

**MINUTES
GILFORD PLANNING BOARD
JANUARY 4, 2010
CONFERENCE ROOM A
7:00 P.M.**

The Gilford Planning Board met in regular session on Monday, January 4, 2010 at 7:00 p.m. in Conference Room A in the Gilford Town Hall.

In attendance were: Vice Chair-John Morgenstern; Selectman's Representative, Kevin Hayes; Regular Members: Jerry Gagnon, Richard Waitt, Richard Vaillancourt and Richard Sonia. Alternate(s): Wayne Hall and Dennis Corrigan.

Member(s) absent: Chair-Polly Sanfacon and Alternates: Carolyn Scattergood, Andrew Garfinkle, and David Arnst.

Also present were John B. Ayer, Director of Planning and Land Use and Stephanie Verdile Philibotte, Technical Assistant. J. Morgenstern appointed W. Hall to replace absent regular member P. Sanfacon.

J. Morgenstern led the Pledge of Allegiance, introduced Board members and staff. He read the rules of procedure for the public hearings and explained the order of the petitioned articles and zoning amendments.

J. Morgenstern introduced the first article-

1. **Section 9.1, Nonconforming Lots – Involuntary Lot Mergers** – Proposal to repeal involuntary mergers of contiguous non-conforming lots in common ownership and allowing lots involuntarily merged by the municipality to be considered lots of record and to be unmerged subject to all other aspects of the Town's Zoning Ordinances by deleting language from Section 9.1, adding new language to Section 9.1 and deleting Section 9.1.1 in its entirety; pursuant to the official copy of the entire proposal that is on file at the Town Clerk's Office.~ (Submitted by Petition)~

Barbara Aichinger, presenting the petition, 558 Edgewater Drive, Gilford, spoke about her version of the history of the non-conforming lots and the town's merging process.

J. Morgenstern asked B. Aichinger how this will affect the merging problem. B. Aichinger said it will allow the property owner to decide on whether to merge or unmerge the property without the town's involvement.

J. Morgenstern opened up the hearing for public input on the proposed article, with no additional public input, he closed the public hearing.

Motion made by K. Hayes, seconded by J. Gagnon, to not recommend this petitioned article as the issue is still in the courts.

Discussion on the motion.

J. Ayer explained to the Planning Board that Town Counsel advised they not recommend this article due to the pending court issue.

J. Morgenstern called for the vote on the motion. Motion carried with all in favor.

The Planning Board will not recommend **Section 9.1, Nonconforming Lots – Involuntary Lot Mergers** as presented be placed on the town warrant.

J. Morgenstern introduced the next article.

2. **Article 15, Wetlands District** – To delete in its entirety the existing Article 15 that established the Wetlands District and replacing it with a new Article 15 establishing a Water Resources Conservation Overlay District to be applicable to all other zoning districts, including standards requiring protective buffer setbacks from wetlands, allowing certain uses and activities by special exception, establishing certain standards for special exception applications, and creating standards for mitigation plans for control of erosion and sedimentation; pursuant to the official copy of the entire proposal that is on file at the Town Clerk's Office. (Submitted by Petition)~

Stephan Nix, presenting the petition, gave a brief explanation of the purpose and focused on the need for wetland setback as their important for reduction in runoff, wildlife habitat preservation, flood control, groundwater recharge and water quality preservation. He explained a wetland area of 3000 sf exemption for the setback and that any lot that is one acre or less will have a 20' setback and not 50' due to the size of the lot. He reviewed the exemptions that the proposed ordinance allows and the process for property owners to follow. He reviewed the neighboring communities, including Meredith, Laconia, and Moultonborough, that have existing wetland buffers and that development has not be halted from the setback.

J. Gagnon asked about the recommendations made by the NHDES to have wetland setbacks but they do not have a setback from wetlands. He has a problem with the NHDES not having a setback and having one in the town.

C. Hall, resident, Conservation Commission, explained they have setbacks from prime wetlands and within the Shoreland Protection Act not the remaining wetlands and other water bodies. This ordinance will help protect the remaining wetlands and other water bodies.

J. Morgenstern opened up the hearing for public input on the proposed article.

D. Corrigan said enforcement would be expensive and asked if there was any thought given to the enforcement cost when this ordinance was written. S. Nix said the enforcement issues are already in place with the existing zoning ordinance and regulations and the processes that applicants go through.

K. Hayes asked if the proposed setback is to be measured from the hydric soils. He said he has an area on his lawn that is defined as a wetland and due to the runoff and terrain of the area, the wetland area increases every year. S. Nix said the setback would be what the NHDES definition is for a wetland, he referred to the definition described in the proposed article. K. Hayes said he would like to know where the setback from the wetland will begin. S. Nix explained if the area meets the criteria as defined than it would be classified as a wetland.

K. Hayes said there is no way to grandfather this ordinance and he believes it is a taking and that it will negatively affect the businesses in town.

Mark Woglum, resident, said most communities have a wetland setback and he would support a wetland setback in Gilford. However, he said he does not agree with the mechanism and methods for relief from the ordinance. He suggested applicants go before the Conservation Commission instead of the ZBA and the Planning Board.

Doug Hill, resident and Conservation Commission member, spoke about his work on the Commission being the first community to have a prime wetland setback and spoke about the need for the proposed setback. He clarified there is no RSA that allows the Conservation Commission to recommend any applications for approval. He explained with this ordinance, the ZBA process is not a variance process it is a special exception process so there is not a hardship standard involved. He acknowledges K. Hayes' and J. Gagnon's concerns but he said there are protocols for the examples they discussed written within the ordinance i.e. disputed wetland boundaries, wetland boundary increasing. He said current regulations for site plan and subdivision regulations require applicants to show the wetlands on the site and now they will only have to show the buffer setback. He said the NHDES has allowed individual communities to regulate their own wetland areas. He said science has proven the importance of wetland setbacks.

K. Hayes said is it conceivable there are buildable lots now that will not be buildable if this ordinance is passed. D. Hill explained the way to apply for relief to develop the lot is to show the least impacting direction to present to the ZBA and since the relief is through a special exception there is no hardship to prove. He said he has worked in other communities that have a wetland setback and have a similar process for relief and the applications have been approved.

Scott Isabelle, Asst. Superintendent School Department, asked on behalf of the School Department, if it is the intent of this ordinance to have the School Department and the Town of Gilford comply with the setback. D. Hill said the school is a separate government entity from the town and this ordinance will not be applicable to the school. S. Isabelle said they were concerned about future development of the Middle School since they are close to the wetlands. D. Hill said under RSA 674:54 the school district is exempt from this ordinance and they would have to appear in front of the Planning Board and the Planning Board's role is only advisory for any application the school would make.

Mary Allen Shafer, Ames Farm, spoke about her families' history at Ames Farm and how this ordinance will impact her family's business. They are in opposition to the proposed ordinance.

Patrick Brown, Ames Farm, family member, he is asking the Planning Board not to support this ordinance as they have concerns over the uses allowed by special exception seem limited, and under prohibited uses, there are some named uses that exist at Ames Farm that would not be allowed if this ordinance passes. He has questions about how it will be enforced and that they are concerned about the ability to continue their business. He said they are not specifically against a wetlands buffer, but they have concerns with sections of this particular ordinance.

John Giere, lawyer from Wescott Law Firm, he spoke on behalf of Michael McGinley whom is opposed to this ordinance. He explained their concern is there is no grandfathering with this ordinance and no one can determine if Mr. McGinley's property falls under RSA 674:39, as being substantially complete and not subject to the regulation. They are asking the Board to not recommend this proposed amendment.

J. Morgenstern closed the public hearing.

D. Corrigan asked if they could delay voting on this ordinance to read the additional material. J. Ayer said yes they can table this until January 19, 2010 as that is the last date to hold public hearing.

R. Vaillancourt has concerns about not having enough time to read the material and is not comfortable recommending the article.

Motion made by D. Corrigan, seconded by R. Sonia, to table recommendation on the article until January 19, 2010.

Discussion on the motion.

D. Corrigan wants the applicants to change a few things in the ordinance to answer the Board's questions and the questions from the public. He was informed by the Board the article cannot be changed as it is a petitioned warrant article. He withdrew his motion. R. Sonia withdrew his second. Motion failed.

Motion made by K. Hayes, seconded by J. Gagnon that the Planning Board not recommend **Article 15, Wetlands District** as presented be placed on the town warrant.

Discussion on the motion.

K. Hayes said he is not against the article but he thinks the article needs more work and research done and suggested they come back in 2011.

Motion carried with all in favor.

J. Morgenstern introduced the next article.

3. **Section 5.2.1, Island and Shore Frontage District** – Amend Section 5.2.1 by creating a new Section 5.2.1(g) to prohibit boat launching ramps and related parking and

storage facilities on shorefront lots under certain circumstances, but to allow private boat launching, related parking and storage facilities as an accessory use under certain circumstances; pursuant to the official copy of the entire proposal that is on file at the Town Clerk's Office. (Submitted by Petition)

S. Nix explained this ordinance will have no impact on existing commercial facilities. He said he believes this article meets the purpose and intent of the Master Plan.

J. Ayer asked about the impact on Ames Farm. S. Nix said that case has been heard and decided by the ZBA and it has not been appealed and Ames Farm does not have a public boat launch.

Discussion ensued about areas that are already developed as residential areas that would be vulnerable to commercial development and this article is designed to preserve the existing residential areas in any zone.

J. Morgenstern opened up the hearing for public input on the proposed article.

John Goodhue, Gilford resident and Conservation Commission member, is speaking as private citizen. He discussed the commercially zoned areas around the Lake and he said the NHDES will not give a permit for a public, commercial boat launch in a residentially zoned area.

Catherine Broderick, attorney for Ames Family, she said her client's property is the only property affected by this ordinance is the Ames Farm as they would have to get a variance for any future uses.

Maureen Nix, petitioner, she said this ordinance is to prevent public boat launching in residential neighborhoods.

Steve Nix, said there was a press release on the Town of Gilford's website that the town would support a public boat launch.

K. Hayes asked if the Planning Board supports this proposed amendment, does it mean they are supporting not allowing a public boat launch in a residential area. J Ayer clarified that this would prohibit public boat launch in any zone that has existing residential uses.

J. Morgenstern closed the public hearing.

Motion made by J. Gagnon, seconded by R. Sonia, the Planning Board not recommend **Section 5.2.1, Island and Shore Frontage District** as presented be placed on the town warrant.

Discussion on the motion.

J. Gagnon said he believes there is not enough time for the Board to research this amendment. The Board agreed.

Motion carried with all in favor.

J. Morgenstern introduced the next article. J. Ayer explained this is back on the Planning Board's agenda due to an administrative error and it is the same article that was approved by the voter's in 2009 but was not enforceable.

4 **PROPOSED FIRE PREVENTION CODE CHANGES**

- A. **Complete Revision of Current Fire Prevention Code:** The current code has not been updated since it was adopted in 1989. All of the referenced NFPA codes have been revised since then and one portion has been repealed by the State of NH.
- B. **Fire Alarm System Requirements:** Proposed changes include the requirement of all new commercial/multifamily occupancy fire alarm systems to transmit the alarm directly to the Lakes Region Mutual Fire Communications Center. There is also a requirement for any commercials/multifamily occupancy with a fire alarm system to provide an approved key box. The penalty for excessive false alarms has been modified to provide for an increased fee based on number of alarms received.
- C. **Fire Suppression System Requirements:** Proposed additions include the requirement of sprinkler systems in some multifamily and commercial occupancies not required by the adopted NFPA codes. Fire suppression systems are also required at motor vehicle fueling facilities.
- D. **General Fire Safety Requirements:** Proposed additions include restrictions on the use of outdoor cooking appliances as they relate to commercial/multifamily occupancies. Gated access to properties will require a system approved by the fire-rescue department.

Fire Chief James Hayes explained the proposed article. He said the change is in Section 8.0.1 because it was confusing. He clarified the changes for the Board.

K. Hayes asked if this ordinance applied to single-family homes and Chief Hayes said no.

J. Morgenstern opened up the hearing for public input on the proposed article; being none, J. Morgenstern closed the public hearing.

Motion made by R. Waitt, seconded by R. Sonia to recommend the proposed article **Fire Prevention Code** is placed on the ballot for consideration.

Motion carried with all in favor.

J. Ayer introduced the next article.

- 5. **Create Workforce Housing Regulations** – Create a new Article 22, Workforce Housing, to comply with the requirements of state law (RSA 674:59), to provide a realistic opportunity for the development of needed workforce housing within Gilford, to promote the continued availability of a diverse supply of home ownership and rental

opportunities, and to meet the goals related to workforce housing provisions set forth in the Gilford Master Plan. The regulation establishes standards to allow development of single-family, duplex, multi-family, and manufactured housing as Workforce Housing; establishes density bonuses for qualifying projects; and establishes related definitions, standards, and requirements for Workforce Housing projects. Also to amend Article 4, Permitted Uses and Regulations, by creating a new Section 4.2.11 to allow Workforce Housing in the Single-Family Residential, Limited Residential, Professional Commercial, Resort Commercial, and Commercial zones; and by creating a new Section 4.7.2(k) to refer to standards of the new Article 22, Workforce Housing.

Steve Whitman, Jeff Taylor & Associates, explained the article is a voluntary regulation by individual communities and that developers are not required to comply but it provides an opportunity to receive incentive based on density bonuses. He explained they researched the state model ordinance for the “Inclusionary Zoning Ordinance” and other towns’ ordinances and they selected this ordinance based on the density bonus based on the percent of workforce housing.

J. Morgenstern opened up the hearing for public input on the proposed article; being none he closed the public hearing.

Motion made by R. Sonia, seconded by R. Waitt, to recommend the proposed article **Create Workforce Housing Regulations** is placed on the ballot as presented. K. Hayes voted against the motion. Motion carried by 6-1.

J. Ayer introduced the next article.

6. **Article 4 and Article 21, Conditional Use Permits** – Create a new Article 21, Conditional Use Permits, to establish general regulations, standards, and procedures for the processing, review, and approval of Conditional Use Permits by the Gilford Planning Board as authorized by RSA 674:21, Innovative Land Use Controls, and to renumber the existing Article 21 and subsequent Articles as needed; and to amend Article 4, Permitted Uses and Regulations, to include in its opening paragraphs an explanation for the references to Conditional Use Permits in Article 4.

J. Ayer explained the purpose of the article is related to the Workforce Housing applications as well as Conditional Use Permits issued by the Planning Board.

Discussion ensued about the purpose is to comply with the existing regulations.

J. Morgenstern opened up the hearing for public input on the proposed article; being none he closed the public hearing.

Motion made by R. Sonia, seconded by K. Hayes, to recommend the proposed article **Article 4 and Article 21, Conditional Use Permits** is placed on the ballot as presented. Motion carried with all in favor.

J. Ayer introduced the next article.

7. **Sections 5.1.4 and 5.1.5, Accessory Buildings in the Side and Rear Setbacks** – Amend Section 5.1.4, Side Setback Area, and Section 5.1.5, Rear Setback Area, to allow detached accessory buildings up to fifteen (15) feet high to be built ten (10) feet from the side and rear lot lines, and to make other related changes.

J. Ayer explained the proposed warrant article.

J. Morgenstern opened up the hearing for public input on the proposed article; being none he closed the public hearing.

Motion made by R. Sonia, seconded by K. Hayes to recommend the proposed article **Sections 5.1.4 and 5.1.5, Accessory Buildings in the Side and Rear Setbacks** is placed on ballot as presented. Motion carried with all in favor.

J. Ayer introduced the next article.

8. **Section 6.2, Obnoxious Uses** – Delete the existing Section 6.2, Obnoxious Uses, and replace it with a new Section 6.2, Nuisances. The proposed new regulation prohibits creation of dangerous, injurious, noxious, hazardous, unhealthy, and similar objectionable disturbances, including exposures to smoke, noise, garbage, dust, odor, pollution, lighting, water runoff, and similar conditions. The proposed regulation exempts normal operations of agriculture-related uses.

J. Ayer explained the proposed warrant article. He discussed the Code Enforcement Officer is concerned about enforcement of the ordinance and specifically storm water runoff onto another property.

J. Morgenstern opened up the hearing for public input on the proposed article.

Don Morrissey-resident- asked if going to Meadowbrook for a concert means that he is contributing to a nuisance. J. Ayer explained Meadowbrook is approved for a specific decibel level and if they exceed that level they will be found in violation of the ordinance.

With no other public input J. Morgenstern closed the public hearing.

Motion made by K. Hayes, seconded by R. Waitt, to recommend the proposed article **Section 6.2, Obnoxious Uses** is placed on ballot as presented. Motion carried with all in favor.

J. Ayer introduced the next article.

9. **Section 6.6, Unlicensed Vehicles** – Amend Section 6.6 by changing the title to Unlicensed and Commercial Vehicles; to require motor vehicles not intended or in condition for legal use be parked or stored in approved automobile repair or sales facilities except under certain circumstances; to require in residential zones that

competition vehicles (such as stock cars), and vans and trucks with a carrying capacity greater than one (1) ton, be stored out of sight; and to allow in residential zones storing of motor vehicles that “are no longer intended or in condition for legal use according to their original purpose” in quantities in bulk up to two (2) at single-family or two-family dwellings provided such vehicles are kept within a building and are out of sight of adjacent properties.

J. Ayer explained the proposed warrant article. He said it is designed to prevent vehicles that are not road worthy and in residential zones only and to keep them out of sight.

K. Hayes asked if this will affect an existing used car lot and J. Ayer said no and referred to the proposed ordinance.

J. Morgenstern opened up the hearing for public input on the proposed article being none, he closed the public hearing.

Motion made by K. Hayes, seconded by R. Vaillancourt to recommend the proposed article **Section 6.6, Unlicensed Vehicles** is placed on ballot as presented. Motion carried with all in favor.

J. Ayer introduced the next article.

9. **Section 6.20, Fire Protection for Residential Property** – Amend Section 6.20, which requires provision of a water supply suitable for fire protection purposes for all new Multi-Family developments, Planned Unit developments, Cluster Housing projects, and Manufactured Housing Parks, and for all Single-Family subdivisions of six (6) lots or more, to allow only use of municipal water supplies, cisterns, or sprinkler systems to satisfy this requirement, and to no longer allow surface water supplies to satisfy this requirement unless they are natural water bodies and approved for such use by the Fire Department, and to make other related changes.

J. Ayer explained the purposed of the ordinance is due to the past problems that have developed with fire ponds not functioning properly and there have been design flaws that have delayed their completion.

Motion made by K. Hayes, seconded by R. Sonia to recommend the proposed article **Section 6.20, Fire Protection for Residential Property** is placed on ballot as presented. Motion carried with J. Gagnon opposed.

J. Morgenstern read a letter from M. McGinely’s agent asking the setback be changed in the PC zone and J. Morgenstern said he believes it is too late to consider this request.

J. Ayer said he spoke to a majority of the Board members and it was their opinion that there is not enough time to review the proposed amendment.

Adjournment – Motion made by R. Sonia, seconded by K. Hayes, to adjourn at 9:20 p.m.

Motion carried with all in favor.

Respectfully submitted,

Stephanie Verdile Philibotte
Technical Assistant