

**NEW LONDON PLANNING BOARD  
DELIBERATIVE SESSION ON ZONING AMENDMENTS  
JANUARY 9, 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 7:32 PM.

Chair Ebel briefly recapped the action taken at the January 3, 2006 Public Hearing on the Proposed Zoning Amendments. It was voted to take proposed Amendments No. 4 and No. 5 to a second Public Hearing. She stated that the purpose of the deliberative session was for the PB to review the amendments and the comments made at the first hearing and to recommend amendments to the Amendments. She advised the public in attendance that they were welcome to listen to the deliberations; however, the PB would not take any comments as this would be a work session for the PB.

**I. AMENDMENT NO. 4 – ARTICLE XIII WETLAND CONSERVATION OVERLAY DISTRICT.**

Chair Ebel stated that the contested issue in Amendment No. 4 related to Section K, that would exclude wetlands from the calculation for determining land available to meet minimum lot size requirements. She said that she had asked Zoning Administrator Peter Stanley to generate sample maps of the data available in the town's GIS system.

Mr. Stanley distributed a packet containing four maps: (1) a USGS map of Lyon Brook with contours, as an example. He advised that the rows of bumps signified drainage areas. (2) Intermittent streams identified on the town's GIS system. (3) Soils information from the National Wetlands Inventory. He noted that the data was color coded so that brown indicates poorly drained soils, yellow indicates very poorly drained soils, blue indicates wetlands, etc. (4) An overlay map with streams and wetland buffers identified by the Conservation Commission and shown on the map displayed on the wall. Discussion ensued regarding the maps displayed.

Chair Ebel advised that she had discussed the legality of the proposed exclusion of wetlands in Amendment No. 4 and steep slopes in Amendment No. 5 with Town Counsel Bart Mayer and had received confirmation that such an exclusion would be legal as proposed in those amendments. She advised that she had asked Ken McWilliams to obtain a copy of Newbury's Wetland and Steep Slope Regulations and those regulations exclude steep slopes in excess of 25% and all wetlands from minimum lot size and density calculations. She stated that the PB should be aware, however, that Newbury's wetlands overlay district only applies to wetlands in excess of 10,000 square feet, while New London's applies to all jurisdictional wetlands regardless of size.

Chair Ebel outlined the alternatives available to the PB. She said that the PB could (1) make no change to the amendments, (2) draft a compromise alternative excluding only mapped wetlands, for example, or wetlands associated with all streams drainages, seasonal or otherwise, for another example, (3) propose an alternate formulation, e.g., rather than excluding all wetlands, exclude only some portion less than the 25% currently in the regulation and 50% with respect to lots using town water and sewer, or exclude only those wetlands of a certain size 100%, or (4) make no change at all to the present regulations.

Chair Ebel advised that she had asked Zoning Administrator Stanley to look up drainage information because of the significant impact that drainage systems have on the wetlands. She said that she hoped the maps would help in the assessment of a compromise exclusion alternative, if that is the desire of the PB. Chair Ebel said that she would have difficulty justifying the exclusion of all jurisdictional wetlands, regardless of size. She pointed out Newbury's exclusion of wetlands of less than 10,000 square feet.

PB member Clough asked to how large 10,000 square feet would be. Zoning Administrator Stanley replied 100' x 100'. Ken McWilliams replied approximately one-quarter of an acre. He reiterated that in Newbury the wetland had to be greater than 10,000 square feet in order to be excluded.

Chair Ebel stated that the State of New Hampshire does not use size in describing jurisdictional wetlands. She said that a fourth alternative would be to exclude 15% on most property and leave the 50% when municipal water and sewer were available. She opined that excluding 100% of all wetlands regardless of town water and sewer usage seemed like too much.

PB member Andrews said that she was concerned about the one acre of contiguous land requirement. Chair Ebel suggested that the PB might want to recommend that .75 acre would be adequate. Chair Ebel and Ken McWilliams both opined that there should be some limit established. Mr. McWilliams said that .75 acre would be consistent with industry standards and regulations in other towns, but perhaps, most importantly, it was consistent with New London's cluster regulation, which seems to have worked well in the past. PB member Clough said that she would favor .75 acre limit over a defined building envelope.

PB member Conly asked if the exclusion should be set forth in a separate amendment inasmuch as it was the only part of Amendment No. 4 that seemed to be controversial. He also stated that he favored a compromise.

Chair Ebel reiterated that the percentage could be lowered. PB member Clough said that the Selectmen had met with Sunapee Area Watershed Coalition (SAWC) representatives and discussed drainage from impervious surfaces. She suggested that the PB could require calculation of the amount of impervious surface. She advised that SAWC would be issuing statistics about the entire watershed within one year. Ms Clough said that more information would be forthcoming and recommended a compromise in the meantime.

PB member Hollinger asked if there were any specific factor that would best serve the community. PB member Clough responded that drainage was definitely a big problem. Mr. Hollinger stated that he had received a number of telephone calls in support of the amendment as written. Chair Ebel said that there were no comments in support of the amendment at the first public hearing. She added that this had really surprised her, given the amount of concern regarding watershed protection expressed during review of the Granger Ridge site plan. She advised that, in researching the justification for the amendment, she decided to look into the current health of New London's major lakes. Chair Ebel said that she had spoken with representatives of local lake protective associations. She said that she was told that clarity had decreased in all the lakes, conductivity was up, and there was a great deal of concern about phosphorus increases in the lakes. The Little Lake Sunapee Protective Association is extremely concerned about a big spike in conductivity in Little Lake Sunapee. She said that Terry Dancy had expressed the SAWC belief that increased density had a direct, deleterious effect on lake health and that this was common knowledge. Chair Ebel stated that the purpose of the proposed amendment was to protect lakes and wetlands, and it appeared that New London's current regulations were not protecting the lakes sufficiently if the water monitoring results she learned of were correct. She opined, therefore, that if decreased density helped the watersheds, it would also support further exclusion of wetlands, as well as protect the wetlands themselves which was a key point.

PB member Andrews recommended that the amendment address major wetland areas instead of every little wetland. Chair Ebel stated that one alternative would be to exclude buffered areas; however, some seasonal drainages are not shown on the map. She asked Mr. McWilliams about the definitions. Mr. McWilliams responded that seasonal drainages would be classified as intermittent streams and were discussed in the handout, *A Glossary of Zoning, Development, and Planning Terms*.

All PB members agreed that the exclusion of jurisdictional wetlands from the minimum lot size/density calculation should not be dropped entirely, and all agreed on the requirement for a minimum of either a .75 acre or a one acre of contiguous area. Chair Ebel asked how the PB felt about the 50% exclusion for lots using town water and sewer, stating that it was logical to encourage development in the village districts. PB member Andrews pointed out that, if the PB wanted to encourage development in village districts, there were also wetlands in the village districts. Chair Ebel responded that the percentage could be reduced without going to zero. A discussion ensued regarding the area served by municipal sewer. Chair Ebel said that the rationale for 50% was based on the amount of land not required for a septic system. Ms Andrews advised that wetlands could be filled in with the appropriate permits and that further displaces water.

Chair Ebel asked PB member Clough to discuss water problems on top of the New London hill. Ms Clough replied that the amount of impervious surfaces had been increased by development and the existing drainage systems were outdated and inadequate.

PB member Cottrill asked what the development guideline was. Ken McWilliams replied that development in the watershed should not exceed 12% impervious surface coverage. He said that at 10% development would begin to impair drainage and at 25% development drainage would be impaired causing an increase in conductivity and too much phosphorus in the lakes. He also said that Interstate 89 and roads around the lakes contributed more than 50% of the drainage. Chair Ebel commented that no one could eliminate the highway

contributions and therefore, towns would have to compensate through town regulations for the pollutants generated by the highway system. Mr. McWilliams responded that the PB could develop new ways to address and change drainage. He advised that NH DOT was working on the issue. He opined that the PB needed to expand requirements and do more about erosion and sediment control in development of land. Mr. McWilliams stated that the PB would need to address the issue in the Site Plan Review Regulations. Mr. Cottrill asked how far the PB would have to go. Mr. McWilliams replied that the PB could make improvements. Mr. Cottrill opined that Interstate 89 was a big problem. Mr. McWilliams said that the issue could be addressed in the proposed revision of the Site Plan Review Regulations, among other things.

Chair Ebel directed the PB's attention to a chart that she distributed which had been provided by the Sunapee Area Watershed Coalition. It showed that New London was doing less than many other towns in the area with respect to erosion control.

PB member Andrews said that she couldn't decide what would be better, a random percentage or establishing a size limitation. Chair Ebel replied that current regulations contain a 25% exclusion. She said that the discussion was about changing the percentage or excluding wetlands of a certain size. PB member Cottrill opined that a small wetland that drained straight down would present no problem; however, if it drained into something else, it would be a problem. Chair Ebel stated that she wanted to address the question of seasonal drainages. She opined that they were incredibly important, even though they were seasonal. Ken McWilliams responded that regulating intermittent streams was another whole discussion. Ms Andrews opined that intermittent streams that do not tie into wetlands were not a problem. Mr. McWilliams replied that most seasonal streams drain into some wetlands. Chair Ebel agreed that it would be difficult to address the intermittent streams at this late date.

PB member Cook asked how much land remained available for development in New London. Zoning Administrator Stanley replied 6000 acres and added that the current population of 4500 was projected to grow to 9500. PB member Cottrill asked if there had been any study conducted on the watershed. He said that the PB could mitigate the problem around town. Ken McWilliams replied that the problems around town resulted from increased parking and expansion, increasing impervious surfaces, and old systems that were not designed to handle the increased drainage volume.

Chair Ebel recommended lowering the 25% to 15% and lowering the 50% to 30%. PB member Hollinger suggested lowering the 25% to 12.5% and 50% to 25%. Chair Ebel said that the PB could also establish a minimum wetland size. Ken McWilliams stated that the State of NH uses the size of the impact and requires an expedited permit for 3000 feet or more. PB member Andrews and Zoning Administrator Stanley both encouraged simplicity in the regulation. Chair Ebel suggested that the PB might want to count a small wetland less and a large wetland more. Mr. Hollinger opined that anything would help. PB member Clough opined that it would be an on-going discussion; however, what now exists is inadequate to protect the watershed. Ms Andrews stated that density did impact on the watershed, and she opined that any limit on density would benefit the watershed.

Chair Ebel said that the PB might not have enough scientific information to establish a wetlands size. She noted that Newbury had included 10,000 square feet in its regulation. She advised that New London had originally regulated only wetlands of 2000 square feet. Mr. Stanley stated that the 2000 square feet limitation went away when New London brought its regulations into agreement with State regulations. Chair Ebel opined that the PB could make an argument for 100% exclusion of wetlands of 10,000 square feet and over. Mr. Stanley opined that if the PB were to establish a minimum size, the result might be less protection for wetlands than if a percentage were used. Chair Ebel suggested allowing jurisdictional wetlands of less than 10,000 square feet and, if wetlands exceeded 10,000 square feet, allowing 0%. Mr. McWilliams replied that most wetlands would be included in that approach. PB member Andrews opined that how much of one's land was wet was different from the definition of a wetland. Mr. McWilliams recommended using a percentage for the sake of simplicity.

Consensus of the PB was to amend Section K of the proposed amendment to require a minimum of .75 acre of contiguous area and to change the 25% and 50% exclusions to 15% and 25% respectively. PB member Andrews asked what the existing minimum contiguous area was. Mr. McWilliams replied that there was no minimum in the existing regulations. Chair Ebel advised that the public hearing showed support for the concept. Mr. McWilliams agreed to draft new language and distribute it to PB members. He advised that final wording needed to be agreed upon by Thursday, January 12.

It was **MOVED** (Conly) and **SECONDED** (Andrews) **TO AMEND THE PROPOSED AMENDMENT TO PARAGRAPH K OF THE ORDINANCE TO (1) PERMIT 15% OF WETLAND AREAS TO BE INCLUDED IN THE CALCULATION OF MINIMUM LOT SIZE AND (2) PERMIT 25% OF WETLAND AREAS TO BE INCLUDED WHEN MUNICIPAL WATER AND SEWER ARE AVAILABLE, (3) REDUCE THE PROPOSED MINIMUM OF ONE ACRE OF CONTIGUOUS AREA TO A MINIMUM OF .75 ACRE OF CONTIGUOUS AREA, (4) CHANGE THE REFERENCES REGARDING SLOPES FROM 15% TO 25%, AND (6) REVISE THE CHART ACCORDINGLY. THE MOTION WAS APPROVED UNANIMOUSLY.**

Ken McWilliams asked if the PB wanted to split the proposed amendment into two separate amendments: one to address minimum lot size and density and one to address steep slopes. PB member Conly stated that the possibility had been mentioned at the Public Hearing. He said that he would not like to lose the entire amendment because of the controversial section. PB member Andrews responded that multiple amendments would be necessary. PB member Cook opined that Section K should not be broken out. PB member Clough opined that pulling it out into a separate amendment would draw attention to it, and that it would be very confusing to have multiple amendments on one regulation. Consensus of the PB was to leave it as one amendment.

## II. AMENDMENT NO. 5 – ARTICLE XIV STEEP SLOPE OVERLAY DISTRICT.

Chair Ebel reviewed the issues regarding amending proposed Amendment No. 5. She said that in Article XIV A. Purpose the phrase “regulate Development” should be replaced by “provide an erosion and sediment control plan”. She also said that she agreed with the comment submitted by Bob Bowers that recommended revising C. (2) to read “Land with slopes in excess of 15%, through and including 25%”.

Chair Ebel took a consensus of the PB confirming that the one acre contiguous area requirement should be reduced to .75 of an acre to conform to the rest of the regulation.

Chair Ebel stated that Mr. McWilliams had advised that changing the exclusion of steep slopes of 15% and over to 25% was required because of the lack of a specific map for slopes of 15%-25%. She said that she had spoken with town counsel about the necessity of a map of the 15%-25% slopes in order to require erosion and sediment control for 15%-25% slopes. She reported that town counsel was not concerned about the lack of a map, particularly because there was a map for steep slopes of 15% and over. Chair Ebel opined that not having a regulation for slopes of 15%-25% would not do anything for the watershed which was very troubling. PB member Clough opined that erosions and sediment control were very important. Chair Ebel said that for erosion and sediment control, slopes of 15%-25% really needed to be included. Ken McWilliams advised that any major subdivision was required to submit an erosion and sediment control plan; however, individual houses (unless in a Cluster or PUD) were not required to submit an erosion and sediment control plan on individual sites under the current regulations. He said that anyone building in an over 15% steep slope area would be required to submit an erosion and sediment control plan if the PB were to adopt the amendment. PB member Cottrill inquired about the origin of the 15% steep slope number. Mr. McWilliams replied that 15% was pretty well known in the industry.

Zoning Administrator Stanley opined that another gap was the fact that all building permits do not require an erosion and sediment control plan. Chair Ebel stated that no one had exhibited opposition to that part of the proposal at the public hearing. Mr. Stanley said that, unless a plan is required, no one submits one. If a plan should be submitted, it must follow established procedures. Chair Ebel spoke in regard to re-opening the discussion concerning the exclusion of slopes of 25% or more in the calculation of minimum lot size. She advised that Peter Blakeman (Blakeman Engineering, Inc.) and Douglas Sweet (Bristol, Sweet & Associates) had submitted letters expressing concern about the 15%-25% exclusion, but not about the over 25% slope exclusion. In fact, she said, they did not seem troubled by leaving the 25% in the proposed amendment.

In response to the recommendation by Mr. Bowers regarding replacing “sediment” with “sedimentation”, Chair Ebel said that other parts of the Zoning Ordinance contained the same language and that it was important to be consistent with the use of “sediment” or “sedimentation” throughout the regulations. Chair Ebel advised that the reference in E. (1) to a lot size of at least one acre should be changed to at least .75 acre and the 15% should

be changed to 25%. Ken McWilliams agreed that the wording suggested by Mr. Bowers of E. (1) was good, and he advised that E. (2) should be eliminated.

It was **MOVED** (Andrews) and **SECONDED** (Conly) **TO AMEND THE PROPOSED AMENDMENT NO. 5 ARTICLE XIV TO REFLECT THE EDITORIAL CHANGES, AS REVIEWED, TO INCLUDE IN THE STEEP SLOPE OVERLAY DISTRICT ALL SLOPES GREATER THAN 15%, TO REQUIRE EROSION AND SEDIMENT CONTROL PLANS FOR SLOPES GREATER THAN 15%, TO EXCLUDE FROM THE CALCULATION OF MINIMUM LOT SIZE ALL SLOPES OF 25% (a 25% increase in slope over a distance of 20 feet) OR GREATER, AND TO REDUCE THE MINIMUM CONTIGUOUS AREA REQUIREMENT FROM ONE ACRE TO .75 ACRE. THE MOTION WAS APPROVED UNANIMOUSLY.**

### III. DISCUSSION

Discussion then turned to a review of the written comments submitted by Bob Bowers. Ken McWilliams stated that he liked Mr. Bowers' recommendations for proposed Amendment No. 4: Article XIII, paragraph K. Members of the PB agreed that they liked the table included in the proposed amendment, even though Mr. Bowers thought that it was confusing. PB member Cottrill asked if the chart would go on the ballot. Mr. McWilliams replied in the negative.

In regard to Mr. Bowers' recommendation that "sediment" be replaced by "sedimentation", Chair Ebel advised that the PB wording had been picked up from other sections of the ordinance; therefore, it should remain for the sake of consistency. She said that the PB could consider Mr. Bowers' recommendation for a paragraph E rewrite for next year.

PB member Cook asked if the proposed amendments would be posted along the walls of the town hall for voters to view as they arrive to vote. Mr. McWilliams advised that copies of the proposed amendments would be available for distribution ahead of time and would also be published in the New London Town Report.

PB member Cottrill recommended inserting a colon after "For example" in paragraph K to break up the sentence and provide better clarity. Mr. Cottrill also noted that there was no mention of "contiguous" area in the chart. Mr. McWilliams agreed to include it.

Chair Ebel asked if any members of the PB wanted to separate the issues into separate amendments. The consensus of the PB was to leave the proposed Amendment No. 4 as one amendment.

Ken McWilliams reviewed the possible action on the amended amendments at the second public hearing scheduled for Wednesday, February 1, 2006 at 7:30 PM. He advised that written comments could be accepted; however, only editorial changes could be made. The PB would have to vote the proposed amendments, as amended, up or down.

The **MEETING** was **ADJOURNED** at **9:09 PM**.

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

DATE APPROVED \_\_\_\_\_

CHAIRMAN \_\_\_\_\_