminate the aquifer is potentially dangerous and should be prohibited. Ms. Robinson noted that the Board should define the aquifer protection zone. The aquifer protection district is a legislative action whereas the map is a scientific instrument.

Mr. Wilson suggested that perhaps the Board could identify the aquifer protection district as the dark blue or green areas and not the light blue area. Mr. Wilson noted that the Board could change "shall" to "may" for a hydro-geologic study for a larger subdivision." The multi-family dwellings verbiage could be changed to "residences."

Mr. Todd expressed concern about not knowing the scientific significance of the USGS map. Ms. Robinson explained the map depicts projected flow rate areas. Ms. Pohl indicated that recharge areas are different from the stratified drift aquifer map presented at the meeting. Ms. Day indicated her concern in justifying the ordinance and added that the Board needed extensive, validated justification to support the ordinance. Ms. Landman remarked that she supported Mr. Wilson's suggestions.

Mr. Wilson remarked that he researched New Hampshire Office of State Planning (NHOSP) resources to locate additional information on SB95. From the information he gathered he felt the purpose of SB95 is to develop rental units. He stated his purpose in this ordinance is to protect the water resources. Mr. Wilson remarked that the ordinance is more detailed rather than more restrictive.

Ms. Day made the motion that the Board proceeds forward with the ordinance with the caveat that the subcommittee updates the verbiage of the proposed ordinance that was raised during the meeting regarding hydro-geologic studies and residences.

Mr. Gould raised his concern that any industrial or commercial activity would require a business to secure a special exception. Mr. Wilson noted that although there are prohibited uses in Aquifer Protection District (APD) they could be permitted by (1) conditional uses or by (2) special exception. Mr. Gould emphasized his concern that the Board is on a tight public hearing schedule and although it would like to move ahead, the Board is not fully prepared on this issue.

Mr. Todd referred to the existing Section 414 on Water Resource and Aquifer Protection. Mr. Wilson suggested changing the special exception requirement to a conditional use in Section 414.5.F. He also suggested putting the aquifer protection requirements into the site plan review regulations.

Ms. Day withdrew her motion that the Board proceeds with the ordinance with the caveat that the subcommittee updates the verbiage of the proposed ordinance that was raised during the meeting regarding hydro-geologic studies and residences.

Ms. Day moved and Mr. Todd seconded the motion that the Board change the ordinance to a site plan review regulation and make it a priority in 2004.

The vote was unanimous (7-0).

Other Business

Winterberry Road Acceptance Request

Mr. Wilson explained to the Board the water drainage problem at the Winterberry Subdivision. He remarked that residents had requested that the Board of Selectmen lower the speed limit through the subdivision. During this process it was discovered that town had not accepted the road as a town road. The necessary repair work has not been accomplished. Residents are worried about the speed issue and requested that the road be accepted before the work is accomplished. Ms. Landman said the town has been plowing the road.

Mr. Gould moved and Dr. Arena seconded the motion to recommend that the Board of Selectmen accept Winterberry Lane as a town road on the condition that the Town Engineer confirms that the road was properly constructed.

The vote was unanimous (7-0).

Mr. Todd moved and Dr. Arena seconded the motion to adjourn.

The vote was unanimous (7-0).

The meeting adjourned at 10:45 PM.

Krystina Deren Arrain
Recording Secretary