



Meeting Minutes
North Hampton Planning Board
Public Hearing and Work Session Meeting
Tuesday, March 16, 2010 at 7:00pm
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 Tom McManus.

Members absent: Laurel Pohl and Jon Rineman, Alternate Select Board Representative

Alternates present: None

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

Mr. Wilson convened the meeting at 7:02pm, and noted for the record that the agenda was properly posted and that there was a quorum.

Mr. Wilson explained that the second Public Hearing was scheduled for this Meeting because it was the last day for the Planning Board to hold the final Public Hearing on any proposed adoption of, or amendment to Zoning Ordinances proposed to go on the May Ballot, pursuant to the State Statutes. He further explained that any substantive changes made to the proposed zoning amendments would prohibit them from being placed on this year's ballot.

I. Public Hearings

1. Proposed amendments to Article V, Section 508 - to change the setback requirement for a farm building from a neighboring property, to change the requirements regarding roadside stands for sale of agricultural products, and to change poultry and animal density. A proposed amendment to Article IV., Section 405.3 – prohibited uses for all districts – to change “Commercial animal husbandry facilities” to “Concentrated Animal Feeding Operation”. Proposed change to Article III, Section 302 to redefine “Agriculture” and to add a definition for “Farm”.

Ms. Cindy Jenkins, Chair of the Agriculture Commission, was present to explain and discuss proposed amendments to the Agriculture Zoning Ordinance that the Commission developed. She passed out copies of State RSA's concerning Agriculture.

Ms. Jenkins explained that due to controversial matters concerning ownership of chickens in the R-1 zoning district that have been reported in the local papers recently, the Agriculture Commission decided to take a better look at the current Agriculture Zoning Ordinance. She said that there is a huge discrepancy between the State Law and the Town of North Hampton's Zoning Ordinance, so the

Commission tried to amend the current ordinance to better reflect the State Laws. She read RSA 672:1 III-b into the record:

Agriculture makes vital and significant contributions to the food supply, the economy, the environment and the aesthetic features of the State of New Hampshire, and the tradition of using the land resource for agricultural production is an essential factor in providing for the favorable quality of life in the State. Natural features, terrain and the pattern of geography of the state frequently place agricultural land in close proximity to other forms of development and commonly in small parcels. Agricultural activities are a beneficial and worthwhile feature of the New Hampshire landscape and shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers.

Ms. Jenkins explained that the Commission adopted the State RSA in developing the amended ordinance with the exception of agritourism¹. She said that the Commission proposed the following substantive changes to the current Agriculture Zoning Ordinance:

- Change the setback requirement for farm buildings from 200-feet to 50-feet of a neighboring property line or 85-feet from an adjacent existing residence.
- Eliminate Section 508.2
- Change the setback requirement of a roadside stand from 50-feet from the nearest edge of roadway surface to 25-feet from the nearest edge of roadway surface.
- Identify by size, and change the allowable amount of farm animals per unit; large animal equal to one unit; medium animal to equal 5 animals per unit; small animals to equal 12 animals per unit; and poultry, a unit is equal to 12. One unit per acre on a two acre minimum lot.
- Replace Section 405.3 Prohibited uses for all districts with *concentrated animal feeding operation, slaughterhouses, breeding facilities, egg farms, and hog, chicken, turkey and other domestic fowl production facilities.*

Ms. Jenkins said that the Commission designed the amended ordinance for people who want to raise their own food, such as chickens and pigs for meat. She said that she raises chickens to produce food, and runs a sophisticated operation in the raising and slaughtering of her chickens. She said that everyone should have the opportunity to raise their own food if they desire.

Dr. Arena opined that North Hampton is a rural area where agriculture should be promoted and even encouraged. He spoke of roosters and how they may impact neighboring properties. Ms. Jenkins said that roosters are controversial, they are triggered to crow at daybreak and when they sense danger from outside predators. She explained that there is no need for a rooster to produce eggs, but there is a need for at least one rooster to produce chickens.

Mr. Kroner said that as a boy he would visit Knox's Farm in North Hampton to participate in the slaughter and sale of chickens, and said it was a very enriching experience. He said that he is a promoter of local agriculture.

Mr. McManus agreed with Ms. Jenkins that there needs to be more done to promote agriculture, and that traditions of living close to the land has been lost. He said that he applauds the Agricultural

¹ The term "agritourism" means attracting visitors to a working farm for the purpose of eating a meal, making overnight stays, enjoyment of the farm environment, education on farm operations, or active involvement in the activity of the farm which is ancillary to the farm operation.

Commission for their work on amending the agriculture ordinance, but felt that he was not prepared to vote on it as it is written, and suggested taking the time over the next year to improve it.

Ms. Kohl commented that it is a lot of work to take care of livestock and poultry. She opined that not too many people will be building the shelters needed to protect the animals, plus the fact of all of the work that is involved in raising these animals.

Mr. McManus commented on the fact that not everyone would be as responsible as people like Ms. Jenkins with the way she runs her farm. He voiced concerns with irresponsibility regarding cultivation of soils, and what machinery would be used for mulching or composting.

Ms. Jenkins said that there are regulations in place that protect against land being degraded or the environment being harmed or the water being polluted. She said that the current zoning is out of synch with the state laws on agriculture.

Mr. Groth voiced concerns on the list of definitions within the amended ordinance and said that as it is written the entire list would be allowed in all zoning districts, it was in his opinion that the Board should further review and discuss the list. He said that eliminating section 508.2 requiring a setback for feed lots, fenced runs and pens of 200-feet would create potential problems. He commented on the proposed amendment to Section 405.3 – Prohibited Uses for All Districts and suggested that replacing *Commercial animal husbandry facilities* with *Concentrated animal feeding operation* needs further Board discussion, and that there needs to be an explicit definition of *concentrated animal feeding operation*.

Mr. Wilson said that he and Don Gould wrote Section 405.3 – Prohibited Uses for All Districts, and explained that they were trying to prohibit the possibility of a landowner operating a pig farm on a piece of land in any district that would cause a hazard to health and safety from producing waste, as well as creating an awful stench in that area. He said that the Section was intended to make it clear that those types of operations would not be appropriate in North Hampton. Mr. Wilson also commented that the way the amended ordinance is written is that it does not allow farm animals for anyone owning less than two acres. He also pointed out that the lot size requirement in all districts is two acres with only one acre of uplands. He said that as the ordinance is written it would allow two cows on one acre and the other acre may be wetlands. He said that there would not be much room on the one acre of uplands when considering that the house, driveway, septic field and well would be situated on the upland acre.

Ms. Jenkins agreed that a barn could not be erected in the wetlands for the animals. She said that there are already wetlands setbacks in place. Mr. Wilson said that fences could be erected in the wetlands and would not prohibit the animals from roaming into the wetlands.

Mr. Wilson said that he sees the proposed amended ordinance as three separate amendments, (1) amendment to the definition Section 301, (2) amendment to Section 508, and (3) amendment to Section 405.3.

Mr. Wilson opened the Public Hearing at 7:56pm.

Mr. Chuck Gordon, 10 Sea Road, said that he is sympathetic to the proposal, but suggested that the Planning Board give the proposed amended ordinance more thought. He said that people have raised concerns that the proposal is too broad and too liberal. Mr. Gordon said that he lives in a neighborhood

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where most of the properties are considerably less than two acres. He explained that Little Boars Head District relies on the Town for the more sophisticated restrictions within ordinances. He suggested that Little Boars Head District be taken into consideration when coming up with reasonable guidelines for the agriculture ordinance.

Mr. Phelps Fullerton, Atlantic Ave, handed out copies of information to each of the Board members. He thanked the Agricultural Commission for their efforts in trying to change the current Agriculture Ordinance. Mr. Fullerton quoted from RSA 672:1 III-b, *Agriculture activities are a beneficial and worthwhile feature of the New Hampshire landscape and shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers*. He said that he is not sure what is *unreasonable* about the agricultural uses already permitted in the ordinance. He said that residents are allowed to raise poultry in “fenced in” pens located at least 200-feet away from a neighboring property, which he opined to be a *reasonable* requirement. Other concerns Mr. Fullerton addressed:

- The proposed amended ordinance drastically reduces the setback requirement from 200-feet to 50-feet.
- Allowing commercial livestock businesses and possible trucking activities to and from properties with animals and supplies.
- There is no requirement to confine the animals on the property that could cause potential traffic hazards if animals are located on property in close proximity to busy roadways.
- There is no specifications on the stockpiling of manure or barn waste
- Possible impact to protected watersheds from nitrates, phosphates and e-coli from piles of manure and barn waste
- The proposed amended ordinance does not differentiate between hens and roosters, and roosters can be a nuisance

Mr. Fullerton mentioned that Rockingham Superior Court sided with property owners that were affected by the noise nuisance of a neighbor’s rooster, and the owner of the roosters agreed to remove their roosters immediately and permanently.

Mr. Fullerton also suggested that the Board revisit the Town’s Dog Ordinance, and consider updating it. He suggested that the word “dog” be replaced with “animal” and the word “nuisance” be added to help protect the right to quiet enjoyment for property owners.

Mr. Fullerton encouraged the Board to consider the entire RSA 672:1, as well as House Bill 97, and RSA 674:32-c, when considering the amendments to the Agriculture Ordinance.

Mr. Derek Hill, 272 Atlantic Ave, said that he was opposed to the amended ordinance as written. He said that the Planning Board needs to put regulations in place that would deal with the responsible person as well as the irresponsible person. He said that there needs to be greater clarity to the proposed amended ordinance. He said that the allowance of manure piles on properties would be an odor nuisance and would diminish the value of surrounding properties. Mr. Hill also said that the impervious area needs to be dealt with. He said that the dwelling, septic and driveway could take up to 25% of the surface area on a two-acre lot. He said a lot of land in North Hampton is in a well head protection area or a wetland area. He voiced concerns of possible contamination of well water, and how that could be managed. Mr. Hill said that he was in favor of allowing agriculture to take place in town, but it needs to be carefully controlled to protect health and safety of all residents.

Ms. Robin Reid, 279 Atlantic Ave., commended the Agriculture Commission for attempting to define the Agriculture Ordinance. She said that the Board is challenged in regulating to everybody and common sense is not always common amongst people. She said that a chicken coop does not require a building permit, and asked that the Board define farm buildings and that a building permit should be required to build such structures. Ms. Reid voiced concerns on heavy equipment used to cultivate the land and asked if the Board would consider restricting hours of operation for heavy equipment. She also said that there should be no room for interpretation because the size of a *large animal* to one person may be considered a *medium sized animal* to another. She said that she agrees with the variance process where people are able to seek relief from an ordinance and whereas abutters are notified to be able to attend the meetings and offer their input.

Ms. Jamie Marston, Atlantic Ave., said that she is a true believer in agriculture and farming and grew up on a farm. She said the dilemma that she has is over population density. She said that people live closer today than they did 50 years ago. She opined that North Hampton is not rural. She voiced concern on commercial operations on a two acre lot, and opined that the current 200-foot setback is not unreasonable.

Mr. Groth said that it is important to know the intent of the Agriculture Commission. He said that the principles for growing ones on food need to be addressed in the language of the ordinance.

The Board discussed “commercial” agricultural activities, and how it should be defined. They believed that a definition of permitted “commercial” agricultural activities was needed.

Kathy Lagassa, 26 Maple Road, said that it was in her opinion that two acres is too small for a farm, and would not be viable, especially if the lot included a house, outbuildings, driveway, well and septic.

Mr. Kroner said that two acres would not be viable for a farm but would be viable to house 10 chickens.

Mr. Wilson closed the Public Hearing at 8:37pm.

Dr. Arena said that there is a big difference between commercial ventures and raising one’s own food.

Mr. Wilson said that the proposed amended ordinance allows “commercial” farming in all three districts in Town.

Ms. Kohl said that it was nice that the people came in to discuss the proposed amended agricultural ordinance, but there are more immediate problems in town that are potential hazards to the water supply, such as “junk yards”. She said that the water is being polluted with things other than agriculture. She said she was concerned with trying to over control the basis of the heritage of this Town. She said that the townspeople need to react to the more pressing dangers to our water supply, and farms are not a pressing danger.

Mr. Wilson said that we need to find a balance. He said that everyone seems to be in favor of agriculture in Town, but not in favor of large food production operations, such as, pig and cow farms. The proposed amendment is a good start but needs to be more refined.

Mr. Wilson suggested that the Planning Board work with the Agriculture Commission over a period of time and deal with the issue of “commercial” versus “non-commercial”.

Mr. Kroner said that there needs to be a balance of protecting the property owners rights, and capturing the intent behind the proposed amended ordinance. He did not think an ordinance should be rushed through the process.

Mr. Wilson suggested they establish an ad hoc committee to deal with refining the agriculture ordinance.

Mr. Bob Copp, a member of the Agriculture Commission suggested that people from the public be invited to be involved in the ad hoc committee dealing with the agriculture ordinance. The Board agreed.

Mr. Kroner moved and Mr. McManus seconded the motion to table the proposed amendment to Article V, Section 508, Section 405.3 and Section 302, presented by the Agriculture Commission, to the next term of the Planning Board.

Mr. Wilson explained that after the May election the Board will *re-organize*, and then create an ad hoc committee to work on the Agriculture Ordinance so that it will be ready for next year.

The vote passed in favor of the motion (4 yes, 0 opposed and 1 abstention). Dr. Arena abstained.

The Board will take up the issue of creating an ad hoc Committee at the April Work Session Meeting. Mr. Wilson suggested emailing Wendy Chase at the Town Office if they are interested in serving as an ad hoc committee member.

Mr. Wilson called for a recess of the meeting at 9:03pm.

Mr. Wilson reconvened the meeting at 9:06pm.

The adoption of a Zoning Ordinance for Small Wind Energy Systems, to allow them in all Zoning Districts with certain regulations and restrictions. The proposed ordinance reflects changes made to it at the February 25, 2010 Public Hearing. This is the second Public Hearing.

Mr. Wilson explained that this was the second public hearing on the adoption of the Small Wind Energy Systems Ordinance.

Mr. Wilson opened the public hearing at 9:08pm.

Mr. Richard Stanton commented that he was in favor of the revisions to the ordinance that included the Atlantic flyway.

Mr. Wilson closed the Public Hearing at 9:09pm.

Mr. Kroner moved and Dr. Arena seconded the motion to take the Small Wind Energy Systems Ordinance to the Town Warrant as written.

The Board determined that the Article number for the proposed Small Wind Energy Systems Ordinance would be: **Article V, Section 516.**

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

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Proposed amendment to Article IV, Section 409.12 – to change a “Special Exception” from the ZBA to a Conditional Use Permit process from the Planning Board, to permit the erection of a new structure on vacant lots of record or expansion of an existing structure located within the wetlands Conservation District, or any buffer zone. This is the first and final Public Hearing for this proposed amendment.

Mr. Kroner verified with Mr. Groth that it was allowed under the Innovative Land Use Control Provisions to change the special exception from the ZBA to a conditional use permitting process from the Planning Board for Section 409.12.

Mr. Wilson explained that he proposed the change to Section 409.12 because the Planning Board deals more with issues associated with the criteria that falls under Section 409.12 than the ZBA does. He referred to criterion E, *the design and construction of the proposed use will, to the extent practicable, be undertaken in such a manner as to be consistent with the purposes and spirit of their ordinance and shall not diminish the natural resource values of affected wetlands in any appreciable way.* He said that the Planning Board deals with drainage and the design of the property when dealing with subdivision and site plan review applications.

Mr. Wilson opened the Public Hearing at 9:18pm.

Mr. Stanton said that he did not want to comment because there is an application before the ZBA requesting a special exception under Section 409.12.

Mr. Gordon disclosed that he is an alternate to the ZBA, and commented that he would not be sitting on the ZBA case that Mr. Stanton mentioned. Mr. Gordon suggested abolishing Section 409.12. He said that it is his belief that it has been used infrequently for wetlands setback relief. He said that all wetlands relief needs a variance under the Little Boars Head District ZBA; there is no “special exceptions” when dealing with relief from the wetlands setbacks in Little Boar’s Head District.

Mr. Wilson explained that the proposed change would be to a conditional use permitting process so the applicant would need to appeal to Superior Court, not the ZBA.

Mr. Gordon said that if the jurisdictional power for Section 409.12 is changed from the ZBA to the Planning Board and the Applicant is denied by the Planning Board, they would have the option to request a variance from Section 409.A.2 from the ZBA. Mr. Gordon said that it was in his opinion that the cleanest way to handle it was to abolish Section 409.12 all together.

Mr. Wilson said that the proposal is to change the process of Section 409.12 from a “special exception” to a conditional use permitting process, and the applicant would not have the option of seeking relief from the ZBA if denied by the Planning Board; they would have to appeal to Superior Court. He also said that the applicant could not request a variance from another provision because the applicant is not authorized under the zoning ordinance to do what it is they want to do without a conditional use permit.

Mr. Wilson said that his concern with abolishing Section 409.12 is that the owner’s of these lots of record before March 8, 1988 (when wetland buffer setbacks were first established) have vested rights,

and Section 508.12 was designed to protect the rights of those land owners, and the intent of the Section was to make it less onerous than going through the variance process.

Mr. Gordon understood that his suggested change to abolish Section 508.12 would not make this year's ballot due to the Public Hearing deadline dates.

Mr. Wilson commented that perhaps the Planning Board should amend the ordinance so that all proposals involving wetlands are done through conditional use permits by the Planning Board, because the Board deals more with drainage issues than the ZBA does.

Mr. Gordon stated that he is not a New Hampshire lawyer, but thought that it would be legally challenged. Mr. Wilson agreed.

Mr. Gordon quoted (Lerner Ham?) "the worst thing for anybody is to get into litigation; it's to be avoided at all cost". Mr. Wilson said that there are some instances where litigation is desirable.

Mr. Joseph Walsh asked if the Conservation Commission is consulted in cases involving wetland issues. Mr. Wilson said that the Planning Board always consults the Conservation Commission when dealing with wetlands and wetlands buffers and requests their input. He said the ZBA does also.

Mr. Wilson explained that the Conservation Commission is an advisory board; they are using resources available to them to hire wetlands experts to get their opinions on particular cases, because they have to prove that the public interests outweighs the private interests.

Mr. Groth said that the way the Section is written it could provide two different avenues. He said that the applicant could apply for a conditional use permit, and if denied; appeal to superior court, but the applicant can also apply for a variance to section 409.A.2 from the ZBA.

The Board discussed rain gardens. Mr. Wilson suggested that monitoring fees be added to any bonding of a rain garden because the construction of a rain gardens should be monitored by an independent monitoring company to make sure they are installed properly, and that they should be monitored yearly, especially after a storm event to make sure they are functioning properly.

Mr. Gordon said that by taking away jurisdiction from the ZBA, it would most likely be challenged, and may even be illegal. Mr. Wilson said that there are Towns in New Hampshire that use the conditional use permitting process instead of variances concerning wetland setback relief. Mr. Gordon said that he would be interested in knowing which towns operate that way.

Dr. Arena said that the Board should never be intimidated by threats of litigation.

Mr. Gordon said that the State of New Hampshire grants to municipalities only certain powers; it grants the power to establish land use regulations, and it also creates a Zoning Board. He explained that there can be no land use regulations without a Zoning Board. He said if the Planning Board chips away jurisdiction of the Zoning Board there is a serious risk of possible litigation.

Mr. Wilson said that statutorily it would stand up in Court because under the Innovative Land Use Control Provisions, both the Zoning Board and the Planning Board Wilson are able to use the conditional use permitting process.

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Mr. Wilson closed the Public Hearing at 9:48pm.

Dr. Arena moved and Ms. Kohl seconded the motion to accept the proposed amendment to Section 409.12 as written to the Town Warrant.

Mr. McManus said that Mr. Wilson had a good argument in that the Planning Board looks at the cases above and beyond the five criteria of the variance process, and with a different perspective than the ZBA. He said that the balance of power between the two boards works, and has been working for a long time.

Mr. Wilson said that if the proposal gets adopted by the Town, the Planning Board should make a conscious effort to find out how many lots in town there are that are official lots of record prior to March 8, 1988.

Mr. Gordon said that he thought that the Legislative intent for relief from wetlands setbacks should be with the Zoning Board, and if people don't like the decisions the Zoning Board makes, they can get rid of the members on Election Day.

Mr. Kroner said that changing the process for non conforming signs in town from a variance process to a conditional use process was a better process because the Planning Board is so tied to the Site Plan review process.

The vote passed (4 yes, 1 opposed and 0 abstentions). Mr. McManus opposed.

IV. Other Business

1. Minutes

February 25, 2010 Meeting Minutes – Mr. Kroner moved and Dr. Arena seconded the motion to approve the February 25, 2010 meeting minutes as written.

The vote passed (4 in favor, 0 opposed and 1 abstention). Mr. McManus abstained.

March 4, 2010 Meeting Minutes – Mr. Wilson moved and Ms. Kohl seconded the motion to table the March 4, 2010 meeting minutes to the April 15, 2010 Work Session.

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

It was noted for the record that the North Hampton Planning Board will be honored at the Workforce Housing Coalition of the Greater Seacoast's annual meeting by receiving the Municipal Leadership award for the Board's work on the workforce housing ordinance that was adopted by the Town in March 2009. The annual meeting will be held on April 7, 2010 at Riverwoods in Exeter. The Planning Board members are invited to attend.

A motion was made and seconded to adjourn the meeting at 10:00pm, with all in favor.

Respectfully submitted,
Wendy V. Chase
Recording Secretary

Approved 5/20/2010

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