

TOWN OF WAKEFIELD, NEW HAMPSHIRE
PLANNING BOARD

2 HIGH STREET
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**MINUTES OF THE PUBLIC HEARING
December 13, 2007**

Chairman Joe Fluet called the meeting to order at the Town Hall at 6:30 p.m. Attendees included:

MEMBERS		ALTERNATES		STAFF	
Joe Fluet, Chairman	X	Donna Faucette		Kathy Menici, Town Planner	X
Rod Cools, Vice Chairman	X	Ed Morrison		Bette Gallagher, Secretary	X
John Blackwood, Selectmen's Rep	X	Dick Atwater		Richard Sager, Town Counsel	X
Al Huntoon	X	Peg Stevenson	X	Arthur Capello, Bldg. Inspector	X
Nancy Spencer-Smith				John Ciardi, Code Enforcement	X

Other Attendees as signed in:

Mike Towle	Dave	Edward Russell
Rose Russell	Pamela Knight	Howie Knight
Robin Frost	Roger Gauthier	Richard Edwards
Jonathan Cyr	John Fisher	Herbert Colleton
Jerry O'Connor	Tracy Folkersen	Paul Morrill
Amber Marcoux	Thomas Reed	Valerie Eaton
Tammy Canney	Al Canney	Jerome Labbe
Robert Todd, Jr.	Cheryl Donahue	Chris Desjardin
Linda Blackwood	Carol Shost	Judith Ciardi
Kathy Randall	Lisa Kimball	Deborah Gauthier
Dick Edwards	Terry Martell	Adele Schweizer
David Schweizer	Richard Benner	Dave Takis
Bobbie Takis	Pam Judge	Pete Kasprzyk
Dave Mankus	Peter Brown	

Chairman Fluet opened the meeting with the Pledge of Allegiance to the Flag.

Chairman Fluet stated that the record should show that Alternate Member Peg Stevenson is sitting in for Member Nancy Spencer-Smith.

Chairman Fluet said in deference to the number of contractors present, he would take the agenda out of order and begin with the proposed amendment for contractor yards. The Chairman stated there have been many inquiries as to why contractor yards should be regulated and he would begin with an introductory statement.

There was a disruption from the floor at this point and Chairman Fluet asked the individual to allow him to speak or he would have the individual removed by the Police.

The Chairman explained that the Zoning Ordinances in Wakefield are set up so that everything that is not specifically allowed in the ordinance is disallowed. Chairman Fluet said that under the current zoning ordinance, contractor yards are not allowed. Therefore everyone that has a contractor yard right now is doing so illegally. What this means is that if someone complains, the Code Enforcement Officer must respond to the complaint and must enforce the law, as it exists. What this means is that the CEO must tell people they must close their yard. The Chairman said that this is not what anyone wants to do and therefore the Board has written an ordinance allowing people to have contractor yards thereby making the illegal yards legal.

Chairman Fluet asked the floor for questions.

Judy Nason asked why the Board defined a commercial vehicle as 14,000 pounds. She stated that under RSA 259 12(e) a commercial vehicle is defined as weighing 26,001 pounds or more.

After discussion, the Chairman stated he would entertain a motion to amend the weight of a commercial vehicle to 26,000 pounds.

MOTION: To amend the definition of commercial vehicle to read “in excess of 26,000 pounds”
Made by: Al Huntoon
Seconded by: Rod Cools
Discussion: None
Vote: Unanimous

Mrs. Nason then questioned the 100 square foot requirement specified under the definition for a contractor yard. She said you couldn't park a trailer in 100 square feet.

Chairman Fluet explained that the definition says that anything smaller than 100 square feet is excluded from the definition.

Mrs. Nason also questioned the parking of 1 or more commercial vehicles when the Article says 3 or more. Chairman Fluet explained that this was a typographical error that would be corrected.

Mrs. Nason insisted that the Chairman read to her the exact language that would appear in both the definition and the article.

The Chairman stated that where the definition says 1 it would be replaced with the number 3.

Mrs. Nason asked what the last paragraph on page 12 would say and the Chairman said it would remain just as it is.

A question from the floor requested an explanation for a contractor vehicle. The Chairman explained that the definition was for a commercial vehicle not a contractor vehicle and the weight had been changed to 26,000 pounds.

Relf Fogg asked if it would be possible to eliminate Article 34 from the Zoning Ordinance by a petition zoning amendment. The Chairman said that such an action, if successful, would involve the re-writing

of all regulations for the Town. Chairman Fluet asked Mr. Fogg if he would be willing to sit on the Board and help with such a task.

Mr. Fogg replied that he would like to see the Planning Board eliminated and received vociferous support from the floor.

Linda Blackwood stated that the Board members may not mean to but they are stepping on people's livelihood. She asked what she and Mr. Blackwood are supposed to do with all their equipment. The Chairman stated that they would have a legal contractor's yard. Mrs. Blackwood said that these regulations need to work for everyone and that everyone is getting sick of rules and regulations.

There was discussion about the length of vehicles and what the Board meant by the 22 foot requirement in the definition. It was explained that 22 feet applied to each piece of equipment, not a combination of vehicle and trailer, etc. The Board emphasized that pickup trucks are not included as commercial vehicles.

Terry Martel suggested that contractor yards should simply be added without any restrictions. He said that there are too many regulations now and more were not needed. Mr. Martell said that if there are only a few complaints and 60 percent of the residents are contractors or contractor related than it doesn't make any sense to create more regulations.

Mrs. Nason asked what would happen if a person lived in a zone where contractor yards were not allowed? She said that it appears they are only allowed in Residential III or Agricultural zones and would also require a Special Exception from the ZBA or a Conditional Use from the Planning Board. Mrs. Nason asked what would happen to people in the Village District who already had businesses. Chairman Fluet said they would come before the Board to work out whatever details are necessary because they are grandfathered.

Mrs. Nason said they are not grandfathered and referred to page 14. She also stated that on page 9 the ordinance required site plan review and people didn't have the \$2,000 or \$3,000 dollars necessary for this. Chairman Fluet said the cost would be minimal since in most cases the level of review is a home occupation. Mrs. Nason said that contractor yards are under home industries and that requires the "whole nine yards" including going before the ZBA or Planning Board for a Special Exception or Conditional Use Permit. Chairman Fluet explained new terms, including "home industries".

Further discussion took place regarding the requirements for changing the zoning regulations and then Mrs. Nason asked for the deadline for a petition zoning amendment. Town Counsel Sager said he believed that the deadline had passed.

A question was asked from the floor as to whether a vote could be taken right now to squash the entire article. Town Counsel Sager said it could.

The number of complaints for illegal contractor yards was asked and the answer from Code Enforcement was four. The public felt that this was inconsequential in view of the large number in existence.

An unidentified member of the public stood up and pointed at Chairman Fluet stating he didn't know who he was and demanded an introduction of all Board members and staff. The introduction was provided. The same individual asked if the Board just thought up the whole concept of contractor yards at a meeting. Chairman Fluet said no, that the Board is charged to make recommendations to the Town on the zoning ordinances. The Chairman also said that this topic has been discussed a dozen times over the past year and the Board would have loved to have all the contractors at the numerous meetings.

Selectman Mark Duffy said when he first heard about this Article he was disturbed and it made him think back to other issues in Town such as the yard sales ordinance. Mr. Duffy said every year he sees the rights of homeowners and landowners diminished through local and State controls.

Selectmen's Representative Blackwood suggested that contractor yards be made a permitted use with no restrictions. There followed a general outcry against the Board, zoning regulations, and out-of-state residents.

At this point, Chairman Fluet said the residents could do away with the Board and all zoning regulations or the other alternative is that people could participate by joining the Board or coming to meetings. There were comments from the floor stating that people work for a living and don't have time. The Chairman said that many people who work participate in one way or another.

Selectmen's Representative Blackwood said that the solution is not to do away with the Planning and Zoning Boards or zoning regulations, the Town must have some rules and that without them there would be chaos.

A comment was made that if neighbors don't like what goes on next door they can leave. The Chairman reminded everyone that the Board has a job to do and in fact took an oath to protect everyone's rights and that includes contractors and their next-door neighbors.

A member of the public asked for a show of hands to see who would be against the contractor yard ordinance. Chairman Fluet posed the question and almost all of the attendees raised their hands. The Chairman asked for a show of hands for anyone in favor of the ordinance and no hands were raised. The Chairman then asked how many attending were contractors and almost all raised their hands.

Mrs. Nason stated that current contractor yards should be grandfathered if this ordinance goes into effect. Chairman Fluet said the ordinance allows for the yards to continue but requires screening within a specified period of time.

Selectman Duffy pointed out that a home occupation has to operate within certain parameters. Both the Chairman and Vice Chairman said that is what the Board is trying to do. Mr. Duffy said that the laws we already have should be enforced and said that contractor yards are not permitted now and they should be permitted with parameters.

The Chairman said that is what the Board did.

Mrs. Nason strongly disagreed stating that the Board did not do this because contractor yards are not allowed in all zones. Mrs. Nason said that contractors live throughout the Town and if they were in a

zone where the contractor yards are not permitted, the contractor would have to obtain a special exception or a variance. Chairman Fluet said that this would only involve going before the Board one night and the contractor would not need to hire a lawyer or a surveyor for the hearing. Mrs. Nason said it took her six months to get a conditional use permit to build a duplex not one night but the Chairman pointed out that Mrs. Nason was being deliberately misleading because she was fully aware that the delay in her permit was caused by waiting for a new ordinance to go into effect and once it did, approval was granted in one night. Mrs. Nason said that she had to wait months to get the paperwork to fill out. Mrs. Nason asked that this ordinance be tabled for one year to allow the Board to do more work on it.

A member of the public said that if a contractor goes in front of the Board he would be at the Board's mercy. The Chairman said that is not true, that the Board can say yes or no depending upon what is allowed in the zoning ordinance. The Board cannot say no if a use is allowed or yes if the use is disallowed. In any case, there is a well established appeals process.

There was discussion about the difference between running a business from your home and parking your truck on your property.

A member of the public stated that this is New Hampshire, not Massachusetts and that Wakefield is not friendly to business.

Once again Mr. Fogg stated that the problem is Article 34 and it should be gotten rid of and then contractor yards would be allowed. Chairman Fluet said if that happened the entire zoning ordinance would have to be rewritten. Mr. Fogg said if Article 34 is eliminated then the problem goes away.

A member of the public said it galls him to think that he has to ask permission to work on his property. He said that if he wants to add on he has to go to the building inspector for a permit.

Terry Martell said that if only four complaints have been received about contractor yards then the number is so small that it doesn't matter. The Chairman said that if Mr. Martell were the one being complained against, the Building Inspector would have no choice but to come and tell him to shut down.

Carol Shost said that she was speaking as both a homeowner and a business owner and felt that aesthetic value was most important to the Board. Mrs. Shost said the focus of this proposed amendment was on people who work for a living and felt it was unfair to focus on the equipment that brings them revenue.

Chairman Fluet said that aesthetics was an important issue but environmental concerns were also involved.

Selectman Paul Morrill said that he is not a contractor so it is hard to stand in their shoes. Mr. Morrill said that the Planning Board's job is not easy and they are trying to do the best they can but regulations that continually take away property owners' rights need to be considered very carefully. He assured the residents that before the current regulations were adopted, input was gathered from multiple segments of the Town. Mr. Morrill recommended that this particular warrant article be removed for this year and suggested that the Board gather a group of contractors together and with input from both sides of the aisle maybe a middle ground could be reached.

Chairman Fluet thanked Mr. Morrill and said he would allow five more minutes of discussion to make sure that everyone is heard.

A member of the public asked where the term “contractor yard” came from? Planner Menici said it is a land use term in the State. When asked if this meant that there could be State or Federal involvement, both the Chairman and Planner said it would not.

Mrs. Nason asked for the last date for a petition warrant article stating that usually it is the date of the public hearing. Town Counsel Sager said he would look it up for her.

Linda Blackwood stated she hoped the Planning Board would table this article for this year and asked the contractors present if they were willing to meet with the Board and the overwhelming majority said they would. A sign up sheet was circulated for the names and contact information of interested contractors.

Relf Fogg asked how people would know when the Board was holding a meeting on a particular subject. Chairman Fluet said public notice is published in the Granite State News and on the website and posted at Town Hall. Mr. Fogg recommended mailing notices to all residents and the Chairman said that would cost the Town thousands of dollars.

Additional discussion was held concerning the difficulty of contractors attending night meetings when they wanted that time with their families.

Terry Martel stated that he didn't feel a home occupation was applicable when the business was conducted at the customer's home and only paperwork was done at home.

Judy Nason said she would like to put this issue in perspective for the Board members. Mrs. Nason asked who they would feel if a group of residents got together and decided they wanted to ban recreational vehicles. She gave a definition that included boats, jet skis, trailers, kayaks, canoes, paddle boats, snowmobiles and four-wheelers and said only two could be had on each property except for Great East which could have three because it was bigger and Lovell Lake could have none since it was in Town. Mrs. Nason also said no more than five gallons of gas could be stored on a property.

Mrs. Nason said this proposed ordinance would affect people's livelihood. She said everyone in Town must be considered not just the four people who are complaining. Mrs. Nason again asked for the last date for a petition warrant article.

Town Counsel Sager said it was 90 days prior to the date of Town meeting and he believed that date was March 14th or 15th.

Dave Mankus spoke stating that when he first came to Town it was easy to get things done, but it was now more and more difficult and he in fact had a lawsuit pending against the Town. Mr. Mankus then shared with those present that he would be running for the Planning Board and would represent the rights of the property owners.

Mrs. Nason then stated that it appeared the last date to file a petition warrant article would be midnight tonight.

Chairman Fluet closed the public hearing and asked for comments from the Board. Vice-Chairman Cools said that there were reasons for proposing this Article and some, although not all of them were in the audience tonight. The Vice-Chairman said that there were also some who would be hurt by the Article and that wasn't the intention so he felt more work was needed.

Member Huntoon clarified that a revocation of Article 34 would require rewriting the Zoning Ordinances and other regulations. Town Counsel stated that such an action would essentially render the Zoning Ordinances totally ineffective. Member Huntoon asked if this was really what they wanted to do and felt the workshop format was an excellent idea.

Selectmen's Representative Blackwood felt the Article should be tabled and worked on for next year.

Alternate Representative Stevenson said she felt the Article should be worked on with input from those affected by it balancing what the contractors want with what is required in Town. Mrs. Stevenson said that eliminating Article 34 would be a bad idea for all.

Chairman Fluet asked what would happen if contractor yards were made a permitted use and the rest of the Article were dropped. Town Counsel said if they are made a permitted use there would need to be a definition and it did not make sense to rush into this.

Planner Menici said that the lack of a definition for contractor yards is currently causing difficulty for the Code Enforcement staff and making contractor yards a permitted use without defining them would not help the current situation.

Vice Chairman Cools suggested that the Board table the Article and set up a committee to work with the Board to come up with a good ordinance for next year. The Vice Chairman said the Board did not intend to upset people, although that appears to have happened.

Chairman Fluet suggested that the Board make contractor yards a permitted use, define it and table everything else.

The Vice Chairman said that suggestion made him a little nervous and it should be left the way it is for now allowing time to work on the issue.

MOTION: To table the Article and definition for contractor yards
Made by: Rod Cools
Seconded by: John Blackwood
Discussion: None
Vote: 3 Aye, 1 Nay

Chairman Fluet explained to the audience that the Board has voted to table the Article and definition for contractor yards. The Chairman said the yards are not a permitted use now and will not be for the coming year and asked the contractors to work with the Board to develop an acceptable Article.

Mrs. Nason asked if the Board has the option to make a motion to make the yards a permitted use. The Chairman said he did and made a motion to make contractor yards a permitted use for one year only

with a definition and asked for a second. Selectmen's Representative Blackwood said he would second it. The Chairman then asked for discussion.

Town Counsel Sager asked if the Board was contemplating limiting the size of the lot for a contractor yard to perhaps five acres. He said that if the yards are allowed without a limitation, someone could buy a large parcel and load it with equipment. Town Counsel suggested that the Vice-Chairman was correct in tabling it and working with the contractors to develop something acceptable.

Selectmen's Representative Blackwood said it didn't matter because the permitted use would only be for one year and then the use would expire. Town Counsel Sager said the use would be grandfathered because it was a permitted use.

The Board decided to table the issue for this year and have Code Enforcement use their good judgment in dealing with any complaints.

Chairman Fluet withdrew his motion in deference to the comments made.

The Chairman closed the public hearing on contractor yards in order to proceed with the remaining Agenda items.

Building Inspector Capello asked for a few minutes to share some information from DES on the Shoreland Protection Act changes. The Building Inspector told the audience that before attending this week's seminar the timeline was that if a building permit was in hand prior to April 1, 2008 the 50-foot setback did not have to be complied with; however, now the State has said that the permit must be in hand and work started. As an example, Building Inspector Capello said that if a house is being built, the cellar hole must be dug, formed and ready to pour. Additionally, after April 1, 2008, anything within 250 feet of the high water reference mark septic designs will need a permit from the Shoreland Department as well as the subsurface bureau.

Terry Martell asked who provided the definition of "work started". The Building Inspector said that came from the Attorney General. Mr. Martell asked for a copy of that regulation and the Planner recommended Mr. Martell call DES and they would provide that to him.

Planner Menici said that one of the staff members having enforcement responsibility for the changes in the Shoreland Protection Act would be available to come to Wakefield in January or February to do a presentation and answer questions for residents. The Planner said the meeting would be noticed in the newspaper and on the website.

Chairman Fluet then proceeded with the rest of the Agenda items.

Corrections referred to as "scriveners errors" were made to language in various sections of the proposed amendments.

Under the new Article for Assisted Living Facilities/Life Care Facilities a correction was made to reduce the maximum density in R I, R III and Agricultural zones to one dwelling unit per buildable acre.

MOTION: Under the new Article for Assisted Living Facilities/Life Care Facilities reduce the maximum density in R I, R III and Agricultural zones to one dwelling unit per buildable acre
Made by: Al Huntoon
Seconded by: John Blackwood
Discussion: None
Vote: Unanimous

Chairman Fluet asked the Board to look at Family Compounds on page 15. The Chairman questioned the phrase that “careful planning is encouraged, although not required” stating that he thought the Board had decided it was required

Town Counsel Sager responded that his vision of a family compound is not the same as the Board’s vision in that he doesn’t feel the family compound needs to have huge acreage capable of being subdivided into separate parcels. He said he views it more as a cluster of structures that allow for closeness of family.

Town Counsel said that wording the Article as presented allows people to choose how to build their family compound and gives the Town protection.

The opinion of the Board was in agreement with the Article as presented.

In-law apartments were next discussed and the Board spent some time decided whether they wanted to allow the use of accessory structures as in-law apartments.

Chairman Fluet said he would entertain a motion to add accessory structures to the proposed Article.

MOTION: To add the use of accessory structures to the proposed new Article for In-law Apartments.
Made by: Rod Cools
Seconded by: Al Huntoon
Discussion: None
Vote: 3 Aye, 2 Nay

The final proposed Article discussed was Indoor Cultural Facilities. Concern was raised by residents on Witchtrot Road regarding the use of one of the properties on their road for concerts if this Article is approved by the Town. The process of approval as well as traffic and rubbish concerns were addressed as well as the use of sound barriers in the actual construction.

MOTION: To pass as amended the Proposed Amendments to the Town of Wakefield Zoning Ordinance
Made by: Rod Cools
Seconded by: Al Huntoon
Discussion: None
Vote: Unanimous

APPROVAL OF MINUTES:

MOTION: To approve the Minutes for December 6, 2007
Made by: Rod Cools
Seconded by: Al Huntoon
Discussion: None
Vote: Unanimous

ADJOURNMENT:

MOTION: To adjourn the meeting at 8:30 pm
Made by: Al Huntoon
Seconded by: Rod Cools
Discussion: None
Vote: Unanimous

Respectfully submitted,

Bette Anne Gallagher
Planning Board Secretary