

## **ATKINSON PLANNING BOARD**

**Atkinson, New Hampshire**

**Public Hearing Meeting**

**Wednesday December 2, 2009**

Present: Sue Killam, Chairman; Paul DiMaggio, Vice Chairman; Regular Members: Ted Stewart; Tim Dziechowski, Joe Guisnard

Alternate: John Wolters; Harold Morse, Mike Turell

Selectman Ex Officio William Bennett

Also Present: Ms. Carol Grant and Mr. John Recesso

Ms. Killam called the meeting to order at: 7:35 PM

Correspondence

Incoming

Rockingham Planning Commission, Roxanne Rines, dated Nov 20, 2009, Workforce Housing Forum

ZBA, dated Nov 20, 2009, Dziechowski, Special Exception-Frontage Reduction, 109 Maple Ave., Map 18 Lot 71

City of Haverhill, dated 11/17/09, Planning Board Public Hearing Notices

Monthly Exp, dated 11/1/2009 – 11/30/2009

Outgoing

Daniel & Nancy Birdsall, dated 11/18/09 re: 2 lot subdivision application, Estate of Katherine Birdsall c/o Daniel Birdsall, Maple Ave/Kelley Lane, Map 9 Lot 59

Chairman Killam called the meeting to order at 7:30 P.M.

### **Approval of Minutes**

Chairman Killam requested that approval of minutes for the Planning Board Meetings of October 7, 2009, October 21, 2009 and November 4, 2009 be deferred to the end of the meeting.

### **Discussion:**

#### **Current Bond Deficiencies**

Chairman Killam and Mr. Stewart have an appointment with the Town Attorney to discuss bond efficiencies. Selectman Bennett will also attend the meeting. Ms. Killam briefly reviewed outstanding bonds. Deficient bonds include the following:

- Brittany Lane required an update from the Treasurer and that the bond expired November 2, 2009.

- Winslow Drive – Chairman stated that the Winslow Drive bond was signed by Busby Construction.
- The Brushwood Drive Bond Deficiency is only \$6,000.
- There is only \$17,000 in the cash account for Ashford Drive and the Town Engineer requires \$97,303 – an \$80,000 deficiency.

Mr. Stewart stated that Ashford drive needed to start from the gravel up. Chairman Killam read the opinion by the Town Attorney into the minutes. Mr. Stewart stated that if you read the whole paragraph then it would say the developer is responsible. She only read an excerpt and Ms. Killam replied that she was asking the Board why the clause she read into the minutes was not used. Mr. Stewart replied that the Highway Department would be responsible.

### **Proposed Small Wind Turbine Ordinance**

Next the Board discussed language for a proposed wind turbine ordinance. Mr. Bennett stated that he wanted see if 100 kw would be enough for the average home. Chairman Killam pointed out that the Board needed to decide at the meeting for a public hearing later. Mr. Stewart stated that an expert in the field wrote the model ordinance and that he felt comfortable with it. Mr. Turell stated that 25 kw would be enough for his home and Mr. Bennett replied that there had to be enough power to handle surges. Mr. Dziechowski stated that he would like to see an exemption for very small systems, less than \$500.00. Mr. Guischard stated that the model ordinance only talks about real towers. Mr. Dziechowski said he would call the State for information regarding small systems. The next question asked was the amount of time for notification. Ms. Killam stated that 10 days notice was required.

Ms. Killam then suggested that in subheading C1 on page 2, the word all should be stricken and zones RR2, RR3, C, C1, CP and lots of 2 acres or more. The Board continued to discuss lot size. Mr. Dziechowski stated that changing the setback ratio in the table on page four from 1.1 to 1.5 would be enough. Mr. Bennett stated that he would like to see the setbacks changed from 1.1 to 1.5. Mr. Bennett stated that the zoning lot size is per ordinance in other zones, that any lots created since zoning are at least two acres and RR2 is at least two acres; that there is a flat 2 acre minimum in all zones except C1 and CP and he would like a minimum two acre lot in all zones except commercial zones. . Mr. Dziechowski asked about one acre lots and Mr. Bennett replied no. Mr. Dziechowski stated that 200' by 200' lot would allow for a 67 foot tower.

Mr. Bennett again stated that minimum setback requirement for property lines of abutting property and utility guy lines should be changed from 1.1 to 1.5 in column three of the table on page 4 because the minimum setback requirement would cover odd shaped lots and would limit the size of the system on small lots and reduce annoyance to neighbors. Mr. Bennett again stated that the minimum lot size for a tower should be two acres except in the commercial zone. Mr. Dziechowski stated that he thought a 1.1 set back with a two acre lot would be sufficient. Mr. Bennett replied that a lot could be 10 acres and the wind turbine could be close to the property line. Mr. Stewart stated that a property owner should be able to do what they wanted on their property. Mr. Bennett replied that there is already zoning to protect the character of the neighborhood.

Mr. Recesso stated that the model ordinance agrees with the RSA's. Mr. Bennett disagreed. Mr. Recesso stated that he did not think tighter restrictions were needed. Mr. DiMaggio asked what the law stated and said the Atkinson ordinance should not be stricter than state law. Chairman Killam stated that the RSA's did not specify a lot size. Mr. Bennett cited 674.63 III for setbacks and stated that the setback ratio could not be more than 1.5. Chairman Killam asked for a show of hands as to how many people were in favor of a minimum lot size. Four people raised their hands. Then she asked how many thought the minimum lot size should be one acre and no one raised their hand. Mr. Wolters stated that if there were a minimum lot size then a property owner could apply for a special exemption.

Mr. Recesso stated that a wind turbine could be placed on the roof and Mr. Bennett stated that there should be no 100 kw wind turbine on the roof. Mr. Turell stated that a lateral turbine could be placed on the roof. Mr. Bennett stated that the ordinance only looks at monopole turbines. Ms. Killam stated that the Board should set a minimum lot size. Ms. Killam asked again for a decision on minimum lot size. Mr. Bennett stated again that minimum lot size should be tied in with set back and he would like the lot size and set back changed to 2 acres and a 1.5 minimum setback. Mr. Dziechowski stated that co-op towers with abutters would need a variance. Mr. DiMaggio asked about 1.5 acre lots.

Mr. Bennett asked if there were any 1.5 acre lots. Ms. Killam responded that some of the older lots were 1.5 acres. Ms. Killam asked if the Board would prefer to leave the working in C1 the same and just change the distance ratio to 1.5. Mr. Recesso stated that the average tower he installed was 40-50 feet, not including the blade. Mr. Dziechowski stated that the setback should be 1.5 from the property line rather than occupied buildings.

Mr. Bennett mentioned code compliance and stated that the code should be updated to reflect ANSI 222. The Board again discussed safety issues, including blade shear, the possibilities and potential hazards. Mr. Bennett asked if there should be a requirement for liability insurance. It was pointed out that the wind turbine systems were not covered by Homeowners Insurance.

In number 3, the words "at applicant's expense were added after certified mail.

The Planning Board agreed that the model ordinance should be modified as follows:

The language on page 3k and stated it should be changed to qualified professional engineer words "at applicant's expense" should be added to No. 3, ...by certified mail **at applicant's expense**...; on page 3

On page 3, D. a. roman numeral iii should be added stating "iii. Guy wires anchored on subject property";

The setback ratio in Column 3 in the table at the top of page 4 should be changed from 1.1 to 1.5;

In D., c Sound Level 60 decibels should be changed to 55 decibels. And the words "a certificate completed by a professional engineer added at the end.

In F. Violation a sentence stated "Hobby systems having an output less than 1 kw peak are exempt".

A severability clause should be added as H. on page 7 stating that the invalidity of any subsection or division of this article should not invalidate any other subsection or division of this article.

The Board agreed to have a public hearing on the model ordinance with the above changes.

The Board then discussed prices and sizes of different wind turbine systems with Mr. Recesso.

### **Carol Grant – Discussion regarding proposed Wetland Warrant Article**

**Member J. Guischard left at 8:39 p.m. and Mr. Recesso left immediately after the discussion regarding wind turbines.**

Chairman Killam then called Ms. Carol Grant to the table to discuss a proposed Wetland Warrant Article. Ms. Grant passed out copies of the proposed article to the Board.

Member Dziechowski stated that according to the new NRCS study, the Hovey Meadow wetland had only one house close to it, on Hoak Road and if he had known that then the wetland would have gone on last year's warrant. Ms. Grant stated that Hovey Meadow was not included in the proposed warrant article.

Mr. Dziechowski pointed out that East and West Swamp were included as one but that Hovey Meadow was not included. Ms. Grant stated that the wetlands included in the proposed warrant article were the same wetlands included on the sample ballot from the 2005 Town Meeting because at that time the Planning Board voted unanimously to recommend them. Ms. Grant stated that included in the documents she passed out were two sample ballots with two warrant articles attached.

Ms. Grant stated that she was recommending two warrant articles, one for protecting prime wetlands and one for a 150 foot buffer, so that voters could vote for each issue separately rather than putting them on one ballot. The wetlands that Ms. Grant wished to include were West Sawmill Swamp, East Saw Mill Swamp, Hovey Meadow and Wright Farm Pond. She then read a report from the National Resource Consulting Service regarding Right Farm Pond wetlands. She stated that she hoped that residents would stop dumping in those areas if they realized that they were prime wetlands.

Mr. Dziechowski pointed out that there was an issue with 6 houses on Summit Drive Extension that would be impacted by even a 100 foot extension. Right Farm Pond is affected the most. The Department of Environmental Services is being flexible in assisting landowners and there is already a waiver process in place wherein a waiver can be approved without a public hearing and designating Right Farm Pond would impact existing homes the most.

Ms. Grant then stated that there was no development on the northern part of East Sawmill Swamp and that the lots on Amber Wood and Fern Wood were long and narrow with the houses close to the road. Mr. Bennett asked about the yellow boundary and if it could be changed. Mr. Dziechowski stated that it was possible over time and Mr. Bennett asked if the boundary for Right Pond Farm could be changed. Mr. Dziechowski replied that it was possible but it would have to go to a public hearing. Mr. Dziechowski stated that there would be three houses affected if East Sawmill Swamp were designated prime wetlands. Mr. Morse stated that he did not see the Dearborn Ridge Houses. Mr. Dziechowski stated that the setback for those houses was enough and that all the homes on Dearborn Ridge are in 20designed to be 100 feet back.

Mr. Stewart asked why the Wetlands Commission wasn't presenting the article. Mr. Dziechowski stated that the Commission wanted to wait one year. Mr. Stewart asked Ms. Grant why she did not wait for the Commission and Ms. Grant replied that everything she was presenting had all been signed by the Commission previously. Mr. Dziechowski stated that the Commission was unanimous about the wetlands but not about the 150 foot setback.

The next wetland discussed was West Sawmill Swamp. Ms. Grant stated that the only houses near West Sawmill Swamp were on upper Maple. Mr. Dziechowski stated that only one lot would be impacted because the owner wanted to be able to cut trees, which he could with an exception; and that he was concerned that there is an island but it is digitized as a peninsula.

The Board then discussed previous ballots and elections. Ms. Grant stated that there were several issues on the 2005 ballot and some issues that weakened wetlands protection, so she voted against it. She stated that for the proposed Warrant Article she only took the parts from the 2005 ballot that strengthened wetlands protection. Vice Chairman DiMaggio asked what happened in 2008. Chairman Killam stated that in 2008 there was a special Town meeting to designate prime wetlands, it was passed by 79% of the people who voted but only 300 people voted. Ms. Grant stated that she told everyone to vote in 2009 because four wetlands would be protected even if not all eight originally planned.

Mr. Dziechowski stated that a 100 foot buffer is easier to enforce, and that all eight wetlands could be protected if there were a 100 foot buffer. Mr. DiMaggio stated that he was in favor of adding more and Mr. Dziechowski reiterated that Right Farm Pond would be hard. Mr. Dziechowski stated that he would like to get wetlands protection in place before there were further development and if they were prime wetlands it would be easier to get grant money to protect them. Ms. Grant agreed and stated that there is not much development on Hovey Meadow. Mr. Dziechowski stated that it is the last undisturbed area of hybrid soils, that there is only one house, and he did not look at it previously. Mr. Stewart stated that it would be easier for the ballots if the Board did all four next year. Mr. Morse recommended a 100 foot setback. Mr. Stewart recommended that the Board do all four this year. Mr. Dziechowski stated that the Board could do three, not Right Farm Pond.

Mr. Morse stated that he was in favor of a 150 foot setback for prime wetlands and reducing the setback to smaller wetlands to fifty feet. Mr. DiMaggio agreed.

Ms. Grant stated that three quarters of West Sawmill Swamp is undeveloped, that she hiked through it looking for the floating island and it is beautiful; and that there are several parcels prime for development; and that there was no reason for prime wetlands to wait for a vote on the size of the buffer zone. Ms. Killam stated that if the 150 foot buffer

zone were not voted in, then a developer would have a 100 foot setback. Mr. Dziechowski stated that the difference between prime wetlands and regular wetlands is that prime wetlands have extra protection from the State.

Chairman Killam asked if Ms. Grant was planning on submitting a petition for a 150 foot setback if she thought the Board would not support it. Vice Chairman DiMaggio polled the Board to see how many would be in favor. Chairman Killam abstained. Vice Chairman DiMaggio stated that he would rather wait until next year. Mr. Bennett stated that he was in favor of placing three wetlands on a warrant article. Mr. DiMaggio stated that he was in favor of putting West and East Sawmill Swamps on the warrant article to approve as prime wetlands. Ms. Grant asked if he would support three wetlands and Mr. DiMaggio replied no. Mr. Dziechowski asked if the Board would reconsider Hovey Meadow. Mr. DiMaggio replied that there were two lots bordering Hovey Meadow and Mr. Dziechowski stated that there was only one house. Mr. DiMaggio agreed that there was 200 feet from the other house. Mr. Dziechowski stated that it was the least valid and the least controversial.

**Vice Chairman DiMaggio made a Motion for the Planning Board to have a Public Hearing for a Warrant Article for three wetlands, East Sawmill Swamp, West Sawmill Swamp and Hovey Meadow for inclusion as prime wetlands as written in the NRCS Report.**

Mr. Morse stated that four wetlands were placed on the ballot last year to see how it affected residents and that a year is not long enough. Mr. Turell stated that last year was a bad year for a test year. Ms. Grant stated that Monday was the deadline for citizens' petitions regarding the Zoning Board of Authority. Ms. Killam stated that the deadline was Wednesday, December 9, 2009.

**Mr. Morse stated that as a point of order, there was a motion on the floor. Chairman Killam requested that the Board continue with the Motion. The motion was seconded by Member Tim Dziechowski. Member Harold Morse requested that Vice Chairman DiMaggio call for a vote. Chairman Killam recused herself from the vote. The Planning Board voted six in favor, Vice Chairman DiMaggio, Mr. Dziechowski, Mr. Mike Turell, Mr. John Wolters, Selectman Bennett, and Member E. Stewart, with Member Harold Morse opposed.**

Ms. Grant stated that only the Planning Board can designate prime wetlands. Chairman Killam asked to discuss specifics and stated that if the hearing were on December 16, 2009 then something had to be turned in the following day. Mr. Dziechowski agreed to turn something in. Chairman Killam requested that Ms. Grant refrain from coming back to the Planning Board with a citizens' petition for a 150 foot setback.

### **Approval of Minutes**

Chairman Killam requested that the members of the Planning Board review the minutes for the October 7, 2009 regular meeting. The Board reviewed the meeting and the following changes were made:

- Mr. Stewart requested that the first paragraph be stricken. Chairman Killam stated that page numbers needed to be added.
- In the second paragraph of the discussion regarding 47 Boulder Cove Road, strike Lewis and insert Williams
- In the first paragraph on page 3, strike the third sentence.
- In the second paragraph of page 3, line 3, change 50 feet to 150 feet and strike the last sentence.
- In the first sentence of the third paragraph on page 3, change Mr. DiMaggio to Mr. Dziechowski.
- Strike paragraph 5, page 3
- Page 4 line 10, change to "and the fire chief had information that he could accept an approved access instead.

**Mr. John Wolters made a motion to accept the minutes of the October 7, 2009 meeting of the Planning Board with the stated changes. The Motion was accepted by Vice Chairman Paul DiMaggio and all members of the**

**Planning Board present voted unanimously to accept the Minutes of the October 7, 2009 meeting with the stated changes.**

Chairman Killam next requested that the Board review the minutes of the meeting of October 21, 2009. The Board also agreed to review the Minutes of the November 4, 2009 meeting.

The following changes were made:

- page 4, 2<sup>nd</sup> paragraph, 12<sup>th</sup> line down strike Selectman Bennett and Member Turell agreed.
- page 5, paragraph 2, strike Mr. Bennett stated that storm parking requires overflows.
- page 6, 2<sup>nd</sup> paragraph, strike Chairman LaBranche
- on page 8 strike Ms. LaBranche agreed.

The Board agreed to continue reviewing the minutes for the planning Board meeting of October 21, 2009 until a later date due to several cut off-sentences.

The Board also agreed to review the minutes of the November 4, 2009 meeting until a later date.

**Vice Chairman Paul DiMaggio made a Motion to Adjourn. Mr. Tim Dziechowski seconded the motion and the members of the Board present voted all in favor to adjourn the meeting.**