

# WOLFEBORO PLANNING BOARD

April 19, 2011

## MINUTES

**Members Present:** Kathy Barnard, Chairman, Chuck Storm, Selectman's Representative, Chris Franson, Dave DeVries, Jennifer Haskell, Members.

**Members Absent:** Stacie Jo Pope, Vice-Chairman, Richard O'Donnell, Members, Fae Moore, Steve Buck, Dave Alessandroni, Alternates.

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

*Chairman Barnard opened the meeting at 7:17 PM.*

### **WORK SESSION**

➤ **Group Homes**  
**Guest; John Rhatigan**

Rob Houseman stated Attorney John Rhatigan is an attorney familiar with the Federal and State Fair Housing requirements and has been provided all correspondence and minutes from the ZBA file.

Kathy Barnard distributed to the Board a proposed revised concept for SB 94 received from Dick Hamilton.

John Rhatigan stated the Board will be examining how to amend its zoning ordinance. He stated the Fair Housing Act provides protection to those who are handicap and disabled. He stated federal law relative to housing treats and protects people that are handicap and disabled in the same manner that it protects discrimination against creed, race, etc. He stated municipalities must act in a nondiscriminatory manner. He stated the Board can exercise some measure of zoning procedures for housing however, such must be done in a nondiscriminatory way. He stated there has been some success in defining Group Homes and families in a nondiscriminatory manner; noting some communities have provided a conditional use permit however, most communities decline to regulate the issue.

Chris Franson requested Mr. Rhatigan address the difference between a group home being privately funded or funded by the State.

John Rhatigan stated there is no difference; noting the federal act does not care who owns the facility and provides for housing that is desired by a person that is protected by the act.

Kathy Barnard verified the Town cannot mandate that the facility needs to be owner occupied or require a home occupation for the facility.

John Rhatigan confirmed that such cannot be required.

Chris Franson questioned whether the Board could provide an overlay district for the use or limit the location of group homes.

John Rhatigan stated that the way the federal statute is set up protects the rights of the disabled and handicap; noting federal laws gives the occupant the choice on where to reside.

Kathy Barnard questioned whether the Board could define facilities in the zoning ordinance and indicate the use is not allowed on anything less than 2-3 acres.

John Rhatigan noted an inability to sustain a higher standard for a group home than a residence.

Chris Franson requested Mr. Rhatigan to advise the Board regarding defining group home and questioned if there is a way to address the definition of a group home without defining what is a family.

John Rhatigan stated the Board is dealing with a specific class of people that are protected; noting such is a challenge.

Dick Hamilton questioned protection of the elderly.

John Rhatigan stated New Hampshire protects against age discrimination over 18 years of age; noting the protection emphasizes nondiscriminatory classes of people.

Jennifer Haskell questioned whether there is a distinction between a home for disabled people and one that is run as a business.

John Rhatigan stated the only people who are afforded protection are those people in the home; noting the regulations does not view commercial use in a residential zone. He stated the zoning ordinance can be written in a way that captures aspects of the type of use however, federal law doesn't care about that; noting the protection of the statute is portable upon wherever the person chooses to live. He stated some communities have mandated that a group home cannot be located within a specific amount of feet (foot radius) from one another. He stated he has no input from other parties relative to a potential ordinance.

The Board requested the following information:

- Examples of ordinances within the State or region and commentary on strengths and weaknesses of such
- Highlight in the ordinance what needs to be incorporated into the Town's Zoning Ordinance (definition & transfer of use category)
- Feedback on NH standard for certification of group homes of 3 or less people (4+ people requires compliance with the Town's zoning ordinance and local ordinances are required to comply with federal law)

➤ **Commercial Districts; C2R28, C2WF, C2GD**

Rob Houseman questioned whether the Board is interested in postponing the rezoning of the Route 28 corridor until the completion of the watershed management plans for Lake Wentworth and Crescent Lake. He reviewed the draft Center Street/Route 28 Mixed Use Business District Ordinance; noting the draft includes a purpose statement.

Kathy Barnard stated the Board is reviewing uses that are not appropriate for the area and expressed concern regarding moving too far ahead without the Lake Wentworth and Crescent Lake Watershed Study. She stated she feels the Board should wait to consider rezoning the area; noting the Master Plan addresses the development of the Downtown area. She stated some members of the Board walked the rail trail and

recommended other members to do so. She recommended further discussion include the Conservation Commission and include consideration of the Natural Resource Chapter.

Chris Franson stated she originally thought the issue should be tabled until completion of the study however, she is concerned for development that could occur without added protection.

Jennifer Haskell stated the issue remains that people will be attracted to the area and without protection relative to uses, the area is subject to subjective criteria by the ZBA.

Dave DeVries questioned the timeframe for the completion of the study.

Richard Masse replied 2013.

Dave DeVries expressed concern for such and the delay of rezoning.

Kathy Barnard expressed concern for several large parcels with substantial wetlands.

Rob Houseman requested the Board to review the draft and discuss such at the 5/3/11 meeting. He then recommended, following review and discussion of the draft, the Board schedule a work session with various interest groups (Conservation Commission, EDC & Chamber of Commerce). He questioned whether the Board should consider a setback from the rail corridor.

Jennifer Haskell requested Staff to provide analysis of how a proposed setback would affect existing lots. She noted the importance of creating standards by the Board rather than having the area subjected to zoning by variance.

➤ **Ridgeline / Steep Slope Development**

Chris Franson stated the Natural Resources Chapter has information regarding view sheds. She stated she feels the topic has merit and believes the Board should review it in some respect.

She stated she is interested in protecting ridgelines without overly regulating the land owners. She stated regulating house development lower than the top of a ridge is responsible development.

➤ **Lot Size Averaging**

Rob Houseman stated reviewing such could provide an opportunity to consider flexibility in lot size of a subdivision and protect farm land better. He noted such includes the cumulative acreage of a parcel and average with underlying zoning. He stated such is similar to the open space concept; noting unintended consequences such as more intense development of a mandatory open space policy without a waiver policy. He recommended consideration of a waiver provision to the Open Space Subdivision Ordinance.

The Board requested Staff to provide a draft waiver provision.

**Other Business**

➤ **Paul Zimmerman letter, dated 4/8/11**

Rob Houseman distributed said letter to the Board. Referencing the submittal of incorrect plans to HE Bergeron for review, he noted Mr. Zimmerman fails to address in his letter that his agent failed to submit the final plans until 3 business days prior to the Board meeting; noting there were no plans transmitted to HE Bergeron by his office rather, White Mountain Survey Co. directly transmitted the plans. He stated there is a

disregard of the process and facts; noting the delay occurred as a result of Mr. Zimmerman's engineer. He stated he would respond in writing to Mr. Zimmerman.

➤ **Shoreland Protection Act**

Chris Franson stated the statute regarding such may change and questioned whether the Board should review such.

Rob Houseman questioned whether the Board is interested in posting a Town ordinance related to such if it becomes void through legislation.

*Board consensus to draft a Town ordinance related to such.*

**It was moved by Chris Franson and seconded by Dave DeVries to adjourn the April 19, 2011 Wolfeboro Planning Board meeting. All members voted in favor.**

*There being no further business, the meeting adjourned at 9:03 PM.*

Respectfully Submitted,  
*Lee Ann Keathley*  
Lee Ann Keathley