

TOWN OF LOUDON, NEW HAMPSHIRE

APPROVED

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PLANNING BOARD MINUTES
OF JANUARY 15, 2009

2009 ZONING ORDINANCE PUBLIC HEARING

Meeting called to order at 6:00 p.m. by Vice Chairman Stanley Prescott.

Attendance:

Planning Board – Vice Chairman Stanley Prescott, Tom Moore, Henry Huntington, Steve Jackson, Ex-Officio Dustin Bowles, Alternates Bob Ordway and Jeff Green

Zoning Board – Chairman Dave Powelson, Roy Merrill, George Saunderson, Howard Pearl, and Alternate Jim Venne

Alternate Jeff Green was appointed as a voting member in the absence of Tom Dow.
Alternate Bob Ordway was appointed as a voting member in the absence of Gary Tasker.

Proposed Zoning Ordinance Amendments:

Amendment 2009-1 – Vice Chairman Prescott read the proposed amendment and reason for the amendment. Conservation Commission representative Dan Geiger said that he would ask strongly that the Board oppose the designation from 20% to 25%. Mr. Geiger said that the Commission believes that the change would be in the wrong direction. He spoke about the reasoning behind the steep slope management, noting that not all departments of the State are in agreement with 25% slopes. Mr. Geiger spoke about potential problems associated with the steeper slopes. He said that it has never really been demonstrated that Best Management Practices (BMP) are adequate for this type of slope. Mr. Geiger spoke of recent storm events and exposure to erosion. He said that this change would be detrimental to landowners and abutters and asked that the Board take this into account.

Polly Touzin of Berry Road stated that she is strongly opposed to this amendment. She said that she was hopeful at one point to go to 15%. George Page stated that he is opposed because there are existing problems in town that have not been addressed and he feels this change would be a hazard to roads, property, and homes.

Vice Chairman Prescott closed the hearing to the public and opened it to the Board. He asked where the author came up with the State of New Hampshire's ordinance on steep slopes. Dan Geiger said that complete analyses of soil types and qualities would be needed. He said that he does not feel that the reason is clear and appears as a rush type of statement. Henry Huntington said that his concern would be that this was changed to 20% only a couple of years ago and they have not seen any real problems. He suggested that the current ordinance be given more time and gather data. Tom Moore said that he would agree with Mr. Huntington. He said that he is not sure of the State's requirements or if the reason given for the amendment is an accurate statement. He agreed with giving the current ordinance another year. Jeff Green said that he would recommend going back to 25%, noting that the State does allow 25% for septic purposes. He pointed out that this change is to address the buildable area of a parcel and that it is

in line with the DES portion and septic requirements. Mr. Green stated that driveways and roads are already held to stricter standards. He recommended looking at all of the regulations to make a fair assessment. He said that this amendment allows for better use of buildable area. Mr. Green said that there could have been six more cases that he knows of go the ZBA had the developers or surveyors asked but instead they had to figure out how to work around the limits. He explained knobs that are encountered when calculating buildable area and said this change would simply be granting some relief. Steve Jackson said this amounts to a 5% change in grade and that he does not recall too many significant problems when the ordinance was previously at 25%. He said that the area language was left out when it went from 25% to 20%. He spoke about contiguous buildable area. Mr. Jackson said that the rise and run was part of the former ordinance. He stated that the town could start seeing building sprawl into open land if calculation limits were too restrictive.

Vice Chairman Prescott said that this hearing is an opportunity for the public to come forth to the Board and tell them the way they see that the Board should be in favor of or not in favor of a proposal. He said that he did not hear any comments in favor of this. He asked the Board how they would like to proceed. Tom Moore said that Steve Jackson had a good point in that there was some definition missing from the last ordinance and that needs to be put in place. Consensus was that the general population should be allowed to decide at the polls. ***Dustin Bowles made a motion to move Amendment 2009-1 to the ballot as written; seconded by Steve Jackson. Opposed – Tom Moore and Henry Huntington; majority in favor. PASSED***

Amendment 2009-2 – Vice Chairman Prescott read the proposed amendment and reason for the amendment. ZBA Chairman Dave Powelson stated that the provision for reduced setbacks was left out of the ordinance when the C/R District was created. He said that it seems to make sense that this district have the same options as all others in town. Hearing no further public input Mr. Prescott closed the hearing to the public and opened it to the Board only. ***Bob Ordway made a motion to move Amendment 2009-2 to the ballot as written; seconded by Henry Huntington. All were in favor. PASSED***

Amendment 2009-3 – Vice Chairman Prescott read the proposed amendment and reason for the amendment. Mr. Prescott also read a portion of a letter from town counsel where it was recommended that this amendment be withdrawn as it violates RSA 674:41.

Steve Jackson asked if there was a way to modify the amendment to meet the statute. Mr. Prescott said that the Board could put the amendment aside, work on the language, or remove it from the table. Jeff Green said that he was not sure that he agreed with counsel's interpretation. He said that other towns allow this type of arrangement to access and use backland. Mr. Green said that he feels that the purpose is appropriate. ZBA Chairman Powelson said that it appears, after reading the RSA, that Mr. Mayer is correct. He said this is covered on page 541 of the 2008-2009 edition of the N H Planning and Land Use Regulation handbook. Mr. Powelson said that he was not sure if there would be a way that an easement could be considered as a private road.

Vice Chairman Prescott said that the reason that the Board hires Mr. Mayer is for legal opinions that he could defend. He said that he feels the Board should listen to the attorney's recommendation. Mr. Prescott said that he was not saying that the Board could not look at the proposal for possible changes. Hearing no public input, he closed the hearing to the public and opened it to the Board only.

Bob Ordway said that it would appear that the attorney takes exception to the deeded right-of-way. He spoke about the opportunity to connect new roads to others, preventing more cul-de-sacs. Mr. Ordway talked of a new road recently constructed by a developer, creating a section to be deeded to the town for a proposed future road. He said this has given access to

landlocked property and the potential for through roads, thus avoiding the cul-de-sac issue. Mr. Ordway said that the wording may be wrong but he feels that there should be a way to make it work. He said he would like to pursue this with the attorney for better wording. Mr. Ordway said that many towns do this type of provision to open up backland and he would like to see if Mr. Mayer has suggestions as to how this can be accomplished.

Dustin Bowles said that there was probably some misinterpretation to Mr. Mayer as to the purpose of the amendment. He said that this could be pursued now or wait for next year but felt that it should be clarified to the attorney. Mr. Ordway agreed. Steve Jackson said that he would be nervous about going against town counsel. He read from the RSA and noted that the particular parcel mentioned by Mr. Ordway is accessed by a road on an approved plan. Jeff Green said it is not a cut and dry matter and he sees it differently than Mr. Mayer. Mr. Green said that it is subject to interpretation, involving access and frontage, and is handled differently in different towns. Stan Prescott said when the particular subdivision at hand was designed there was a 50' easement to be deeded to the town at some point. He said that the attorney may not know of that and is looking at a general picture. Mr. Prescott asked if this needs to be further clarified for this year or another. Jeff Green said that he would like to see it happen this year if time permits. Donna informed the Board of the deadlines to post and hold another hearing. It was agreed to go back to Mr. Mayer with more information and clarification.

Steve Jackson made a motion to table Amendment 2009-3 until town counsel's response is received; seconded by Tom Moore. All were in favor.

Amendment 2009-4 – Vice Chairman Prescott read the proposed amendment and reason for the amendment. ZBA Chairman Powelson stated that better defining types of signs seemed to be a good idea. George Page asked how this amendment came about since the town has a strict ordinance already in place that is not always enforced. Mr. Prescott said that the boards have workshops to discuss possible revisions and additions to the Zoning Ordinance. Dustin Bowles stated that this is to clearly define signs so there would be no more interpretation necessary, noting that this addresses definitions only. Code Enforcement Officer Fiske asked if this would apply to the commercial corridor only. Tom Moore pointed out that this addresses just definitions. Steve Jackson stated that this is not changing the sign ordinance. Brenda Pearl asked how this is clarifying anything if the ordinance is not being changed at the same time. Earl Tuson pointed out that some signs do not fit easily into the ordinance and these amendments better define types of signs. Mrs. Pearl said she did not understand why the definitions were being changed if the ordinance was not. She asked how the change of definitions makes a sign allowable or not allowable if Section 501 is not changed at the same time. Mr. Powelson stated that changeable copy signs are allowed but the current definitions do not differentiate electronic from manual. Henry Huntington pointed out that there is a sign ordinance that addresses rules on how to use signs, sign sizes, and where permitted. He said that the definitions only define what constitutes different types of signs. Steve Jackson said that the boards attempted to better define types of signs and what is considered as a flashing sign. Jeff Green said that they are trying to clarify, define different types of signs, but are not changing the ordinance.

Mr. Fiske used the Village Store as an example, asking if it could have an electronic sign because it is in the definitions and fits the criteria of the sign ordinance. Mr. Powelson pointed out that the Village Store is a business and is allowed a sign with a specific area and type. He said these amendments are to define each kind of sign. Mr. Fiske stated that he would not want something on a sign changing in a residential area. Howard Pearl said that there is currently no way to define changeable copy so they have to be allowed. He said that is the reason to clarify the definitions. Mr. Fiske asked why these cannot pertain only to the commercial corridor. Mr. Pearl asked how clear that would be to applicants if something is allowed here but not there. Steve Jackson pointed out that if something is allowed now it will continue to be allowed after

the vote, and if something is not currently allowed it still would not be allowed after the vote. He said this is simply adding definitions of signs that would be allowed within the stated size limits.

Hearing no further public input, Vice Chairman Prescott closed the hearing to the public and opened it to the Board only. ***Jeff Green made a motion to move Amendment 2009-4 to the ballot as written; seconded by Henry Huntington. All were in favor. PASSED***

Amendment 2009-5 – Vice Chairman Prescott read the proposed amendment and reason for the amendment. There were no questions from the public and no discussion from the Board. ***Tom Moore made a motion to move Amendment 2009-5 to the ballot as written; seconded by Jeff Green. All were in favor. PASSED***

Amendment 2009-6 – Vice Chairman Prescott read the proposed amendment and reason for the amendment. Earl Tuson said that he is not in favor of this amendment because of the proposed five second duration. He said that he feels that is too frequent and should be something more in line with gas station pricing signs, perhaps changing at twelve hour intervals. Hearing no further comment from the public, Vice Chairman Prescott closed the hearing to the public and opened it to the Board only.

Steve Jackson said that the five second duration was suggested because of the 55 mph speed, thus the message would be in the view of any passing driver. ***Steve Jackson made a motion to move Amendment 2009-6 to the ballot as written; seconded by Dustin Bowles.*** Henry Huntington said that he was getting the feeling from the public that they are not supportive of these amendments. He said it is important for people to realize that the whole idea of what the Board is trying to do is to tighten up the definitions. He said they are not trying to make anything worse or do something new. Mr. Huntington said what is already allowed is wide open right now and will not change. Tom Moore said that they may look at the sign ordinance next year but currently are not proposing any changes. ***All were in favor. PASSED***

At 7:05 p.m. Vice Chairman Prescott asked if the Board wanted to continue the public hearing and delay the start of the regular Planning Board meeting or close the hearing at that time. ***All were in agreement to extend the public hearing and delay the start of the Planning Board meeting.***

Amendment 2009-7 – Vice Chairman Prescott read the proposed amendment and reason for the amendment. Code Enforcement Officer Fiske spoke about the proposed five second interval, which was based on a 55 mph speed limit, being allowed in the Village District. He said it would be hard to interpret between flashing and electronic message sign in this district. He said the residential area is the only potential problem. Stan Prescott said that he personally feels that the Zoning Board and Planning Board need to pay attention to public comment when they object to something. He said if an electronic message sign was installed in the Village across from an apartment house there should be complaints and the ZBA should look at that when considering an application. Mr. Prescott said if they do not, they are not doing their job.

Hearing no further comment from the public, Vice Chairman Prescott closed the hearing to the public and opened it to the Board only. Steve Jackson stated that a lot of discussion has gone into the proposed amendments. He read from the Zoning Ordinance about setbacks and locations of signs. Mr. Jackson said because they are clarifying the definitions does not mean that signs will pop up all over town. He said that he feels the concerns mentioned are covered in Section 501.5 of the Zoning Ordinance. ***Henry Huntington made a motion to move Amendment 2009-7 to the ballot as written; seconded by Dustin Bowles. All were in favor. PASSED***

Amendment 2009-8 – Vice Chairman Prescott read the proposed amendment and reason for the amendment. There were no questions from the public. Vice Chairman Prescott opened the hearing to the Board only. Steve Jackson stated that this is a little bit of housekeeping by adding to the definitions and reiterating that flashing signs are prohibited. ***Jeff Green made a motion to move Amendment 2009-8 to the ballot; seconded by Tom Moore. All were in favor. PASSED***

Amendment 2009-9 – Vice Chairman Prescott read the proposed amendment and reason for the amendment. Earl Tuson said that he is in favor of this amendment as written. He said it would be beneficial to the town, region, and country and that the ordinance allows the town to manage wind energy systems in a reasonable manner. Code Enforcement Officer Fiske said that he has no problem with the proposed ordinance as it is law but he does have concerns about the procedure for review. He noted that the proposed ordinance has been modified from the original model proposed by the Office of Energy and Planning by adding that a Special Exception through the ZBA is required. Mr. Fiske said that previous minutes reflected that George Saunderson, as well as several other members, was suggesting that the systems should go to the ZBA first and then the building department as any application does currently. He said that he understands that the system has to go through the Building Inspector by law but still feels that it makes sense for them to go through to the ZBA for the Special Exception first. Mr. Fiske spoke about the redundancy of notification and fees that have to be paid by the applicant. ZBA Chairman Dave Powelson said that it was his recollection that the boards wanted to do it that way but town counsel's recommendation was not to go in that order. Mr. Fiske said that he spoke with Chris Northrop at OEP and that Mr. Northrop agreed that it made more sense to go to the ZBA first. Stan Prescott stated that town counsel's comment was that the Building Inspector's decision, if not liked, could be appealed to the ZBA. Mr. Prescott said that Mr. Mayer is town counsel and, agree or not, that is why the ordinance was proposed as seen.

George Saunderson said that he agrees with Mr. Fiske, does not like the RSA as crafted, and had gone back and forth with town counsel. He said that the boards had tried to take the pressure off the Building Inspector and felt that it was important that the process go through the ZBA to allow for a public hearing. Mr. Saunderson said that it would appear backward but is the procedure that Mr. Mayer advised the group to use. He said that it is not going to be a lot of work as the town is not going to see that many applications for the wind energy systems. Mr. Fiske said that he would have to talk with the Board of Selectmen about appropriate fees.

Dave Powelson said that the proposed ordinance is based on the RSA, the intent of which obstructs the town's ability to restrict the systems. Brenda Pearl said that she found seven or eight towns online that require the systems to go through site plan review with the Planning Board rather than special exception through the ZBA. Stan Prescott stated that the systems do not impact 400 sf and the group felt that the Special Exception was the best way to get the town's review. Henry Huntington said that they followed the model ordinance with the review done by the Building Inspector. He said by adding the requirement for a Special Exception the ZBA would be looking at the project, abutters would be notified for a public hearing, and it is sort of a site plan review through the ZBA. Dustin Bowles said that if a project was denied as a site plan it would go to the ZBA anyway so it was felt that it would be easier to go directly to the ZBA, particularly based on the small size of the systems. Howard Pearl said, from all discussions at the workshops, it appeared that the RSA was put in place to make sure that people have the right to put these systems in. He said that the general consensus had been to at least do the Special Exception yet not stand in the way of the systems.

Jeff Green said that he is against requiring the Special Exception. He said the way the model ordinance was written is the intention of the law, which is to get small wind energy systems up and going for individuals. Mr. Green said that the building permit process would require that the system meet code, setbacks, and other regulations. He said requiring a Special

Exception just adds more time and more money to the project. Mr. Green said that he does not feel this is the right process and that it should be just the Building Inspector doing the review.

Dustin Bowles made a motion to move Amendment 2009-9 to the ballot as written; seconded by Steve Jackson. Opposed – Jeff Green; majority in favor. PASSED

Amendments 2009-4 through 2009-9 will be renumbered accordingly should amendment 2009-3 be withdrawn.

The public hearing was closed at 7:30 p.m.

Respectfully submitted,

Donna White