

Hopkinton Planning Board
Minutes
January 9, 2007

Chairman Bruce Ellsworth opened the Hopkinton Planning Board public hearing of Tuesday, January 9, 2007, at 7:00 PM in the Hopkinton Town Hall. Members present: Vice Chairman Timothy Britain, Bethann McCarthy, Celeste Hemingson, Michael Wilkey, Clarke Kidder, and Alternate Edwin Taylor. Members absent: Jane Bradstreet and Alternate Cettie Connolly.

- I. Conceptual Consultations**—Surveyor Joe Wichert addressed the Planning Board representing Barry Upton who owns property located off Branch Londonderry Turnpike. At the Board's December 12, 2006 hearing, the Board approved a five-lot subdivision of Mr. Upton's property with conditions as it relates to improvements to Branch Londonderry Turnpike. Mr. Wichert is now before the Board requesting clarification of the Planning Board's December 12, 2006 decision. He suggested that the condition requiring Mr. Upton to pay for one-third of the cost of improvements to Branch Londonderry Turnpike should be based on facts. Mr. Wichert then offered to provide the Board with a traffic analysis that he believed would show that the traffic created by the development would be very minimal; therefore, Mr. Upton's share of the cost of improvements would be less than the one-third requested by the Board.

Mr. Britain noted that the development, if constructed, would almost double the number of dwelling units along the road. He believed that the condition that Mr. Upton be responsible for one-third of the cost of improvements is adequate. Mr. Kidder concurred stating that offer of proof with respect to Mr. Upton's share is not limited to additional traffic that will be caused by the development. It is also as a result of Police, Fire, and School services having to access the homes within the development.

Mr. Britain informed Mr. Wichert that reconsideration of a decision of the Board must take place at a publicly noticed meeting of the Planning Board.

Mr. Wichert then stated that the Applicant is considering in 2007 completing the engineering design for the off-site improvements. One-third of the engineering cost would be paid by the developer with two-thirds being paid by the Town. Then, in 2008, the Developer would pay his share of construction costs.

Finally, Mr. Wichert stated that the alternative is to reduce the number of lots proposed to two lots fronting of Branch Londonderry Turnpike. One or both of the new lots would have substandard frontage which would require a variance. He asked whether the Board would be willing to provide a recommendation to the Zoning Board of Adjustment that they grant the variance. In response, Mrs. Robertson stated that the Planning Board should not provide recommendations to the Zoning Board of Adjustment. Providing a recommendation would set a precedent in which the Planning Board would be asked to provide recommendations with respect to all applications to the Zoning Board of Adjustment. Board members concurred.

Chairman Ellsworth suggested that the condition with respect to off-site improvements would remain in effect no matter the number of lots proposed. It was noted that the addition of dwelling units along the street will increase the need for access by Police, Fire, and School services.

II. Public Hearing concerning the following proposed amendments to the Hopkinton Zoning Ordinance:

- To insert the following definition of Construction and Demolition Debris:

2.1.C.7 Construction and Demolition Debris: Waste materials, wood, and rubble resulting from the construction, remodeling, repair, removal or demolition of structures or roads, including any by-products or materials derived from such waste materials, wood, and rubble.

Scott Flood addressed the Planning Board advising that the current Zoning Ordinance does not specifically provide a definition for Construction and Demolition Debris. He noted that there have been certain individuals that have their own version of what they believe to be Construction and Demolition Debris. The addition of a definition in the Town's Ordinance will provide clarification for the future.

Mr. Britain questioned whether the definition was to include raw wood. Mr. Flood replied no.

Mr. Kidder questioned why the definition did not specifically reference treated wood. Mr. Flood indicated that the definition is to include treated wood as a waste material or as part of construction demolition.

Ronald Lajoie addressed the Planning Board explaining that the definition proposed is very similar to the definition of Construction and Demolition Debris that is used by the State. He advised that Maine is the only State that allows the burning of construction and demolition debris; however, there is a requirement that each load brought into a plant be looked over to determine whether there are materials included in the load that are prohibited from being burned. Mr. Lajoie noted that there is a difference in the burning and incineration of construction and demolition debris. Incineration generally means the burning as a waste process for commercial purposes.

Mr. Britain questioned whether it would be appropriate to specify treated wood. In response, Mr. Flood stated questioned who would be responsible for checking the loads to be sure that the material is clean.

Following discussion, Mr. Wilkey, seconded by Mr. Kidder, voted to support the proposed amendment. Motion carried unanimously.

- To insert the following paragraph specifying that a Special Exception or Variance granted would expire upon two (2) years of disuse:

15.12 Expiration of Special Exceptions and Variances

Unless otherwise specified in the decision granting the special exception or variance in question, a special exception or variance granted by the Zoning Board of Adjustment shall expire if:

- (a) the special exception or variance is not used within two years following the date of the decision granting such special exception or variance; or
- (b) the use or condition necessitating the special exception or variance is discontinued or ceases to exist for a period of two years or more following the date of the decision granting such special exception or variance.

Mr. Flood readdressed the Board advising that in some Towns variances expires due to non-use.

Mr. Kidder believed that the amendment should be considered as a house keeping item that will assist the Town in keeping tract of those variances that have been granted and have not been in use. Mr. Kidder questioned whether the amendment is intended to affect variances that have previously been granted that are no longer in use. Mr. Flood replied yes, stating that it he believed that the amendment as written would apply to any and all variances.

Chairman Ellsworth read into the record a letter from Regenis, owner of property located off Maple Street in West Hopkinton. See attached copy.

Karen Irwin addressed the Board suggesting that the Town notify those people that have been granted a variance as to the affect of the proposed amendment.

Following discussion, the Planning Board agreed to hold a second hearing on February 5, 2007.

- Petition to amend the Zoning Ordinance by inserting the following section:

5.7 Production of Electricity or Waste Disposal

No land in an M-1 district shall be used for (1) the commercial production of electricity through the combustion of wood, any wood product, bio mass or any other waste or (2) the commercial disposal of any waste through any combustion process. Any pre-existing use of land in an M-1 district for any of the aforementioned processes must cease within seven years and six months from the passage of this ordinance.

Mr. Flood explained that the intent of the proposed amendment is to provide notice to landowners of the Town's wishes to eventually discontinue this type of use. He believed that the amendment balances the wishes of the public with the needs of private landowners.

Mr. Flood reviewed with the Planning Board a hand-out that listed cases in New Hampshire involving amortization. Mr. Britain expressed concern with the dates of the cases referenced given the opinion of the New Hampshire Courts concerning property owners' constitutional rights as it relates to non-conforming uses.

Chairman Ellsworth believed that the objective of the amendment would be to deny the production of electricity in Hopkinton. Mr. Flood replied yes, noting that the language is intended specifically for the M-1 (industrial) district; however, he stated that windmills and hydro-plants would be allowed.

Chairman Ellsworth then questioned why the amendment is intended only to address those uses in the M-1 (industrial) district. In response, Mr. Lajoie discussed the affects of industrial uses on the Contoocook River which is located within the M-1 district.

Mrs. McCarthy expressed an interest in learning more about the different methods of wood fired plants, along with the use of best management practices.

Mr. Britain believed that the amendment submitted by petition would be supported by the voters; however, he suggested that once the amendment passed there may be constitutional issues that may be litigated.

Chairman Ellsworth read for the record a letter from New Hampshire Timberland Owners Association and Colby Lumber in opposition to the amendment. See attached copy.

Chairman Ellsworth suggested that the Planning Board must consider the impact of the amendment on the entire community and how it may limit others in using their property.

Forester Ronald Klemarczyk addressed the Board advising that there is a difference in burning of virgin wood and construction and demolition debris. He suggested that the passing of the amendment may affect those people that are interested in burning woodchips to produce electricity, include heat. Mr. Klemarczyk advised of the use of woodchips to heat Merrimack Valley High School.

Following discussion, motion made by Mr. Wilkey, seconded by Mrs. McCarthy, to not support the petitioned amendment as written. Motion carried unanimously.

III. Adjournment.

There being no further comment, Chairman Ellsworth declared the public hearing adjourned at 8:45 PM. The next scheduled public hearing concerning proposed zoning amendment is Monday, January 22, 2007 at 6:00 PM in the Town Hall.

Karen L. Robertson
Planning Director
