

ATKINSON PLANNING BOARD
Atkinson, New Hampshire

Public Hearing Meeting
Wednesday, December 28, 2005

Present: Susan Killam, Chairman; Paul DiMaggio, Vice-Chairman; Harold Morse

Alternates: Joe Guishard; Tim Dziechowski

Ms. Killam called the meeting to order at 7:38 PM.

Mr. Morse stepped off the Board.

Public Hearings, Continued from December 21, 2005

Amendments to Zoning Ordinance, Section 620, Golf and Sports Complex/Residential Sub-District ("SCR Subdistrict"), related sections and charts which would allow buildings within the SCR subdistrict to have more than four (4) units, but not more than forty (40) units in a building, so long as those buildings did not exceed fifty five (55) feet in height per the International Building Code and were set back four hundred (400) feet from the property line and/or town roads. These amendments to the zoning would not increase the allowable density and would correct omissions, typographical errors and recodification of the sections if necessary.

At the last meeting it was discovered that the document the Board was working with was not the up to date version the Board would be putting forth to the ballot. This article was on the ballot a year ago and did not pass. Since last year a study has been done, at no expense to the town, by a consultant to look at the potential of income versus cost to the town if these changes take place. The report was very positive; the changes would have no cost to the town, and the over 55 housing would also bring significant tax revenues into the town without an impact to the school department.

The Board spent time checking the accuracy of the document. Mr. DiMaggio spoke in support of our process and the proposed amendment.

The hearing was opened to the public with no comments noted.

Mr. Dziechowski asked if the golf course was guaranteed to be public access or if it could ever be private. Re: Section 620:8. Mr. Lewis said that it could be private, but he felt that it is better this way, (public).

Mr. Guishard made a motion to move the Amendments to Zoning Ordinance, Section 620, Golf and Sports Complex/Residential Sub-District ("SCR Subdistrict") to the ballot with the Board's approval. Mr.

Dziechowski seconded the motion. Discussion: Mr. DiMaggio noted that there were no townspeople in opposition to this amendment and felt the Board had done due diligence. **Motion approved unanimously.**

Mr. Morse returned to the Board.

Public Hearings, New

An Amendment to the Zoning Ordinance/Building Code by replacing Section 610:1 to adopt the latest International Building, Residential, Fire, Fuel Gas, Mechanical & Plumbing Code, Edition 2003. National Electrical Code, Edition 2005. State Energy Code to remain Edition 2000.

Next text to read as follows:

All conventionally constructed buildings shall conform to and comply with the following: International Building Code, Edition 2003; Building, Residential, Fire, Fuel Gas, Mechanical & Plumbing. National Electrical Code, Edition 2005. State Energy Code 2000.

The Building Inspector stated that we are currently on the 2000 codes and would like to move forward. The state has adopted the 2005 National Electrical Code and has stayed with the 2000 Energy Code. The town has gone from Edition 2000 to 2003. The next change will be in 2006. This is not adding any new codes this is amending existing codes the town has already adopted. The new codebooks are on hand at the town office. There are no significant changes. Mr. Morse questioned the code regarding stairs. There have been no changes from 2000 to 2003.

The hearing was opened to the public with no comments noted.

Mr. DiMaggio made a motion to continue this hearing to January 4, 2006 to allow time for the Board to review the regulations to determine if this needs to go the ballot or if the codes can be adopted by the Planning Board at a single Public Hearing. Mr. Morse seconded the motion. Motion approved unanimously.

An Amendment to the Zoning Ordinance Section 400. General Provision by Adding a new subsection 400:8 to address Eminent Domain for the purpose of protecting the longevity of citizen rights to own land under the 5th Amendment to the Constitution of the United States.

New text to read as follows:

400:8 Eminent Domain. Property acquired through "Eminent Domain" shall be restricted in use to Local, State, or Federal governmental public sector uses, and only if said uses provide direct access and use to and by the public. Private or Public development of such land, solely for financial gain or revenue enhancement, is prohibited.

This is a response to a U.S. Supreme Court Case in Connecticut. This is what the town has adopted under our subdivision regulations. The only change is that

the state has the overriding rule when it comes to Eminent Domain. Mr. DiMaggio felt this article is important, it may or may not hold up in court, but it is a statement of concern. The state has a subcommittee together and is moving forward on this.

The hearing was opened to the public with no comments noted.

Mr. Morse made a motion to move this Amendment to the Zoning Ordinance Section 400 re: Eminent Domain to ballot with the Planning Board's approval. Mr. DiMaggio seconded the motion. Motion approved unanimously.

As submitted by Petition of the Atkinson Conservation Commission to adopt an Amendment to the Town Zoning Ordinance which would include the repeal of the present wetland ordinance (Section 410. WETLANDS ZONING) and would replace it with a new ordinance.

This is a petitioned zoning amendment by citizens with signatures put forward by the Conservation Commission but not brought through the Planning Board. The Planning Board cannot make any changes to this amendment. At the end of this discussion the Planning Board should make a recommendation as to whether they want to recommend or not recommend.

Mr. Dziechowski reported that this petition is very similar to last year's amendment, which was not passed by the voters. This is a shortened version from last year. The Board reviewed and discussed the document. Under Conditional Uses: Mr. Morse noted that last year, with a special exception, you could build a house within 50'. This has been omitted and is a significant change to this document. The feedback from townspeople was that they were giving up a lot to get too little and that they liked the 100' buffer. This was the reason they voted against it. Ms. Killam did not agree with this and noted that in this entire year she has never encountered one person that has made this comment. This petition has no give. The document is more restrictive in some areas. This petition would require a variance to cross a wetland to build a driveway where now they only need a state permit. Conditional Use Permit Section was reviewed. Section 410:6 was reviewed. The Conservation Commission acts as an Advisory Board to the State. Ms. Killam noted that the Zoning Board would like to have their workload reduced and she did not feel that this petition would do it. The Conservation Commission felt that it would reduce their involvement in some areas.

Mr. DiMaggio made a motion to send this Citizen Petition to ballot with the Planning Board's recommendation. Mr. Dziechowski seconded the motion. Motion failed. Mr. DiMaggio and Mr. Dziechowski in favor. Ms. Killam, Mr. Morse and Mr. Guishard against.

Mr. Morse made a motion to send this petition to the ballot with a note stating that the Planning Board does not recommend this petition. Mr. DiMaggio seconded the motion. Discussion: Mr. Morse voted to put this on the ballot last year because he liked the compromises that were in the document. He felt that enough of the issues that were compromised for last year have been removed.

Regarding encephalitis and other diseases Mr. Guishard was concerned that we could possibly create an epidemic if we don't have the ability to regulate pesticides in this area within state guidelines. If the town wanted to do any spraying a variance is always the way to go. Mr. Guishard did not see a provision in this petition to allow this noting that there is only a small window of opportunity for the spraying to be effective. If this passes someone should go to the Zoning Board for a variance and open end it. The Conservation Commission agreed with this. Mr. Morse suggested that people should be educated on the use of pesticides by using bulletins and announcements not in this type of legislation. He was concerned with the issue of enforcement. Conservation would like the public to look beyond this and look at the overall document. We need to adjust our definition of 'Wetlands' to match the state. The state's definition does not include open bodies of water or streams. The state does not have buffers around these areas. For information the public can go to the Conservation Commission web site at atkinsonconservation.org.

Ms. Killam felt that they had a really good working document last year. Ms. Killam stated that she has a degree in geology and 100' is excessive in some cases and the fact that you gave back on that last year to 50' around certain wetlands was a reasonable compromise. The fact that this was taken away causes her not to support this. Mr. DiMaggio agreed with that this is more restrictive.

Vote of the Motion: Motion approved. Ms. Killam, Mr. DiMaggio, Mr. Guishard and Mr. Morse voted in favor. Mr. Dziechowski voted against.

New/Old Business

There was discussion regarding the effect of these changes during posting prior to Town Meeting Vote.

Mr. Morse made a motion to adjourn. Mr. DiMaggio seconded the motion. Motion approved unanimously.

Next scheduled Public Hearing Meeting - January 4, 2005.

APPROVED _____ Respectfully submitted,

Carol Kater