

# HILLSBOROUGH PLANNING BOARD

January 4, 2012  
Official Meeting Minutes

Present:

Members: Martha Caron (Vice Chair), Ken Stafford, Sr., Russ Galpin, Paris Wells, Rachel Hawkinson (Alternate)

Shane O'Keefe, Planning Director  
John P. Segedy, Recording Secretary

Jack R. Bronnenberg  
Mary Bronnenberg  
Claudette Morency  
Richard Morency  
Raymond Paquin  
Wayne A. Wood, Asplundah Tree Expert Company  
Bruce A. Lee, Asplundah Tree Expert Company  
Paul J. Arno, Asplundah Tree Expert Company  
David R. Crane, Public Service Company of New Hampshire (PSNH)  
Jon Gibson, Zoning Task Force Member (ZTF) and Historic District Commissioner  
Roger Racette, Zoning Task Force Member and Chairperson – Zoning Board of Adjustment (ZBA)  
Peter Mellen, Licensed Land Surveyor (LLS)  
Jean Murdough  
John Murdough

## **CALL TO ORDER**

The meeting was called to order at 7:00 pm by Martha Caron, Vice-Chairperson.  
Shane O'Keefe, Planning Director had provided a staff memo to the Board regarding the meeting's agenda items.

## **DESIGNATION OF ALTERNATE MEMBERS**

Rachel Hawkinson was designated to vote for Ann Poole.

## **MINUTES**

### **December 21, 2011**

Russ Galpin provided an e-mail from Kelly Dearborn-Luce regarding what she had said about helping with the rewrite of the enforcement section of the Site Plan Review Regulations.

**Martha Caron moved:** *To amend the minutes by adding the sentence “Ms. Dearborn-Luce said she wants to make comments on the proposed draft of the Site Plan Review Regulations.”.*

**Rachel Hawkinson seconded.**

Martha Caron said that she would invite her (Kelly Dearborn-Luce) to make comments in writing through the Planning Director.

**Martha Caron said she would also like to add the statement:** “There was consensus of the Board that the wording of this Article was alright.” to the section discussing Article 2 about trailers on page 6 and to add the statement “Ann Poole suggested that in Section 229-86 B (5) the phrase “in addition to” be changed to “in excess of” so that the sentence will now read: “The Home Occupation shall generate no vehicular traffic in excess of that normally associated with use of a lot for residential purposes.””

**Martha Caron moved:** *To approve the minutes of December 21, 2011 as amended.*

**Rachel Hawkinson seconded. Motion passed 3-0-2 (Russ Galpin and Ken Stafford, Sr. abstained).**

Acting Chair Caron said she would like to address the Interim Growth Ordinance next as there were people here from Emerald Lake and it should be quicker than some of the other items on the agenda. She asked why it was on the agenda tonight.

Shane O'Keefe said that it was there because at the last Planning Board meeting he had reported that the Emerald Lake Commissioners were meeting the same night and would decide about their position on the ordinance. He put it on the agenda so as to report back to the Board. As such he understands, from speaking with the District's Administrator and its Chairman, that they are not interested in supporting renewing the moratorium, but that they haven't actually voted on it so he does not have an actual answer yet.

Martha Caron said that then the Board had no action to take on the matter tonight. She summarized that there is still a hearing set for January 18<sup>th</sup> on it.

Martha Caron said she wanted to make sure all of the information about the ordinance which had been discussed at the meeting of December 21 was in the minutes.

**Martha Caron moved:** *To reopen the discussion of the minutes of December 21, 2011 and to amend those minutes so that the sentence on page 8 of the minutes that refers to her discussion of the ordinance reads: "Martha Caron said that from her talks with Emerald Lake Village District Commissioner Bob Hutchinson, who was invited here tonight, the issue of water volume has been resolved but not of distribution, "which is what the Master Water Plan will do by replacing faulty and small sized pipes with new 8 inch pipes. Since DES is concerned only with volume and not future impact, it is not supporting a continued growth ordinance. However, water restrictions are still in place, aside from the five hookups that were pre-approved and could proceed by variance. The first phase of the Master Plan is scheduled to start in April 2012 and to be completed sometime in November 2012, almost the end of next year already. This will be for new lines in the immediate area around the lake. When this is done, and to the extent water restrictions are lifted for existing users, then new hookups could be allowed and the ordinance phased out accordingly. Therefore, it makes sense to continue the ban on new hookup approvals for at least one more year and then by next year, to amend the ordinance to phase out growth restrictions where there are no longer any water usage restrictions.""*

**Rachel Hawkinson seconded. Motion passed 5-0.**

### **OLD BUSINESS**

**1. RAYMOND PAQUIN – Review sketch plan for previously approved Home Business. 137 Henniker Street (Map 12, Lot 119). Case No 11-012.**

Raymond Paquin had provided a revised sketch plan which was included in the packet of information provided to the Board. Shane O'Keefe recommended accepting the plan.

**Martha Caron moved:** *To accept the revised sketch plan related to Case No. 11-012.*

**Rachel Hawkinson seconded. Motion passed 5-0**

**PUBLIC INPUT/ BUSINESS****1. PUBLIC HEARING - JOHN & JEAN MURDOUGH/ANDERSON IRREVOCABLE FAMILY TRUST – Lot Line Adjustment. 77 Sleeper Road (Map 1, Lots 50 & 53). Case No. 11-017.**

Acting Chair Caron opened the Public Hearing at 7:25 pm.

Peter Mellen, LLS appeared for the applicant. He explained that the proposal was to take a portion of Lot 53 and attach it to Lot 50 and asked if the Board had any questions.

Martha Caron asked to clarify that approval of the proposed adjusted lot line would not imply any “build-ability”.

Peter Mellen pointed out the changes on the plans he provided to individual Board members and to abutter Jack Brannenber.

Martha Caron asked if there were any further comments or questions from the Public or the Board.

Rachel Hawkinson asked Shane O'Keefe to clarify his comment in his staff memo regarding the road crossing the lot:

“Complicating the review of the proposal somewhat is the fact that the property to which the acreage is being merged is across Sleeper Road, so the lot will be bisected by a Town road. The Subdivision Regulations provides as follows on this issue, under the definition of the word “Subdivision”: “*E. Land divided by a highway shall be deemed to be contiguous if the reference deed describes the property as one single tract of land, even though a highway may pass through it*”.”

Shane O'Keefe said that he was just clarifying that creating a lot that straddles a Town road was allowed under the regulations.

**Ken Stafford, Sr. moved: *To accept the application as submitted to be complete.***

**Russ Galpin seconded. Motion passed 5-0.**

Acting Chair Caron closed the Public Hearing.

**Rachel Hawkinson moved: *To approve the proposed Lot Line Adjustment as submitted and authorize the Chairman to execute all plans and documents necessary for approval on behalf of the Board.***

**Paris Wells seconded. Motion passed 5-0.**

**OLD BUSINESS****1. Discussion of Proposed Zoning Ordinance Amendments from the Zoning Task Force**

There was discussion of the time line for hearings.

Shane O'Keefe said they could have a hearing on January 18<sup>th</sup> and, if there are changes, still fit in a second hearing in February.

Martha Caron recessed the discussion to meet with PSNH.

**NEW BUSINESS**

**1. PUBLIC SERVICE OF NEW HAMPSHIRE (PSNH)** – Discuss noncompliance with request for tree removal/trimming along designated Scenic Roads (Beard, County, Danforth Corners, Dean Hill, Farley, Jones, and Shedd Roads) per RSA 231:158.II. Case No. 11-001

Martha Caron said she understood the situation to be that some trees were cut on County Road that hadn't been previously approved.

Dave Crane addressed the Board. He summarized what had happened (details were also included in the email he had sent to Shane O'Keefe and included in the packet of information provided to the Board). He said in retrospect perhaps he should have gone out again when they were going to cut because of the time that had passed since the approval.

Martha Caron said she would like to see a procedure set up so there are no future problems – perhaps Dave Crane personally going out to each site when cutting will take place.

Paris Wells asked if the Asplundah personnel had any suggestions.

Paul Arno said he had just become a supervisor this year and thinks things will get better.

Dave Crane said this case had been one where the information traveled through multiple people, so he would try to cut that amount of passing information indirectly.

Paris Wells said if the general foreman goes on the site walk and then also is present during cutting that would help.

Ken Stafford, Sr. said that the Board shouldn't be deciding PSNH's procedures, that is their job. He said if they made a mistake and told us that is not a big deal.

Martha Caron said that the statute requires the Board to give permission for any cutting on these roads. Shane O'Keefe said that the Board approves cutting on roads that the voters have designated as “Scenic”.

Martha Caron said she thought that a phone call would be good if something happens.

Shane O'Keefe said they (PSNH) did communicate that they had made a mistake.

There was discussion of marking the trees to cut.

Paris Wells said he thought that paint was a good idea.

Dave Crane said he only wanted to do that after approval of the Board and property owner.

Rachel Hawkinson said she appreciated PSNH having come forward.

The consensus of the Board was in agreement with her.

Wayne Wood said he just wanted to repeat he was sorry it happened and that he takes full responsibility.

Wayne A. Wood, Bruce A. Lee, Paul J. Arno and Dave Crane left the meeting.

**OLD BUSINESS****1. Discussion of Proposed Zoning Ordinance Amendments from the Zoning Task Force (cont.).**

The Board returned to discussion of the proposed Zoning Amendments.

Shane O'Keefe said that a new “chart of uses” replaces a part of each section in the existing ordinance. He said that with this someone can just go to the chart instead of going through the whole ordinance. Shane O'Keefe said the Task Force had also went through and consolidated the definitions as well as adding to them.

Jon Gibson said that the parts in the proposal that are underlined are new, and those crossed out are to be removed.

Shane O'Keefe provided another chart showing items that were changed “grayed” as well as a chart showing what currently exists in the Zoning Ordinance.

Martha Caron asked if there were any areas in the chart cutting back on what is allowable.

Shane O'Keefe answered no.

John Segedy recognized as a member of the public pointed out that on the first page mobile home parks were being eliminated from 3 districts.

Shane O'Keefe said this was a case where there was a conflict. One section of the ordinance said they were allowed and one said they weren't, and he was showing it in an attempt to reflect that.

Martha Caron noted that Hotels and Motels were no longer being allowed in residential zones.

Roger Racette commented that at the last meeting it had been pointed out that the phrase “all commercial uses” had been taken out of what is allowed in the commercial district. He said that the Zoning Task Force tried their best to define all uses it could think of but may have missed some.

Russ Galpin said that the Historic District wasn't listed with the others and he wondered why.

Shane O'Keefe said that it was in another section of the code because it is authorized under a different statutory provision.

Roger Racette said that as a member of the ZBA, he feels the chart will make his job a lot easier.

Shane O'Keefe asked if there were comments about the definitions. He noted that the Town Attorney had made a number of comments and suggested changes.

Martha Caron said the Board should review them and decide about any changes.

It was agreed to attach Shane O'Keefe's memo of December 21, 2011 discussing the Attorney's recommendations to the minutes of this meeting.

Abutter Consensus of the Board was in agreement with the attorney's recommendation.

Driveway Consensus to delete words “sites or dwelling units”

Farmers Market Consensus of the Board was in agreement with the attorney's recommendation.

Junk Yard Consensus of the Board was in agreement with the attorney's recommendation.

Mobile Home Park and Mobile Home Subdivision - Consensus of the Board was in agreement with the attorney's recommendation.

Municipal Facility Consensus of the Board was in agreement with the attorney's recommendation.

Planning Board Consensus of the Board was in agreement with the attorney's recommendation.

Subdivision The Board discussed the state statute (672:14) and whether to recite it or just refer to it. Consensus was to just refer to it. Shane O'Keefe will adjust the language to reflect the change.

Section 229-20.1 Consensus was elimination of requirement for a Certificate of Occupancy in this section was alright because of reference to power to issue one elsewhere (Section 107-15 B).

Sections 229-22 B & 229-23 - Consensus of the Board was in agreement with the attorney's recommendation and also to remove the reference to Section 229-23 within Section 229-22 B. There was further discussion of 229-23 including whether the removed phrase "all commercial uses" legally accomplished what this section was trying to but could not legally do.

Article 2 (Trailers) Shane O'Keefe recommended only having the definition in Article 1 if making a choice as recommended by Attorney Donovan. Consensus of the Board was in agreement.

Article 4 (ZBA procedures) – There was discussion of the Attorney's recommendation to separate this into multiple articles.

John Segedy, recognized as a member of the public, suggested that the section putting an expiration on not yet used variances and special exceptions, should be a separate article or perhaps not put forth at all. He said that if enacted the article will interfere with the possibility of phased conditional approvals as discussed with the Economic Development Council a few months ago.

Ken Stafford, Sr. said he agrees that this will hurt economic development.

Martha Caron said an applicant can always come back for an extension.

Jon Gibson asked if there have been any problems with an old variance?

No one answered.

There was much discussion back and forth.

Consensus of the Board was to eliminate proposed 229-56 and leave the rest of the article as is.

Article 5 It was noted that this article was addressed at the previous meeting.

The Board took up discussion of the proposed Chart of Uses (Article 1) again.

There was discussion of prohibiting mobile homes in some zones. RSA 674:32 was reviewed and it was felt that current scheme is alright.

Shane O'Keefe noted that in the definitions section, the definition of 'parking space' had been changed and now allows for spaces to be smaller in some circumstances.

John Segedy as a member of the public noted that the definition of 'structure' had been changed to now include (and regulate) a lot of smaller things including pools and fences (more than 7 feet).

Martha Caron said that this had been discussed extensively by the ZTF.

Rachel Hawkinson moved: *To schedule a Public Hearing on proposed amendments to the Zoning Ordinance as recommended by the Zoning Task Force, to include changes discussed by the Board, for January 18, 2011 at 7:35 pm.*

Ken Stafford, Sr. seconded. Motion passed 5-0.

### 3. 2012 Meeting Schedule

There was a brief discussion of the meeting schedule.

Martha Caron moved: *To meet every first and Third Wednesday in 2012 except for July 4, August 1, and November 21.*

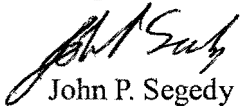
Seconded by Rachel Hawkinson. Motion passed 5-0.

### ADJOURNMENT

Rachel Hawkinson moved: *To adjourn.*

Paris Wells seconded. Motion passed 5-0 at 9:38 pm.

Respectfully Submitted:



John P. Segedy

Recording Secretary

Approved January 18, 2012

Appendix:

### MEMORANDUM

TO: Hillsborough Planning Board

DATE: December 21, 2011

FROM: Shane O'Keefe, Planning Director

RE: Zoning Task Force – Review of Town Attorney Comments on proposed Zoning Ordinance amendments

Town Attorney Michael Donovan has reviewed the proposed Zoning Ordinance amendments as suggested by the Zoning Task Force on 12/1/2011, and his comments are attached. In order to assist the Board in reviewing his comments, I have incorporated them into the Ordinance text below to provide better context.

#### Town Meeting Article 1

#### ARTICLE II. General Provisions

##### § 229-6. Definitions and word usage.

ABUTTER -- Any person whose property adjoins or is directly across the street or stream from the land under consideration. For purposes of receiving testimony only and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that their land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term "abutter" means the officers of the collective or association, as defined in RSA 356-B:3, Title XXIII. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a manufactured housing park form of ownership as defined in RSA 205-A:1, II, the term "abutter" includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the local land use board.

[COMMENT: Consider adding the last sentence from RSA 672:3, which the legislature added in 2002.]

DRIVEWAY -- An area located on a lot, tract or parcel of land and built for direct access to a garage or off-street parking space, serving not more than two lots, sites or dwelling units.

*[COMMENT: This would appear to preclude access ways into the parking lot of an apartment complex. If the objective is to prohibit shared driveways from serving more than 2 lots, that could be accomplished with a regulation elsewhere in the General Provisions section of the ordinance.]*

DWELLING -- A building ~~designed for or used primarily by one family~~ for living quarters, but not including mobile homes, trailers of any kind, hotels, motels, lodging houses, institutional homes, residential clubs, tourist camps, cabins, or other commercial accommodations offered for occupancy.

*[COMMENT: I recommend eliminating “designed for or primarily used by one family”. A dwelling could be a two-family dwelling or a multi-family dwelling. See definition of “Residential”.*

*RESIDENTIAL USE -- Includes, single-family, two-family, or multi-unit dwellings, and any combination of those uses.]*

FARMERS’ MARKET -- An outdoor sale limited to sale of home produced ~~or locally grown~~ farm produce, and the incidental sale of artisan produced handiwork, artwork and food. Second-hand goods are not offered for sale.

*[COMMENT: Eliminate “or locally grown”. It is vague and could be an illegal constraint of trade.]*

JUNK YARD -- ~~A parcel of land used for the commercial dismantling, storage, processing and sale of salvage material, including, but not limited to, scrap metal, vehicles, paper and rags. The use of any lot or parcel of land, or any part of a lot or parcel of land, for the open or exposed storage, keeping, sale, disposal or abandonment of food, garbage, refuse, old, used, wholly or partially dismantled, useless, broken or damaged articles, machines, machinery, automobiles, motor vehicles of any sort, clothing, furniture, or things of any sort. Such storage, keeping, placing for sale, disposal or abandonment of one or more unused, inoperative or unregistered motor vehicles on any lot or parcel of land, or portion thereof, shall constitute a junk yard. The term “junk yard” as so defined shall not be deemed to include any municipal dump or municipal refuse disposal area.~~

*[COMMENT: This limits the definition to commercial junkyards which means you could not enforce the Zoning Ordinance not allowing junk yards against residential properties accumulation “junk” but not in a commercial context. The above changes are submitted for consideration.]*

MOBILE HOME PARK OR MANUFACTURED HOUSING PARK -- A parcel of land upon which mobile homes may be placed upon rented spaces.

MOBILE HOME SUBDIVISION OR MANUFACTURED HOUSING SUBDIVISION-- A subdivision occupied exclusively by mobile homes sited on individually owned lots, each of which complies with the minimum lot area and frontage requirement of this chapter.

*[COMMENT: Consider adding Manufactured Housing Park, as well to the term. E.g., Mobile Home Park or Manufactured Housing Park.]*

MUNICIPAL FACILITY -- Any utility, street, sidewalk, STRUCTURE, BUILDING or other facility owned and maintained by the Town of Hillsborough.

*[COMMENT: Add sidewalks, “structure, building” or other structures”. Otherwise rules of construction would limit the definition to utilities, sidewalks and similar infrastructure.]*

PLANNING BOARD or BOARD -- The Town of Hillsborough Planning Board ~~and the regulator of this article.~~

*[COMMENT: Delete “and the regulator of this article”. It no longer applies since you have removed the definition from the cluster article. The Planning Board is not the “regulator” of the Zoning Ordinance.]*

SUBDIVISION -- The division of the lot, tract or parcel of land into two or more lots, plats, sites or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, condominium conveyance or building development. It includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided. The division of a parcel of land held in common and subsequently divided into parts among the several owners



shall be deemed a "subdivision." The grant of an easement in gross to a public utility for the purpose of placing and maintaining overhead and underground facilities necessary for its transmission or distribution network, such as poles, wires, cable, conduit, manholes, repeaters and supporting apparatus, including any unmanned structure which is less than 200 square feet, shall not be construed as a "subdivision," and shall not be deemed to create any new division of land for any other purpose.

*The rent, lease, development, or grant of an easement to a person for the purpose of placing and maintaining a wireless communications facility shall not be construed as a subdivision under this title, and shall not be deemed to create any new division of land for any other purpose. For purposes of this paragraph, "wireless communications facilities" means any towers, poles, antennas, or other unstaffed structure of less than 500 square feet intended for use in connection with licensed transmission or receipt of radio or television signals, or any other licensed spectrum-based transmissions or receptions. This paragraph shall not be deemed to affect other local zoning, site plan, or regulatory authority over wireless communications facilities.*

*[COMMENT: Consider adding RSA 672:14,IV in order to make the definition totally consistent with the statutory definition.]*

### **Section 229-20.1**

*[Comment: Why eliminate the requirement for a Certificate of Occupancy? Is it covered elsewhere?]*

RESPONSE: Town Code Section 107-15.B (Building Inspector) provides that "(t)he Building Inspector is authorized to issue building permits as provided by RSA 676:11-13 and certificates of occupancy for any building or structure that is erected or remodeled or that undergoes a change or expansion of use subsequent to March 14, 2006

### **Section 229-22B**

*[Comment: Add the word "lawful", i.e. "lawful" nonconforming use. Have you considered defining the word "nonconforming use" as "A use which does not conform to the requirements of this ordinance"?]*

#### **§ 229-22. Use Standards**

1. Any use that is not listed in Table 4 as either permitted, permitted by special exception, or permitted by conditional use, or that is not a lawful nonconforming use, is considered to be a prohibited use and may not be permitted to locate anywhere in Hillsborough unless specifically authorized under § 229-23, below, or applicable State or Federal statutes.

### **Section 229-23**

*[Comment: This provision is not legal. It should be removed from the amendment. In essence it allows the Planning Board to grant use variances, which is a power allocated by the Statutes to the ZBA. Additionally, the standards for such variances are different, and lesser, than the statutory requirements for a variance.]*

~~§ 229-23. Uses not provided for~~

~~Provision is made for unanticipated future uses. Uses which are not listed in any district may be allowed upon a finding by the Planning Board that such use is of the same general character as those allowed within the district and will not be detrimental to the other uses within the district or to the adjoining land uses.~~

~~In order for a use to be allowed under this provision, the Planning Board must make the following findings after holding a public hearing with notice given pursuant to RSA 676:4.I(d).~~

~~(1). That the proposed use must not be listed on Table 4.~~

~~(2). That the use is of the same character as those either permitted or permitted by special exception within the district. This excludes any use existing illegally or as a nonconforming use.~~

~~(3). The use will not be detrimental to the other uses within the district or to adjoining land uses. In making a decision under this criterion, the Planning Board shall consider whether the proposed use would attract similar ones and, if so, whether this would be detrimental to the planned development of the area as set forth under the district purpose and Town Master Plan.~~

~~***In making its findings, the Planning Board shall determine and state the allowed use most similar to the proposed use. The proposed use shall then meet all standards in this Chapter for the similar permitted use.***~~

**Town Meeting Article 2**

Place definition of “trailer” either in proposed separate “trailer” section or in the general definitions section, but not both.

**Town Meeting Article 3**

No comments or concerns.

**Town Meeting Article 4**

May wish to separate out 3 different provision of this change to ZBA provisions for separate Town Meeting article votes.

**Town Meeting Article 5**

[Comment: I interpret the new provision of Section 229-86 B (5) as meaning that a Home Occupation shall generate no vehicular traffic whatsoever beyond what a normal residence would generate. This would exclude a Home Business which generated FEDEX deliveries or someone baking cakes with customers coming to pick them up. If you did not intend to this strict, then the regulation should be rewritten.]

B. Home occupations.

(1) The home occupation shall be located only in the existing primary residence.

(2) There shall be no nonresident employees.

(3) The home occupation shall not advertise with a sign on the premises.

(4) The maximum gross vehicle weight for a commercial vehicle stored on the premises shall be 10,000 pounds.

(5) The home occupation shall generate no vehicular traffic in addition to that normally associated with use of the lot for residential purposes.

\* \* \*

Cc: Zoning Task Force members