



Meeting Minutes
North Hampton Planning Board
Public Hearing & Work Session
Thursday, February 25, 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: Phil Wilson, Chair; Shep Kroner Vice Chair; Joseph Arena, Barbara Kohl, and Michael Coutu, Selectmen's Representative. Laurel Pohl arrived at 7:10pm.

Members absent: Tom McManus

Alternates present: None

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

Mr. Wilson convened the Meeting at 7:00pm.

I. Public Hearing

Article IV, Section 406.2.2 (First public hearing)

Mr. Wilson explained that the word "structure" requiring 100-feet of frontage was a mistake and should read "lot" in Section 406.2.2 of the Ordinances. He further explained the linear regression table he designed to replace the 100-foot frontage requirement established last year, and approved by the Legislative Body. He explained that it is based on the belief that the smaller the lot sizes the larger the frontage requirement. He said that smaller lots need more width to meet the setback requirements.

Proposed Table of Frontage Requirements

Lot Size (acres)	Minimum Frontage
≥ 3.0	40'
$< 3.0 \text{ \& } \geq 2.5$	50'
$< 2.5 \text{ \& } \geq 2.0$	60'
$< 2.0 \text{ \& } \geq 1.5$	70'
$< 1.5 \text{ \& } \geq 1.0$	80'
$< 1.0 \text{ \& } \geq 0.5$	90'
> 0.5	100'

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Dr. Arena thought the proposed amendment was a good idea, because it puts a sound scientific basis on it.

Mr. Kroner said that he liked the basic logical framework of the proposal. He commented that there may not be many vacant lots of record in town that would be affected by it.

Mr. Coutu commented that the proposal appears to be a logical application on how to resolve the frontage issue.

Mr. Groth said that the proposal fills in the gap between the 40-foot frontage requirement for a back lot and the 100-feet of frontage requirement for workforce housing with the same kind of "fairness".

Mr. Wilson opened the Public Hearing at 7:08pm.

Mr. Russell Jeppesen commented that Section 406.2.2 pertains to vacant lots of record existing in 1974; he said that it does not affect new subdivided lots.

Mr. Wilson confirmed Mr. Jeppesen's comments and said that the Board feels that there are not too many vacant lots of record pertaining to this section, it is too difficult and time consuming to figure out just how many lots there are in town.

Michael Donahue thanked the Board for their time on amending Section 406.2.2 and said that he and his client, Mr. Jeppesen, came before the Board last year when proposed amendments were made to the section, but were too late to recommend any substantive changes because it was already voted on by the Board to be placed on the March 2009 ballot. He thanked the Board for giving them the opportunity to come back this year and for coming up with a rational way of addressing issues with this section.

Mr. Wilson noted that the "carrots" were facing the wrong direction on the linear regression table. The correction will be made.

Ms. Pohl arrived at 7:10pm.

Mr. Wilson closed the Public Hearing at 7:11pm.

Dr. Arena moved and Mr. Coutu seconded the motion to put the proposed amendments to Section 406.2.2 as presented on the May Town Ballot. The vote passed (4 in favor, 1 opposed and 1 abstention). Ms. Kohl opposed and Ms. Pohl abstained.

Article IV, Section 406 and Article III, Section 302 (First public hearing)

Mr. Wilson explained that the proposed changes to Section 406 would be to add "place of worship" in permitted uses in the I-B/R zoning district and to replace the word "church" with the words "place of worship" in the R-1 and R-2 zoning districts. He further explained that the amendment to Section 302 is to add a definition of "place of worship" under definitions. He read the proposed definition: ***Place of***

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Worship: *A venue for any religious group that can provide written documentation that the U.S. Internal Revenue Service has determined that it qualifies for tax exempt status as a religious organization.*

Dr. Arena commented that the proposed amendment was ambiguous, and said that “place of worship” defines a specific thing, such as, building or structure. He suggested that the definition be written in such a way that a “place of worship” is a structure occupied by a recognized religion, subject to 501.3.C regulations.

Mr. Wilson explained that “churches” are not subject to 501.3.C regulations. He said that he found a brochure that the IRS produced where it explained that the IRS has to determine what qualifies as a religious organization. He said that if the organization satisfies the criteria set forth by the IRS, then they are deemed a legitimate religion and are tax exempt.

Mr. Coutu said that using the IRS determination on whether or not it is a religious organization is an independent standard to use that is not arbitrary. He said that if it meets the standard that has been the standard, it would less likely be challenged.

Mr. Wilson opened the Public Hearing at 7:24pm.
Mr. Wilson closed the Public Hearing at 7:25pm without public comment.

Mr. Kroner moved and Dr. Arena seconded the motion to take the proposed amendments to Sections 406 and 302 as presented to be placed on the May Town Ballot. The vote passed (5 in favor, 0 opposed and 1 abstention). Dr. Arena abstained.

Adoption of a Small Wind Energy System Ordinance (First public hearing)

Mr. Groth presented a draft copy of a Small Wind Energy System Ordinance that reflected changes made by the Board at the February 4, 2010 meeting.

Dr. Arena brought up a very important substantive change to the draft ordinance. He explained that there was no provision in the ordinance to protect the Atlantic Flyway.

The Board agreed. Mr. Wilson offered to add the following verbiage: *Towers located in the Atlantic Flyway (in North Hampton that is point East of Mill Road) shall be considered on a case by case basis. The burden shall be on the Applicant to demonstrate that any proposed tower does not interfere with migratory water fowl.* The Board agreed with Mr. Wilson’s added verbiage to section D.2.c. of the proposed ordinance.

The Board also agreed to eliminate the last sentence of D.2.: *in no situation shall the tower height exceed 150 feet*, because it was in the Ordinance twice.

Mr. Wilson opened the Public Hearing at 7:33pm.

A student from Winnacunnet High School was present to fulfill a requirement for his senior seminar project and commented on the proposed Ordinance and said “since it’s not messing with the birds, it’s all good”.

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Another student present for the same reason asked for an explanation of what the Flyway was. Dr. Arena explained that migratory birds have followed the same pathway for eons. He said that every year migratory birds follow the same route for 10,000 miles in a very narrow width. He said that Canadian geese fly in masses following the Flyway at a low altitude.

Mr. Wilson closed the Public Hearing at 7:37pm.

Dr. Arena moved and Mr. Kroner seconded the motion to take the proposed Small Wind Energy Systems Ordinance to the seconded Public Hearing on March 16, 2010, at 7:00pm. The vote was unanimous in favor of the motion (6-0).

Mr. Wilson explained that the Agricultural Commission came up with proposed changes to Article 508 – Agriculture, and asked that the Planning Board hold a Public Hearing on the proposed amendments to try and get it on the May Town Ballot for a vote by the Legislative Body. They have also proposed amendments to Section 302 – definitions to add a definition for farm and change the definition for agriculture.

Dr. Arena moved and Mr. Coutu seconded the motion to take the proposed amendments to Sections 508 and 302 submitted by the Agricultural Commission to the first and final Public Hearing on March 16, 2010. The vote was unanimous in favor of the motion (6-0).

Mr. Wilson informed the Board that he was sent a copy of the ZBA case dispositions for 2009 by Ms. Chase by mistake. After he reviewed it, he realized the many applications involving wetlands that were approved by the ZBA.

Mr. Wilson offered the following proposal: To change Article IV, Section 409.12 – Special Exception. He suggested changing the special exception granted by the ZBA to a conditional use permitting process that may be granted by the Planning Board.

Mr. Kroner said that he has been hearing a lot of evidence from different organizations on the magnitude of problems in regards to wetland setbacks and the degradation of the State's waterways; especially the estuaries. He said that ZBA's all over the State have been granting variances over and over again. Mr. Kroner said that he hopes that the Planning Board would consider incorporating into the Zoning Ordinances, some level of vegetated and undisturbed buffers into the existing wetland buffers. He said that it is something the Board can work on for next year.

Mr. Wilson said that he attended the Regional impact meeting regarding the proposed 64-bed assisted living community on Lafayette Road in Rye at the North Hampton town line. He said that the Applicant is proposing six "rain gardens" that will be maintained by an elaborate management plan, and Mr. Wilson said he asked them how the Town of Rye would be ensured that the management plan would be followed. Mr. Wilson said that if "rain gardens" are not maintained meticulously they degrade rapidly. He also learned at the meeting that it has been discovered that "pervious" concrete becomes impervious after two years, because salt and sand cannot be swept off of it; it needs to be vacuumed, and the debris the vacuuming does not pick up falls in the crevices and blocks the infiltration of water.

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He mentioned this to the Board because more and more applicants are including “rain gardens” and pervious concrete in their proposals when applying for variances involving wetland setbacks.

Dr. Arena voiced concerns on the difficulty of enforcing management practices for “rain gardens”.

Mr. Kroner said that when he hears the words “rain garden” a “red flag” goes up. He commented that if a “rain garden” is part of the proposal, then the land is probably not best suited for that type of development.

Mr. Wilson said that one way of protecting “rain gardens” if approved is to have the owner do the same thing as the Town does with conservation land. The owner would need to pay a fee to the Rockingham Conservation District for them to monitor the “rain garden” in perpetuity.

**Mr. Kroner moved and Mr. Coutu seconded the motion to take the proposed amendments to Section 409.12 to the first and final Public Hearing on March 16, 2010.
The vote was unanimous in favor of the motion (6-0).**

Mr. Wilson asked Mr. Groth to check the innovative land use law to make sure the Board can make the proposed amendments to Section 409.12. Mr. Groth said he would check into it.

Minutes

January 21, 2010 Work Session Meeting Minutes – Dr. Arena moved and Ms. Kohl seconded the motion to approve the Meeting Minutes of January 21, 2010.

The vote passed (4 in favor, 0 opposed and 2 abstentions). Mr. Wilson and Ms. Pohl abstained.

February 4, 2010 Meeting Minutes – Ms. Kohl moved and Mr. Wilson seconded the motion to approve the Meeting Minutes of February 4, 2010.

The vote passed (3 in favor, 0 opposed and 3 abstentions). Dr. Arena, Mr. Coutu and Mr. Kroner abstained.

Other Business

Dr. Arena informed the Board that he submitted a formal complaint to the Code Enforcement Officer regarding the piece of equipment with the “stuffed” animal perched on it located on the lot off of Atlantic Avenue where the yellow warehouse sits. He said that he wrote in his complaint that the Planning Board concurred with what needed to be done. He further explained that he submitted the complaint two weeks ago and has not received any reply from the Code Enforcement Officer as of yet. Dr. Arena suggested inviting the Code Enforcement Officer to a Planning Board Work Session to discuss code violations in Town.

Mr. Kroner agreed that it would be a good idea to invite the Code Enforcement Officer to a Work Session Meeting. He said that he would start of list of possible zoning violations to discuss with him at the meeting.

The Board decided to invite the Code Enforcement Officer to the April 15, 2010 Work Session Meeting.

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It was brought to the attention of the Board that an approved lot line adjustment for Lamprey Brothers on property located at 227R Atlantic Ave., M/L 007-150 was never signed and recorded at the Registry of Deeds. The approval from the Planning Board was April 2, 2002. One of the conditions of approval was that an access easement to the building on the property be granted and noted on the Mylar. The owner of the building was Charles Rowell, Jr., and the easement was never executed; the condition was not met. Thera Research purchased the building from the Rowell Estate, and a new easement was drawn up and a new note was added to the new Mylar to reflect the ownership change. The Conditions of Approval have been met and the Board decided to sign the Mylar. Mr. Wilson asked that the Board authorize the Chair to sign the Mylar on behalf of the Board.

Ms. Kohl moved and Ms. Pohl seconded the motion to authorize the Chair to sign the Lamprey Brothers Mylar for M/L 007-150 for a lot line adjustment approved by the Board on April 2, 2002 on behalf of the Board.

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

Mr. Wilson signed the Mylar.

A motion was made and seconded to adjourn the Meeting at 8:16pm with all in favor of the motion.

Respectfully submitted,

Wendy V. Chase
Recording Secretary

Approved March 16, 2010