



Minutes

NORTH HAMPTON PLANNING BOARD Public Hearing: January 6, 2004

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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

Present: (1) Phil Wilson, Chair; (2) Ron Todd, Vice Chair; (3) Jenifer Landman, Selectperson; (4) Joseph Arena; (5) Don Gould; (6) Shep Kroner, (7) Judy Day.

In attendance: (1) Laurel Pohl, Alternate; (2) Beth Church, Alternate; (3) Jill Robinson, Circuit Rider/RPC; (4) Krystina Arrain, Recording Secretary/Planning & Zoning Administrator.

Absent: (1) Richard Place, Alternate.

Members of the Public: (1) Glenn Martin, 11 Evergreen Drive and (2) Michael Iafolla, 114 Woodland Road.

Mr. Wilson called the meeting to order at 5:10 PM.

Items Considered

Section 405 – Permitted Uses, Special Exceptions, and Prohibited Uses

Mr. Wilson opened the public hearing at 5:11 PM.

Mr. Todd stated that both amendments had been submitted to the Town Attorney, John Ryan, for review. Mr. Todd made minor modifications on Section 405 and Section 512. Mr. Todd provided the Board with a copy of Atty. Ryan's input. He distributed an updated version of the zoning amendment containing suggestions from Atty. Ryan.

Mr. Gould questioned Mr. Todd's interpretation of Atty. Ryan's review, referencing the difference in what was contained in Atty. Ryan's letter to what was stated in the updated version presented by Mr. Todd. Mr. Gould questioned the removal of the word "unreasonable" which had been deleted from the original draft. He could not locate the reference in Atty. Ryan's letter that recommended the deletion of "unreasonable." Mr. Todd referenced Atty. Ryan's letter which did not include the term "unreasonable."

Ms. Landman remarked that "unreasonable" is a vague term and must be defined or abandoned. Mr. Gould noted that the courts have dealt with the issue of the "reasonableness" in many cases and with reference to many laws and statutes. Mr. Gould noted that the phrase "any adverse effect" is very restrictive and goes beyond what is "reasonable." Dr. Arena commented that the term "adverse" is all-encompassing and refers to anything that is severely negative and, therefore, that the inclusion of the term "unreasonable" is unnecessary.

Mr. Wilson suggested re-phrasing by including “adverse or unreasonable.” Ms. Robinson commented that “unreasonable/reasonable” is the more common term and would be understood by townspeople. An extensive discussion ensued among the Board regarding the nuances of the terms “adverse” and “unreasonable/reasonable.”

Mr. Gould moved and Ms. Day seconded the motion that the Board insert the term “unreasonably affect” in Section 405.1 and 405.2.2.2.

The vote was 6-1 with Dr Arena opposed. The motion carried to include “unreasonably affect” in the zoning amendment.

Mr. Wilson raised the issue of the term “shall.” He added the term is applied numerous times and evokes a requirement that may be unnecessary. Mr. Wilson suggested that perhaps the verbiage “may” was appropriate. Mr. Todd remarked that in some instances the “shall” verbiage is appropriate and should not be replaced.

Ms. Day asked if the term “aquifer” in 405.3 is comprehensive enough to cover the protection the Board wants to provide with this amendment. Ms. Robinson commented that the terms “ground and surface water or watershed” could be included for clarification. Mr. Wilson suggested using the verbiage “water resources” instead of “aquifer.” The Board acted without objection to change the term “aquifer” to “water resources” in Section 405.3.

Ms. Day questioned the absence of the term “health” in the first paragraph of Section 405.1. The Board acted without objection to include “health” following “safety” in the last sentence of the first paragraph of Section 405.1.

Mr. Todd requested that the Board change the verbiage under “Storage of Raw Materials” under “Prohibited Uses” that referred to “the stockpiling of lumber or wood products.” He noted that when first written, the amendment was to address commercial operations. On further consideration, the committee realized that non-commercial, personal processing and stockpiling of lumber for personal use should be excluded from this amendment section. Mr. Wilson indicated that the Board was concerned with the noise, pollution, dust and truck/transportation traffic that was the result of commercial operations.

Mr. Martin questioned the statement about the sale of manure. He remarked that in an agricultural setting, the compilation of manure is a by-product of the business of a farm. He noted that farmers sell their manure stockpile for the purpose of removing it from their property. Board members indicated that the amendment addressed the prohibition of a commercial manure distribution business opposed to a farmer’s selling his manure stockpile only. The Board acted without objection to delete the last sentence of the last paragraph of “Prohibited Uses” in Section 405.3 that referred to “the stockpiling and processing of wood products.”

Mr. Wilson closed the public hearing at 6:12 PM.

Dr. Arena moved and Mr. Gould seconded the motion to take the zoning amendment as amended to the second public hearing.

The vote was unanimous (7-0). The motion carried to approve the amendments to the Section 405 zoning ordinance for the next public hearing.

Section 512 – Motor Vehicle Refueling Facilities [previously Gasoline and Service Stations]

Mr. Wilson opened the public hearing for Section 512 at 6:15 PM.

Mr. Wilson commented that there had been a change in the size of service stations since the last zoning amendment in 1973. Because of that fact, the Board had taken a different approach to updating the ordinance. He noted that the Board had approached the amendment by setting a standard that limits the number of gasoline refueling nozzles in the town rather than the number of refueling facilities. Mr. Wilson further noted that the town had a large percentage of water resources and wetlands that needed protection, and it is the Board's intention that this amendment would successfully address the town's water resource and environmental concerns. Mr. Wilson remarked that the term "gas stations" is obsolete adding that they are now "multi-function retail and refueling facilities." He noted that the term "refueling facilities" would be used instead of "gas stations."

Ms. Pohl had been conducting research specifically on the 1,000 foot radius restriction between refueling facilities. She referenced a recent gasoline spillage accident in Northwood, NH in which the DES recommended a 500 foot radius restriction. Ms. Pohl located an ordinance from Champaign, IL that established a 1,000 foot radius restriction between gas stations. She also added that an ordinance from Durham, NC limited the concentration of gas stations at an intersection. Both Ms. Landman and Ms. Pohl raised a concern about the difficulty of identifying the source of leakage of pollutants from adjacent refueling facilities. Information from the RPC and independent research confirmed this difficulty.

Mr. Martin questioned why other kinds of commercial refueling facilities are not considered in this amendment. Mr. Wilson indicated that the amendment does not affect the NHDOT garage, airports, construction companies or other non-retail refueling facilities. Mr. Iafolla commented that if the purpose of the amendment was to address the environmental protection of water resources, wouldn't it be incumbent upon the Board to address all refueling facilities that have tanks in the ground, rather than to single out retail refueling facilities.

Mr. Wilson responded that whenever a non-retail refueling facility is constructed or upgraded, the DES is involved in the permitting, registering and inspection. He expressed his opinion that these professional organizations adhere to stricter safety rules and regulations and as such are more careful to avoid spillage and other environmental accidents than are the occasional consequence of individuals' refueling their vehicles at a retail refueling facility.

Dr. Arena was concerned with the greater number of individuals refueling who could possibly create a spillage incident. Mr. Iafolla did not agree with the premise that the likelihood of spillage at retail refueling facilities was greater than that of commercial operations. Mr. Wilson commented that he agreed with Mr. Iafolla's statement that perhaps all refueling facilities should be considered. Mr. Wilson added that perhaps the Board should consider another amendment for

commercial refueling facility in the future. Mr. Todd noted that the proposed amendment takes a step in the right direction and that, perhaps, the Board should consider further amendments in the future.

Mr. Martin questioned why a refueling facility requirement involves location at an intersection. Mr. Wilson responded that an intersection location would facilitate safer egress and ingress. It would provide a safer alternative traffic flow. Mr. Martin felt such a restriction would limit potential sites. Mr. Wilson stated one purpose of the amendment was to limit refueling facilities sites because a limited number of sites reduced the possibilities for contamination of water resources. Mr. Martin suggested changing the intersection location requirement for a traffic light installed at each location. It was noted that the Board could not require the placement of traffic signals on non-town roads.

Mr. Gould commented that the Board had not met the justification for the public safety, health and environmental protection to move forward with the amendment as written. Ms. Day noted that there should be a preface written into the introduction that specifically lists the reasons behind the amendment, not just the statement that it “is intended to protect, preserve and promote public health, safety and welfare and to reduce environmental hazards to health, safety and welfare.” She felt that introductory statement was too vague and generalized. Mr. Wilson agreed that the Board should address these concerns.

Mr. Wilson closed the public hearing at 6:55 PM.

Ms. Day moved and Dr. Arena seconded the motion to continue the public hearing on January 7, 2004 following the public hearing on the citizens’ petition. The vote was unanimous (7-0). The motion carried to continue the public hearing on January 7, 2004.

Respectfully submitted,

Krystina Deren Arrain, Recording Secretary