



MEETING MINUTES
NORTH HAMPTON PLANNING BOARD
Work Session
Tuesday, December 16, 2008
Mary Herbert Conference Room

These minutes were prepared as a reasonable summary of the essential content of this meeting, not as a transcription.

Members present: Phil Wilson, Chairman; Shep Kroner, Vice Chairman; Joseph Arena, Laurel Pohl, Barbara Kohl, Tom McManus and Craig Salomon, Select Board's Representative.

Others present: David West, RPC Circuit Rider and Wendy Chase, Recording Secretary.

Alternates present: None

Mr. Kroner called the meeting to order at 7:05pm. Mr. Kroner rearranged the agenda to discuss the Conservation Subdivision Ordinance, and stepped down as Chair of the meeting.

Mr. Wilson assumed the Chair.

Mr. Wilson explained that the first Conservation Subdivision application was before the Planning Board under the Conservation Subdivision Design Ordinance that passed in March 2008 by the Legislative Body, and it allows the Planning Board to waive ordinances. Mr. Wilson, authorized by the Planning Board at the November Meeting, solicited an opinion from the Local Government Centerⁱ, and Attorney Paul G. Sanderson responded.

In Mr. Sanderson's response email he explained that the Board needed to first address the issues with RSA 674:41 – Erection of Buildings on Streets; Appeals.

Mr. Wilson thoroughly reviewed RSA 674:41 and outlined the following sentences that he thought would apply to the situation:

- *No building shall be erected on any lot within any part of the municipality nor shall a building permit be issued for the erection of a building unless the street giving access to the lot upon which such building is proposed to be placed: Mr. Wilson read from the various disjunctions pertaining to this paragraph: (b) Corresponds in its location and lines with: (2) A street on a subdivision plat approve by the planning board.* Mr. Wilson opined that it was his understanding that this provision explains the exact intentions of the Board.

Mr. Wilson referred to RSA 674:40-a, which deals with the delegation of authority to accept dedicated streets that appears to be distinguishing between a street and a "dedicated street". He referred to RSA 674:40-a.V *In this section, "dedicated street"*

means a street which has been dedicated to public use under the New Hampshire common law of dedication. Mr. Wilson opined that it appeared to him that it is possible to have a street that is not a “dedicated street”.

The question Mr. Wilson raised is that by simply approving the subdivision plan, and the plan that includes a street that meets the conditions the Planning Board imposes upon it, has the Board satisfied what it needs to do?

Mr. McManus referenced RSA 674:41.I.(d) (1) *The local governing body, after review and comment by the planning board, has voted to authorize the issuance of building permits for the erection of buildings on said private road or portion thereof.* Mr. McManus opined that the proposed shared driveway in the Skowronski’s Conservation Subdivision Design proposal appears to be a “private road”.

Discussion ensued regarding “dedicated streets” and “private roads”. There are three conditions under “private road” that must be met and with “dedicated streets” only one of the various conditions need to be met. One of the conditions of the “private road” requires the local governing body’s authorization to issue building permits for the erection of building on a “private road”.

Dr. Arena said that he is in favor of the Conservation Subdivision concept but voiced concerns on repercussions of allowing five lots to be accessed off a sub quality road. He referred to the back lot subdivision ordinance, and how allowing this may interfere with that ordinance leaving it open to legal challenge.

Mr. Wilson said that the purpose of the Conservation Subdivision Ordinance is to conserve unfragmented blocks of land to protect the aquifer recharge and wildlife habitat, so it would not be unreasonable to allow twenty lots off of a street.

Mr. Kroner agreed with what Mr. Wilson isolated in the RSAs is true, but his biggest concern with the conditional use process is that it gives the Board the authority to waive sections contained within that particular ordinance not every zoning ordinance, and if the Board has authority to waive Section 406.6 then it can waive any other ordinance such as wetlands setbacks.

Mr. Wilson referred to Section 417.F.3 – Flexibility that states *that upon written request by the applicant the Planning Board may grant a waiver of one or more of the provisions of this Article as it deems appropriate.* This gives the Board the flexibility to waive any provision within the entire Article IV. He also explained that the Ordinance was modeled under the Town of Dublin’s Ordinance and the Article numbers XXI, XXII and XXIII were never changed to reflect the correct number order for North Hampton’s Zoning Ordinances.

Mr. Kroner agreed with Mr. Wilson’s explanation.

Attorney Field confirmed that the Skowronski case was still part of the preliminary stage. He said that the RSA 674:41 I. (d) private road is very close to what the Applicants are “talking” about. He opined that the “governing body” mentioned under this provision is the Planning Board, and the Planning Board would not need authorization from the Select Board to issue building permits for the erection of buildings on said private road or portion thereof.

Attorney Field said that the Planning Board has gone on record as saying that the existing Skowronski’s driveway is acceptable as an access way for two lots that is satisfactory for emergency vehicle access.

Dr. Arena stated that it must be iron clad that the Conservation land remains conserved in perpetuity. Mr. Field and Mr. Wilson said that as members of North Hampton Forever they have mastered the art of tying up land in perpetuity.

Mr. Wilson suggested that the Skowronski’s move forward with the Conservation Subdivision application process, and to either proceed with an undedicated street or a private road to access the proposed lots. Mr. Wilson made the comment that the Planning Board cannot supersede State Regulations.

Mr. Field said that his clients consider it a common driveway but are willing to work with the Board on an agreeable access way.

Mr. Wilson said that the access way would be addressed during the four step design process.

Mr. Wilson suggested that the Applicants design the plan so that each lot would have at least 40-feet of frontage off of the access way to eliminate the need for easements to access the two back lots, however, the driveway itself need not go through that frontage.

Mr. Field said that the Applicants don’t want to diminish the value of the conservation land or cross the wetland. He said that the lines on the proposal are not precise, and the discussion regarding the frontage makes sense but the Applicants would not do it at the expense of the wetlands crossing or the conservation area.

Mr. Wilson said that his suggestion is not a prescription to follow; he just wanted the Applicants to consider it.

Mr. Skowronski said that he would propose trading buildable area for buildable area when considering adding the suggested 40-feet of frontage to each lot.

Discussion ensued on whether to begin with the formal application or to continue the Preliminary Consultation to the January 8, 2009 meeting.

Mr. Field asked that if they take the route of a private road would the Board be willing to give the Applicants assurance that the Board will support that notion of having a private

road that would support access to the five lots with 40-feet of frontage, and represent the conservation land of 41.9 acres, to the Select Board because the trade-off the Applicants are making with respect to the normal subdivision requirements and the conservation subdivision design requirements justifies what the Applicants are doing.

Mr. Wilson asked for the Board Member's comments.

Ms. Kohl said that she has no problem with the proposal.

Mr. McManus said that he is in the affirmative.

Dr. Arena said that he would like to continue the Preliminary Consultation to the January meeting.

Mr. Field requested a continuance to the January 8, 2009 meeting as a continuance to the Preliminary Consultation.

Mr. Kroner said that he supports the project.

Ms. Pohl said that she didn't feel qualified to comment because she was not at last meeting when the proposal was initially discussed.

Mr. Wilson said that he would be supportive of a private road, and relay that to the Select Board if that is the route the Applicants want to take.

Mr. Salomon said that he had recused himself from this case, and said that because there may be a vote of some kind on this case the Board may want the Select Board Alternate to sit on the case at the next meeting and to perhaps add it as the first order of business on the agenda.

Dr. Arena Moved and Mr. Kroner seconded the Motion to continue the Preliminary Consultation for case #2008:15 – Richard Skowronski and Liela Hanna to the January 8, 2009 Meeting.

The vote was unanimous in favor of the Motion (6-0).

Mr. Kroner resumed the Chair.

Minutes

June 5, 2008 Meeting Minutes – Ms. Pohl Moved and Ms. Kohl seconded the Motion to approve the June 5, 2008 Meeting Minutes as amended.

The vote was unanimous in favor of the motion (7-0). Mr. Wilson, Dr. Arena and Mr. Salomon did not partake in the vote to approve the minutes relating to the Salomon case.

October 2, 2008 – Mr. Wilson Moved and Dr. Arena seconded the Motion to accept the October 2, 2008 Meeting Minutes as amended.

The vote passed (6 in favor, 0 opposed and 1 abstention). Mr. Salomon abstained.

November 6, 2008 – Mr. Salomon Moved and Mr. Wilson seconded the Motion to table the November 6, 2008 Meeting Minutes to the January 20, 2009 Work Session Meeting.

The vote was unanimous in favor of the Motion (7-0).

December 4, 2008 – Mr. Wilson Moved and Mr. Kroner seconded the Motion to table the December 4, 2008 Meeting Minutes to the January 20, 2009 Work Session Meeting.

The vote passed (6 in favor, 0 opposed and 1 abstention). Ms. Pohl abstained.

Discussion ensued on Meeting Minutes. The Board decided to select a deadline to forward all recommended emendations or amendments to the Recording Secretary so that a final draft copy could be distributed to the members prior to the meeting in which they would be voted on.

Dr. Arena commented that the best record is the DVD recording of the meetings and Ms. Pohl explained that the law states that a DVD is the record for 5 days. She added that the Channel 22 Committee is rewriting their policies to reflect that law.

Old Business

Public Hearing dates were discussed for the following proposed Ordinances.

Mr. Wilson Moved and Dr. Arena seconded the Motion to hold the first Public Hearing on any proposed amendments to or adoption of Zoning Ordinances on Tuesday, January 6, 2009 at 7:00pm, and to hold the second Public Hearing on Tuesday, January 20, 2009 at 7:00pm in the Mary Herbert Conference room
The vote was unanimous in favor of the Motion (7-0).

Discuss draft revision #7 Inclusionary Housing Ordinance

The Board took a minute to read the correspondence from Attorney Serge regarding revision #7 of the draft Inclusionary Housing Ordinance and revision #5 of the District Regulations.

Mr. Wilson explained that the current wetlands district is an overlay district, and the workforce housing subcommittee has suggested formalizing it as a normal district instead of an overlay district to ensure that the denominator in the calculations determining the Town's fair share of workforce housing will not include wetlands.

Mr. Salomon said that the way the wetlands ordinance is currently written the boundary of a wetlands can change if proven by a soil scientist. He said that keeping the wetlands

as an overlay district, and still taking the position for the calculations that it is not buildable land is the more prudent approach.

Mr. Kroner mentioned the fact that people are permitted to fill in 3000 square feet of wetlands without regulatory approval. The number of acreage in wetlands is not constant.

Mr. Wilson said that the law states that 50% of land area zoned for residential use and the wetlands acreage is included in residential use even though it can't be built upon is still part of the denominator in the calculation.

Mr. Kroner said that he is comfortable to move forward with the Committee's approach and the Board should move forward with this approach.

Mr. McManus said that is about "striking a balance". It is about promoting and allowing workforces housing while at the same time including provisions to protect the Town. He quoted from Attorney Serge's opinion letter to the Board, dated November 18, 2008, "At the outset, I must note that this new law is complex and untested. Until we receive guidance from the New Hampshire Supreme court regarding how municipalities are expected to properly implement this new law, we are left to use our best judgment in carrying out the law's requirements". Mr. McManus opined that the Board has to start somewhere.

Mr. West said that by taking numbers out of the denominator you are also taking numbers out of the numerator, and because of that he does not see the point of creating either the conservation district or the wetlands district unless it is proven that it would make a difference because no matter what there will be no building allowed on the conservation land or in the wetlands.

Mr. Wilson said the vast majority of wetlands are in the R2 and R3 districts.

Mr. West said that he is working with 3 different sets of conservation land maps, and asked who would be able to help him determine the best one to use, and said that the map used in Chris Kane's study for the Town's Conservation Commission is not the most accurate. He said that he needs to obtain a list of conservation land in order to finish his map.

Mr. Wilson suggested that he contact Chris Ganotis.

Mr. Wilson informed the Board that he spoke to State Representative Judy Day, and she is submitting a Bill to establish a commission to study all of the problems that are created by the new workforce housing law and try to come up with resolutions to them. Mr. Wilson asked that she include Legislation that would give towns more authority to exact penalties if somebody violated their agreement with respect to building workforce housing, and Ms. Day is going to submit that suggestion into Legislation separately.

Mr. Salomon Moved and Ms. Kohl seconded the Motion to take the Inclusionary Housing Ordinance and the District Regulations Ordinance to the first Public Hearing on January 6, 2009, and to the seconded Public Hearing on January 20, 2009.

The vote was unanimous in favor of the Motion (7-0).

Discuss amendments to Section 406.2

Mr. Kroner said that his biggest concern regarding Mr. Salomon's revisions to Section 406.2 is under 406.2.2 where it does not define the minimum frontage requirement. He opined that he was more comfortable with Mr. Wilson's version.

Mr. Wilson suggested adding 100-feet of frontage to the section 406.2.2.

Mr. Wilson commented that the only change this makes than with what exists today, is it gives people who have 2 lots that are not held in separate ownership the ability to build on the lot.

Mr. Salomon Moved and Mr. Kroner seconded the Motion to delete 406.2.2 in its entirety, and to insert 406.2.2 as amended by Mr. Wilson and to take it to the first Public Hearing on January 6, 2009 at 7:00pm, and to the second Public Hearing on January 20, 2009 at 7:00pm.

The vote passed (5 in favor, 0 opposed and 2 abstentions). Ms. Pohl and Ms. Kohl abstained.

Discuss draft revision #2 Outdoor Lighting Ordinance

The proposed revisions to the Ordinance were discussed.

Mr. Wilson took the model ordinance for outdoor lighting crafted by the NH DES and added an authority section to it. He opined that the draft ordinance is very "straight forward".

The Board made some minor changes to section IV. H, and a more substantive change by not permitting neon signs. They also discussed whether or not to eliminate the sentence *except as temporary seasonal holiday decorations*, pertaining to the prohibition of moving, blinking, or flashing lights.

Ms. Pohl said that she wanted to eliminate the aforementioned sentence.

Ms. Pohl Moved and Ms. Kohl seconded the Motion to remove the sentence under IV.H. *except as temporary seasonal holiday decorations*.

Ms. Pohl commented that conceivably every month has a holiday, and the sign ordinance allows a holiday sign to be up for 30-days.

Dr. Arena said that prohibiting the right to put up holiday decorations is infringing on people's Constitutional rights.

Ms. Kohl commented that uncontrolled holiday lighting decorations have been known to cause traffic gridlock.

It was determined by the Board that the proposed outdoor lighting ordinance was not restricted to just the I-B/R district, but for the entire Town.

Mr. Salomon suggested that the Board move forward and let the townspeople decide.

The vote failed (1 in favor, 6 opposed and 0 abstentions.) Ms. Kohl voted in favor.

Mr. Salomon Moved and Ms. Pohl seconded the Motion to take the proposed Outdoor Lighting Ordinance to the first Public Hearing on January 6, 2009 at 7:00pm, and to the second Public Hearing on January 20, 2009 at 7:00pm. The vote passed (6 in favor, 0 opposed and 1 abstention). Mr. McManus abstained.

New Business

The Board members reviewed the email communication from Phil Wilson and Shep Kroner regarding the Conservation Subdivision Ordinance. Mr. Wilson commented that because Mr. Kroner's email asked a substantive question under the right to know law he thought it best to disclose it. Mr. Kroner agreed.

Committee Updates

Ms. Pohl informed the Board that she still has not received the financial information that she requested from Mr. Fournier for last year and this year needed to complete the CIP.

Mr. Salomon explained that the topic is a standing topic on the Select Board's agenda. He informed the Planning Board that the Select Board suggested that it become a more formal procedure and suggested that a member of the Capital Improvement Plan Committee meet with Mr. Fournier and the Heads of each Department to get the requested information.

Mr. Wilson said that the capital budget should be submitted by each department at the same time the regular budget is submitted. He commented that it is appalling that the Select Board and the Town Administrator cannot get the Department Heads to fill out the CIP forms every year.

Mr. Salomon said that he would relay the message, but is trying to come up with a solution.

Dr. Arena opined that it should be part of the Department Head's job description that the CIP forms get filled out annually.

Mr. McManus volunteered to meet with Mr. Fournier and the Heads of each Department.

Ms. Kohl said that it would be a one-time meeting to solve the problem, and that she would join Mr. McManus at the suggested meeting.

Mr. Salomon said that he would contact Mr. Fournier to set up a meeting with Mr. McManus and Ms. Kohl and the Department Heads.

Other Business

Mr. Salmon Moved and Pohl seconded the Motion to adjourn the meeting at 10:55pm.

The vote was unanimous in favor of the Motion (7-0).

Respectfully submitted,

Wendy V. Chase
Recording Secretary

Approved January 20, 2009

¹ Subject: North Hampton Zoning Ordinance Issue

To Whom It May Concern:

At Town Meeting in March 2008 the Legislative Body adopted the attached "Conservation Subdivision Design Ordinance" that is now Section 417 under Article IV of North Hampton's Zoning Ordinance.

The Ordinance was developed and adopted under authority of RSA 674:21 and involves a "Conditional Use Permit" process for approval of any application under the Ordinance. Consequently, any appeal of a Planning Board decision under Section 417 goes to Superior Court, rather than to the ZBA.

The Ordinance gives the Planning Board broad authority (Section 417.F.3) to waive "one or more" of the provisions of "this Article" (Article IV of the Zoning Ordinance) under specific conditions stated in the Ordinance (Section 417.F.3.a-c).

The Ordinance also addresses limitations on the breadth of "relief" from restrictions on subdivisions in the underlying zoning district that is granted to applicants who apply under the Conservation Subdivision Design

Ordinance (cf. So denoted "Article XXI").

N.B.: It should be noted that the denotation of the section titled "Existing Ordinances" as "Article XXI," as well as the denotation of the two subsequent sections, "Article XXII" and "Article XIII," as "Articles" is inconsistent with the way the remainder of Section 417 is outline numbered and is inconsistent with the outline numbering of the Zoning Ordinance as a whole. The use of "Article" for these three sections is, I believe, the result of a failure on the part of the drafters (I was one of them) of this ordinance to edit consistently the model ordinance that was used to craft the North Hampton Conservation Subdivision Design Ordinance. These three sections, using outline numbering that is consistent with the remainder of Section 417 and the Zoning Ordinance as a whole, should be denoted as "417.K," " 417.L," and "417.M," not as separately denoted "Articles." Our entire Zoning Ordinance is divided into only 10 Articles, and Section 417 is one section of "Article IV General Regulations."

See: http://www.northhampton-nh.gov/Public_Documents/NorthHamptonNH_PZDept/regsTO
<http://www.northhampton-nh.gov/Public_Documents/NorthHamptonNH_PZDept/regsTO>

C)

At our Planning Board meeting on December 4, we held our first "Preliminary Consultation" about a potential application under Section 417.

While no votes were taken because of the nature of the "Preliminary Consultation" step in the review process defined in Section 417, the sense of the Board was that the applicant's proposal was consistent with the provisions of the Conservation Subdivision Design Ordinance in all respects save one: The applicant's preliminary conceptual subdivision plan envisions a shared drive way to serve all five lots that will be proposed for development in the subdivision.

An application under the conventional subdivision provisions of the Zoning Ordinance is required to provide a conforming road in the proposed subdivision, on which each proposed lot must have 175 feet of frontage.

The Conservation Subdivision Design Ordinance in Section 417.F.1 reduces that frontage requirement to 100 feet, but is silent about any specific requirement for a conforming road to serve a conservation subdivision.

In this case, it is not economically feasible for the applicant to construct a conforming road that would serve only five lots. If, therefore, the Planning Board holds the applicant to providing 100 feet of frontage on a conforming road for each of the proposed lots, the application will not likely go forward.

The applicant understands that any access road or driveway must be fully acceptable to the Police and Fire Departments, as well as to the Planning Board, to protect public safety and welfare (Section 417.F.3.c.).

The question on which the Planning Board seeks your opinion, therefore, is the following:

Does Section 417.F.3, in conjunction with the provisions of RSA 674:21, give the Planning Board authority to grant a waiver to the requirement for 100 feet of frontage for each proposed lot (cf. Section 417.F.1), if in the

Board's judgment, the standards in Section 417.F.3.a-c are met?

Or, alternatively, does so called "Article XXI" prohibit a waiver of this kind?

I hope this adequately characterizes our dilemma and our question. If further clarification is needed, please call me at 964-2124.

Cordially,

Phil Wilson, Chair

North Hampton Planning Board