



MEETING MINUTES
NORTH HAMPTON PLANNING BOARD
Public Hearing
Tuesday, January 6, 2009
Mary Herbert Conference Room
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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, Selectmen's Representative.

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

Alternates present: None

Mr. Wilson called the meeting to order at 7:07pm. He explained that the Special meeting was the first scheduled Public Hearing to consider amendments to the Zoning Ordinances, and due to meeting deadline dates the second Public Hearing has been scheduled for January 20, 2009 at 7:00pm.

Proposed amendments to Article IV, Section 406.2, eliminating Section 406.2 and replacing it with proposed Sections 406.2.1 and 406.2.2, to eliminate confusion about involuntary lot mergers and terms of "grandfathering" for certain lots of record existing prior to March 5, 1974.

Mr. Wilson explained that Section 406.2 of the Zoning Ordinances has caused problems over the past years for Town Administration, the ZBA, and at some extent the Planning Board. He further explained that the two purposes to the section; the first principle purpose was to grandfather certain non-conforming lots so that the owners of those lots would not lose their rights to build on them, ~~and the~~ The second purpose was used by the Town to involuntarily merge ~~the~~ two lots; if an owner has an abutting lot that is non-conforming, and is not held in separate ownership, ~~than~~ then the Town has merged such lots for tax purposes in the past. In an attempt to rectify the two problems, the Board has created two new paragraphs to deal with the two different issues.

The first paragraph, proposed section 406.2.1 nullifies involuntary lot mergers, and the second paragraph, section 406.2.2 defines standards under which a lot of record, when the ~~current~~ proposed zoning ordinance amendment is adopted, continues to be buildable even if it is not a conforming lot under the ~~new-normal~~ standards. The paragraph does include a 100-foot frontage requirement, and any structure built on the lot must conform to the zone's setback requirements, and would have to support a septic system.

Mr. Wilson opened the Public Hearing at 7:13pm.

Mr. Stanton asked if the Board knew how many lots there were in Town that have under 100-feet of frontage that would be affected by this new ordinance.

Both Mr. Wilson and Mr. West agreed that it is too difficult to determine how many lots in Town have 100-feet of frontage or less, and if the lot does have under 100-feet than the applicant would need to go before the ZBA for a variance to the 100-foot frontage requirement. Mr. Wilson

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explained how the Board ~~derived~~^{arrived} at the 100-foot frontage requirement; they simply calculated a 100' x 100' lot, which would be 10,000 square feet or about one-quarter acre, and determined that 100' of frontage was reasonable.

Mr. Salomon said that when he was looking at the ordinance, one of the things he tried to deal with was the issue of involuntary merger. He explained that since the old ordinance was adopted, the State has ~~since~~ determined that Town~~s~~ can't merge lots except by voluntary merger, unless the zoning ordinance specifically requires it.

Ms. Pohl explained that her house lot is recorded at the Registry as one lot even though her property deed mentions having four pins with two pins in the middle of the lot, and it was once shown on the Town's Tax Map as two separate lots, and the previous owners sold it as two lots. She used to receive two separate tax bills for the lots, but then through the course of time the tax bills were combined, and she received only one tax bill.

Mr. Salomon explained that lots merged by the Town were done so for tax purposes only, because the Town had not legal authority to merge the lots for any other reason.

Mr. Wilson closed the Public Hearing at 7:20pm.

Mr. Wilson commented on the typo in the last line of the first paragraph; *merge* will be changed to *merged*.

Dr. Arena Moved and McManus seconded the Motion to take the proposed amendment, Section 406.2.1 and Section 406.2.2, to the March 2009 Town Warrant. The vote passed in favor of the Motion (6 in favor, 0 opposed and 1 abstention). Ms. Pohl abstained.

Proposed amendments to Article IV – District Regulations, formalizing the Wetland Conservation District and creating a Conservation Land District. This amendment is proposed as part of the Town's action to comply with New Hampshire's new workforce housing law.

Note: The "workforce housing" subcommittee consisted of Planning Board members, Phil Wilson, Barbara Kohl and Tom McManus.

Mr. Wilson briefly explained the workforce housing law that the State recently passed, and that will take effect ~~in on 1~~ July 2009. He explained that the purpose of the law is to enact a law that establishes the principle that New Hampshire ~~Towns-municipalities~~ have a legal and moral responsibility to provide ~~its~~^{its} ~~their~~ "fair share" ~~or of~~ "workforce housing" pursuant to RSA 674:58-61, and that, to comply with the law, the Town of North Hampton must allow "workforce housing" in more than 50% of the land area in Town that is zoned for residential use.

He also explained that the subcommittee is recommending changes to Article IV -- District Regulations to address the Town's need to allow workforce housing in more than 50% of the land area zoned for residential use. These recommendations include:

1. Combining the current R-2 and R-3 Districts into a new R-2 District that will have the same zoning restrictions as the existing R-2 District;
2. Creating two new districts in which residential use is not now and will not be permitted in the new districts;

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- a. A "Wetlands Conservation District" that will have exactly the same restrictions as the current Section 409 -- Wetland Conservation Areas and
- b. A "Conservation Land District" that will have restrictions consistent with the deed, easement or other restrictions placed upon conservation parcels.
3. Permitting workforce housing in the I-B/R and R-1 Districts, by way of a Conditional Use Permit process; and
4. Adding land to the R-1 District to the extent necessary to achieve the requisite 50%+ of land area zoned for residential use in which workforce housing is permitted by way of a Conditional Use Permit.

The Town of North Hampton has 8,900 + acres of land, and Mr. West, using various tools and data, determined that the Town has roughly 4,300 acres of wetlands and conservation ~~area-land that are not supposed to be built upon on which structures are not now permitted, and-but that are currently are~~ zoned for residential use. He explained that the proposed amendments to the district regulations that the subcommittee has ~~created-drafted~~ would categorize the 4,300 acres into ~~the~~ two ~~isolated-new~~ districts ~~in which residential use would not be permitted, thus~~ eliminating them from the calculation when determining the total area of land in town that is zoned for residential use, the "fair share" number. Formally removing wetlands, wetlands buffer zones, and conservation land from the total area of the Town zoned for residential use, ~~leaves-leaving~~ the total ~~buildable~~ area zoned for residential use to be 4,588.9-acres. The "workforce housing" area requirement, therefore, would be 2,294.45+ ~~acres-~~.

~~existing-~~ After excluding wetlands and conservation land, ~~existing~~ areas in the R-1 and I-B/R districts ~~is-total~~ 1,381.1 acres, leaving 913.35 acres of additional area needed to meet the requirement of the law. Both the I-B/R and R-1 Districts are and will continue to be zoned for residential use.

Mr. West passed out copies of ~~the-a working document for a~~ proposed new zoning map that depicted areas categorized as A through J that ~~would-might~~ be added to the R-1 district to achieve 50%+ of the land area in Town zoned for residential use, totaling- These areas totaled 955.51 acres of buildable area. The subcommittee is recommending adding land only to the R-1 District to achieve compliance with the law.

Mr. Wilson explained how the subcommittee chose the land to ~~combine-in-~~consider adding into the R-1 district. He said that there is a core area of Town along Lafayette Road and between I-95 and Mill Road that has access to Aquarion Water, roads that can handle a higher volume of ~~road-~~traffic, and is already more densely developed. It is important also to keep ~~it-~~workforce housing in an area where the land value ~~would-might~~ be low enough for a developer to be able to afford to build "workforce housing."

Dr. Arena stated for the record that the "workforce housing" law was rushed through Concord; "they" intruded upon the various Municipalities and told them what they will do". Dr. Arena said that it should be up to the Municipalities to determine whether or not they need "workforce housing", not the State. He opined that he is very unhappy with the "workforce housing" law, and the State has overstepped their bounds. He also commented on the amount of work the subcommittee did, and the good job that they did.

Ms. Kohl said that most of the members share Dr. Arena's opinion, but also realized that an ordinance needed to be established to help protect the Town and the Town's environment while conforming to the "workforce housing" law.

Mr. Wilson said that State Representative Judy Day has begun the process of establishing a Commission to study the problems that this law has created and recommend solutions.

Dr. Arena said he spoke to Judy Day and told her that the “workforce housing” law should be repealed, and a new one be created if need be.

Mr. Salomon said the Legislature passed the law with little guidance, and threw the responsibility for the planning and financial burden onto the towns. The subcommittee did a terrific job and should be commended for it. He said that the idea in looking at the current overlay district and making it a separate district to reduce the acreage is a good one.

Mr. Wilson ~~said that~~addressed one of the concerns the subcommittee: He said that they feared had was that by changing the wetlands overlay district to an isolated district that some people ~~may might~~ be under the impression that their property rights would be infringed upon by the creation of an explicit Wetlands Conservation District. He said that this impression was incorrect and that people landowners would have exactly the same rights as they currently under the current Section 409 – Wetland Conservation Areas provisions of the Zoning Ordinance, ~~have~~ if it ~~is changed to~~wetlands and buffer zones are made a formal zoning district.

Mr. Wilson opened the Public Hearing at XXXXX.

Amy Case, 117 Atlantic Ave, commented that a lot of work was put into the proposed ordinance and amendments concerning “workforce housing”, and that it was thoughtfully done. She had some questions on the proposed zoning map and how the area was determined that would allow “workforce housing”.

Mr. Wilson explained that the subcommittee tried to stay within the core of Town that offered more services while meeting the required acreage.

Another member of the audience asked if the proposed amendments to the district regulations would discourage the Town from accepting or purchasing conservation land.

Mr. Wilson said that if someone were to donate a large lot of buildable area, that amount of acreage would be taken from the denominator as well as the numerator in the “fair share” calculation to determine whether 50%+ of the land area in Town zoned for residential use were available for workforce housing. Because the land available for workforce housing and the land available for residential use, but not for workforce housing, are almost equal, removing equal areas from the numerator and the denominator of the ratio should have a minimal effect on the ratio. If, however, the area available for workforce housing falls below the requirement, an adjustment would have to be made in the zoning map.

Mr. McManus commented on the fact that the law did not give much guidance, leaving the Town to tread on uncharted waters.

Mr. Wilson closed the Public Hearing at 8:19pm.

Mr. Salomon Moved Dr. Arena seconded the Motion to eliminate section I and draw a line bisecting F, and eliminating the large rectangular wetland area part of F depicted on the proposed zoning map submitted by Mr. West.
The vote was unanimous in favor of the Motion (7-0).

The Board went over the text of the district regulations.

Mr. Wilson reopened the Public Hearing at 8:24pm.

Mr. Wilson explained that there is an amendment to Section 409.12 that will be on the March Town Warrant, and if it passes the outcome of the proposed amendment to the district regulations will not affect it. If the proposed amendment to Section 409.12 passes, it will be in effect, regardless of the outcome of voting on the proposed new District Regulations.

Mr. Wilson closed the Public Hearing at 8:25pm.

Mr. Salomon Moved and Mr. McManus seconded the Motion to take the text of the district regulations along with the map, as voted on, to the January 20, 2009 Public Hearing.
The vote was unanimous in favor of the Motion (7-0).

Adoption of an Inclusionary Housing Ordinance pursuant to RSA 674:58-61. This amendment is proposed as part of the Town's action to comply with New Hampshire's new workforce housing law.

Dr. Arena suggested a change to Section X – Administration, Compliance, and Monitoring, paragraph A of the proposed Ordinance by replacing “Planning Board” with “Select Board”. He opined that it is not up to the Planning Board to be responsible for the administration, compliance and ensuring that monitoring requirements are met under the proposed Article.

Mr. Wilson disagreed and said that because this is based on the conditional use permit process, compliance with the application is the Planning Board's responsibility, although he agreed with Dr. Arena that enforcement would, as it always has been, the responsibility of the Select Board.

Mr. Salomon said that the Select Board is tasked with enforcement, and gets involved when there is a violation. He said that the monitoring is a tool that the Planning Board uses to know how the Town is meeting its statutory obligation of to provide workforces housing.

Ms. Pohl said that it shouldn't be the Select Board's responsibility because it is the Planning Board that plans the future of the Town, and would have more of an interest in monitoring to ensure that the requirements of the Ordinance are met.

Dr. Arena Moved to delete Section X.A from the proposed Article. There was no second to the Motion. The Motion failed.

Mr. Wilson presented an amendment to the proposed ~~District Regulation~~Inclusionary Housing Ordinance Article under Section III. B. Permitted uses~~Uses~~. He ~~split up~~proposed to differentiate the types of workforce housing permitted in the I-B/R and R-1 Districts districts to remove by removing multi-family from the R-1 High Density Residential District, thus permitting multi-family workforce housing units only in the I-B/R. The reason for this proposed change was that the areas that are proposed to be added to the R-1 District are on the perimeter of the “core,” where infrastructure for higher density development is less adequate.

Mr. Salomon said that manufactured housing is allowed in I-B/R district and not in the R-1 ~~district~~District. The R-1 District was amended to include manufactured housing under the permitted uses.

Mr. Wilson opened the Public Hearing at 8:53pm.

Mr. Stanton said that it would be interesting to see if the Superior Court will be bombarded with cases, and end up changing the law so that appeals would need to be taken to the ZBA.

Mr. Wilson closed the Public hearing at 8:55pm.

Mr. Salomon Moved and Mr. Kroner seconded the Motion to approve the adoption of the proposed amendment to Article Section III, Section-Paragraph B submitted by Mr. Wilson to include manufactured housing in the R-1 district. The vote was unanimous in favor of the Motion (7-0).

Ms. Pohl Moved and Ms. Kohl seconded the Motion to take the proposed Inclusionary Housing Ordinance, as amended, to the second Public Hearing on January 20, 2009.

Mr. Wilson said that he received comments on the proposed ordinance from Ben Frost regarding IX.B. Certification of ~~Income levels~~Levels under Section IX.B.i. Mr. Frost proposed the substitution of "an initial" for "a lease" in the phrase – "the execution of ~~the a initial~~ lease" and suggested that it be changed to reflect encompass future leases as well. The Board agreed to change the language to "any lease".

Dr. Arena left the meeting at 9:00pm.

Mr. Salomon Moved and Ms. Pohl seconded the Motion to approve the amendment IX.B.i. to change the word "a" to "any" regarding the lease. The vote was unanimous in favor of the Motion (6-0).

Regarding the Motion to take the proposed ordinance to the second Public Hearing as amended:

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

Mr. Wilson said that he would send a copy of Revision 10 to Ms. Chase.

Adoption of an Outdoor Lighting Ordinance to adopt a "dark-sky standard" for the Town.

Mr. Wilson explained that Board voted to ~~create-draft~~ and propose a "dark sky" standard for the entire Town. Mr. Wilson took the model ordinance that the NHDES crafted and made minor changes to it. The purpose of the proposed ordinance is to maintain the rural character of the Town by preserving the visibility of night-time skies, and to minimize the impact of artificial lighting on nocturnal wildlife. He referred to the November 2008 edition of National Geographic, which he received from Mr. Jon Rineman that had an extensive article on why it is important for municipalities to adopt "dark sky" standards.

Mr. Wilson read the summary justification for a "dark sky" ordinance from the DES document:

New Hampshire's dark skies have more than esthetic value. They are part of the rural experience that attracts tourism, which in turn contributes significantly to local economies. By taking relatively simple steps to regulate outdoor lighting, communities may also save energy and minimize the impact of artificial light on wildlife habitat, where darkness is essential to predation, migration and reproduction of many nocturnal species.

Mr. Kroner said that he is strongly in favor of the proposed ordinance.

Mr. McManus said that he has mixed feelings over it. He commented on safety and security issues, and night time drivers trying to locate businesses.

Ms. Kohl said that it is a very important ordinance and commented on seasonal lighting, and how this ordinance would help deal with individuals that use excessive holiday lighting.

Mr. Wilson said that there is a huge energy impact of excessive lighting, and if lighting is designed properly then it will achieve the objective with safety and security.

Mr. Wilson opened the Public Hearing at 9:15pm.

Mr. Stanton asked if the Planning Board would have the authority over State roadways if the ordinance passes.

Mr. Wilson said that he NH DES states that towns do have authority to regulate lighting other than traffic lighting.

Mr. Wilson closed the Public Hearing at 9:24pm.

Mr. Kroner Moved and Ms. Pohl seconded the Motion to take the proposed Light Ordinance to the Town Warrant.

Mr. Salomon said that the voters should decide.

Ms. Kohl suggested taking it to the second Public Hearing to give the Business Community another chance to come in and comment.

The Motion failed (3 in favor and 3 opposed).

**Mr. Kroner Moved and Mr. Salomon seconded the Motion to take the proposed Lighting Ordinance to the second Public Hearing on January 20, 2009.
The vote was unanimous in favor of the Motion (6-0).**

**Ms. Pohl Moved and Mr. McManus seconded the Motion to adjourn at 9:30pm.
The vote was unanimous in favor of the Motion (6-0).**

Respectfully submitted,

Wendy V. Chase

Recording Secretary Approved February 17, 2009

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