



TOWN OF NEW LONDON, NEW HAMPSHIRE

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Town of New London Public Hearing on Proposed Zoning Amendments January 6, 2009

Members Present: Karen Ebel, (Chair), Ken McWilliams (Town Planner), Peter Stanley, (Zoning Administrator), Michael Doheny, Tom Cottrill, Dale Conly, Jeff Hollinger, Larry Ballin, Deidre Sheer-Gross, (Alternate for Celeste Cook)

Also Present: Virginia Soule, Mike Meller, David Harris, Richard Simek, Lansing Reed, Nick Ourusoff, Rosemary Fulton

Chair Ebel called the meeting to order at 7:00 p.m. She stated that the meeting was called review the proposed amendments to the New London Zoning Ordinance.

PLANNING BOARD PROPOSED AMENDMENT NO. 1:

The *Planning Board's Amendment No. 1* proposes to add a new **ARTICLE XXV Small Wind Energy Systems Ordinance** to the Zoning Ordinance to comply with new state legislation that encourages Small Wind Energy Systems and mandates that ordinances adopted by towns to regulate the installation and operation of 'Small Wind Energy Systems shall not unreasonably limit such installations or unreasonably hinder the performance of such installations.

Chair Ebel explained that what was being proposed was based on a model ordinance proposed by New Hampshire's Office of Energy and Planning (OEP) with a few tweaks to make the Ordinance better for New London. She then requested comments on the proposed amendment. Mike Meller asked if the Board had received a letter from Chet Reynolds, chair of New London's Energy Committee. Chair Ebel responded that the Planning Board had not gotten a copy, so Mr. Meller, also a member of the committee, gave a copy to the Board.

Virginia Soule stated that the proposal was ambiguous. Lansing Reed of the Energy Committee stated that he had come to the meeting to learn as much as he could.

Board of Selectmen P: 603-526-4821 x 10 F: 603-526-9494	Town Administrator P: 603-526-4821 x 13 F: 603-526-9494	Town Clerk-Tax Collector P: 603-526-4821 x 11 F: 603-526-9494	Finance P: 603-526-4821 x 21 F: 603-526-9494	Assessing P: 603-526-4821 x 20 F: 603-526-9494
Planning/Zoning P: 603-526-4821 x 16 F: 603-526-9494	Fire Department P: 603-526-6073 F: 603-526-6079	Police Department P: 603-526-2626 F: 603-526-2782	Public Works P: 603-526-6337 F: 603-526-9662	Recreation P: 603-526-4821 x 14 F: 603-526-9494

Rosemary Fulton asked how this Ordinance fitted in with the survey taken and Chair Ebel responded that the survey responses were supportive of alternate energy systems. Chair Ebel then stated that the Town needed an ordinance re: wind systems, otherwise the installation would be unregulated. She stated that Peter Stanley and Ken McWilliams had done the research the topic and used the OEP model ordinance recommended for the State of New Hampshire.

Chair Ebel asked Ken McWilliams to speak about the suggested amendments to the model ordinance being discussed. Ken stated that the Planning Board had received an email question from a citizen, Storm Connors, concerning the maximum height standard that was being proposed, that being 35 feet above the tree canopy within 300 feet. The question was whether that standard provided for the natural growth of the trees and if, over time, would the system still be functional. Mr. McWilliams stated that a wind system needed a certain distance above the trees in order to be above the turbulent wind and have a steady consistent wind stream. Ken contacted Eric Steltzer, at OEP, the author of the model ordinance, who told him that it did come up in discussion, but the standard really did not account for tree growth. After speaking with him, Ken had some thoughts about how to approach this. Eric suggested that the town could omit the height standard, but Ken was concerned that for larger properties with large setbacks, a very tall windmill could be installed – higher than what was necessary to be functional -- which could extend high above the tree canopy and it would have a visual impact. Ken thought the better approach was to base the standard not on a height separation from the canopy but on performance and have it verified either by manufacturer specifications or by an engineer. Peter, Karen, and Ken then came up with alternative language trying to deal with this issue and they believe the suggested amendments to the original proposal addresses this.

Chair Ebel clarified that for those who had the draft to read, they were on page 3, Section C, 1.b, Wind Tower: The maximum Wind Tower height shall be restricted to 35 feet above the tree canopy within 300 feet of the small wind energy system. In no situation shall the Wind Tower height exceed 150 feet.

She stated the new language as:

Section C.1.b. Wind Tower Height: The maximum Wind Tower height shall be the minimum height necessary for the system to function at its rated capacity over the estimated lifespan of the device, as certified by either Small Wind Energy System manufacturer or, if hired, an engineer licensed in the State of New Hampshire. In no situation shall the Wind Tower height exceed 150 feet.

And because there would be a certification requirement, they had to adapt the application requirements, in Section B.2.i., to read:

i. Certification by the manufacturer or New Hampshire licensed engineer of the required Small Wind Energy System specifications, including manufacturer, model, rotor diameter, Wind Tower height, Wind Tower type, nameplate generation capacity.

Tom Cottrill also suggested adding (See Table below) in Section C.1.a. after minimum setback requirement number.

Chair Ebel stated that basically they were going to let science determine how high the wind tower should be and not set some sort of arbitrary number. Peter Stanley commented that the goal was to have them be functional. Mike Meller stated the he thought one of the engineering specifications that everyone should be aware of was that the higher the wind tower is, the more efficient it is, that it generates more wind and putting an arbitrary number on the height would create a problem. Ken McWilliams responded that according to Eric Steltzer, property owners who wanted to build a tower would have a built-in economic incentive to keep the tower as low as possible because of the cost of the tower construction itself and long-term maintenance costs associated with the higher towers. He stated that there is a threshold at which the tower height will cost more (for maintenance) with not much more in wind gain. Ken stated that the first 20 feet off the terrain is turbulent due to other structures interfering with the wind; once you get above that, there is a steadier stream. Mike Meller added one more point, stating that the height should be no higher than 110% than the size of the lot. Deidre Sheerr-Gross said that the ordinance states: if it's built over a house or structure on the participating landowner's property, it's got to meet the setback requirements (Section C, l.a.1). Nick Ourusoff asked for some type of caveat so that the rules were not so tightly tied that someone couldn't get a permit. Peter Stanley responded that for public safety reasons, there were specific requirements such as having some connection to the grid that is suitable for a carrier of public services, height requirements, setback requirements, and as such are basic limitations. He also said that as far as kilowatts are concerned, the State determines what that is. Chair Ebel interjected in response to Mr. Ourusoff's question that she thought he was asking for some type of blanket provision for alternate forms of wind energy systems. She stated that the only thing she could think of was that they would handle it on a case by case basis.

Deidre Sheer-Gross added that so much of this was new that, instead of it being thought of as restrictive, it could be changed and if the Town found something out there that was fabulous, it could adopt it. This allowed the Town to permit it with very broad guidelines and it is very reasonable.

Chair Ebel added that if someone wanted something not in the Ordinance, they could go to the Zoning Board for a variance. Larry Ballin stated that zoning ordinances are

looked at each year and revised if necessary. Chair Ebel stated that basically they needed the language tonight to take to the next hearing.

Michael Doheny asked to have Section C.1.a on page 3 be amended to read 'see table below' at the end of the paragraph.

It was **MOVED** (Sheer-Gross) and **SECONDED** (Conly) **TO APPROVE Section(s) C.1.a, C.1.b, and B.2.i, AMENDMENTS AS PROPOSED, and TO TAKE THE REVISED PROPOSAL TO A SECOND PUBLIC HEARING ON JANUARY 27, 2009 AT 7:00 PM. The MOTION was APPROVED UNANIMOUSLY.**

Chair Ebel stated that the amendments would be carried over to the second public hearing on January 27, at 7:00 p.m.

PLANNING BOARD PROPOSED AMENDMENT NO. 2:

The *Planning Board's Amendment No. 2* proposes to amend **ARTICLE XVI Shore Land Overlay District** to comply with the new state legislation revising the State Comprehensive Shore land Protection Act.

Chair Ebel stated that this was a State mandated change.

It was **MOVED** (Cottrill) and **SECONDED** (Hollinger) **TO APPROVE THE PLANNING BOARD'S AMENDMENT NO. 2 ON THE BALLOT, AS PROPOSED.** The **MOTION** was **APPROVED UNANIMOUSLY.**

Chair Ebel stated that this motion would be in favor of moving over to the ballot.

PLANNING BOARD PROPOSED AMENDMENT NO. 3

The *Planning Board's Amendment No. 3* proposes to add a new **ARTICLE XXVI Workforce Housing Overlay District** to the Zoning Ordinance.

Chair Ebel stated that the State had passed a law this past summer that required towns to provide reasonable and realistic opportunities for the development of workforce housing including rental apartments. She stated that it is required that the Town pass a zoning ordinance to comply with this new law by July of 2009, which means that it has to be included in this period in order to be passed at Town Meeting. Workforce housing has to be allowed in the majority of land area zoned to permit residential uses. The zoning ordinance was crafted as a functional well-conceived ordinance and was reviewed by the Town attorney on two or three occasions. The solution was to create

an overlay district which encompassed a majority of the zone districts permitting residential uses. As proposed the overlay district covered 52% of all the residential land areas. She stated that the ordinance allowed a developer to apply for a conditional building permit to construct workforce housing and that the Board could work with the developer to reduce density requirements, lot size requirements, setback requirements, and a variety of other things that make it more economical for the developer to put in workforce housing. She noted that the State statute does not require that the workforce housing remain affordable after it is initially sold, however, the Board decided that if it was going to make planning concessions to a workforce housing developer to promote affordable housing, it wanted to ensure that the housing remain affordable in perpetuity. The Board included provisions in the proposed ordinance that ensure continued affordability while also ensuring that anyone living in workforce housing can get the costs of necessary capital improvements back on resale.

Virginia Soule stated that she feared what would happen in the R-1 district by permitting multi-family housing with the accommodations made to the developer, and the Planning Board able to make changes such as decreasing the density, changing lot sizes, setback reductions, etc., all things which the taxpayer is not allowed to do. She also stated that there is the possibility that existing properties would have their value diminish and that she felt it was unfair of the Board to stick multi-family housing into the R-1 district. She suggested that the Board not allow the multi-family housing at all and not be so pro-active about it.

Chair Ebel asked if apartment houses (4 units or more) were permitted by special exception in R-1 already anyway. Peter Stanley responded that they were up until 2002.

Deidre Sheer-Gross explained that by virtue of the buffer requirement, the ordinance would prohibit multi-family housing on smaller lots. She added that because many lots in R-1 are smaller, they wouldn't be affected. She said that smaller lots can't handle the density of a multi-family building. Chair Ebel added that a 100 foot buffer is required all the way around the perimeter of a multi-family housing building site pursuant to the proposal.

Chair Ebel clarified procedures. By law, if any substantive changes to the proposal at this hearing, those changes must be taken to a second hearing. At the second hearing, no further changes can be made with the exception of editorial changes. At that point the Planning Board will have to decide whether they want to move the proposal onto ballot or drop it entirely. Peter Stanley added that if the Town did not provide reasonable opportunity, did not comply with the State statute, and a developer came wanting to build multi-family workforce housing, the Town is at risk because the developer might be able to have to go court, sue the Town and do what they wanted. He stated that in all probability no one would be likely to do that, but the Town has to

provide reasonable opportunity according to State mandate. Chair Ebel stated that Town Counsel advised the Board to comply with the State mandate which requires a workforce housing law to be in place by July 2009.

John Sheehan asked if the Planning Board had looked at what other towns in the State have done to address this issue and wondered if most towns were moving forward to comply with this mandate. Chair Ebel responded that it is hard to know because everybody is scrambling to do something by the deadline. She thought maybe 60-70% of the towns are doing something, but the Planning Board does not know who's doing what. She stated that what the Planning Board does know is that the Town attorney has advised the Board to comply with the law. Tom Cottrill interjected that if the amendment goes to ballot, the voters could vote it down. Chair Ebel agreed and stated that she thought it would be unreasonable to not at least propose an ordinance that would seek to comply with the State law. Peter Stanley interjected that the LGC, (Local Government Center), was the biggest proponent of this ordinance.

Following an extensive discussion, Chair Ebel stated that the Board now had to decide whether to remove the provision permitting multifamily housing from the R-1 District as proposed by Mrs. Soule. She stated that the affect of this change was to permit multifamily housing only in the Commercial District. She clarified that pursuant to the State law and advice of Town Counsel, the Town had to provide reasonable opportunity for multifamily housing. She then asked for a consensus of the Board, specifically inquiring whether Board members believed that the Town would provide reasonable opportunity for multifamily housing if it was only permitted in the Commercial District. Deidre Sheer-Gross asked where the sewer line was located in relation to the R-1 and Commercial Districts. Peter Stanley indicated on the map a grid area that could be sewer line(s) served by gravity. Deidre stated that it was possible to revisit this issue again and that if they did choose only commercial, it would show that they had made an attempt to comply with the State law. She agreed with Virginia Soule that people were not aware that this was coming. She stated that she would be comfortable with only permitting multifamily housing in the Commercial District. Dale Conly, Tom Cottrill, and Michael Doheny all disagreed, stating that R-1 provided the water and sewer along with the density that is required for multi-family/workforce housing and that it was not reasonable to only permit multifamily housing in the Commercial District.

Jeff Hollinger stated that he thought the verbiage in the Town's proposed ordinance protected people in R-1 and that the proposal should remain as written.

Deidre Sheer-Gross stated that she was concerned about the neighborhood context changing. Accordingly, the first part of Section K.1., was amended to read:

1. The Planning Board must determine that the type and density of proposed Workforce Housing units is compatible with or provides a compatible transition to the use and density of any neighboring residential areas and that the project will be designed constructed in a manner that is harmonious with neighboring developments, housing and-natural surroundings, and housing context (the housing type, density and land use in the surrounding area). ~~Workforce Housing projects with Multi Family Housing shall have a landscaped buffer one hundred (100) feet in width around the perimeter of the project and have direct access to a paved street.~~

Tom Cottrill said he thought the Board was doing the right thing by complying with the State law, that the Town had been pretty thorough in its compliance and he couldn't see why they couldn't be a little flexible. He asked Ken McWilliams if the incentives for workforce housing on page 12 were all written by the State. Ken responded that these items had been discussed with Bart Meyer, Town Counsel, and were based on various models he'd seen as well.

Chair Ebel said that the concept was that in order to encourage workforce housing, some concessions would have to be made. She then asked Larry Ballin for his opinion and he stated that he was in favor of the ordinance as it was written, with R-1 being a good area for the housing along with Commercial, if the lot sizes are appropriate. He also reminded the Board members that workforce housing was something that has been suggested for the Town of New London in the Master Plan of ten years ago and hasn't been addressed. He thought that this ordinance gave the Town an opportunity to address it and that chances are it will not be in the neighborhood or district that Virginia Soule lives in, but the Town needed to move forward in offering the opportunity for workforce housing so that the Town would not be considered an exclusionary town.

Chair Ebel stated that the Board consensus was to leave the ordinance and that it was not reasonable to only permit multifamily housing in the Commercial District and to take it to a second hearing, and change the wording in No. 16.

It was **MOVED** (Ebel) and **SECONDED** (Hollinger) **TO TAKE AMENDMENT NO. 3 TO A SECOND HEARING ON JANUARY 27, 2009 WITH THE AMENDMENT PROPOSED.** The **MOTION** was **APPROVED UNANIMOUSLY.**

Ken McWilliams clarified that some changes would be made in the draft and then be presented at the second hearing; the choice at the second hearing is that further editorial changes can be made but beyond that no substantive changes can be made. The choice then is to move it on to ballot the way it is or to drop the amendment.

PLANNING BOARD PROPOSED AMENDMENT NO. 4:

The *Planning Board's Amendment No. 4* proposes to amend **ARTICLE VII Commercial District** to add Multi-Family Dwelling(s) and Mixed Use as a permitted use and amend **ARTICLE III Definitions** to add a definition of Mixed Use.

It was **MOVED** (Cottrill) and **SECONDED** (Conly) **TO PLACE AMENDMENT NO. 4 ON THE BALLOT AS PROPOSED.** The **MOTION** was **APPROVED UNANIMOUSLY.**

PLANNING BOARD PROPOSED AMENDMENT NO. 5:

The *Planning Board's Amendment No. 5* proposes to amend the Zoning Ordinance to implement the changes to the zoning boundary lines as recommended by the Zoning Boundary Study undertaken on behalf of the Planning Board by the Upper Valley Lake Sunapee Regional Planning Commission.

John Sheehan stated that he was not clear on what the changes were and wanted to know if they were substantive. Peter Stanley showed some examples on the map of areas that were affected by the changes and stated that where there was no clarity and were no references to a particular street or a setback to a street, they had the new line follow the property line/boundary as indicated on the overlay map. They had used this all over town to provide clarity without making huge changes.

Chair Ebel stated that 180 letters had been sent to the property owners who were affected by the proposed changes, the Board had a hearing on that, and that there were some people who were opposed the suggested changes and the Board then found an alternate definable way of making the changes that would accommodate some of the requests from people who had attended the hearing or had made their request(s) by letter to the Board.

Chair Ebel asked Ken McWilliams what size map(s) would be available for people to see the proposed changes. He responded that Rachel Rupel had updated the packets of maps provided at the December hearing and those were available again.

Larry Ballin suggested having a large map posted at the polling place for people to see the proposed changes and Peter Stanley added that he had been told that no one could explain anything to the voters as that would be considered ballot tending.

It was **MOVED** (Conly) and **SECONDED** (Cottrill) **TO PLACE AMENDMENT NO. 5 ON THE BALLOT AS PROPOSED.** The **MOTION** was **APPROVED UNANIMOUSLY.**

PLANNING BOARD PROPOSED AMENDMENT NO. 6:

The *Planning Board's Amendment No. 6* proposes to amend **ARTICLE II General Provisions**, Section 10. Sign Regulations to allow one for sale sign or one open house sign in common areas of Cluster and Planned Unit Developments.

It was **MOVED** (Cottrill) and **SECONDED** (Conly) **TO PLACE AMENDMENT NO. 6 ON THE BALLOT AS PROPOSED.** The **MOTION** was **APPROVED UNANIMOUSLY.**

PLANNING BOARD PROPOSED AMENDMENT NO. 7:

The *Planning Board's Amendment No. 7* proposes to add Forestry as a permitted use in the Residential Districts.

It was **MOVED** (Sheer-Gross) and **SECONDED** (Cottrill) **TO PLACE AMENDMENT NO. 7 ON THE BALLOT AS PROPOSED.** The **MOTION** was **APPROVED UNANIMOUSLY.**

PLANNING BOARD PROPOSED AMENDMENT NO. 8:

The *Planning Board's Amendment No. 8* proposes to amend and rename **ARTICLE II General Provisions**, Section 14. **Temporary Ancillary Sales** as **Section 14. Temporary Events.**

Richard Simek asked about the intent of Section 14 and what the definition of a temporary event was. Peter Stanley responded that it was intended to provide authorization for events that included tents, parking spaces, etc. in commercial type settings. Richard asked if it applied to personal residences and Peter responded that

private residences were specifically excluded. Michael Doheny added that this amendment was designed for public events, not for private residences, in order to control parking. He stated that it was crafted to protect the private property rights.

It was **MOVED** (Conly) and **SECONDED** (Cottrill) **TO PLACE AMENDMENT NO. 8 ON THE BALLOT AS PROPOSED.** The **MOTION** was **APPROVED UNANIMOUSLY.**

PLANNING BOARD PROPOSED AMENDMENT NO. 9:

The *Planning Board's Amendment No. 9* proposes to amend **ARTICLE III Definitions** to add a definition of "Seasonal Use".

The Planning Board decided to change the word "and" to "or" in the last part of the definition to read "during the summer or winter" rather than "during the summer and winter."

It was **MOVED** (Sheer-Gross) and **SECONDED** (Cottrill) **TO TAKE AMENDMENT NO. 9 TO A SECOND HEARING ON JANUARY 27, 2009 AT 7 PM WITH THE AMENDMENT PROPOSED.** The **MOTION** was **APPROVED UNANIMOUSLY.**

Chair Ebel asked Ken McWilliams to clarify what was going to a second hearing. He responded that:

- Amendment No. 1 - Small Wind Energy Systems
- Amendment No. 3 - Workforce Housing Overlay Districts
- Amendment No. 9 - Seasonal Use

Chair Ebel stated that on January 27th at 7:00 p.m. there would be a second hearing on Amendments No. 1, 3, and 9.

Ken McWilliams said that for those interested there would be handouts of the revised amendments available from Linda Jackman in the Town Office about a week or ten days in advance of the hearing and also on the website.

Town Planning Services Agreement:

Ken McWilliams stated that the agreement mirrored the agreement from last year with two exceptions: 1) the lowering of the hourly rate from \$52.50 per hour to \$50.00 per hour; and 2) reducing the overall total for the year \$35,000 to \$25,000.

Chair Ebel asked Ken to explain why the overall budget was being reduced. Ken responded that it was: 1) because of the rate reduction; and 2) because the actual budget cost for ~~the year 2008~~ was only \$26,000, so the recommendation was to budget for \$25,000. Tom Cottrill asked if the Master Plan costs were included in this amount. Ken responded that it was a separate contract, ~~and that Ken noted that~~ -the reduction meant that the Board would have to monitor the budget closer this coming year.

It was **MOVED** (Ebel) and **SECONDED** (Sheer-Gross) to **APPROVE THE TOWN PLANNING SERVICES AGREEMENT**. The **MOTION** was **APPROVED UNANIMOUSLY**.

It was **MOVED** (Ebel) and **SECONDED** (Doheny) to **APPROVE THE MINUTES FROM THE NOVEMBER 25TH MEETING**. The **MOTION** was **APPROVED UNANIMOUSLY**.

It was **MOVED** (Conly) and **SECONDED** (Cottrill) to **APPROVE THE MINUTES FROM THE DECEMBER 9TH MEETING**. The **MOTION** was **APPROVED UNANIMOUSLY**.

Chair Ebel requested that it be on record how very sorry the Planning Board was to learn of Judy Condict's untimely death. She noted that Judy had served the Board excellently as its recording secretary for at least 15 years, and that her attention to detail, dependability and cheerful presence would be sorely missed. Other Planning Board members concurred and expressed their sadness at Judy's passing.

The meeting adjourned at 8:45 p.m.

The next Planning Board meeting is scheduled for Tuesday, January 27, at 7:00 p.m.

Respectfully submitted

Camille Holmes
Secretary, Town of New London

Approved by the Planning Board on _____, 2009

Karen E. Ebel, Chair