

**NEW LONDON PLANNING BOARD
REGULAR MEETING & PUBLIC HEARING
JANUARY 3, 2006**

PRESENT: Karen Ebel (Chairman), Sue Ellen Andrews, Dale Conly, Celeste Cook, Tom Cottrill, Jeff Hollinger, Sue Clough (Selectmen's Representative), and Kenneth McWilliams (Planner)

Chair Karen Ebel called the **MEETING TO ORDER** at 7:30 PM.

I. PUBLIC HEARING ON ZONING AMENDMENTS PROPOSED BY THE PLANNING BOARD FOR CONSIDERATION OF THE VOTERS IN MARCH 2006

Chair Ebel opened the Public Hearing by outlining the procedures to be followed in discussing the proposed zoning amendments. She advised members of the audience that copies of the proposed amendments were available in the hallway near the entrance to the Sydney Crook Meeting Room. She further advised that the document showed the changes to specific zoning amendments by a combination of **highlighting** the proposed new language and ~~striking out~~ of the existing language to be deleted.

George Quackenbos inquired about the disposition of the amendments and asked if the PB would amend a proposed amendment if there were enough discussion to warrant a change. Chair Ebel responded that if all agreed that an amendment should go forward, a motion would be made to place it on the ballot for consideration by the voters in March 2006. If all agreed that an amendment should not go forward, a motion would be made to remove it from consideration. In instances where a proposed amendment generated a great deal of discussion or a need to amend the amendment, the PB would review the matter, taking all comments under consideration, and present a revised amendment for consideration at a second Public Hearing.

Chair Ebel said that, if there were no objections, she would dispense with the reading aloud of each proposed amendment. Hearing no objection, she proceeded with the hearing.

- A. **AMENDMENT NO. 1 – ARTICLE I PREAMBLE.** The amendment clarifies that the zoning ordinance is constructed as a permissive Zoning Ordinance; if a Use is not specifically identified as a permitted Use or a Use permitted by Special Exception in a Zone District, then the Use is not permitted in that Zone District. The proposed amendment makes no changes; rather it provides clarification. There being no discussion it was

MOVED (Conly) and SECONDED (Cottrill) TO PLACE THE PROPOSED AMENDMENT NO. 1 ON THE BALLOT FOR CONSIDERATION BY THE VOTERS IN MARCH 2006. THE MOTION WAS APPROVED UNANIMOUSLY.

- B. **AMENDMENT NO. 2 – ARTICLE II GENERAL PROVISIONS** proposes to amend Paragraph 8. Sanitary Protection to clarify current state and local agency responsibilities for permitting sanitary systems. There being no discussion, it was

MOVED (Clough) and SECONDED (Conly) TO PLACE THE PROPOSED AMENDMENT NO. 2 ON THE BALLOT FOR CONSIDERATION BY THE VOTERS IN MARCH 2006. THE MOTION WAS APPROVED UNANIMOUSLY.

- C. **AMENDMENT NO. 3 – ARTICLE II, GENERAL PROVISIONS, PARAGRAPH 11.** The amendment proposes to amend Article II. General Provisions, Paragraph 11. Temporary Structures to clarify that the use of trailers as temporary storage facilities is not permitted, except during construction. Ken McWilliams advised that Bob Bowers, in his written comments, made a good point in regard to striking the reference to sub-paragraph "c" in proposed sub-paragraph "d". There being no further discussion, it was

MOVED (Conly) and SECONDED (Cook) TO STRIKE THE REFERENCE TO SUB-PARAGRAPH "c" IN PROPOSED SUB-PARAGRAPH "d" AND TO TAKE THE PROPOSED AMENDMENT NO. 3, AS REVISED, TO A SECOND HEARING. THE MOTION WAS APPROVED UNANIMOUSLY.

- D. **AMENDMENT NO. 4 – ARTICLE XIII WETLAND CONSERVATION OVERLAY DISTRICT.** The amendment proposes to amend Article XIII Wetlands Conservation Overlay District to (A.) amend

the prohibited uses section to clarify that construction and development are prohibited uses in wetlands as defined by the ordinance; (B.) add a new provision requiring erosion and sediment control plans for any construction or development that may be permitted in the wetlands and/or wetland buffers, as defined by the ordinance; (C.) revise the ordinance to exclude wetlands in calculating minimum residential lot size and/or density; and (D.) add a new provision pertaining to cutting and removal of natural vegetation in the wetland buffers, as defined by the ordinance.

Chair Ebel asked Ken McWilliams to explain the proposed amendment and advise the audience of the existing law. Mr. McWilliams advised that the amendment contains four proposed changes: (1) amending Paragraph H. Prohibited Uses to specify the erection or construction of any Structures or Buildings except as provided in Paragraph E. Special Exceptions or Paragraph F. Special Provisions, and the addition of any fill or dredging that would alter the natural surface configuration of the land except as provided in Paragraph E. Special Exceptions or Paragraph F. Special Provisions; (2) adding a requirement for an Erosion and Sediment Control Plan for all construction, filling, grading, dredging, and other activities requiring land disturbance that may be permitted in Wetlands or Wetland buffers under paragraphs D, E, or H; (3) amending the effect of Wetland on Minimum Lot Size/Density to eliminate counting any wetlands in calculating minimum lot size/density (currently, areas designated as Wetlands may be used to fulfill 25% of the minimum lot size. In lots served by municipal water and sewer, the areas designated as Wetlands may currently fulfill 50% of the minimum lot size. PB member Clough asked if the new calculation would apply only when creating new lots. Mr. McWilliams replied affirmatively and stated that the amendment would have no impact on existing non-conforming lots. (4) adding requirements for cutting and removal of natural vegetation in Wetland Buffers similar to those in the Streams and Shore Land Buffers.

Resident Charles Martin said that he was confused on what “wetlands” were. Chair Ebel replied that New London has only three prime wetlands: Low Plain, Cricenti Bog, and Goose Hole. She advised that additional wetlands had been identified using the State of New Hampshire definition of jurisdictional wetlands. Mr. McWilliams added that the maps on display showed wetlands designated on the basis of hydrology (soil types), and the results were not exactly the same as state jurisdictional wetlands. He advised that the maps identified broad areas and that it was the responsibility of the developer to hire a soils expert to accurately map the wetlands on a particular property. Mr. Martin asked if buffers applied to wetlands. Mr. McWilliams replied that there was a 200-foot buffer for prime Wetlands, a 150-foot buffer for all Wetlands that adjoin or are connected to a prime Wetland, and a 100-foot buffer for all other significant Wetlands identified for protection by the Conservation Commission and depicted on the New London Streams and Wetlands Protection Map. Mr. Martin asked if it was, therefore, possible that a small bog on someone’s property would not need to have a buffer. Chair Ebel replied that such a determination could not be made without additional information, but, as a general matter, if it didn’t meet any of the previously discussed types, that would be true.

Resident Delavan Cate asked about buffers in regard to septic systems. Ken McWilliams read the buffer requirement contained in Article XIII. F. (1) of the New London Zoning Ordinance that states that “No septic tank or leach field may be constructed or enlarged closer than 100 feet to any Wetland whenever excessively well-drained soils with rapid permeability are encountered, otherwise 75 feet shall govern.” Mr. Cate asked why the PB wanted to make changes. Chair Ebel replied that the PB was of the opinion that additional protection was needed for the lakes in New London.

Resident David Kidder asked if the amendment had been proposed in response to the Granger Ridge situation. Chair Ebel replied “not directly.” Mr. Kidder opined that long-time property owners who have had land in current use would be penalized by the proposed amendment for not having developed their property sooner.

Resident Chris Bottinger stated that his property “sits right next to wetlands.” He advised that he currently has an approved subdivision plan for his 28 acre parcel; however, if he wanted to make changes to the plan, he had been advised by Messrs. Stanley and McWilliams that he would be governed by the regulations in effect at the time of the change. Mr. Bottinger opined that he would be “hit” by both the exclusion of wetlands and by the change in the maximum slope allowed in calculating minimum lot size. He said that that there was a 100% grade on one side and wetlands on the other. Chair Ebel replied that

that the PB had proposed excluding from the calculation of minimum lot size areas with slopes greater than 15%; however, she said that, since the Upper Valley Lake Sunapee Regional Planning Commission was unable to produce a steep slopes map for the 15% to 25% slopes in time for the hearing, the PB would not pursue that change at this time. She emphasized that the amendment would have to be modified to only exclude from the minimum lot size calculation areas of steep slopes with a 25% or greater grade over a distance of 20 feet.

PB member Clough stated that currently only areas with slopes of less than 25% could be used in the calculation of minimum lot size. She advised that existing issues relating to water emanating from drainage from hills, roads, and rights-of-way give the Selectmen concerns about steep slopes in addition to development of such areas.

Resident Harry Snow commented that the discussion only related to high density areas. Mr. Bottinger said that the zoning classifications had changed several times over the years. He stated that the incremental zoning changes had progressively reduced the amount of his property that he could use, but that the taxes on the property had not gone down in a similar way. Mr. Snow opined that the amendment was an effort to control development and was an assault on property owners' rights. He asked if the entire town would be subject to a soils inventory to establish where wetlands are located. He opined that zoning changes were making affordable subdivision impossible. He said that the 15% grade proposal was ridiculous and advised that a 15% slope would be less than that of a full walk-out basement. He reminded everyone that the town is located on a hill. Chair Ebel reiterated that the change from 25% to 15% slope would be removed from the proposed amendment. Mr. Snow responded that it might be removed from the currently proposed amendment, but it would be back at some future time. He opined that changes in the zoning ordinances over the last 10 years have been an assault on land owners.

PB member Andrews stated that the PB had listened to nearly 100 people at the Granger Ridge hearings complain about steep slopes and water running downhill. She emphasized that not all amendments were generated by the PB; rather amendments were also drafted in reaction to concerns brought forward by townspeople. Mr. Snow opined that the zoning ordinance already provided enough protection. He hypothesized that one might need seven acres in the Agricultural and Rural Residential Zone in order to build one house. Mr. Bottinger opined that the zoning changes were snuck through because the PB indicated that it supported them and people voted for whatever the PB supported. Chair Ebel advised that zoning amendments were developed in a very public process, including public hearings at which the public had the opportunity to comment. She further advised that the Master Plan guided zoning amendments. She said that the Master Plan had been developed based on responses to questionnaires mailed out to all New London residents, had been developed during a very public process, and that the townspeople, most of whom were landowners themselves, had voted for the zoning changes.

Howard Hoke opined that proposed Amendment No. 4 would remove land from any development, even when there was no scientific evidence or sensitive area. He said that he saw it as penalizing property owners who had preserved open space. He also suggested that property could be wet because a municipality decided to maintain a certain water level. Mr. Hoke criticized the separation or combining of issues to be included in any one amendment. He opined that some parts were good, some were controversial. He said that lumping issues together seemed to be like stacking the deck.

Chair Ebel advised that some of the changes were made to clarify the existing zoning ordinance. Ken McWilliams stated that amendment of Article XIII. H. Prohibited Uses to include (4) and (5) simply restated information that could be found in Article XIII. D. Permitted Uses. It was the opinion of the PB and town personnel that someone looking to find whether or not something was prohibited would not think to look for the information under permitted uses.

Mr. Snow stated that just because a property was located within the Wetlands Conservation Overlay District, it didn't mean that the property contained any wetlands. Mr. McWilliams replied that the proposed paragraph J. Erosion and Sediment Control Plan was new and would apply if a Special Exception were to be granted by the Zoning Board of Adjustment. Mr. Hoke stated that he was in favor of better control, but asked what the penalty would be for non-compliance. He opined that, if the penalty were not harsh enough, the ordinance would not be effective. Chair Ebel replied that there was an entire

penalty section. PB member Clough advised that penalties are set by state law. Zoning Administrator Peter Stanley stated that the penalty would be \$275 per day for a maximum of five days.

Ken McWilliams advised that the PB had the option of breaking the amendment down into separate amendments and that the PB could consider that option. Mr. Snow stated that he understood that Peter Blakeman (Blakeman Engineering, Inc.) and Douglas Sweet (Bristol, Sweet & Associates) had written letters to the PB and asked if those letters could be read aloud to the audience. Chair Ebel acknowledged that letters had been received from Mr. Blakeman and Mr. Sweet; however, she temporarily deferred reading them, since the letters addressed somewhat different issues from the one being discussed and were quite lengthy.

Erin Darrow, an engineer from Grantham, inquired about guidelines issued by the New Hampshire Environmental Protection Agency and about any other towns with similar regulations.

Chair Ebel advised that the addition of Paragraph L, Cutting & Removal of Natural Vegetation in Wetland Buffers to this section would make the Wetlands Conservation Overlay District consonant with the Shore Land Overlay District and the Streams Conservation Overlay District. Mr. McWilliams stated that the Wetlands Overlay District applied to any wetland meeting the State of New Hampshire definition or the Town of New London definition. He advised that not all wetlands were buffered. Resident Charles Martin asked for clarification of what must be buffered. Mr. McWilliams reiterated the three types of wetlands that must be buffered: prime wetlands, all Wetlands that adjoin or are connected to a prime Wetland, and all other significant Wetlands identified for protection by the Conservation Commission and depicted on the New London Streams and Wetlands Protection Map.

Attorney Chris Carter (Hinckley, Allen & Snyder, LLP) asked if a wetland was protected, would no buffering be required. He said that the proposed Amendment No. 4 seemed to apply only to the Wetlands Conservation Overlay District. PB member Andrews and Zoning Administrator Stanley both responded that the wetlands that required buffering were defined in the New London Zoning Ordinance and outlined on the streams and wetlands map. Mr. Carter opined that the impetus was drainage/run-off from steep slopes. In regard to excluding wetlands from the minimum lot size calculation, he asked if it was to protect the wetlands, which he considered an enforcement issue, or to reduce density by eliminating wetlands from the area counting towards minimum lot size and density. Chair Ebel replied that the intent was to protect wetlands. Mr. Carter asked why the DES restrictions were not adequate. Chair Ebel responded that the PB and the town had not found the DES restrictions to be adequate. Ken McWilliams stated that the State has no buffers around wetlands and regulates itself. He said that state law does not regulate at all. Mr. Carter asked if the PB distinguished wetlands from the buffer area. Chair Ebel responded affirmatively.

PB member Clough asked if, instead of excluding wetlands from the minimum lot size and density calculations, the PB determined a precise building envelope with buffers for each lot, the assembled property owners would be more satisfied. The suggestion was not greeted with enthusiasm. Attorney Carter advised that his experience with DES has been very different. He stated that he had prosecuted violations of erosion and sediment control in criminal court. He said that he has found enforcement by DES to be very aggressive. PB member Andrews asked Mr. Snow for his reaction to the suggestion made by Ms Clough. Mr. Snow replied that he believed the impact would be far more damaging than what has been proposed in Amendment No. 4. Pierre Bedard (Pierre Bedard & Associates) opined that some pre-existing non-conforming lots adequately protected wetlands.

Resident Eric Schultz (148 Old Main Street) suggested that there be a pool of recognition mechanisms, instead of setbacks, for example, inspection by an expert to determine placement of a building. He opined that Amendment No. 4 would negate use of properties that should not be excluded. He objected to the use of a blanket statement to apply to all situations. Mr. Schultz said that some areas are wetlands at different times of the year. Chair Ebel advised that wetlands are defined by soil types and types of vegetation, not only by whether or not the ground is wet at a particular point in time.

Chair Ebel stated that one part of the amendment was a minimum of one acre of contiguous property and asked if anyone in the audience had any comments. Harry Snow said that the PB seemed to favor cluster

development, in which case lots are less than one contiguous acre. Ken McWilliams stated that the Cluster Development regulations allow for lots of 0.75 acres.

Chair Ebel inquired about process and asked if items in the proposed amendment could be separated. Mr. McWilliams noted that the PB had received written comments that bore on the amendment. He said that the PB would need to re-work the amendment taking into account comments made at the public hearing, as well as the comments submitted in writing. PB member Clough asked if the PB could have a meeting before the second public hearing on the amendment. Mr. McWilliams replied affirmatively and said that, after the Public Hearing closed, the PB could continue its meeting to provide an opportunity for a session to work on the amendment. He noted that there was sufficient time to re-schedule the Second Public Hearing. He advised that the public could attend the deliberative session, but no comments would be taken.

Resident Jim Cricenti (268 County Road) asked if the proposed amendment would apply to larger tracts of land now in "current use". Mr. McWilliams replied that it would apply to buffered areas only. Mr. Cricenti expressed his fear that he might lose the ability to log in his wetlands. PB member Clough stated that a property owner could log in buffered wetlands with the permission of the PB. She cited the Elizabeth Graham property on which the PB had recently approved logging in the buffer as an example.

Attorney Carter asked if the PB would finalize the amendment that evening. Chair Ebel and Ken McWilliams replied that the PB would have a deliberative session and then hold a second Public Hearing on the revised amendment. At the second Public Hearing the PB will decide whether to place the amendment on the ballot or defer the matter until some later time. No additional revisions may be made at that Public Hearing. Mr. Carter opined that the proposed amendment involved a very complicated series of issues.

Non-resident Mark Grubbs, who said his wife owns an interest in the Cate property in New London, asked why there could be no compromise regarding the reduction in the amount of wetlands that could be used to fulfill the minimum lot size requirement. He asked why not reduce the current 25% somewhat, rather than eliminating it entirely. Chair Ebel thanked him for his suggestion and stated that that sort of a compromise position could certainly be considered. She also said that a compromise position of reducing the 50% exclusion to something more than 0% could also be considered.

It was **MOVED** (Hollinger) and **SECONDED** (Clough) **TO REVIEW AND DISCUSS ALL COMMENTS SUBMITTED AND REVISE PROPOSED AMENDMENT NO. 4 AND TAKE THE PROPOSED AMENDMENT, AS REVISED, TO A SECOND HEARING. THE MOTION WAS APPROVED UNANIMOUSLY.**

- E. **AMENDMENT NO. 5 – ARTICLE XIV STEEP SLOPE OVERLAY DISTRICT.** The amendment proposes (A) to add a requirement for an erosion and sediment control plan for any construction or development in the Steep Slope Overlay District, (B) to amend the definition and boundaries of steep slopes to include slopes that range from 15% to 25%, (C) to add a section that would give 50% credit towards meeting the minimum residential lot size and/or density for areas with slopes between 15% and 25% and no credit for areas with slopes in excess of 25%, and (D) cross reference the effects of steep slope areas on the density calculations for Cluster and Planned Unit Developments.

Chair Ebel reiterated that part (B) "to amend the definition and boundaries of steep slopes to include slopes that range from 15% to 25%" would not be pursued, as the PB could not get a map of the 15% slopes in time for the Public Hearing for purposes of excluding them from minimum lot size, based on her understanding of the law at this time.

Ken McWilliams reviewed changes to the proposed amendment due to the lack of a map of 15% slopes. He advised that, in Article XIV. A, the proposed phrase "and to regulate Development on slopes between 15% and 24%" would be deleted. In Article XIV. B, the proposed 15 percent would be deleted and the 25 percent retained. Resident Terry Dancy advised that the information regarding 15% slopes was available, and he asked why the PB had decided not to pursue the change. He said that Colby-Sawyer College had completed mapping a good amount of the town in regard to Pleasant Lake. Chair Ebel responded that the PB could get the information, but the cost of \$3000 would be prohibitive. Mr.

McWilliams advised that in Article XIV. C. (2) would be deleted and in Article XIV. E. (1) the 15% would be changed to 25%. He said that Article XIV. E. (2) would be deleted and the chart revised. Other portions of the amendment would remain as proposed.

Resident Harry Snow stated that under the current regulations it was not possible to develop slopes over 25%. Mr. McWilliams clarified that a 25% slope refers to a change in elevation of 25% over a distance of 20 feet. A discussion of the steep slopes map on display ensued. Mr. McWilliams said that the map displayed should be used as a guide only. He advised that a developer must hire someone to map a specific site. He pointed out that the amendment would not change the existing regulation in regard to development of slopes. The proposed reduction of the 25% to 15% had been eliminated. Mr. McWilliams advised that the Erosion and Sediment Control Plan referred to Variances granted by the Zoning Board of Adjustment to develop steep slopes. He said that the amendment addressed the minimum lot size by eliminating steep slopes from the area that may be counted in the calculation.

Resident Chris Bottinger opined that the proposed amendment was counter to everything that he had learned in college, where he had been taught to build on slope, not on flat land. Resident George Quackenbos opined that the proposed change in density would have the effect of taking rights and opportunities away from land owners with no reduction in taxes assessed. He referred to a letter written to the PB by Attorney Bradford Cook (Sheehan, Phinney, Bass & Green, P.A.) on behalf of Lake Sunapee Properties, LLC. In his letter, Mr. Cook opined that there were already adequate safeguards in place to protect development of wetlands and steep slopes and that the removal of such areas from the minimum lot size calculation would be punitive to the few landowners affected. He wrote that the combined impact of the proposed regulations would significantly reduce the value of a property and, in essence, would amount to "taking without compensation." Mr. Cook advocated taking a different stance on reducing density.

Chair Ebel responded that wetlands density and steep slopes were different issues and that it was important to keep the regulations separate. Resident Howard Hoke opined that the issue was a diminishing of property owners' rights. He asked why, if a lot conformed in all respects and the owner was not proposing to build on a slope, eliminate the slope from the calculation of available land, the effect of which would be to render the lot too small to meet minimum lot size requirements. Mr. Hoke opined that the elimination of property from development when the land could support building was arbitrary. Discussion ensued re the maps displayed and 15% slopes.

PB member Conly stated that the PB's concern was precipitated by erosion control resulting from building on steep slopes. Mr. Hoke recommended keeping erosion issues separate from density. Chair Ebel asked if excluding slopes of 25% from minimum lot size calculations was unusual in this area. Mr. McWilliams replied in the negative and said that many cities in southern NH were now developing erosion control and density regulations that applied to 15%-25% slopes. He said such provisions were not unusual at all. Mr. Snow stated that, percentage-wise, New London had more land with steep slopes than southern NH.

PB member Clough said that she was not hearing any comments regarding the need for erosion control plans. Consensus of the audience agreed. The concern of the audience was with the density issue and that erosion control was a good concept. Mr. Bottinger said that, between the various required setbacks and wetlands on his 28 acre parcel, he would be "screwed" if he wanted to make changes in his subdivision plan. Resident Eric Schultz stated that eliminating slopes of 25% from the calculation of minimum lot size would take away land when there were other methods of controlling development. Resident Delavan Cate said that any proposed building must come before the PB and the PB could require that an erosion control plan be submitted.

Resident Peter Stanley stated that there were increased taxes, increased population, and increased demand for services and infrastructure due to increased development. He said that a major impact of increased density was to increase taxes. He said that local taxpayers inherit the increased taxes after a developer moves on to other areas. Mr. Stanley opined that the developer impinges on the rights of long-term resident taxpayers.

It was **MOVED** (Cottrill) and **SECONDED** (Conly) **TO REVIEW AND DISCUSS ALL COMMENTS SUBMITTED AND REVISE PROPOSED AMENDMENT NO. 5 AND TAKE THE PROPOSED AMENDMENT, AS REVISED, TO A SECOND HEARING. THE MOTION WAS APPROVED UNANIMOUSLY.**

Chair Ebel then spoke to Mr. Snow's request that the letters submitted by Messrs. Blakeman and Sweet be read aloud. She advised that both letters referred to the exclusion of slopes of 15%-25% issue. Since that issue had been removed from the proposed amendment, the letters would not be read, but copies could be made for anyone who wanted them. Mr. Snow maintained that the impact on density would take away a right of ownership.

- F. **AMENDMENT NO. 6 – ARTICLE XVI SHORE LAND OVERLAY DISTRICT**. The amendment proposes to amend Paragraph H. Non-conforming Buildings & Structures of the ordinance to permit new foundations under specified conditions to be built for non-conforming structures located entirely within the first 50 feet inland from the normal high water level of lakes and ponds.

Resident Chris Bottinger asked if the proposed amendment would mean that you could not put a basement under a house. PB member Clough replied that the intent of the amendment was to allow those with houses located within the 50-foot setback to maintain their houses, but they could not expand the basements. Zoning Administrator Peter Stanley explained that presently a homeowner without a basement in the 50-foot setback area could not put in a basement and this measure would permit the creation of a foundation.

Resident George Quackenbos asked if the amendment would permit piers to be replaced by a basement. Chair Ebel responded affirmatively. Zoning Administrator Peter Stanley added that, unlike the present ordinance, the amendment would also permit building maintenance without requiring a property owner to go to the Zoning Board of Adjustment.

MOVED (Cook) and **SECONDED** (Cottrill) **TO PLACE THE PROPOSED AMENDMENT NO. 6 ON THE BALLOT FOR CONSIDERATION BY THE VOTERS IN MARCH 2006. THE MOTION WAS APPROVED UNANIMOUSLY.**

- G. **AMENDMENT NO. 7 – ARTICLE XXII STREAMS CONSERVATION OVERLAY DISTRICT**. The amendment proposes to add a new provision requiring an erosion and sediment control plan for any construction or development located within the first 100 feet inland from the ordinary high water mark of all streams regulated by the ordinance. These streams are shown on the Streams and Wetland Protection Map dated March 13, 2001. A copy is available for viewing in the Selectmen's Office. The amendment would make requirements in Article XXII consonant with those in other overlay districts. There being no further discussion, it was

MOVED (Conly) and **SECONDED** (Cottrill) **TO PLACE THE PROPOSED AMENDMENT NO. 7 ON THE BALLOT FOR CONSIDERATION BY THE VOTERS IN MARCH 2006. THE MOTION WAS APPROVED UNANIMOUSLY.**

- H. **AMENDMENT NO. 8 – ARTICLE XVI SHORE LAND OVERLAY DISTRICT, PARAGRAPH E**. The amendment proposes to revise the current provision requiring an erosion and sediment control plan for any construction or development located within the first 50 feet inland from the normal high water level of all lakes and ponds to be consistent with the language proposed for comparable sections in the Wetlands and Steep Slopes Overlay Districts. There being no further discussion, it was

MOVED (Clough) and **SECONDED** (Cottrill) **TO PLACE THE PROPOSED AMENDMENT NO. 8 ON THE BALLOT FOR CONSIDERATION BY THE VOTERS IN MARCH 2006. THE MOTION WAS APPROVED UNANIMOUSLY.**

Discussion ensued regarding dates for the deliberative session and the second Public Hearing. The deliberative session was scheduled for Monday, January 9, 2006 and the second Public Hearing was scheduled for Wednesday, February 1, 2006.

Ken McWilliams advised that copies of the ballot amendments would be available in the town offices on January 17, 2006.

Chair Ebel closed the Public Hearing on Proposed Amendments to the New London Zoning Ordinance and continued the deliberative session to Monday, January 9, 2006.

II. PUBLIC HEARING ON PETITIONED AMENDMENT TO THE NEW LONDON ZONING ORDINANCE

Ken McWilliams gave an overview of the petitioned amendment process. He advised that 25 registered voters could submit to the Selectmen a petition for an amendment to the zoning ordinance 90-120 days before town meeting. The Selectmen forward the petition to the PB for that body to set up a public hearing. A petitioned amendment is placed on the ballot along with a note indicating whether or not the amendment appears on the ballot with or without the PB's support. The PB decides only whether the note on the ballot advises of PB support or non-support for the amendment.

The **PETITIONED AMENDMENT proposes to amend the definition of Structure in ARTICLE III DEFINITIONS** to exempt "equipment providing necessary utilities servicing buildings" from the definition of a structure.

Resident Bill Andrews, a local contractor, stated that it's getting more and more difficult to put utility meters on houses because of PSNH requirements for access. He said that the use of pedestals is becoming more common. He opined that a pedestal could be constructed within the size of the dog houses that are currently exempted from the definition of a structure.

Zoning Administrator Peter Stanley advised that the petitioned amendment would not accomplish the objective; rather, it would make the issue more complicated. He said that the amendment does not get to a meter pedestal directly, because a meter pedestal does not meet the existing definition of "equipment" set forth in Article III. 39. of the ordinance. Zoning Administrator Stanley opined that the pedestals are usually placed very near the road and are of flimsy, ugly construction. He advised that the current regulations permit pedestals if setback requirements are met.

Mr. Andrews asked if locating a dumpster right on a property line would be permitted. Mr. Stanley replied affirmatively and said that a dumpster was usually temporary. Mr. Andrews opined that the PSNH meter readers want to be able to read meters without exiting their vehicles. Harry Snow, a local developer, stated that PSNH would not permit anything to be constructed around meters, e.g., any type of enclosure. In response to a question from PB member Cottrill, Mr. Andrews said that a pedestal would be about five feet tall.

Resident Howard Hoke asked if there was time remaining for the PB to suggest better language. Mr. McWilliams replied that several years ago Town Counsel had advised that a petitioner may not withdraw or amend a petitioned amendment. Mr. Hoke asked if the petitioner could withdraw and the PB present another amendment in its place worded correctly. Chair Ebel responded affirmatively, but said that the PB would have to agree that it would want to allow such a structure. Zoning Administrator Stanley reiterated that pedestals are currently allowed if setbacks are met. PB member Andrews asked those in attendance what the problem was with meeting setback requirements. Mr. Andrews replied that it might be difficult with the layout of utilities.

Michael Todd said that the definition of "structure" included bird baths and the town administrator was quoted as saying the definition is flawed. Messrs. McWilliams and Stanley asked if he had looked at the definition of "Equipment" in the existing ordinance and said that the use of the term in the petitioned amendment was very problematical. Mr. Todd said that PSNH was pushing pedestals because they make the meter readers' lives easier.

Chair Ebel advised that the problem with the petitioned amendment was that it used a term, "equipment", that was defined in the regulations to include backhoes, bulldozers and various forms of heavy equipment. PB member Hollinger asked if a Zoning Board of Adjustment (ZBA) Variance could be obtained in cases where setback requirements could not be met. Chair Ebel and PB member Clough both responded affirmatively. Resident Eric Schultz asked about the "equipment providing necessary utilities servicing buildings" wording.

Zoning Administrator Stanley replied that “pertinent devices” would have been more appropriate than “equipment”. He opined that the petitioned amendment was flawed because of the inclusion of “equipment”, a term already defined in the regulations and the definition of which does not include devices providing necessary utilities. Mr. Todd said that the PB had the final interpretation and that the use of the term “Structure” subsumed the term “Equipment”.

Chair Ebel took a sense of the PB with regard to support or non-support of the amendment. The sense of the PB was not to support the amendment.

It was **MOVED** (Conly) and **SECONDED** (Hollinger) **TO PLACE THE PETITIONED AMENDMENT ON THE BALLOT FOR CONSIDERATION BY THE VOTERS IN MARCH 2006 WITH A NOTE THAT THE PLANNING BOARD DOES NOT SUPPORT THE AMENDMENT. THE MOTION WAS APPROVED UNANIMOUSLY.**

Chair Ebel then advised that the PB could, if it chose to, write a new amendment. Mr. Hoke suggested that Zoning Administrator Stanley could come up with the proper wording. Mr. Todd advised that the PB could save the town a great deal of money and could avert action in Superior Court before Town Meeting if it drafted a new amendment for consideration by the voters. Chair Ebel asked Mr. McWilliams what the procedure for drafting a new amendment would be. Mr. McWilliams replied that the PB could take the matter to its deliberative session on January 9, draft a new amendment, and take it to the second Public Hearing. He said that, if the PB thinks that pedestals should meet setback requirements and that the possibility of obtaining a ZBA Variance in hardship cases provides an adequate remedy, then it could decide not to draft a new amendment.

Mr. Hoke asked what right PSNH had to determine the location of utility pedestals. PB member Cottrill asked how wide a pedestal would be. Mr. Andrews replied “three feet”. Mr. Snow replied that pedestals could be 6’ x 6’. He said that PSNH wants the meters to be on the gable end of the drive. Mr. Snow also said that house sites might not be able to meet the setback requirements. He added that the utility owns the part of the pedestal considered to be the “utility pole”. PB member Andrews opined that a pedestal might be aesthetically unpleasant to the neighbors. Both Ms Andrews and Ms Clough opined that there was already adequate provision for pedestals in the regulations. When asked if he had applied for a ZBA Variance, Mr. Todd acknowledged that he had not, because he disagreed with the definition of “structure” in the regulations. Mr. McWilliams advised that Mr. Todd could still seek a Variance.

Chair Ebel took a sense of the PB and found no support for drafting a new amendment. Consensus was that pedestals should be setback requirements and that in those instances when it was not possible to meet setbacks, the opportunity to seek a ZBA Variance provided an adequate remedy.

Chair Ebel closed the Public Hearing on the Petitioned Amendment to the New London Zoning Ordinance.

III. CONCEPT PRESENTATION FOR A NEW MIDDLE SCHOOL IN NEW LONDON

Peter Schiess appeared on behalf of KARMA (Kearsarge Alliance for Regional Middle School Alternatives to bring the PB up to speed on the adequacy of the New London site to support a new middle school for the Kearsarge Regional School District. He provided conceptual drawings for the PB to view.

Mr. Schiess explained that the same school that was designed for the Sutton site would fit on the New London site. The primary difference would be that the building in New London would be a two-story building instead of the partial two-story and largely one-story building in Sutton. He explained that the building would be erected on existing unused and poorly maintained playing fields, the students would then be moved into the new structure, and the old buildings would be demolished and two playing fields and a practice field constructed in its place. He explained that the traffic flow would be reversed with separate loops for buses and cars. He said that the site would provide 140 parking spaces, a bus drop-off point, and a front drop-off for guests/visitors.

Mr. Schiess advised that, contrary to rumors, there would be little (less than 10,000 sq. ft.) wetland impact and the impact would be limited to an area right behind the “pit”, an area nearly bisected now. He emphasized that the wetlands impacted were not the wetlands that flow into Pleasant Lake. He stated that KARMA members involved with the plans included land planners, such as himself, architects, engineers, and other professionals.

He also said that they had had discussions with Fire Chief & Zoning Administrator Peter Stanley. He said that the SAU building would remain. He estimated the height of the new building to be about 26 feet, a conventional two-story height; and noted that the existing building is approximately 40-feet high. He pointed out that the new building would be set way back from Main Street with athletic fields in front.

PB member Andrews asked if there would be any room for bleachers around the front fields. Mr. Schiess replied affirmatively, while acknowledging that it would be tight in spots. When asked about room for expansion, Mr. Schiess replied that building the school as a two-story structure would allow for expansion in the event that enrollment should increase. PB member Cook asked where the students played now if the existing fields are not used. Mr. Schiess replied that the students used other fields, especially the NL Outing Club. Ms Cook asked how students accessed the NL Outing Club. Mr. Schiess replied that there is a sidewalk along Parkside Road and students walk the short distance between the school and the NL Outing Club.

PB member Cottrill noted that the plan puts parking in several different areas, rather than in one large lot. Mr. Schiess said that there would actually be slightly less impervious surface under the proposed site plan. Ken McWilliams, speaking as a community planner, said that the fact that kids can walk to activities, services, and facilities is key in determining where a school should be located.

PB members Cottrill and Clough expressed sadness that the plan would not preserve the original 1941 building. Discussion ensued regarding flat roof lines versus pitched roof lines. Mr. Schiess advised that, long-term, a pitched roof saves money, although the initial cost of erecting a pitched roof is greater than constructing a flat roof. All agreed that, because flat roofs create such problems, it was a shame that the pitched roof alternative was no longer being considered. Ms Clough said that she was pleased that so little wetland would be impacted.

Ms Andrews said that she was concerned about parking and the possibility that the proposed practice field might become a parking lot to accommodate event parking. PB member Cook opined that there could be temporary parking on the field when additional parking was needed for events. Mr. Schiess replied that even in Sutton proponents were not designing for Christmas concert parking. He advised that the Sutton plan only provided 160 parking spaces. Mr. Schiess said that part of the parking problem on the New London site currently is the result of people parking along the roadways rather than in the parking lots. PB member Hollinger asked how many spaces there were on the current site. Mr. Schiess replied that there were 100 spaces, excluding the elementary school parking lot.

Ken McWilliams pointed out a possible modification in traffic flow. Mr. Schiess said that buses wanted to off load so that students exiting from buses would not have to cross the road. Mr. McWilliams opined that if the road was dedicated to buses only, there would be no cars for which students would have to watch. PB member Conly opined that the change in traffic flow would not aid traffic on Main Street. Mr. Schiess replied that it actually would alleviate it, as the problem occurs on exiting the site, not entering. Under the proposed plan, not all exiting traffic would be dumped onto Main Street as is now the case. He suggested that much of the traffic would continue up Gould Road or down Pleasant Street.

PB member Cook asked how long it would take to build the school. Mr. Schiess replied 15-18 months. PB member Andrews asked for what enrollment size the plan was designed. Mr. Schiess replied that the core would be designed for 900 students and the remainder for 700 students, with the possibility to expand to 900.

Zoning Administrator Peter Stanley asked if the plan had been shared with other planning boards. Mr. Schiess replied that the New London PB was the first to see the plan. Mr. Stanley opined that the plan would be good for New London; however, students from other towns would be on the bus longer than if the school were to be built in Sutton. He said that an RSA requires that the Kearsarge Regional School District obtain a permit from the Selectmen and must come to the PB for an advisory review.

All agreed that the KARMA plan was an interesting concept and that the school designed for Sutton would fit on the New London site.

IV. OTHER BUSINESS

- A.** Chair Ebel announced that Ken McWilliams would be leaving the UVLSRPC in mid-January and that he has agreed to continue to serve as New London's Town Planner on a consulting basis.

B. Ken McWilliams announced that the OEP Annual Conference has been scheduled for April 1, 2006. It will be held in Concord and an agenda will be forthcoming.

C. The MINUTES of the DECEMBER 13, 2006 meeting were APPROVED, as circulated

The **MEETING** was **ADJOURNED** at **10:37 PM**.

Respectfully submitted,
Judith P. Condict, Recording Secretary
New London Planning Board

DATE APPROVED _____

CHAIRMAN _____