



Meeting Minutes
Public Hearing Proposed Zoning Ordinance Amendments
Work Session
North Hampton Planning Board
Tuesday, March 20, 2012 at 6:30pm
Town Hall, 231 Atlantic Avenue

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

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14 **Members present:** Shep Kroner, Vice Chair; Joseph Arena, Laurel Pohl, Tim Harned, Mike Hornsby, and
15 Phil Wilson, Select Board Representative.

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17 **Members absent:** Barbara Kohl, Chair

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19 **Alternates present:** None

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

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23 Mr. Kroner convened the Meeting at 6:33pm and noted for the record that there was a quorum.

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25 Mr. Kroner explained that changes made to the proposed Zoning Ordinance Amendments at the first
26 Public Hearing on March 6, 2012 required the Board to hold a second Public Hearing; any substantive
27 changes made to the two proposed amendments would require another Public Hearing which would
28 prohibit them from being placed on the May 2012 Town Warrant.

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30 **1. Body/Bodies of Water – Wetlands – Minimum Lot Area.** Add to Article III, Section 302 –
31 Definitions, the phrase “Body/Bodies of Water”. Add to Article IV, Section 411, commas in the
32 first sentence before and after “excluding bodies of water”.

33 Mr. Kroner read the proposed amendment into the record:

34

35 *Section 302 - “Definitions”*

36

37 *“Body/Bodies of Water”: Surface Waters, defined by RSA 485-A:2 XIV, that are not*
38 *“Wetlands”. The phrases “Body of Water” or “Bodies of Water” as used in this*
39 *Ordinance shall include, but are not limited to, perennial and seasonal streams, rivers,*
40 *brooks, lakes, ponds, tidal waters and water courses, natural or artificial. The extent of*
41 *the “Body of Water” or “Bodies of Water” shall be as measured by the mean high water*
42 *mark, as determined by a Certified Wetland Scientist not to include water features*
43 *otherwise defined as “Wetlands”. This definition is separate and distinct from the*
44 *definition of “Wetlands” found elsewhere in this Section and the two shall not be used*
45 *interchangeably nor shall they be deemed synonymous.*

46 Mr. Kroner opened the Public Hearing at 6:45pm.

47

48 **Robert B. Field, Jr.**, introduced himself as Chair of the ZBA, initiator of the proposed Zoning
49 Amendment, and on behalf of himself individually. He explained that Mr. Buber had concerns on the
50 suggested changes and would like to address the Board.

51

52 **David Buber, 4 Maple Road and Member of the ZBA**, said that he was not able to make the March 6,
53 2012 Public Hearing, but watched the video recording of that Meeting. He suggested that the Board
54 consider not referencing Surface Waters, defined by RSA 485-A:2 XIV in the proposed Zoning Ordinance
55 Definition. He said that he researched RSAs and Environmental Regulations and couldn't come up with a
56 single definition that covered "bodies of water". He said there is conflicting information between the
57 referenced RSA and what is written; rivers and brooks are not listed in the RSA, but are in the definition
58 and marshes are listed in the RSA, but not the definition. He said that referencing the RSA would lead to
59 a lot of confusion. Mr. Buber also questioned if the ZBA vote shown on the draft proposal would appear
60 on the ballot and Mr. Kroner said that the only thing shown on the Town Warrant is the vote of the
61 Planning Board.

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63 Mr. Kroner commented and Mr. Wilson agreed that a change beyond a grammatical one would cause
64 another Public Hearing making it too late to be placed on this year's Town Warrant.

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66 Mr. Buber read RSA 485-A:2 XIV into the record: *"Surface waters of the state" means perennial and*
67 *seasonal streams, lakes, ponds, and tidal waters within the jurisdiction of the state, including all streams,*
68 *lakes, or ponds bordering on the state, marshes, water courses, and other bodies of water, natural or*
69 *artificial.*

70

71 Mr. Wilson said that even though "rivers" and "brooks" are not specifically cited in the RSA they are
72 "covered" under the phrase "water courses". He said the Board had a long discussion on whether or not
73 "marshes" should be considered "bodies of water" and concluded for the purposes of the Town that
74 "inland" and "tidal" wetlands that are not perpetually flooded should be considered "wetlands" not
75 "bodies of water", and the Board wanted the definitions to be mutually exclusive.

76

77 Mr. Buber said he just wanted to bring to the Board's attention that referencing surfaces as defined in
78 the RSA, "marshes" "pop-up" and "rivers" and "brooks" don't, which may lead to confusion when the
79 ZBA tries to adjudicate it in the future.

80

81 Mr. Groth agreed that the phrase "water courses" covers that concern.

82

83 Dr. Arena commented that "marshes" are "bodies of water", and the "marsh" in front of his property is
84 always filled with water.

85

86 Mr. Wilson commented that Little River Salt Marsh has never been defined as a "body of water" and has
87 never been continually "flooded".

88

89 Mr. Wilson and Dr. Arena agreed to disagree that a "marsh" is a "body of water".

90

91 Mr. Groth commented that "surface waters" include everything and "bodies of water" are "surface
92 waters" minus "wetlands"; "marshes" are not "bodies of water" they are "surface waters".

93

94 Mr. Wilson proposed to put the Zoning Ordinance Amendment – “Body/Bodies of Water” on the 2012
95 Town Warrant, and that they should not appear separate because if one passes and one fails it would
96 cause great problems.

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98 **Peter Horne, 112 Mill Road,** said that he understood the confusion over the definition of “bodies of
99 water”. He went to Superior Court over this issue. Mr. Horne said that the Army Corps of Engineers
100 clarified the subject distinguishing between a “wetland” and a “body of water” which was the basis used
101 for his subdivision application. Based on studies done by the Army Corps of Engineers, in 1979, that
102 classifies water as “wetlands” to be a depth of about 6-feet of water, based on plant growth, is probably
103 a simple definition of “wetlands”, and the Board may want to consider that in the future.

104

105 Mr. Groth said that he looked into the “6-foot rule” and it is not an official definition; “wetlands” has to
106 do with vegetation, not depth of water. He said that Soil Scientists determine “wetlands” in New
107 Hampshire by soils type, hydrology and vegetation.

108

109 Mr. Harned said that he is “troubled” by the delineation between “wetlands” and “body of water” and
110 the Board decided to insert “measured by a mean high water mark by a Wetlands Scientist”. He
111 questioned what would prevent someone who doesn’t agree with one Soil Scientist’s findings and goes
112 out and hires one that would give them an answer that would better suit them. He commented that
113 under the RSA 438B – Water Management Shoreland Protection Act; they define it as an ordinary high
114 water mark; not a mean high water mark, and the ordinary high water mark is measured by the
115 Department of Environmental Services. He asked if it would be a substantive change to replace Soil
116 Scientist with Department of Environmental Services.

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118 Mr. Wilson commented that the Board is never bound by any Soil Scientist’s opinion. The Board has the
119 authority to obtain their own independent experts and it is the Board that ultimately makes the final
120 decision.

121

122 Mr. Groth said that NH Department of Environmental Services would only be involved if there were a
123 conflict.

124

125 Mr. Kroner read the other portion of the proposed amendment into the record:

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127 *Add:*

128 *Section 411 Wetlands – Minimum Lot Area:-*

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130 *Wetlands, but not a “Body of Water” or “Bodies of Water”, may be used to satisfy*
131 *minimum lot area and setback requirements provided that, that portion which is wetland*
132 *does not exceed fifty (50) percent of the minimum required lot area and provided that the*
133 *remaining lot area is sufficient in size and configuration to adequately accommodate all*
134 *required utilities. *3/13/79. (Balance of paragraph to remain unchanged.)*

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136 Mr. Field explained that this portion of the proposed amendment was to add two commas; a
137 grammatical correction to make the paragraph as it should be.

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139 Mr. Kroner closed the Public Hearing at 7:20pm.

140 **Ms. Pohl moved and Mr. Wilson seconded the motion to move the proposed amendment**
141 **Body/Bodies of Water – Wetlands – Minimum Lot Area to the 2012 Town Warrant as written.**
142 **The vote was unanimous in favor of the motion (6-0).**
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144 Mr. Kroner noted that the language of the Articles approved to be placed on the 2012 Town Warrant
145 was due by tomorrow and invited everyone to help draft the language.
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147 It was decided that it was up to the Planning Board to draft the language. Mr. Wilson suggested it read
148 as follows:
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150 Shall the Town vote to amend Section 302 – Definitions of the Zoning Ordinance to define “body of
151 water” or “bodies of water”, and then insert the whole amendment, and to also add, “and shall the
152 Town vote to add two commas to the definition in Section 411 – Wetlands minimum lot size” to clearly
153 indicate that “body of water” or “bodies of water” are excluded from “wetlands”.
154

155 **2. “Signs and Billboards”.** Replace Article V, Section 506.6.G – Signs and Billboards with a new Section
156 506.6.G – “Size, Number and Dimensional Criteria of Signs, including Contractor’s signs, in the R-1 and
157 R-2 Zoning Districts”.

158 Mr. Kroner opened the Public Hearing.

159 Mr. Kroner read the signs and billboards proposed amendment into the record:
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161 *“Section 506.6 (G) “Signs and Billboards””*
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163 *“G. Size, Number and Dimensional Criteria of Signs in the R-1 and R-2 Zoning*
164 *Districts.*

165 *No more than one sign shall be allowed for any business located in the R-1 or R-2*
166 *Zoning Districts.*

167 *The dimensional criteria for signs placed or erected on business properties in the*
168 *R-1 or R-2 Zoning District, including but not limited to, ground signs, monument*
169 *signs, pole signs, pylon signs, wall signs, sandwich-board signs, etc., shall be the*
170 *same as those specified within Section 506 of this Ordinance with the exception*
171 *that, under no circumstances, shall any sign exceed four (4) square feet per face,*
172 *not to exceed two (2) faces (total surface area shall not exceed eight (8) square*
173 *feet). Advertising shall be allowed on each side of such sign, if so desired by the*
174 *business. Internally or externally lighted signs, whether illuminated directly or*
175 *indirectly, are prohibited in the R-1 and R-2 Zoning Districts.*

176 *One (1) sign per residence under construction or renovation or per lot approved*
177 *for development that identifies the Contractor or Developer and provides a means*
178 *of contact shall be required. Such sign shall not exceed 12” x 12” and shall be*
179 *posted on the frontage of subject lots and shall remain until construction or*
180 *renovation is completed or the lots are sold.*

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Mr. Field commented that the Zoning Board has run into sign problems in the Residential District. There were changes made at the first Public Hearing to the proposed amendment to recognize that construction signs are helpful for directional purposes for public safety issues, deliveries and other conveniences.

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Dieter Ebert, Lovering Road, asked what it was that promoted the proposed changes, besides the recommendations from the Zoning Board. He commented on the considerable reduction of size of signs in the proposed ordinance. He said the current allowable size of a sign in the Residential District is 18-square feet and the proposed change is to reduce it to 4-square feet; a significant reduction. Mr. Ebert brought up other concerns with the proposed amendment:

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- The signs posted on Town Conservation Land are allowed to be 18 square feet, and a local farmer can't have the same size; he considers this a "double standard".
- He commented that it was made clear in the Town Survey for the Master Plan that people want to promote local businesses, and stopping advertisement is not promoting local businesses.
- The proposed size for Contractor's signs is too small to read from the road and to enter the property to read it would be trespassing.
- Real Estate signs are allowed to be bigger than Contractor's signs.

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Mr. Kroner said that the Board had a challenging Case that brought up the idea of how many signs should be allowed in the Residential District because it was not perfectly defined within the Zoning Ordinance. He said that adding the last paragraph is an attempt to regulate Contractor's signs that are sometimes left up for years. He said that the Town is littered with Contractor's signs and thinks there are better ways to advertise their business.

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Mr. Groth said there is a contradiction within the Ordinances and read from the Agriculture Ordinance; *Farm Stand Signage shall comply with North Hampton Zoning Ordinance 506.6.M (Seasonal signs). Section 506.6.M. Seasonal signs, Temporary signs that advertise a seasonal event, activity or harvested product, such asand shall be no larger than 30 square feet.* The proposed amendment allows only 4 square feet per face.

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Mr. Ebert said that the "seasonal sign" is a good idea, but the farm itself should be allowed to have a sign up "year round".

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Mr. Wilson said that that "farm stands" are not businesses; they are to comply with the Agricultural Ordinance, and the proposed amendment is meant to deal with just "businesses" in the Residential District.

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Mr. Kroner said that the proposed amendment is for "grandfathered businesses". There are a couple of "grandfathered businesses" in Town and this proposed amendment was designed to properly regulate those businesses. He said at the time when the "grandfathered business" wanted to make a material change to the sign is when they would have to comply with the proposed ordinance.

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Mr. Hornsby apologized for not being at the first Public Hearing. He said that he strongly disagrees with the proposed amendment for the following reasons:

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- The size of the Contractor's sign is too small and can cause traffic issues when people try to read them while driving.

- 232 • The sign is too small to read from the street, but trespassing on private property is prohibited.
233 • Contractors are not going to like being inundated with phone calls inquiring who the Plumber or
234 Electrician is.
235 • The sign should be large enough to read passing by at 40mph.
236 • He said that 90% of his jobs are out in back of the property so a business should be allowed to
237 display a sign out in front and a 12" x 12" sign is too restrictive.

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239 Mr. Wilson said that the point of view the Board took was that if you have a construction project going
240 on the primary function of the Contractor's sign is for contact information for the source to go to if there
241 is any kind of problem. He commented that advertising signs are prohibited. He said that he doesn't see
242 this proposal as prohibiting, and thinks it represents what the people in Town want. Mr. Wilson also
243 commented that the Sign Ordinance distinguishes between governmental signs and business signs where
244 businesses are in the Residential District; there are two different standards, not a "double standard", as
245 Mr. Ebert previously remarked.

246

247 Mr. Groth said that the proposal requires an informational sign; signs advertising businesses are already
248 prohibited under 506.5.B Billboards.

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250 Mr. Kroner said that he is in favor of the proposed ordinance amendment and that it sets a good balance
251 in this Town. He said it actually allows more signage than what is currently permitted.

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253 Dr. Arena commented that each subcontractor on a building project usually has a sign on their trucks
254 that are parked on the site during construction and that advertisement alone should be sufficient. He
255 read from a document on legal issues with premise signs into the record: "Today the Courts in most
256 States hold that aesthetics alone will support and exercise police power".

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258 Mr. Kroner closed the Public Hearing at 8:15pm.

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260 **Dr. Arena moved and Ms. Pohl seconded the motion to take the proposed amendment - "Signs and**
261 **Billboards to the 2012 Town Warrant as written.**

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263 Mr. Wilson said that he was conflicted because he is sympathetic to the fact of wanting to promote local
264 business, but the point that Mr. Groth made was that this amendment doesn't change what is allowed
265 and not allowed; it allows one sign to identify the Contractor. The proposed amendment does nothing
266 to change the "status quo".

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268 Ms. Pohl agreed with Mr. Wilson and said that the amendment is worth going on the ballot because it
269 permits more signage and is no more restrictive than what is currently allowed, but agrees that there is
270 confusion and that it may need more time to be worked on to make it more consistent with the rest of
271 the Ordinances.

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273 Mr. Kroner suggested convening a group to provide the frame work that can be discussed over the next
274 year.

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276 Mr. Kroner called for a five minute recess.

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Mr. Kroner reconvened the meeting.

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The Board added the last paragraph to the proposed ordinance to deal with the proliferation of contractor and subcontractor signs on properties under construction and it doesn't have anything to do with the first paragraph. The Board agreed that the paragraphs are incompatible and should be separated. The Board agreed that it would be a substantive change to separate the paragraphs within the proposed ordinance.

Mr. Wilson said that the Board needs to decide whether the flaws within the amendment are so important that it should not go on this year's Warrant, or that the benefit to put it on this year's Warrant will allow the Board to "live" with the flaws until they can be corrected over the next year. Mr. Wilson opined that the flawed amendment should not go on this year's Warrant and the Board should work on it and present it to the People next year and deal with the issue about construction signage.

Mr. Kroner commented that the things the Board has talked about over the Contractor's signs seems like it is more tied to the same requirements as posting a building permit then it does specifically to signage.

Mr. Hornsby commented that the Building Permit posted on the property has a section that shows who the Contractor is and their contact information.

Mr. Harned said that the ordinance is flawed and confusing and that the third paragraph should be separated from the first and second paragraphs.

The Board voted against the motion to take the proposed Zoning Ordinance Amendment – Signs and Billboards to the 2012 Town Warrant. (0 in favor, 6 opposed, and 0 abstentions). The motion failed.

Mr. Wilson moved and Ms. Pohl seconded the motion that the Recording Secretary note in the minutes that this Board strongly recommends that the Planning Board, next year, come back and revisit this proposed Amendment and try and resolve the problems that were identified at this meeting.

Ms. Pohl asked if the Board should have all the things that need to be addressed in a neat little package i.e. the proposed Zoning Ordinances that were proposed by the Zoning Board that did not make it to a Public Hearing and to look at the entire Zoning Ordinance to clarify which signs are allowed where.

Mr. Wilson suggested addressing those issues at another meeting.

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

Mr. Hornsby moved and Mr. Wilson seconded the motion to adjourn the Public Hearing at 8:55pm. The vote was unanimous in favor of the motion (6-0).

Dr. Arena suggested that the Work Session portion of the meeting not last beyond 9:30pm.

Mr. Kroner convened the Work Session Meeting at 8:58pm.

323 **I. Old Business**

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325 **1. None**

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327 **II. New Business**

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329 **1. Blasting Protocol – Review and Discussion to include in the Site, Subdivision and Excavation**
330 **Regulations. –**

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332 Mr. Harned reported that Draft #5 was distributed and discussed at the February 21, 2012 Work Session.
333 The radii from blast zones were discussed and he received information from a reliable source that the
334 suggested 750 –feet from 100 year-old and older houses and 500-feet from up to 100 years-old were
335 distances typically used by professional Blasting Companies.

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337 The Board discussed adopting the provisions of the Blasting Ordinance as provisions of the Site,
338 Subdivision and Excavation Regulations and take the time over the next year to propose it as a Zoning
339 Ordinance amendment.

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341 Mr. Groth said that changes to the Regulations require a Public Hearing.

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343 Mr. Wilson said that if it's a Select Board Policy or a Zoning Ordinance they both require a Town Vote.
344 He wondered if it could be part of the Building Permit process and if a project requires blasting then
345 they would have to abide by a certain blasting "policy".

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347 Mr. Kroner opined that it would be in the Town's best interest for the Board to adopt the Blasting
348 Protocol as part the Town's Site, Subdivision and Excavation Regulations, and then next year add it as a
349 Zoning Ordinance to be placed for Town Vote on the 2013 Town Warrant. He said there may be a
350 subdivision coming into Town soon that may require "blasting".

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352 Mr. Groth will look into putting the Blasting provisions under the Building Permit requirements.

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354 The Board agreed to hold a Public Hearing on April 17, 2012 to adopt the provisions of the Blasting
355 Ordinance as provisions to the Site, Subdivision and Excavation Regulations.

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357 Mr. Harned will email the Sixth Draft to Ms. Chase who will then distribute to the Planning Board
358 members by Friday, March 23rd.

359

360 The Board will take a final vote at the April 3, 2012 Planning Board Meeting to hold a Public Hearing on
361 April 17, 2012 amending the Site, Subdivision and Excavation Regulations by adding the Blasting
362 Ordinance provisions.

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364 **2. Master Plan Chapters Discussion/Approval:**

365 **a. Broadband Chapter**

366 **b. Energy Chapter**

367 **c. Existing Land Use Chapter**

368 **d. Housing Chapter**

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370 Mr. Kroner said that he would like to take the aforementioned Master Plan Chapters to a Public Hearing
371 on April 17, 2012.

372 Mr. Groth explained that the Broadband Stake Holder Group's aim is to increase Broadband availability
373 throughout the State. Mr. Landman is a member of the Stake Holder Group and made recommended
374 changes to the Broadband Chapter that Mr. Groth thinks are good. He said the changes are minor and
375 not substantive.

376 Dr. Arena commented that the Town has already approved (DAS) Distributive Antenna System. The
377 Board agreed that Broadband is different from DAS.

378
379 Mr. Groth said that DAS is covered in the last Chapter of the Broadband Chapter.
380

381 Mr. Wilson suggested that if the Board had any changes to the Master Plan Chapters or the Blasting
382 Protocol to have them ready for the April 3, 2012 meeting; the Board would be able to make changes at
383 that meeting for the April 17, 2012 Public Hearing (the same time as the regularly scheduled Work
384 Session).

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386 **Mr. Wilson moved and Ms. Pohl seconded the motion to post the Public Hearing on April 17, 2012 on**
387 **all four (4) Chapters of the Master Plan, Broadband, Energy, Existing Land Use and Housing.**
388 **The vote was unanimous in favor of the motion (6-0).**
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390 I. Other Business

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392 **CIP Update**– Mr. Wilson reported that the Committee has the spreadsheet for all of the projects that
393 they know about for the next six years starting FY 2012, and Mr. Fournier has looked into funding and
394 sent a spreadsheet of how much things will cost and how it will be funded so they can begin to look at
395 what the tax rate might be. He said that the CIP Committee is pushing to get decisions on the Municipal
396 Complex. They have asked Dr. Azzi to look at the data and give the Committee “feedback” by the March
397 30th meeting. He said they are 75% to 80% done. The Town needs to come to a decision; if they choose
398 to keep what they have then the Town needs to start investing in maintaining the buildings. He said
399 that the Fire Department is falling apart. He said the CIP Committee has no authority over this but is
400 trying to push the point and move things along.

401
402 Dr. Arena said that townspeople should be made aware at each step of how much things are going to
403 cost.

404
405 **Code of Ethics Committee Update** – Mr. Wilson said that Committee is meeting Thursday in a Joint
406 Meeting with the Select Board and the Code of Ethics Committee to consider the recommendations
407 made by Mr. Miller to turn the “Code” into an “Oath” to be a part of the Oath of Office taken by Elected
408 or Appointed Officials. This will eliminate the enforcement portion. He said it is a dramatic change, but
409 Mr. Miller is concerned the chilling effect the Standing Committee has on an Appointed or Elected
410 Official that may have to face them for a complaint made against them.

411

412 Junk Yard Update – Mr. Wilson said that the Attorney is still working on a process to collect “Junk Yard”
413 License fees.

414

415 **Minutes –**

416 **February 14, 2012 Joint Meeting**

417 **February 21, 2012 Work Session**

418 **March 6, 2012 Public Hearing and Regular Meeting**

419

420 **Mr. Wilson moved and Ms. Pohl seconded the motion to approve the February 14, 2012, February 21,**
421 **2012 and March 6, 2012 Meeting Minutes as written.**

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

423

424 **The meeting adjourned at 9:30pm without objection.**

425

426 Respectfully submitted,

427

428 Wendy V. Chase

429 Recording Secretary

430

431 **Approved April 17, 2012**