

DEERFIELD PLANNING BOARD
DEERFIELD, NEW HAMPSHIRE
JANUARY 9, 2013

MINUTES OF MEETING

PRESENT: Board members Fred McGarry, William Perron, Lisa Wolford. Also present Planning Consultant Gerald Coogan and secretary Jane Boucher.

Chair Fred McGarry called the meeting to order at 7PM.

PUBLIC HEARING; PROPOSED AMENDMENTS TO ZONING
Chuck Reese was also present.

Chair McGarry read the Notice of Public Hearing to discuss proposed amendments to Zoning for 2013. Proposed amendments will be presented for :Section 330 Pleasant Lake Watershed Ordinance.

Chair McGarry said the intention of the proposed amendments is to make changes to Section 330 to better clarify the Section. Lisa Wolford referred to a Memo from Attorney James Raymond dated December 12, 2012. A copy is attached to these minutes. In the memo Attorney Raymond noted " In short , the ordinance creates a confusing picture of conflicting and overlapping jurisdictions, sometimes outside of the statutory authority of the board or official charged with enforcing the ordinance."

Ms. Wolford felt that the proposed amendments be removed and tabled until the Board can work with the Pleasant Lake Preservation Association and perhaps the committee representing Northwood Lake to better clarify and define the ordinance as it is currently written.

Chuck Reese, a member of the Pleasant Lake Preservation Association, felt that putting the amendments on hold was a good idea and had no objection.

Chair McGarry closed the Public Hearing at 7:20PM.

Lisa Wolford moved that, in light of the memo from Attorney Raymond, to withdraw the proposed amendments to Section 330 of the Zoning Ordinance and work on an over haul of the Section for 2014. William Perron seconded. Voted in favor.

APPROVAL OF MANIFEST

William Perron moved to approve the manifest for \$186.50 (\$60.00 KNA, \$126.50 SNHPC; two time sheets for Jane Boucher 17 hours and 10 1/2 hours) Lisa Wolford seconded. Voted in favor.

LOT LINE ADJUSTMENT; JOPLIN/SPELLMEN/SCHWALLIE

Information was received Mr. Joplin's attorney Bruce J. Marshall regarding the Boundary Line Agreement. Mr. Marshall noted that the subject settlement agreement , including the boundary line adjustment, has been confirmed by the court system to be binding and final. Attorney Marshall also included a copy of the Notice of Decision.

Lisa Wolford reviewed the Notice of Decision noting that the Decision does not order the Planning Board to comply.

The Board agreed that a letter withdrawing their approval of the application should be sent to the Planning Board from Spellmen/Schwallye. Gerald coogan will speak with Attorney Raymond asking what the text of the letter should contain and question if a Public Hearing would be necessary to revoke the Board's approval of the Lot Line Adjustment.

ROLLINS EXCAVATION

Gerald Coogan provided a memo noting that Nellie Rollins was tentatively scheduled to meet with the Board at this meeting relative to a new site plan. Earl Sanford advised, in an e-mail, that Ms. Rollins would like to reinstate the approved site plan rather than submit a new one.

Gerald Coogan will advise Nellie Rollins that a landscaping plan outlining the trees to be planted will need to be submitted . The plantings to be completed by the end of June, 2013 with the PLanning Board inspecting the site on regular intervals.

CONTRACT 2013/GERALD COOGAN

Mr. Coogan will prepare a letter for the Board's review on February 13, 2013 to better schedule his time as a result of a budget cut for 2013.

98 NOTTINGHAM ROAD; SITE FOR REHAB FACILITY

Gerald Coogan provided a memo advising that Steve Miller, Operations Director for Neuro Restorative contacted both Rick Pelletier and himself regarding plans to acquire a residence at 98 Nottingham Road and to convert the building from a five bedroom home to a six bedroom home for people who need rehab services from head injuries. Mr. Coogan added that it is his understanding that the inside of the building will be reconfigured, but the building and its footprint will not be expanded. Attorney James Raymond and Rick have discussed this matter and their conclusion was to have Neuro Restorative seek a special exception for a Convalescent home under Section 204 Table 204.1.

The application for a Special Exception will be heard by the ZBA on Tuesday, January 22, 2013. Mr. Coogan questioned if the

Planning Board will require a Site Plan Review from the applicants.

The Board agreed they would like to first meet with the applicants informally on Wednesday, February 13, 2013 to discuss the proposal.

APPROVAL OF MINUTES

William Perron moved and Lisa Wolford seconded to approve the minutes of December 12, 2012. Lisa Wolford seconded.

The following corrections were made to the minutes;

Page 1: Paragraph 5: Add after second sentence "The motion presented the Planning Board with the question if they wanted to proceed."

Page 1: Paragraph 6: Correct read "...several options regarding the approval.."

Page 3: Paragraph 2: Second step:

Page 3: Paragraph 2: Correct to read "...previously approved plan."

Page 3: Paragraph 7: Correct to read "..Phase II approval and advise."

Chair McGarry called for a vote on the motion. Motion carries.

PUBLIC HEARING ; ADOPTION OF ENERGY CHAPTER

It was agreed to schedule a public hearing to adopt the Energy Chapter on February 27, 2013.

William Perron moved and Lisa Wolford seconded to adjourn the meeting at 8:20PM.

Recorded and transcribed by Jane Boucher
Pending Approval by the Planning Board

Memo

TO: Deerfield Planning Board
FROM: James Raymond
Upton & Hatfield, LLP
RE: Pleasant Lake Watershed Ordinance
DATE: December 12, 2012

You requested our comments on the Pleasant Lake Watershed Ordinance which appears in Section 330 of the Zoning Ordinance, and which we understand that the Board may be reviewing for possible amendments. This ordinance, adopted in 2007, creates a buffer around wetlands and tributaries to the lake (although apparently not expressly around the lake itself), imposes use restrictions, and creates an enforcement mechanism to protect the lake. The Board can assess whether the goals of the ordinance and the extent of the buffer and other provisions are appropriate. Our comments address its mechanics.

The ordinance appears in the town zoning ordinance. Unlike site plan and subdivision regulations, which permit some discretionary interpretation by the Planning Board, standards in zoning ordinances are typically absolute on their face. They may permit some exceptions or alteration, typically either through special exceptions granted by the ZBA or conditional use permits granted by the Planning Board. Both ZBA and

Planning Board, though, are boards with limited and defined jurisdictions, so the procedures in the ordinance for any variance from the standards should fit within the statutory jurisdiction of the board or official reviewing the use or application.

The Pleasant Lake Ordinance, however, mixes concepts of a zoning ordinance and of site plan and subdivision regulations. For example, it requires that all developments in the Overlay District must meet specified standards, with certain prohibited uses. It then creates a review process by ZBA and planning board and evaluation by the Code Enforcement Officer, in section in Section 330.6.1. It then requires a hydrological study, and certain controls on runoff for subdivisions and site plans acceptable to the Code Enforcement Officer, Section 330.7.1.e. The one hundred foot buffer may be reduced by the Planning Board, Section 330.8.B, but there is no provision for reducing the buffer for development proposals that do not come before the Planning Board. In short, the ordinance creates a confusing picture of conflicting and overlapping jurisdictions, sometimes outside of the statutory authority of the board or official charged with enforcing the ordinance.

Overlay districts typically create an issue of how they should be applied to existing uses and structures. This ordinance is silent. The silence could be a problem, for example, if the owner of a preexisting house within the buffer wants to make a change that requires a building permit, which the ordinance as strictly interpreted would prohibit. Although the Planning Board is charged with allowing reductions in the buffer, the Planning Board would have no statutory jurisdiction to grant the reduction, and the home owner would have to apply for a variance. A variance, however, has a higher bar than for the Planning Board's approval of a reduction in the buffer. More confusing is the

delegation to the Code Enforcement Officer of review obligations in projects that must go before the Planning Board. See *e.g.*, Section 330.6.E and 330.7.1.e. Typically, and by statutory authority, the Code Enforcement Officer does not advise the Planning Board or make decisions for the Planning Board.

When the Board reviews the ordinance for possible revisions, it might want to think through how the ordinance will be enforced, by whom, and who will have the power to modify it, either by special exceptions or conditional use permits. The standards for granting the special exception or conditional use permit should be expressly stated. This ordinance throws more discretion into the lap of the Code Enforcement Officer. See, *e.g.*, Section 330.7(e) and 330.6.1.B. We question whether it is appropriate for the code enforcement officer to be required to make qualitative judgments, particularly of the scope described in Section 330.6.1.B.

In short, the Board should consider how to structure this ordinance so it provides a review and enforcement mechanism that fits within the jurisdictions of the ZBA and Planning Board and the authority of the Code Enforcement Officer, and clearly separates their roles. In addition, it should recognize that only site plans and subdivision applications, and, if allowed by the ordinance, conditional use permits, go before the Planning Board, as its jurisdiction is limited. The Code Enforcement Officer should not typically be involved in reviewing projects that appear before the Planning Board, and his review authority should have clear standards that do not require substantial interpretation, as that is typically not within the code enforcement officer's area of expertise or statutory authority.

You also inquired about what forms of development are subject to the buffer requirements. As noted, the Planning Board is given authority to reduce the buffer, in Section 330.8B, suggesting the buffer applies only to subdivisions or site plans. The provisions on applicability, in Section 330.2, however, are not so limited. Similarly, the remainder of Section 330.8, and particularly 330.8C, appear to apply the buffer setback to all buildings, and not only new subdivisions or site plans.