

WOLFEBORO PLANNING BOARD
December 13, 2011
MINUTES

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

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

PUBLIC HEARINGS

- **Group Home Ordinance**

Rob Houseman reviewed the Group Home Ordinance, see attached.

Chairman Barnard opened the public hearing.

Dick Hamilton thanked the Board for their efforts and reviewed his letter, dated 12/13/11, see attached. He stated he opposes the proposed ordinance and requested the Board to vote against forwarding it to Town Meeting. He stated the proposed ordinance is saying that we have no regard for the neighborhood; noting 8 clients is not a single family use rather, it is a commercial use. He stated he feels his approach outlined in a letter to the Governor is a better approach.

Frank Tedeschi, 13 Eagle Trace, stated he is opposed to the ordinance and noted that if the Board wants to be risk adverse then they should adopt the ordinance as is. He stated the need to push back against legislation and review Supreme Court cases that gives the Board an avenue. He stated the Town needs an ordinance that can be enforced and can push the State provisions. He recommended providing a couple of additional areas where home based occupations are allowed; noting the purpose is to help individuals in their homes. Referencing the Zoning Ordinance, recommended removing the 55 age limit in the elderly housing and leave as congregate living; noting a change in the definition of elderly housing, see attached. He recommended creating an adult care home and provided information regarding permitted uses and Home Occupation, see attached.

Mike Hodder stated the Planning Board needs to ensure the Town understands that the Board did not draft an ordinance on imagination rather; the draft is an attempt to channel a social development as best they can. He questioned the Board's stance/response when an applicant says State and Federal law supersede the Town's Zoning Ordinance therefore, they refuse to meet the criteria set forth by the Town. He stated he feels the ZBA should not have said that they do not have jurisdiction. He questioned whether the Board expects an applicant to channel themselves into criteria if they don't want to.

Dick Hamilton stated Wolfeboro is a low tax town therefore; there is an incentive for this type of use to come to Wolfeboro. He stated the Board/Town has to be very careful as to how to proceed.

Jennifer Haskell stated the Board struggled for one year in regard to this issue. She stated people who are disabled are a protected class. She stated 3 different categories of Group Homes are recognized; up to 3, 4-7 and 8+. She stated there is no question of risk and there would litigation if an attempt were made to further regulate 3 and under. She stated the ordinance invites a conversation for proposed group home use with abutters. She stated per the Constitution, there is an inability to regulate 3 & under as a single family residence. She stated the Board was advised by four attorneys not to touch the issue.

Kathy Barnard asked Mr. Hamilton and Mr. Tedeschi if they feel the Board should do nothing.

Mike Hodder stated something has to be done however, questioned the possibility of being overrun because the Town Ordinance would be pre-empted by State and Federal regulations. Referencing the Merka case, he believes the Town should have fought.

Frank Tedeschi stated the Constitution protects citizens of the United States. He stated in certain respects a corporate entity is a citizen.

Jennifer Haskell stated the Board is not permitted to view a group home of 3 residents or less as anything other than a single family residence and the Board is not permitted to treat those people as a corporation.

Frank Tedeschi stated he doesn't think the Constitution protects the situation; noting DHHS regulations do not say there cannot be zoning regulations.

Jennifer Haskell disagreed stating that Mr. Tedeschi's belief doesn't incorporate what the Board has learned over the past year; noting the proposed ordinance is in response to the public's request to do something.

Chris Franson stated she feels as though the work done by the Board and the proposed regulations isn't good enough; noting the Board was requested by the public to review the issue. She stated that if the Board does nothing, such would be the very thing the public didn't want the Board to do.

Frank Tedeschi stated he challenges the proposed ordinance because it allows group homes anywhere in Town.

Chris Franson stated it would be discriminatory to only allow the group homes in certain areas of town.

Jennifer Haskell stated the Board is not allowed to consider individuals as a corporation and cannot treat disabled people as the corporation. She stated to override authority will cause a lawsuit; noting the Board's role is to make an ordinance that complies with State regulations.

Fred Tedeschi stated the Board needs to comply with the statutes and not the regulations.

Dick Hamilton stated he does not believe the ordinance will serve the Town well.

Jennifer Haskell stated that if the Board abandons the ordinance that any size group home can come into Wolfeboro without any conversation with the abutters.

Mike Hodder urged the Board to go forward with the ordinance.

Chuck Storm recommended Mr. Hamilton and Mr. Tedeschi push back at the State and Federal level. He stated the ordinance provides for notification to abutters.

Dave DeVries agreed with Ms. Haskell's comments; noting at it seems at every point of solution there appears to be a revolution. He stated it sounds as if Mr. Hamilton and Mr. Tedeschi are saying they don't want group homes in our community and feels the ordinance is better than what currently exists.

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

Rob Houseman recommended the information submitted by the public and the minutes be reviewed by Town Counsel and the Board schedule a second public hearing.

It was moved by Chris Franson and seconded by Chuck Storm to move Group Home Ordinance to a second public hearing scheduled for January 3, 2012. All members voted in favor. The motion passed.

- **Shorefront Residential District Ordinance**

Kathy Barnard stated significant changes were made to the Comprehensive Shoreland Protection Act on July 1, 2011 in which the Board felt weakened the protection of the Town and State's greatest asset; its surface waters.

Rob Houseman reviewed the Shorefront Residential District Ordinance presentation, see attached. He also reviewed the differences between the former Comprehensive Shoreland Protection Act and the current Shoreland Water Quality Protection Act.

Chairman Barnard opened the public hearing.

Dan Coons questioned how such is administered and who would be reviewing the applications. He stated the Conservation Commission reviewed the proposal and it was the consensus to support it.

Rob Houseman replied the Planning & Development Office and when necessary, other Boards.

Dan Coons questioned if there is an appeal process.

Rob Houseman stated per 674:41 the appeal is directly to Superior Court.

Dick Hamilton questioned the impact to existing developed property.

Rob Houseman stated if a property is compliant with the Town then it will be compliant with State standards.

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

It was moved by Chris Franson and seconded by Chuck Storm to move Shorefront Residential District Ordinance to Town Warrant. All members voted in favor. The motion passed.

- **Wetlands Conservation Overlay District**

Kathy Barnard stated Town Counsel reviewed the Ordinance and recommended clarification to specific sections of the ordinance.

Rob Houseman noted the changes to the ordinance in 2011 were in response to a Supreme Court ruling and reviewed the Wetlands Conservation Overlay District presentation, see attached.

Chairman Barnard opened the public hearing.

Mike Hodder thanked the Board for their work on the ordinance.

Referencing page 2, C.(2) of the Ordinance, Dan Coons noted the Conservation Commission is an advisory body rather than a determining body therefore, recommended changing the language from “determination” to “recommendation”.

Chris Franson stated language needs to be included relative to basis of determination.

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

Following discussion, the Board agreed to the following change;

- Page 2, C.(2), 3rd sentence; to read as follows, “The Conservation Commission shall make the final recommendation of the wetlands limit with consideration of the consultant’s report.”

It was moved by Chuck Storm and seconded by Chris Franson to move Wetlands Conservation Overlay District with the following change; Page 2, C.(2), 3rd sentence; to read as follows, “The Conservation Commission shall make the final recommendation of the wetlands limit with consideration of the consultant’s report.” to a second public hearing on January 3, 2012. All members voted in favor. The motion passed.

It was moved by Jennifer Haskell and seconded by Chris Franson to adjourn the December 13, 2011 Wolfeboro Planning Board meeting. All members voted in favor.

There being no further business, the meeting adjourned at 9:12 PM.

Respectfully Submitted,

Lee Ann Keathley

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