

# WOLFEBORO PLANNING BOARD

January 4, 2011

## MINUTES

**Members Present:** Kathy Barnard, Chairman, Stacie Jo Pope, Vice-Chairman, Chuck Storm, Selectmen's Representative, Chris Franson, Jennifer Haskell, Dave DeVries, Members.

**Members Absent:** Richard O'Donnell, Member, Steve Buck, Fae Moore, Dave Alessandroni, Alternates.

**Staff Present:** Rob Houseman, Director of Planning & Development, Lee Ann Keathley, Secretary.

*Chairman Barnard opened the meeting at 7:00 PM at the Wolfeboro Public Library and announced the public hearing for Commercial District Zoning Changes has been continued to January 18, 2011.*

### **PUBLIC HEARINGS**

Kathy Barnard stated the language of the Petition Warrant Articles cannot be amended and will be placed on the ballot as submitted with a note "recommended" or "not recommended" by the Planning Board.

➤ **Petition Warrant Article ~ "To add color back into Business Directional Signs"**

Kathy Barnard stated currently business directional signs are white with black lettering with the rear face being dark green.

Rob Houseman reviewed the Petition Warrant Article "To add color back into Business Directional Signs".

*Chairman Barnard opened the public hearing.*

Jerome Holden stated the petition was put forth because the people believe they should be able to use business colors in the directional signs; noting the merchants paid good money for their business identity. He stated the type of lettering or rear face color has not been enforced. He stated he is in favor of the article; noting that people should have the ability to vote on whether color is wanted.

*There being no further questions or comments, Chairman Barnard closed the public hearing.*

Kathy Barnard stated the Planning Board had a significant number of meetings and discussions regarding the provision; noting the Board reviewed other communities and felt there should be consistency and uniformity in the directional signs to direct people to a business. She stated Town and State signs are uniform in size and color.

Stacie Jo Pope stated the Board reviewed the 2004 Transportation Chapter of the Master Plan; noting such speaks to directional signs which recommended a consistent look, color, size and placement; noting such are way finding signs and not signs for advertising a business. She stated she is opposed to adding color to the signs; noting the signs should remain consistent to reflect the New England character of the Town and not add to the visual clutter.

David DeVries agreed with Ms. Pope.

**It was moved by Stacie Jo Pope and seconded by Dave DeVries to not recommend the Petition Warrant Article "To add color back into Business Directional Signs". All members voted in favor. The motion passed.**

- **Petition Warrant Article ~ "To amend Section 175-38 of Article VA, ROI Residential/Office/Institutional Overlay District of the Wolfeboro Zoning Ordinance to include Group Home as a permitted use"**

Rob Houseman stated the Petition Warrant Article proposes to insert the definition of Group Home in the ordinance and as a permitted use in the ROI Overlay District.

*Chairman Barnard opened the public hearing.*

Fred Tedeschi, 13 Eagle Trace, stated he is an attorney with 40 years of practice however he is appearing before the Board not in his legal capacity but rather, his capacity as a resident of the Town of Wolfeboro for the past 8 years. He stated he is in favor of the amendment. He stated that due to the well thought out Master Plan and Zoning Ordinances, he felt his property values would remain stable and he would be able to live in a place where the owners of the property would take pride in their property in which they own and is free from commercial for profit enterprises operated by absent free owners that care very little for their neighbors. He stated an opportunistic entity has found a small loophole in the ordinance and as a result, he and his neighbors propose the amendment to the ordinance. He stated clarifying what appears to be a small loophole would insulate the Town from claims that group home residences have not been provided for; the one flaw in the Zoning Ordinance. He reviewed the history of the ZBA application and proposal that prompted the amendment; noting the precedent set by the outcome now allows for group homes to be placed anywhere in the Town of Wolfeboro as a matter of right and occupied by anyone. He stated the Town's Zoning Ordinance does not make absolutely clear the proposed community residential facility is a permitted use subject to the issuance of a Special Exception in the ROI District. He stated the Fairway View Estates Association believes the Town's position that the community residence as a care facility can be located in accordance with the Town's Zoning Ordinance in the ROI District however; it should be relaxed for small group homes of 3 people provided it is owner occupied. He stated owner occupancy is essential. He stated the Association's attorney drafted the warrant article and strongly urged the Board to recommend the amendment for approval by the voters.

Russell MacCabe, 7 Fairway Drive, stated the reason for the proposed clarification is to give a definite and clear understanding of what facilities are welcome in the overlay district. He stated the neighborhood has no sidewalks or crosswalks and is  $\frac{3}{4}$  mile from Main Street; noting that without such, it becomes a danger to some of the people in the facility. He stated 57 signatures were collected in two hours; noting 4 were declared invalid and only 16 were from his neighborhood therefore, the amount of signatures show a lot of Town support. He requested recommendation of the Petition Warrant Article.

Dick Hamilton, 10 Eagle Trace, stated his response from people when discussing the issue is "they can't do that", "they can't put a commercial operation in a residential zone". He stated he is in favor of the Petition Warrant Article and hopes it will further support the Town's position on zoning. He stated

it is important for the Board to know the residents of Fairway View Estates are not antagonistic. He stated he told the BOS that he and other residents feel like they are treated as the enemy; noting there is no sense that they are citizens of the community or supportive of zoning. He stated their suggestions are not taken seriously or responded to. He stated the BOS signed a letter that was sent to the manager of the Certification and Licensing Division of DHHS requesting a slow approval of the certification until the zoning issue was heard however, the State has certified the home. He stated outside of the letter from the BOS, the residents have been forced to fight the issue alone. Following the ZBA hearings, he questions whether the threat of litigation or zoning is prominent. He requested the Board recommend the Petition Warrant Article.

Mike Hodder, 689 North Main Street, urged the Board to support the Petition Warrant Article; noting the case law the ZBA relied upon in its decision to close the hearing is old and doesn't believe it was looked at by the State's Supreme Court. He stated the Planning Board should stand up as champions for the Town's zoning to support the Town's citizens. He stated the State relying on the Fair Housing Act amounts to an unfair taking and intrusion into people's neighborhoods. He urged the Town to stand up for the rights of all citizens.

Kathy Barnard stated Town Counsel reviewed the Petition Warrant Article and read Laura Spector's email regarding such; noting the email states "*The group home presents a whole host of problems. As an initial matter it does not solve the problem that she suspects the petitioners are attempting to solve as group homes will still be permitted in any district in Town because State law pre-empts zoning with regard to those homes. Moreover, by defining group homes as owner occupied residential dwelling occupied by 3 or fewer additional unrelated people, this amendment reaches far and wide. By specifically permitting such homes only in the ROI District it is implied that they are not permitted in other districts. There is no rational basis for such a distinction and the amendment could be struck down as unconstitutional.*"

Dick Hamilton stated at one of the ZBA hearings it was questioned by his group as to the ZBA had sought counsel with Fair Housing credentials. He stated Dave Owen, Town Manager, stated such was not done and although he appreciates Town Counsel's opinion, he cautioned the Board in regard to whether she is up to speed on Fair Housing law. He stated the Town Manager stated there was no effort made to seek said counsel.

Fred Tedeschi stated he extensively reviewed the two cases cited and have had two outside counsel review the cases; noting the cases say that the local Zoning Board and Town cannot frustrate State policy. He stated that assuming those cases are still good law, the Town of Wolfeboro, if they had denied the zoning would not be frustrating State policy and therefore, would not be subject to violation of State rules. He stated the zoning statute that gives the Planning Board and the ZBA the authority to act, gives them an unfettered right to rule in zoning matters unless the State specifically, through legislature, has said that is not the case in a particular area. He stated there is no such restriction on the Zoning Board's authority; noting the laws were adopted after the 1980 & 1981 cases cited and relied upon by Town Counsel. He stated those cases, by definition, are no longer considered good law because the statutes have change extensively. He stated federal law requires applicants to come before the Town and ask for permission. He stated he does not agree with Town Counsel's opinion.

*There being no further questions or comments, Chairman Barnard closed the public hearing.*

Kathy Barnard stated she sat on the ZBA case; noting the issue is very important and needs to be studied in order to properly deal with the issue of group homes.

Chris Franson stated she is empathetic to what has been heard however, has a problem with the language of the petition warrant article. She stated she cannot support the specific definition noted in the article and recommended the issue be placed on the Board's work program.

Jennifer Haskell recused herself from the vote; noting she represented Fairway View Estates Association. She expressed concern for the accuracy of Town Counsel's opinion and believes there is a lot of misunderstanding of State and federal law and the term pre-exemption. She believes there is case law that will guide the issue in the future. She stated she doesn't think the language is narrow enough and recommended inserting "for profit" at the end of the statement; noting such could change the scope of the proposal. She believes the Board has to address the issue because the definition is not in the ordinance therefore, group homes are not permitted anywhere. She stated the issue will take a lot of study and specific counsel who is familiar with State policies and federal law. She stated that although there are a lot of threats in the air, it is not the Board's role to respond to them.

Stacie Jo Pope stated there was compelling testimony this evening and the issue needs to be addressed by the Board. She stated the proposed definition could provide a lot of problems and recommends the Board place the issue on its work program.

Chuck Storm stated he and the BOS support the petition warrant article; noting the BOS wrote a letter in support of such.

Dave DeVries stated he understands the resident's intent however, the definition needs more work and further discussion on the part of the Board.

Chris Franson stated it would be good to be prudent from both sides of the argument and not be reactive.

Jennifer Haskell stated it is important for members of the community and the Association to know that the issue is not dying here with the Board's vote to recommend or not recommend. She stated it is an important issue to the Planning Board regardless of the recommendation and will be addressed by the Board if the voters don't make a decision that is favorable.

**It was moved by Chris Franson and seconded by Dave DeVries to not recommend the Petition Warrant Article "To amend Section 175-38 of Article VA, ROI Residential/Office/Institutional Overlay District of the Wolfeboro Zoning Ordinance to include Group Home as a permitted use". Kathy Barnard, Chris Franson, Dave DeVries, Stacie Jo Pope voted in favor. Chuck Storm opposed. Jennifer Haskell abstained. The motion passed.**

➤ **Lot Frontage**

Rob Houseman reviewed the proposed changes to the definition of Lot Frontage.

Kathy Barnard requested Staff to strike the definition of shore frontage, as decided by the Board previously; noting that if an applicant wishes to decrease shore frontage then ZBA approval could be sought.

*Chairman Barnard opened the public hearing.*

Suki Fawcett noted that by making lot line adjustments to have a buildable lot makes lots conforming.

*There being no further questions or comments, Chairman Barnard closed the public hearing.*

**It was moved by Stacie Jo Pope and seconded by Chris Franson to continue the Lot Frontage public hearing to January 18, 2011. All members voted in favor. The motion passed.**

➤ **Sign Ordinance**

Rob Houseman reviewed the proposed changes to the Sign Ordinance.

Kathy Barnard stated the Board reviewed comments from local merchants and developed changes to the ordinance; noting the proposed ordinance offers additional advertising devices that do not require permitting such as on premise portable signs, decorative flags with some restrictions and special promotional signs. She stated the Board has no control over signs on top of vehicles and considered comments from the public.

Rob Houseman reviewed the proposed changes to the ordinance.

*Chairman Barnard opened the public hearing.*

Jerome Holden, JC Signs, reviewed Paul Jenny's email and recommendation regarding decorative flags and appropriate size of such; noting the provision would read; "*decorative flags not constituting a sign up to two per business of appropriate size.*" Relative to the issue of off premise signs for the Village Players, he questioned how the Village Players can get the two off premise signs allowed at Pickering Corner.

Rob Houseman replied an off premise banner has to meet the definition of a public event; noting the intent of the ordinance is for the entire Town and directional signs do not advertise an event rather it advertises a business. He questioned whether the banner meets the threshold for the definition of a public event.

Jerome Holden suggested allowing an off premise sign by permit issued by and for a fee established by the Code Enforcement Officer; location of sign to be specified by the Code Enforcement Officer. He stated Paul Jenny recommended removing "bunting" from the definition of flag.

Julie Jacobs stated she disagrees with having to take A-frame signs in at night. Referencing page 6, C & D; noting 25% of window space is not enough for a promotional banner. She stated "specials" should be allowed to be advertised.

Jerome Holden concurred with Ms. Jacobs and recommended 15 SF for a banner for a special event for a business.

*There being no further questions or comments, Chairman Barnard closed the public hearing.*

Chris Franson stated what is proposed is a good balance. She read Paul Jenny's email regarding the flags and is not in favor of changing the flag provision of the ordinance.

Following further discussion, the Board agreed to the following changes;

- Definition of Flag; add “decorative” in front of “flag”
- Revise definition of Flag; insert “or WELCOME” following “OPEN”

Jennifer Haskell recommended revising Section 175-44.B.(4) as follows; “Decorative flags, not constituting a sign, up to one per business.”

Chris Franson and Dave DeVries disagreed.

**It was moved by Jennifer Haskell to revise Section 175-44.B.(4) as follows; “Decorative flags, not constituting a sign, up to one per business.” There being no second, the motion failed.**

**It was moved by Chris Franson and seconded by Dave DeVries to maintain Section 175-44.B.(4) as proposed. Kathy Barnard, Stacie Jo Pope, Chris Franson, Chuck Storm, Dave DeVries voted in favor. Jennifer Haskell opposed. The motion passed.**

**It was moved by Chris Franson and seconded by Stacie Jo Pope to move the Sign Ordinance, as amended on 1/4/11, to Town Warrant. All members voted in favor. The motion passed.**

➤ **Wetlands Ordinance**

Rob Houseman reviewed the proposed changes to the ordinance. He stated discussion has taken place as to what constitutes a pre-2003 lot of record. He stated the change in the ordinance radically reduces the number of lots that require relief in regard to the State process. He stated the Town is one of 171 towns in the State of NH that is more restrictive than the State; noting that if the State moves forward with the adoption of the NH Method, the Town will be subject to it. However, if the NH Method is only proposed as a model, the Town can use the model to update the Town’s ordinance. He stated the ordinance is more conservative and more environmentally protective than other towns and other towns on Lake Winnepesaukee.

Kathy Barnard stated the Board decided one year ago to review the ordinance in total for revisions and formed a subcommittee that proceeded with such and presented the proposed changes to the ordinance. When reviewing the pre-2003 lots, the Board considered the development of the lots. She stated she and Stacie Jo Pope prepared a history of various changes to the ordinance and requested such be part of the record, see attached. She stated the Board received 2 letters from Orr & Reno, dated 10/18/10 & 12/9/10; noting both have been entered into the record.

*Chairman Barnard opened the public hearing.*

Roger Murray, representing Cynthia & Clinton Johnson, stated he attended all the Wetland Committee meetings. Referencing Rene Pelletier’s presentation to the Board on 11/2/10, he stated Mr. Pelletier commented on the need to evaluate wetlands based on functions and values and the Board’s decision should be based on technical evaluation that the NH Method provides (revised 2010) and noted he spoke to Amanda Stone who stated the NH Method would be available in February 2011. He stated Mr. Pelletier mentioned the work of the Land Use Commission and distributed copies of the report. He reviewed #’s 17 and 19 of the report and recommendations of the Land Use Commission. He stated the Wetlands Committee 6/23/10 minutes reflect discussion of buffer zones and that such should

reflect the functions and values of the wetlands; noting there should be a standard and classification system; noting such is also the recommendation of Mr. Pelletier and the Land Use Commission however, it is not what the proposed ordinance does. He stated it does not make sense to go forward realizing the information from the 2010 NH Method is not yet available but expected to be out in February 2011. He stated the Natural Resources Inventory has not been completed and the Lake Wentworth Foundation is undertaking a Watershed Management Plan for Lake Wentworth which takes up 85% of the town and as such, it would make sense to wait to prepare a new wetlands ordinance that incorporates the information. He questioned whether the ordinance is a no touch or a no touch until a Special Use Permit is received.

Rob Houseman stated there is an opportunity for encroachment into the buffer with a Special Use Permit.

Roger Murray stated a no touch buffer is very important and significant and is what provides protection to the wetlands. He stated wetlands are vulnerable in the ordinance and it should be a no touch buffer in order to protect the wetlands. He noted confusion of the definition of buffer and wetlands buffer (pages 1, 2 and references throughout the ordinance); noting such needs to be addressed (no touch, something that exists already or something that is to be created). He noted inconsistencies between the model ordinance and the Town's current ordinance; noting the ordinances are structurally different; noting inconsistencies regarding structures and expansion of dwellings. The Wetlands Committee discussed the importance of wetlands next to bodies of water rather than a wetland 2 miles away however, the proposed ordinance treats them the same. He reviewed issues with pre-2003 lots. He stated his clients believe the four criteria should apply to all Special Use Permits and the economic development criteria should be retained; noting that by removing them reduces the standards in the current ordinance. He read the statement and purpose of the Future Land Use Chapter of the Master Plan and Goals and objectives of such.

Chris Franson stated she received follow up from NH DES; noting the NH Method is not yet available and the projected date of 2/11 is not definite. She stated NH DES sent her the Army Corps of Engineer's procedure; noting such is cumbersome and similar to the NH Method (NH Method is based on such). She stated it is not appropriate to request the Board to wait until the NH Method is available.

Roger Murray stated the NH Method is expected to be out in February 2011. In regard to buffer and setbacks, he stated the current ordinance provides an exception to single family and duplexes however, such does not appear in the proposed ordinance.

Chris Franson requested Mr. Murray to address recommended changes to the ordinance.

Roger Murray stated he recommends the following; address conflict within two ordinances, request no touch buffer to be no touch, all 4 of the criteria apply to all Special Use Permits, setbacks should remain 50' rather than the reduction to 30', requested consideration of a setback to intermittent streams, include rebuild "in kind" of structures (questioned whether proposed ordinance addresses such), permitted uses (D & E) also appear under Special Use Permit as G & H (clarify), 8.A. insert "building" prior to "footprint", questioned definition of building footprint, criteria A.b; include "buffer", disposal of snow in wetland buffers should not be allowed, clarify "K" (page 7), identify standard / criteria for "L" (page 7), monument buffer boundaries and 2 year duration for a Special Use Permit is not included in proposed ordinance. He distributed a comparison between the current and proposed

ordinance with the model ordinance; noting his client's prepared such. He requested to play a video of excerpts from Rene Pelletier's previous presentation to the Board.

Dave DeVries stated it is not necessary for the Board to watch the presentation again.

Roger Murray stated he was requested by his clients to show the excerpts of Mr. Pelletier's comments. He stated there are parts of the presentation that were not addressed in the draft ordinance.

Chris Franson stated the Board is aware of his comments and was present at the meeting he attended.

Mike Hodder stated Mr. Murray has mentioned the NH Method several times and submitted the 2010 NH Method to the Board; noting 10 of the 17 changes are significant. He stated the new NH Method is going to allow wetland scientists to evaluate individual wetlands as opposed to comparing one wetland to another; noting such is designed to evaluate individual wetlands and is not a planning tool or zoning guideline. He stated the new wetlands ordinance offers substantial protection to the Town and is far better than what the Town has today. He urged the Board to place such on the Town Warrant.

Dan Coons, Chairman, Conservation Commission and Certified Wetlands Scientist, stated the current ordinance does provide for the evaluation of wetlands based on functions and values. He stated the NH Method, if and when adopted, may be a valuable tool that can be used. He questioned how the watershed assessment of Lake Wentworth and Lake Winnepesaukee affects zoning decisions; noting the information from such is watershed based and not necessarily policy based. He stated the Committee attempted to provide a balance between providing greater protection for the natural resources and water resources of Wolfeboro and balance such with development of the Town.

*There being no further questions or comments, Chairman Barnard closed the public hearing.*

Dave DeVries stated a lot of the testimony of Roger Murray is based on the NH Method that has not yet been adopted. He recommended moving forward with the ordinance.

Jennifer Haskell stated she was moved by the testimony of Mr. Hodder and Mr. Coons regarding the purpose of the ordinance and is confident the ordinance is a strong document.

Kathy Barnard questioned the Board's view of issues that Attorney Murray felt were confusing.

Referencing the competing definitions of buffer as noted by Attorney Murray, Jennifer Haskell stated each has a context that was consistent and understandable and did not appear confusing. In regard to the two competing purposes, she stated she doesn't see it as being in conflict. She stated Attorney Murray wants more restrictive language; noting the Board discussed such and did not feel the insertion of more restrictive language was necessary.

Chuck Storm recommended placing the ordinance on the warrant.

Stacie Jo Pope questioned the lack of the two year provision in the proposed ordinance.



Rob Houseman stated the ordinance itself expresses the time limit of the Special Use Permit. He stated currently there is a two year limit on Special Use Permit approvals; noting the State's permit is valid for 5 years. He stated the Board has the right to impose a restriction on the condition of approval therefore, doesn't feel the Board loses anything by not having the provision stated in the ordinance.

**It was moved by Chuck Storm and seconded by Dave DeVries to move the Wetlands Conservation Overlay District to Town Warrant. All members voted in favor. The motion passed.**

**Planning Board schedule**

- Planning Board regular meeting rescheduled to 1/18/11
- Commercial Districts ~ 2<sup>nd</sup> public hearing scheduled for 1/18/11
- Lot Frontage definition ~ 2<sup>nd</sup> public hearing scheduled for 1/18/11

**It was moved by Chuck Storm and seconded by Dave DeVries to adjourn the January 4, 2011 Wolfeboro Planning Board meeting. All members voted in favor.**

Respectfully Submitted,  
*Lee Ann Keathley*  
Lee Ann Keathley