

TOWN OF NEWPORT
Minutes of the Newport Planning Board
Sugar River Valley Regional Technical Center
243 North Main Street Newport, NH 03773
October 20, 2015 – 6:00 P.M.
Special Meeting & Public Hearing

MEMBERS PRESENT: David Burnham, Vice Chairman; Ken Merrow, William Walsh, Erna McCormick, alternate; Gary Nichols, BOS Representative

MEMBERS ABSENT: Jeff North, Howard Dunn, Christina O'Brien

INDIVIDUALS PRESENT: Ms. Caroline Snyder, PhD; Stuart Clifford Stone, Joanne Stone, Ronald R. Stone, Kyle Stone, Lisa Simoneau, Richard Kay, Tom Hubert, Warren Sherburne, Frank Pitkin, Beth Pitkin, Peter Franklin, Sherri Cummings, Thomas Cummings, Tom Callum, Bob Evans, David Collise, Gert Blaine, Michael Batista, James Ackerman, Mike Henauld, Kim Henauld, Brian Packard, Skip Rollins, Bert Spaulding, Sr.; Bert Spaulding, Jr.

VIDEOGRAPHER: NCTV; Louis Cassorla

STAFF PRESENT: Julie M. Magnuson, Planning and Zoning Administrator; Bernard Waugh, Esq. (Town legal counsel); Shane P. O'Keefe, Town Manager, James Burroughs, Newport Police Chief

CALL TO ORDER: Acting Chairman Burnham called the meeting to order at 6:01 p.m. This was followed by a roll call. Ms. Erna McCormick was appointed to sit for Mrs. Christina O'Brien.

MINUTES: None

ADMINISTRATION: Ms. Magnuson introduced Mr. Bernard Waugh, Esquire of the law firm Gardner, Fulton and Waugh; PLLC (Town legal counsel). He was attending the hearing at the request of the Planning Board. Ms. Magnuson asked Attorney Waugh to address the Planning Board and public in attendance. Attorney Waugh explained his role was to advise the Planning Board on procedure and the legality of the amendment. He addressed the public in attendance and told them that as a lawyer he did not have a position on the amendment. Anything said to advise the Planning Board should not be construed that way.

CONTINUED BUSINESS: none

NEW BUSINESS:

Chairman Burnham read proposed rules of procedure for the October 20, 2015 hearing into the record. Addressing the Planning Board members he stated that if they found them satisfactory, he would like a motion to accept them for the hearing. On a motion by Mr. Nichols, seconded by Mr. Merrow; *the Board voted to enact the rules of procedure for the October 20, 2015 Planning Board hearing. The motion passed 5-0-0.*

Chairman Burnham then read a letter by him into the record which gave a synopsis of the meetings, hearings and documents concerning the proposed Zoning amendment from April 2015 to October 2015 (Attachment 1).

Chairman Burnham stated the October 20, 2015 hearing was concerning a proposed amendment to the Town of Newport Zoning Ordinance Article V (Special Provisions) Section 506- LAND APPLICATION OF SEPTAGE.

Chairman Burnham read the public notice into the record:

The Planning Board is proposing an amendment to the Newport Zoning Ordinance that regulates the land spreading of septage. The area affected by this amendment includes the entire community. The State of New Hampshire currently permits the spreading of septage with a permit from the Department of Environmental Services (DES). The proposed regulation is more restrictive and includes local review in addition to State regulations.

He then opened the hearing to the Board members and asked if they had any questions. They had none at this time. Chairman Burnham addressed the public in attendance and invited them to address the Planning Board. He requested that they approach the podium, state their name and where they were from. Chairman Burnham stated that the length each person's speech would be timed, and explained the process that would be followed for each individual.

Mr. Spaulding addressed the Chair with a question. Chairman Burnham acknowledged Dr. Caroline Snyder. Dr. Snyder addressed the Board and stated she was from Sandwich, NH. She referred to a letter of sworn testimony by Dr. David Lewis, Research Microbiologist that had been presented to the Planning Board for their information. She told the Board they had been given the testimony because when she had initially been contacted by the Town of Newport to find scientists who were familiar with regulations on the sludge and septage issue, she had not found anyone who could attend and testify before the Planning Board in Newport. She had volunteered to attend and speak at the previous Planning Board hearing. After the hearing she had contacted Dr. David Lewis. He had offered to write a letter to the Newport Planning Board which included a sworn affidavit with documentation concerning the topic of septage. She said that the information in his testimony before the Planning Board at the October 20, 2015 hearing was in response to nationwide petitions requesting a moratorium of the dumping of septage and sludge.

Chairman Burnham acknowledged Ms. Magnuson. She stated that the document that Dr. Snyder referred to was in the Planning Board member's packets. She had a few extra copies if others wanted them.

Mr. Spaulding again addressed the Chair. Chairman Burnham acknowledged Mr. Spaulding and asked if he had a question. Mr. Spaulding stated that Chairman Burnham had not read the entire proposed Zoning Ordinance to the public. He asked that the entire Zoning amendment being proposed by the Planning Board members be read into the record. Chairman Burnham thanked him and complied. He read into the record ARTICLE V (Special Provisions) SECTION 506-LAND APPLICATION OF SEPTAGE.

Chairman Burnham returned to comments from the public. Mrs. Beth Pitkin of Unity Road Newport, NH addressed the Chair and Planning Board. She inquired whether the Planning Board had received a letter from the Concerned Citizens group with minor requested modifications to the proposed Ordinance. She was told they had. For the public, Mrs. Pitkin read from the letter, reading the modifications in setbacks and the reasons the Concerned Citizens would like to have them included in the proposed Zoning Ordinance for the Town of Newport. Addressing the Planning Board, Mrs. Pitkin asked if they had any questions. There were none.

Chairman Burnham addressed the audience and asked if there was another individual who wanted to speak. He told them the Planning Board wanted the input. Mrs. Sherrie Cummings of Unity Road Newport, NH addressed the Chair. She read about proposed land use on pages 1, 10 and 11 of the Town of Newport Master Plan, April 10, 2012 and stressed it had been adopted by the Newport Planning Board (see town website: www.newportnh.net).

The Chair acknowledged Mr. James Ackerman. Mr. Ackerman stated his name and that he lived off Unity Road, Newport, NH. He told the Board he was a former RN of twenty years and EMT. He had a lot of knowledge concerning infectious diseases, specifically prions. Mr. Ackerman explained the harm that prions caused in the soil and the length of time they would continue to be potent. He stated that water quality was an issue for him and his family. He stated that the quality of life in the Town would be diminished if the Town allowed the (septage application) practice to occur. He thanked the Planning Board.

Chairman Burnham asked if there was another speaker. There being none, he returned to the Planning Board. Mr. Nichols made a motion to close the public hearing, seconded by Mr. Merrow. Chairman Burnham stated there was a motion and a second to close the public hearing.

Mr. Spaulding addressed the Chair and stated that the motion had not been made and he had raised his hand for acknowledgement. Chairman Burnham addressed Mr. Spaulding and stated that the motion had been made before his hand had been raised.

Chairman Burnham called for a vote. On the motion by Mr. Nichols, seconded by Mr. Merrow; ***the Planning Board voted to close the Public Hearing and enter into Board deliberation. The motion passed 5-0-0.***

Chairman Burnham addressed the Planning Board and asked their pleasure. He stated that if anything was changed with the proposed Zoning amendment before them, they would have to hold another hearing. Mr. Nichols stated that if they wanted changes they would have to instruct the Administrator of Planning and Zoning to make changes and present the new proposed Zoning amendment to the Planning Board. Mr. Walsh asked if anyone on the Board had an opinion about the changes presented. Mr. Nichols asked to be recognized. He stated he had a number of points.

He stated that one point in documentation in writing stated that the Planning Board did not have the right to make changes. He said that they did. There was a NH RSA and the right was confirmed by conversations with Mr. Michael Rainey, NHDES. Mr. Nichols explained the safeguards used when applying septage.

Letters received by the Board had been in support of both sides. Mr. Nichols specified the letter from Mr. Michael Rainey, NHDES; because he would be the individual overseeing the land application process in Newport. Mr. Nichols stressed the three major points of the proposed Zoning amendment.

Mr. Nichols stated it was the obligation of the Newport Planning Board:

- ³⁵₁₇ to protect the property owners rights, to make sure those rights are protected; to ensure that the property owner could do as much as the property owner wished
- ³⁵₁₇ to protect the abutters to make sure that their property was not injurious in any way by any action the Planning Board took and
- ³⁵₁₇ the welfare and safety of the community in general. He explained the reasons.

Mr. Nichols then reviewed the eight new regulations added to the proposed Zoning Ordinance drafted by the Newport Planning Board. Referring to the modifications that the Concerned Citizens proposed to number seven, Mr. Nichols stated he felt the currently proposed Zoning Ordinance amendment did not need them, but he would listen to the rest of the Planning Board members. Concluding, Mr. Nichols stated he would like the Planning Board to go ahead with what had been presented by the Administer of Planning and Zoning.

Chairman Burnham acknowledged Ms. Erna McCormick. She asked the Chair if the Planning Board had accepted the proposed modifications, or would they be accepting or voting on any modifications at the

October 20, 2015 hearing. Chairman Burnham stated nothing had been accepted as of yet at the hearing. The Planning Board was in discussion.

Mr. Merrow was acknowledged by the Chair. He stated that regarding the increased setbacks proposed by the Concerned Citizens, he understood their stand. Mr. Merrow stated that what the Planning Board proposed allowed the land to be used if done properly. Some of the restrictions the Concerned Citizens requested would interfere with the Master Plan; the owner's property would become unusable. He was therefore hesitant to support their proposed changes because. He would listen to the rest of the Board's conversation.

Referring to the Concerned Citizens letter and recommended changes to the Planning Boards proposed Zoning amendment *[f) 4 feet above the seasonal high water table]*, Mr. Walsh questioned how effective that would be. He stated that anything that was deposited would percolate down into the soil. He did not believe it would make a great deal of difference to the proposed Zoning Ordinance amendment.

Chairman Burnham acknowledged Mr. Nichols. He stated that presently the minimum standard is no lower than two feet below the ground (Seasonal High Water Table-SHWT). The applicant is proposing bringing it up as close as four feet (SHWT) which would require greater setbacks on the property.

Mr. Merrow was acknowledged. He stated that another item, number nine (by the abutters), the Planning Board heard conversations about. As a Town, Newport didn't want to be hypocritical. In the future the Town might have to find a place to deposit our septage. If we restricted accepting septage from Newport only, other towns may ban accepting Newport's septage. He explained the two sides and the choice the Newport Planning Board and citizens had to make.

Mr. Nichols was acknowledged. He stated that he questioned Concerned Citizens request number nine and whether Newport could legally control it. He explained it was a private site and not municipal. Chairman Burnham deferred the answer to Attorney Waugh, legal counsel. Attorney Waugh stated he had not prepared an answer to the question. He concurred that it would be very difficult to enforce; there would have to be monitoring twenty four hours a day. Attorney Waugh stated that he could give an answer to that statement; he would have to research the legality of keeping it Newport septage.

Chairman Burnham stated that his thoughts were that the setbacks presented by the Planning Board at the October 20, 2015 hearing were restrictive. He stated that the added setbacks proposed by the Concerned Citizens would pose problems for all in the future. He preferred the distances proposed by the Planning Board, that was his opinion. Chairman Burnham had nothing additional to add, except that if it was something the Towns people wanted they could vote in favor; if not they could vote it down and the Planning Board would again be asked to change things after the Town meeting vote. They would start the process again.

Chairman Burnham acknowledged Mr. Merrow. Mr. Merrow stated that he would like to make a motion on the proposed Land Application Zoning amendment. On a motion by Mr. Merrow, seconded by Mr. Walsh; ***the Planning Board voted to move the proposed Zoning Ordinance amendment Section 506- Land Application of Septage as read into the record on October 20, 2015 to the townspeople for a vote at a Town Meeting. The motion passed 4-1-0*** (McCormick opposed).

Attorney Waugh addressed the Chair and apologized for addressing the Chair after the vote. He stated that he had noticed (when the Chair had read aloud the entire Proposed Zoning Ordinance) that there were two typographical errors. One was on page two, number seven (e). It stated "steams" and should be "streams". The second was at the bottom of page two under **Section 506.4-Definitions** line two read... "deemed have the same meaning"...and should read... "deemed to have the same meaning"... Attorney Waugh stated that the Board could make those changes without holding another meeting to

correct the changes. Chairman Burnham acknowledged Mr. Walsh. Mr. Walsh questioned a typographical error under **Section 506.2-Regulations** on the last line of page one. The first word of the line... “circumstance”... should be ... “circumstances”... He then read the entire sentence with the corrected typographical error.

Attorney Waugh was consulted as to the proper way to correct and vote on the changes. Mr. Merrow restated his motion. A motion was made by Mr. Merrow *to accept the Land Application Septage Planning Amendment as drafted and amended for typographical errors as just discussed to be corrected by staff*. It was seconded by Ms. McCormick.

Chairman Burnham stated the motion had a second. He called for a vote. *The motion passed 5-0-0.*

On a motion by Mr. Nichols, seconded by Ms. McCormick; *the Board voted unanimously to adjourn at 6:58 pm.*

Chairman Burnham thanked everyone for attending the hearing.

Respectfully submitted,

Maura Stetson
Recording Secretary