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PLANNING BOARD

February 23, 2010 - Minutes

A meeting of the Orleans Planning Board was called to order at 7:00 p.m. in the Nauset Meeting Room at the Orleans Town Hall. **Present: Chairman:** John Fallender; **Clerk:** John Ostman; Chet Crabtree. **Planning Department Staff:** George Meservey; **Also Present: Board of Selectmen Liaison:** Jon Fuller. **Absent: Vice-Chairman:** Seth Wilkinson; Kenneth McKusick; **Associate:** Gary Guzneau.

CONSERVATION, RECREATION AND OPEN SPACE PLAN (CROS) – APPROVAL OF EXTENDED ACTION PLAN

Meservey described the Conservation, Recreation and Open Space Plan which was approved in 2006 and endorsed by the Planning Board in May 2006. Meservey stated that the Executive Office of Energy and Environmental Affairs has allowed towns to extend the eligibility of their Conservation, Recreation and Open Space Plans for two additional years beyond the five year approval period. Meservey stated that this plan is necessary for the eligibility for reimbursement grants for open space protection. Meservey explained that the town has developed an extended action plan which has been brought to the attention of the Open Space Committee and was unanimously approved. Meservey requested review and approval of the Conservation, Recreation and Open Space Plan by Planning Board members. Meservey explained a little known affordable housing regulation in Chapter 40B that when a town has adopted an open space plan, any of the priority parcels that are listed in that plan, the town can fight a 40B development proposal for those parcels because those are town priorities in a Planning Board approved plan. Meservey stated that the town has a pretty extensive priority list in our plan which identifies many parcels some of which are under negotiation by the Open Space Committee at present.

MOTION: On a motion by **John Ostman**, seconded by **Chet Crabtree**, the Board voted to approve the extended action plan for the Conservation, Recreation and Open Space Plan.

VOTE: 3-0-0 The motion passed unanimously.

VILLAGE CENTER STUDY UPDATE

Meservey gave a report on a meeting he and John Ostman attended with the Orleans Chamber of Commerce at which point they were informed of the proposed Village Center study which they indicated they would support. Meservey stated that the Chamber of Commerce was thanked for their support of the funding which was approved by town meeting. Meservey stated that the Chamber of Commerce has indicated they will assist the town in the survey of visitors through the cooperation of realtors and the information booth. Meservey reported on a meeting with Suffolk University representatives and a discussion on the use of various databases to compile information to use for the surveys.

BUILDING HEIGHT DEFINITION & BUILDING-MOUNTED WIND TURBINES

Zoning Board of Appeals

Meservey reported that the Zoning Board of Appeals received a Special Permit request for a building mounted wind turbine which would have been about 14' above the ridgeline of the structure. The Zoning Board of Appeals granted the Special Permit under section 35.1 (Wind Turbine bylaw). Meservey noted that there was no request for a variance from the building height which limits any appurtenances to no greater than 5' above the ridgeline. Meservey noted that the Building Inspector may find that even though the applicant has received a Special Permit for the turbine, there is still a need for a variance for building height.

Meservey read the following sections of the Orleans Zoning Bylaws:

ARTICLE VI ADMINISTRATION

§164-41 Enforcement; Violations and Penalties

§164-41.A This chapter shall be enforced by the Building Inspector, with the Planning Board acting in an advisory capacity.

ARTICLE I GENERAL PROVISIONS

§164-3 Applicability

§164-3.A Noninterference. This chapter shall not interfere with or annul any other town bylaw, rule, regulations or permit, provided that, unless specifically excepted or where a conflict exists within the chapter itself, where this chapter is more stringent, it shall control.

Meservey explained that as noted above in §164-41 the Building Commissioner is requesting an advisory opinion from the Planning Board of in whether a variance is required for the installation of a wind turbine on a building if it exceeds the allowable building height; or is §164-35.1 the sole regulation on wind turbines on a building. Meservey stated that if the Planning Board determines that a variance is required, then the public hearing on March 9, 2010 is important. If the Planning Board determines that the wind turbine section in the Orleans Zoning Bylaws is the only thing that should be looked at with regard to a wind turbine installation, then the public hearing is somewhat moot. Meservey noted that the Planning Board would be acting in an advisory capacity at the Building Commissioner's request.

Meservey explained to the Planning Board that all wind energy facilities require a Special Permit and the requirements for granting a Special Permit are eight criteria found in §164-44 of the Orleans zoning Bylaws:

§164-44 Special Permits

C. Criteria. Special Permits may be granted when it has been found that the use involved will not be detrimental to the established or future character of the neighborhood and the town and when it has been found that the use involved will be in harmony with the general purpose and intent of the chapter and shall include consideration of each of the following:

- (1) Adequacy of the site, in terms of size, for the proposed use.
- (2) Suitability of the site for the proposed use.
- (3) Impact on traffic flow and safety.
- (4) Impact on neighborhood visual character, including views and vistas.
- (5) Adequacy of the method of sewage disposal, source of water and drainage.
- (6) Adequacy of utilities and other public services.
- (7) Noise and litter
- (8) Impact on groundwater quality and recharged volume and the water quality of coastal and fresh surface water bodies.

Meservy noted that above eight criteria must be met for every Special Permit. Meservy stated that in addition to the criteria listed in §164-44, there are ten requirements in §164-35.1.D that need to be met for every wind facility. Meservy noted that at the end of that bylaw there is a section §164-35.1.D that says for a non-commercial wind facility the Zoning Board of Appeals may waive any of the ten requirements provided they find that the basic eight criteria listed above for the issuance of the Special permit.

Planning Board members discussed the following proposed language for Chapter 164-4: Definitions for a public hearing to be held on March 9, 2010:

To see if the Town will vote to amend Section 164-4 by adding the following language:

Building Height: *The vertical distance from the average undisturbed existing natural grade at the foundation on the street side of the building to the top of the ridge. Except as otherwise provided in Section 164-40-2-B, or Section 164-35.1 D. Non-Commercial Wind Facilities, the only portions of a structure permitted above the ridge line shall be chimneys, air conditioning equipment, skylights, ventilators and antennae and other like features appurtenant to buildings which are usually carried above roofs and are not used for human occupancy and which in no event shall exceed 5 feet above the ridge line.*

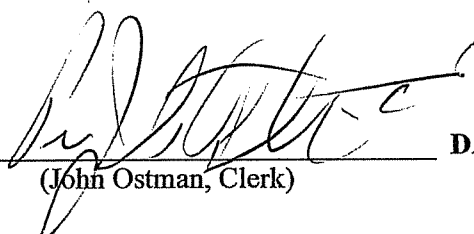
Consensus: There was a consensus of Planning Board members that there seems to be a conflict in the zoning bylaws regarding non-commercial wind turbines and it is clear that the more restrictive interpretation applies and needs to be clarified, and that a building mounted appurtenance that exceeds five (5) feet above the ridge line would require a variance.

ADJOURNMENT

MOTION: On a motion by John Ostman, seconded by Chet Crabtree, the Board voted to adjourn at 7:39 p.m.

VOTE: 3-0-0 The motion passed unanimously.

SIGNED:


(John Ostman, Clerk)

DATE:

4/7/2010

