



Meeting Minutes
North Hampton Planning Board Work Session
Thursday, January 21, 2010
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: Shep Kroner, Vice Chair; Joseph Arena, Barbara Kohl, Tom McManus, and Michael Coutu, Selectmen's Representative.

Members absent: Phil Wilson and Laurel Pohl

Alternates present: None

Others present: Brian Groth, RPC Circuit Rider, and Wendy Chase, Recording Secretary

I. New Business

1. Colin Lawson, Rockingham Planning Commission – Power Point presentation on the results of the Piscataqua Region Environmental Planning Assessment (PREPA).

Mr. Lawson explained that the Power Point presentation was on the Piscataqua Region Environmental Planning Assessment (PREPA) results. The PREPA was the survey conducted across the greater Piscataqua watershed (52 towns) including the entire NH seacoast, and eleven Maine communities along the Piscataqua River. He further explained that the Regional Planning Commissions worked with the Piscataqua Region Estuaries partnership to conduct a detailed survey of all town rules and regulations pertaining to water quality issues.

Mr. Lawson informed the Board that the final results and updated maps will be mailed to each town within a week or so.

II. Other Business

Mr. Kroner explained that scheduling public hearings for proposed Zoning Ordinances and changes will begin February 4, 2010. He said that the February agenda is very light and it would be a good opportunity to begin the public hearings at that time.

1. Review of the final draft of the proposed CIP Warrant Article.

The Board reviewed the final draft of the proposed CIP Warrant Article prepared by Town Administrator Steve Fournier. Mr. Fournier's final draft included all of the changes suggested by the Planning Board from their December 17, 2009 Work Session Meeting.

Mr. Coutu commented on an inconsistency with the language, where each Board or Committee member would be nominated by such Board or Committee except for the Select Board. He suggested changing the sentence *one member of the Select Board* to *one member of the Select Board, nominated by the Select Board*.

Mr. Groth commented on the terms to be held by the members of the general public. He questioned how each member's term would be determined. The Board discussed several options, such as, alphabetical order, first come first served, etc.

Mr. Coutu moved and Dr. Arena seconded the motion to add to the current CIP Warrant Article draft, the words - , *nominated by the Select Board*, after *one member of the Select Board*.

Dr. Arena made a friendly amendment to include language referring to the expiration of the member's term.

The Board discussed the fact that each term should only be a one year term.

Dr. Arena withdrew his friendly amendment.

The vote was unanimous in favor of the motion (5-0).

Mr. Coutu commented on the language that states the members of the public would have a staggered term leaving the question on how that would be allocated. He suggested changing the language to read that each member shall be appointed for a one year term.

Discussion ensued on the terms for the members of the general public, and the terms of the Committee and Board members. It was determined that the members of the general public should remain as three year terms, and that the Board and Committee member's terms be clarified in the proposed Article.

Dr. Arena said that members from a Board or Committee whose terms expire after one year should be given the opportunity to be reappointed for another term.

Mr. Groth suggested adding the following language: *each such member shall serve for a period of one year and may be reappointed so long as they continue to serve on the Board or Committee from which they were appointed*.

The Board discussed changing the "bullets" in the documents to numbers.

Mr. Coutu suggested a motion be made regarding Mr. Groth's suggestions, and to change the bullet format in the document to numerical ordering.

Dr. Arena said that adding numbers confuses the issue, and suggested numbers not be added.

Mr. Coutu suggested combining the first few bullets into one paragraph, along with Mr. Groth's suggested language.

Mr. Coutu moved and Mr. McManus seconded the motion to add the following language: each member of the Select Board, Planning Board, Municipal Budget Committee and North Hampton

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School Board shall serve for a period of one year, and may be reappointed so long as they continue to serve on the Board or Committee from which they were appointed.

The vote was unanimous in favor of the motion (5-0).

The Board discussed the previous minutes that explain that the Select Board would appoint the members that were nominated, and given the option to reject the nominee and send the nomination back to the appropriate Board or Committee for reconsideration.

The Board agreed that the Select Board should have “no rights” in the nomination, or appointments of the CIP Committee Members.

Dr. Arena moved and Mr. Coutu seconded the motion to bring the proposed Capital Improvement Plan Warrant Article to the first Public Hearing on February 4, 2010.

The vote was unanimous in favor of the motion (5-0).

Proposed amendment to Article IV, Section 406.2.2 (frontage requirement).

Mr. Kroner explained that Article IV, Section 406.2.2 was changed by a vote of the Legislative Body to include a frontage requirement amount of 100-feet where there was no frontage requirement prior to the change.

Mr. McManus explained that the logic used when deriving at the 100-foot frontage requirement had to do with work the Planning Board had done on the Inclusionary Housing Ordinance.

Mr. Kroner said that the lots still need to meet the side, front and rear setbacks.

Attorney Donahue has been before the Board in the past to request that Section 406.2.2 be reexamined, because he represents a client that owns a “lot of record” that does not meet the 100-foot frontage requirement, and that he knows of at least one other property owner that this ordinance would negatively affect.

Mr. Groth said that he and Attorney Michael Donahue have been working on a proposed change to Section 406.2.2. Mr. Groth said that the logic behind the 100-foot amount is understandable, but it assumes that the lot is a square lot. He said that there may be existing lots of record that are “pork chop” shaped, taking on the appearance of a “back lot”. He said that other area towns, such as Hampton, and Brentwood, have left the setback rule, which forces a certain width on the lot, although it does not address the frontage issue. He suggested that there should still be a frontage requirement, because a lot of record could come down to a “needle point” to the Street.

Mr. Groth said that one option would be to accept the frontage requirement provided by the “back lot” subdivision provision. He said that 40-feet may be too small, but the provisions of the “back lot” require a certain width to be maintained for 200-feet.

Mr. McManus voiced concern that unless the Town does a survey of each nonconforming lot, and actually look at them individually, and come up with a common “rhyme or reason”, the Planning Board could be faced with other Attorneys coming before the Board requesting a change to the Ordinance.

Mr. Groth agreed that the Zoning Ordinance should not be changed for one lot or one property owner. He agreed that without a survey of other nonconforming lots, the Town would not be sure if they were changing the Ordinance for just one property owner.

The Board agreed that they did not have a scientific basis to determine a frontage requirement amount on "lots of record".

Mr. Groth commented that the fundamental purpose of frontage is for access, and to create continuity in newly created lots. He said that regarding preexisting nonconforming lots, the fundamental purpose for frontage would be access.

Mr. Donahue said that he understood why the Board chose the 100-foot requirement. The Board was dealing with a standard when dealing with new development for "affordable housing", but the nonconforming lots in Town are not new developed lots; they are existing lots. He said that he and his client went to the Public hearing last year hoping to discuss the proposed changes, but were too late because the Board had voted to add it to the ballot; and it passed. He said that he was advised by the Board to come back this year and propose changes to the ordinance for consideration. He said that his client, Mr. Jeppesen has a nonconforming lot with 90-feet of frontage, and he knows of another property owner with a nonconforming lot with 50-feet of frontage. Mr. Donahue opined that the Board needs a rational basis to support the frontage requirement, and commented that there is already a rational basis with the ordinance for a "back lot". He said that new lots can be created in North Hampton with 40-feet of frontage, because it was determined that 40-feet of frontage was a reasonable amount for access.

Mr. Coutu asked if the 100-foot pick is more likely subject to a court challenge on the basis that it was not a fully descendible selection.

Mr. Kroner said that the property owner of a nonconforming lot has the "safety valve" of seeking a variance from the ZBA.

The Board discussed the back lot frontage requirement. Mr. Kroner said that the total lot's frontage requirement is 215-feet of frontage in total; 175-feet for the parent lot and 40-feet for the back lot.

Mr. Donahue argued that the lots in question are old lots where on some occasions a family member drew up a deed to another family member, and were not lots created through the Planning Board subdivision process. Mr. Donahue opined that the 100-foot frontage requirement suits new lots more than it does long established lots of record. He said that the purpose of a lot of record exemption is to avoid taking away existing, vested property rights.

Ms. Kohl said that there were some members on the Board that would have preferred changing the ordinance to a frontage requirement of 175-feet, but the Board chose 100-feet of frontage as sort of a compromise. She opined that it was a decision made for the orderly development of the Town, rural character of the Town, and environmental aspects, and it was a good decision made by the Board.

Mr. Kroner reminded the Board that Mr. Donahue was invited to come back to the Board this year with a proposal to change the 100-foot frontage requirement.

Mr. Donahue said that the decision should be a policy decision, not a decision based on his client's lot, who has 90-feet of frontage. He said that the voters have already determined that the 40-foot frontage requirement is adequate for access when they voted in the back lot ordinance. He explained that a lot of record exemption is not used in shaping what will be future subdivisions in this community. He said that these are lots that already exist, and that property owners have an investment in, and an expectation of use.

Dr. Arena said that such issues can be resolved by sending the applicant to the ZBA.

Mr. Donahue said that he disagreed with the Board sending the owner's of a lot of record to the ZBA to endure the expense of that proceeding, and making the ZBA go through the expense of that proceeding, and the applicant would need to prove "unnecessary hardship".

Mr. Kroner said that the Board had the intention of changing the ordinance last year, to allow more people to use these nonconforming lots.

Mr. McManus thought the Board should take a look at the back lot provision requiring 40-feet of frontage.

Mr. Kroner explained that the back lot subdivision requires 215-feet of frontage, and at least five acres of land to create a back lot with 40-feet of frontage, and the parent lot would maintain the required 175-feet of frontage.

Mr. McManus moved to amend Article IV, Section 406.2.2 by changing the required 100-feet of frontage to 40-feet of frontage.

Mr. Groth recommended that the language in Section 406.2.2 reads *all such "structures" must, however, have 100 feet of frontage*. He suggested changing the word "structures" to "lot" within that sentence.

There was no second to Mr. McManus' motion; the motion failed.

Mr. Kroner suggested that a member of the Board work on completely changing Section 406.2.2, and present it to the Planning Board for review at the February 4, 2010 Meeting. He suggested that the Board member work with the Circuit Rider on the proposed changes.

Mr. McManus volunteered to work with Mr. Groth on drafting a new proposal to have ready for the Board to review at the February 4, 2010 meeting.

Proposed amendment to Article IV, Section 405 – permitted uses - add number 18 - churches.

Dr. Arena suggested that the word *churches* be changed to *places of worship*.

Mr. Coutu referred to the December 21, 2009 meeting minutes, and quoted Mr. Wilson's statement "that whenever a word is not specifically defined, the meaning in the general use applies". Mr. Coutu said that Webster's Dictionary does not define "church" as place of worship, synagogue or mosque. He agreed with Dr. Arena, and opined that the proper language should be "place of worship".

Mr. Stanton mentioned that if a church buys property in the I-B/R district, the Town loses the tax revenue for that property, because they are tax exempt. Mr. Stanton opined that churches should be allowed by special exception, allowing them only on rented property so that it would not restrict churches in the I-B/R district, but would protect the tax base.

Dr. Arena voiced concerns on the growing number of mosques, which may present audio harassment five days a week.

Mr. Coutu suggested that the word "church" be changed to "place of worship", because the world is changing.

Mr. Kroner said that it would have to be changed under the permitted uses in the R-1 and R-2 zones as well. The Board agreed.

Mr. McManus made a motion to change the word "church" to "place of worship" in the permitted uses under R-1 and R-2, and add it to the I-B/R district under permitted uses.

There was no second to the motion; the motion failed.

Mr. Kroner said that he will come back to the Board with a new proposal, and a definition of church for the February 4, 2009 meeting. He said that he would email the draft to Ms. Chase to circulate to the Board members because he would not be in attendance at the February 4, 2009 meeting.

Proposed Small Wind Energy Systems Ordinance

Mr. Groth presented a model ordinance for Small Wind Energy Systems Ordinance from the Rockingham Planning Commission.

Mr. Coutu commented that the "tower height" and "total height" are different. He said that "tower height" is excluding the turbine, which could add up to another 30 feet on top of the 150-foot tower.

Dr. Arena said that the topography of the land determines the wind velocity.

Mr. Kroner said that there may be areas of Town with historic nature, such as Little Boar's Head, where you may not want to allow 250-foot towers.

The Board decided to continue the discussion on the Small Wind Energy System Ordinance to the February 4, 2010 meeting, in order to give the members a chance to review the model ordinance provided by Mr. Groth.

Mr. Groth said that he would forward an email to the members with thoughts to consider regarding the Small Wind Energy System Ordinance.

Some of the topics the Board would like to address:

- Height and fall height
- Birds migratory patterns
- Sounds

- Zones allowing Small Wind Energy Systems

Mr. Kroner suggested tabling the “junk yard” discussion to the February Work Session Meeting.

III. Minutes

1. December 17, 2009 Work Session – Mr. McManus recused himself from voting on the December 17, 2009 minutes, because he was not present at that meeting. Mr. Coutu moved and Dr. Arena seconded the motion to approve the December 17, 2009 Work Session Minutes as amended by Mr. Wilson. The vote was unanimous in favor of the motion (4-0).
2. January 7, 2010 Regular Meeting – Dr. Arena moved and Mr. Coutu seconded the motion to approve the January 7, 2010 Minutes. The vote passed in favor of the motion (4 in favor, 0 opposed and 1 abstention). Ms. Kohl abstained.

A motion was made and seconded to adjourn the meeting at 9:31pm.

Respectfully submitted,

Wendy V. Chase
Recording Secretary

Approved 2/25/2010