

**NEW LONDON PLANNING BOARD  
REGULAR MEETING & PUBLIC HEARING  
FEBRUARY 1, 2006**

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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** and opened the **SECOND HEARING ON PROPOSED ZONING AMENDMENTS** at 7:30 PM.

Members of the audience asked if there were any available copies of the proposed amendments. Ken McWilliams replied that copies were usually available in the Town Offices and offered to see if there were any there.

- I. 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.

The recommended amendment to the proposed amendment would strike the reference to sub-paragraph "c" in proposed sub-paragraph "d". Chair Ebel explained that the reference was incorrect. There being no further discussion, it was

**MOVED** (Cook) and **SECONDED** (Hollinger) **TO PLACE THE PROPOSED AMENDMENT NO. 3, AS AMENDED, ON THE BALLOT FOR CONSIDERATION BY THE VOTERS IN MARCH 2006.** THE **MOTION** WAS **APPROVED UNANIMOUSLY.**

- II. AMENDMENT NO. 4 – ARTICLE XIII WETLANDS CONSERVATION OVERLAY DISTRICT.** The amendment, as originally presented, proposed 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 provision requiring erosion and sediment control plans for any construction or development that may be permitted in the wetlands and/or wetlands 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 wetlands buffers as defined by the ordinance.

Chair Ebel explained that the amendment, as originally proposed, eliminated counting any wetlands, as defined by the New London ordinance, in calculating minimum lot size/density. She stated that the current ordinance permits areas defined as Wetlands to be used to fulfill 25% of the minimum lot size and in lots served by municipal water and sewer, the areas defined as Wetlands may currently fulfill 50% of the minimum lot size. Based upon input from the first Public Hearing, the amended amendment reduces from 25% to 15% and from 50% to 25% where municipal water and sewer are available, the amount of wetlands to be included in calculating minimum lot size/density. The amendment also requires erosion and sediment control plans in the Wetlands Conservation Overlay District in conformation with requirements in the Shore Land Overlay District and the Streams Overlay District. The amendment also requires a minimum of 15,000 square feet of contiguous property in the R-1 District. Originally, the PB had proposed a minimum of one acre of contiguous land; however, the one acre was reduced to .75 acres of contiguous land to conform to cluster development regulations and in response to comments at the public hearing.

Harry Snow said that the R-1 District now requires 10,000 square feet. Ken McWilliams replied that the minimum lot size in the R-1 District is now 20,000 square feet; however, one could build a duplex and still meet the minimum of 10,000 square feet per family. Arthur Hall asked if it would be possible for someone to have municipal water without having municipal sewer. PB member Clough advised that the concern would be for locating a septic system on a small lot. PB member Conly asked if it would be possible for someone to have municipal sewer without having municipal water. Several people present identified themselves as falling into one group or the other demonstrating that it was, indeed, possible to have municipal water without having municipal sewer and vice versa.

Mr. Snow questioned the reduction from 25% to 15% of the wetlands that could be included in the calculation of minimum lot size for those properties without municipal sewer. He opined that most of the town was located in the Agricultural and Rural Residential (ARR) District and that those property owners had already been hit by amendments reducing density and increasing minimum lot size requirements. He stated that approximately

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three-quarters of an acre is needed to accommodate a house, driveway, water, and septic construction. He said that he was concerned that some property owners who have large tracts of land that have been held by them or their families for many years were being denied the use of their own property by changes in the regulations.

Chair Ebel advised that prior to the deliberative session she had done a considerable amount of research and had talked with the area lake protective associations regarding the impact on the lakes of development and increases in impervious surfaces. She said that she had talked with Sunapee Area Watershed Coalition (SAWC). Chair Ebel said that SAWC supported the amendment because it should reduce the amount of development-related impervious surfaces that damage water bodies and the watershed. She reminded the audience that the original amendment excluded 100% of wetlands from the calculation of minimum lot size and stated that the proposed reduction from 25% to 15% was a compromise. PB member Hollinger opined that the reduction from 25% to 15% was very much a compromise. He said that he had received many calls from people who were unhappy that the PB was suggesting a compromise. He stated that the PB must consider all land owners, not just developers and realtors.

PB member Clough stated that the PB recognizes the area lakes as a major asset and a major concern of the PB is the protection of the watershed. She said that the PB wanted to protect the pristine quality of the lakes; however, there was insufficient data available to support 100% exclusion of wetlands from the calculation of minimum lot size. Ms Grubbs asked; if there was not enough data to support excluding 100%, why recommend the reduction from 25% to 15%. Ms Clough responded that changes have an incremental impact and all indications support lower density as one way to protect the watershed.

Terry Dancy, a member of the Conservation Commission and a representative of SAWC, advised that the last Master Plan reported that 92% of those who responded to a survey recommended that the PB protect New London's natural resources. He said that he recognized the desire of people to use their own property; however, long-term protection of water quality is achieved through the reduction in density. He advised that neighboring states of Maine and Vermont have much more draconian regulations than what the PB has proposed. He said that the greatest impact comes from steep slopes and erosion. Mr. Dancy opined that anything that can be done to control erosion is very important. He reiterated that other states have much stronger regulations. He added that the PB must be careful because if the town has strong regulations and a process by which property owners may appeal to an entity that readily grants approval of appeals, nothing has been gained. Mr. Dancy advised that, in addition to the amount of impervious surfaces, the lakes could be protected by many other things, for example, the direction of driveways, how driveways are designed, and how roads are maintained to name a few. He opined that it was a very complex subject and that the PB was moving in the right direction. He advised that the Conservation Commission has a list of items to be addressed in the next Master Plan update. One of those items, he said, is the way in which the PB deals with slopes of 15% near water. He said that those property owners who believe that their right to use their property has been diminished, have access to an appeal process.

Chair Ebel asked if SAWC supported the reduction in density. Mr. Dancy replied in the affirmative and opined that the changes proposed were fairly modest. He stated that it was important to look at the long-range impact in order to avoid having another "Birch Acres". He opined that there were lots that should not have been built upon in the past and there are lots that should not be built upon now. Harry Snow opined that it would be impossible to have another "Birch Acres" because the land-use ordinances had changed. Chair Ebel agreed and stated that poor planning decisions due to lack of knowledge in the past created many problems and that what has been done cannot be undone. She opined that this further supported careful land-use planning today.

Marilyn Kidder asked how many building permits were issued in 2005 or in 2004. Zoning Administrator Peter Stanley replied that 43 permits for new homes were issued in 2004 and 20 permits for new homes were issued in 2005. Ms Kidder asked "so the purpose of the proposed reduction from 25% to 15% is to reduce density?" Chair Ebel replied that the purpose was to protect the watershed. Ms Kidder asked what the definition of wetlands was. Chair Ebel responded that the definition is contained in the Zoning Ordinance and was taken from the State of NH definition. Ken McWilliams read the definition: "Wetland: An area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, Swamps, Marshes, Bogs and similar areas." Mr. McWilliams

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reiterated that the definition in the New London Zoning Ordinance conforms to the definition in State of NH regulations. PB member Clough asked if soil types would also be considered. Mr. McWilliams responded affirmatively and said that soil types and hydrology would be considered in addition to vegetation.

PB member Clough noted that the number of new home permits issued was lower in 2005 and asked about permits for additions and/or renovations. Zoning Administrator Stanley replied that those had greatly increased. Non-resident Mark Grubbs suggested that additions and/or renovations could be made without any consideration being given to wetlands. Ms Clough responded that great care was taken to avoid additions in any wetland areas.

Chair Ebel advised that the proposed amendment only increased by 10% the amount of wetlands to be excluded from the minimum lot size calculation.

Attorney Chris Carter (Hinckley, Allen & Snyder, LLP) stated that he represented Delavan Cate and said that he recalled a discussion at the first hearing re the amendment addressed density or erosion control to protect wetlands. Chair Ebel advised that the intent of the amendment is not to reduce population; rather, the intent is to protect the environment. She explained that the SAWC and others have noted that by increasing lot size (and reducing density), the increase in drainage due to new impervious surfaces has a greater area in which to be absorbed and erosion is reduced. Mr. Carter replied that her statement made it clearer, but he thought that the data and the Minutes of the deliberative session focused on erosion control and the effect of run-off on wetlands. He asked if 50% of the run-off was caused by the NH DOT and salt, what evidence was there that the reduction from 25% to 15% would address run-off and erosion control. Chair Ebel responded that there were many different measures taken to protect the wetlands and the watershed and that it was a combination of a variety of initiatives that diminish erosion and threats to the watershed. She further stated that it was common sense that decreasing the percentage of development-related impervious surfaces in a watershed and increasing the area for drainage to be controlled benefited the watershed. Mr. Carter opined that the amendment would impact on the rights of property owners. He opined that there needed to be a rational objective for the amendment and there needed to be evidence to show that the reduction from 25% to 15% would achieve the objective of protecting the watershed. He stated that buffers, if working, provided protection and that the State of NH has erosion control regulations. He persistently asked what evidence the PB had to show that the 10% reduction would address the issue of erosion and protect the wetlands.

Resident Kittie Wilson responded that the original proposal was to exclude 100% of wetlands from the calculation of minimum lot size. Attorney Carter asked what evidence there was that increasing the percentage of wetlands to be excluded from the calculation of minimum lot size would protect the watershed and reduce the effects of erosion. He opined that the State of NH regulations provided adequate protection. He asked how many enforcement efforts in regard to buffers and erosion had been brought to the State's attention in the last year. Zoning Administrator Stanley responded that New London has not been able to get the State to act on any issues. Chair Ebel opined that the issue was irrelevant as New London was proceeding with its own enforcement efforts. Mr. Carter asked how many town actions had been taken during the past year. Zoning Administrator Stanley replied "dozens". He added that NH DES has had three or four cases pending for up to seven years, and he opined that DES would not review cases unless they were high profile or politically involved. Mr. Carter again asked if the town had had any cases in the last year. Mr. Stanley replied affirmatively. Mr. Carter asked if the DES addressed the issues. Mr. Stanley responded in the negative and advised that the town had addressed the issues itself. Mr. Carter asked why, if there was not any enforcement at 25%, the PB recommended reducing the 25% to 15%. Mr. Stanley responded that the town had enforced its regulations and DES was not dependable. Chair Ebel responded that Mr. Carter was incorrect, that the DES had not been responsive; however, the Town of New London was vigorously enforcing the regulation. She further stated that she understood that Attorney Carter had represented DES in the criminal proceedings that percolated up through the system while he was at the Attorney General's Office and that he may have the impression that DES is effective. However, she said, he needed to understand that for towns which are down in the trenches trying to get DES' help, it was ineffectual. She further commented that there are many news stories about how under funded and understaffed DES is, that the agency's predicament is common knowledge, and that DES employees themselves have said as much.

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Jack Sheehan, a member of the Little Lake Sunapee Protective Association, stated his support for the Sunapee Area Watershed Coalition and advised that there is ten years of data on the impact on Little Lake Sunapee of erosion caused by development and construction. He advised that John Callewaert, director of environmental studies at Colby-Sawyer College, has a study that is publicly available that demonstrates that at 10% of development there is little impact, but at 20% there begins to be an impact on the water quality in the watershed. He stated that he and the Little Sunapee Protective Association are very supportive of the proposed reduction from 25% to 15%. He also advised that he and his wife would be directly impacted by the change as they have owned two pieces of property for a number of years that, because of the changing regulations, they'll not be able to develop as they had originally planned; however, he recognizes the need to have the regulations. He reiterated that he is a landowner who is directly affected financially by changes in the regulations and that he supports them. He apologized for not having a copy of the study with him and offered to obtain a copy for the PB. PB member Clough stated that the PB had referred to the study in the deliberative session. Mr. Sheehan also advised that last Wednesday the Little Sunapee Protective Association had gone before the NH DOT to discuss having Little Sunapee Road declared a low salt road in an effort to provide further protection for Little Lake Sunapee.

Erin Darrell (Erin's Land Use Consulting) said that she was not familiar with the New London violations, but that one of the services that she offers is providing help to property owners with violations. She advised that the corrective actions required of those with violations are very substantial.

It was **MOVED** (Clough) and **SECONDED** (Andrews) **TO PLACE THE PROPOSED AMENDMENT NO. 4, AS AMENDED, ON THE BALLOT FOR CONSIDERATION BY THE VOTERS IN MARCH 2006. THE MOTION WAS APPROVED UNANIMOUSLY.**

Harry Snow asked how the PB had passed over the 100-foot buffer requirement in its discussion. Chair Ebel replied that the 100-buffer requirement was already included in the zoning regulations. She advised that the existing regulations require a 200-foot buffer for Wetlands designated as prime Wetlands by RSA 482-A:15, a 150-foot buffer for Wetlands that adjoin or are connected to a prime Wetland, and a 100-foot buffer for all other significant Wetlands identified for protection on the New London Streams and Wetlands Protection Map dated March 13, 2001.

Zoning Administrator Stanley explained that the proposed change would change the current regulation to allow cutting in the buffered areas. Under the existing regulations, property owners are not permitted to cut anything located in the buffer. A question was then raised regarding the reference to "wetlands as defined by the ordinance". Zoning Administrator Stanley replied that if you go to the ordinance and the definition of the Wetlands Overlay District, it is clearly set forth in Paragraph B. Overlay District Boundaries and Paragraph G. Wetland Buffers, which refers to the New London Streams and Wetlands Protection Map dated March 13, 2001.

Mr. Snow opined that the definition of a wetland and the definition of the Wetlands Overlay District were different. Zoning Administrator Stanley replied that the map gives you a general area in which the wetland is located and the specific location must be determined by an on-site inspection by a qualified soils scientist. PB member Andrews advised that page 47 of the New London Zoning Ordinance defines wetlands.

Chair Ebel stated that the proposed amendment actually broadens what a property owner is permitted to do within the buffer.

Marilyn Kidder wondered what the reduction in the number of homes as the result of the change in density would be and asked if there had been any calculation. Chair Ebel replied in the negative.

- III. AMENDMENT NO. 5 ARTICLE XIV STEEP SLOPE OVERLAY DISTRICT** The Amendment, as originally proposed, would (A)add a provision requiring an erosion and sediment control plan for any construction or development in the Steep Slope Overlay District, (B)amend the definition and boundaries of steep slopes to include slopes that range from 15% to 25 %, (C) 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%

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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 identified the changes addressed in the amendment to the originally proposed Amendment No. 5: The proposed reduction from 25% to 15% of any steep slope area to be excluded from the calculation of minimum lot size has been eliminated, that now the proposal was only to exclude steep slopes in excess of 25%, that erosion and sediment control plans would be required on slopes of 15% and up, and the originally proposed one acre of contiguous area has been reduced to .75 acre of contiguous area, excluding areas with slopes in excess of 25% and Wetlands.

Harry Snow asked if there was any exclusion in the existing regulations. Chair Ebel replied that the Steep Slope Overlay District includes "all areas of New London with slopes in excess of 25% with an elevation change of more than 20 feet," but currently no steep slopes were excluded in calculating minimum lot size and/or density.

Attorney Susan Manchester (Sheehan, Phinney, Bass & Green P.A.) stated that she represented Lake Sunapee Properties. She said that proposed Amendment No. 4 at least protects the watershed. She opined that if the regulations currently provide protection by not permitting building on steep slopes in excess of 25%, there was no need to exclude slopes of 25%. She stated that she saw no rational basis for the proposed reduction. Ms Manchester opined that the intent was to prevent development on steep slopes. Chair Ebel responded that erosion control was the reason for proposing the exclusion of steep slopes in excess of 25% when calculating density. She opined that it was taken as gospel, based on years of engineering work, that increasing the water flowing over slopes greater than 25% contributes to erosion because of the drainage problems. Terry Dancy stated that a 15% slope in some circumstances could be worse than a 25% slope in other circumstances. He said that he was disappointed that the PB had changed its proposal from excluding 15% steep slopes to 25% steep slopes.

Ms Manchester said that she objected to the elimination of that much land from "good" land if the property owner does not plan to build on the slope. She opined that if erosion control measures were enforced, there was no need to reduce the percentage. PB member Andrews responded that wherever on a property a house is located, it has an impact on where water goes, e.g., is water absorbed downward or does it run off the property. Ms Manchester asked why the PB proposed a reduction in density, why not have a buffer. PB member Andrews asked Ms Manchester if she was recommending buffering for house construction. She further stated that when the concept of buffering all wetlands instead of excluding them from the minimum lot size and density calculations was proposed at the previous hearing, it was vehemently opposed by those in attendance. She said that she assumed the feeling would be the same for buffering steep slopes.

Harry Snow opined that the effect of the proposed amendment seemed to reduce cluster development possibilities. Chair Ebel replied that the purpose of the proposed amendment was to increase erosion control. Ken McWilliams stated that all of New London was located in one watershed or another. He further stated that the percentage of impervious surface impacts on soil erosion and stream and lake sedimentation. He referred to study results that showed that at slopes of 10% there's little impact on soil erosion, but at slopes of 15% the beginning of soil erosion can be detected. Mr. Snow said that he did not understand the elimination of 25% of the steep slopes area from the density calculation. He stated that a property could be large enough to support many houses without contributing to soil erosion and stream/lake sedimentation. He opined that the proposed amendment would place a hardship on owners of large tracts of land who have held the property for a long time. He said that he didn't see the logic of excluding areas with slopes of 25% or greater from the density calculation. Jack Sheehan stated that the logic is that at 25% slope, water coming down the slope does cause erosion. He advised that at the bottom of the slope or around the bottom of the slope, there needs to be enough property for water to be absorbed or the watershed must be protected. He said this clearly supports the proposed change to increase lot size in areas of steep slopes.

Arthur Hall asked if there was a definition of "slope". Zoning Administrator Stanley replied that the definition of a 25% slope was a 25% change in slope over a distance of 20 feet. Ms Manchester asked why the Special Exception was eliminated in the proposed amendment. Chair Ebel replied that the PB felt that the ordinance provided better protection for the watershed if a Variance was required instead.

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PB member Hollinger observed that certain large tract property owners, developers, and real estate agents seemed to be the most concerned about the proposed changes. PB members Clough and Cottrill both said that the silent majority favored tighter regulations, but was not in attendance and that this group included many landowners. Ms Clough advised that the Citizen's Advisory Council was concerned that not enough was being done to protect the environment. Mr. Cottrill said that many individuals have spoken to him in support of the changes, and he has been encouraging them to come to show their support for the PB's proposed amendment.

It was **MOVED** (Conly) and **SECONDED** (Cook) **TO PLACE THE PROPOSED AMENDMENT NO. 5, AS AMENDED, ON THE BALLOT FOR CONSIDERATION BY THE VOTERS IN MARCH 2006. THE MOTION WAS APPROVED UNANIMOUSLY.**

PB member Cook asked Jack Sheehan if he would write down his comments for the record. He agreed to do so and to deliver them to the PB.

There being no further amendments to be reviewed, Chair Ebel closed the second Public Hearing on the proposed amendments to the New London Zoning Ordinance.

**IV. REVIEW OF RATIONALE TO BE INCLUDED ON THE BALLOT ALONG WITH THE PROPOSED AMENDMENTS**

The PB reviewed the draft of the rationale for each of the proposed zoning amendments.

Amendment No. 1: PB approved the draft rationale statement as presented.

Amendment No. 2: PB approved the draft rationale statement as presented.

Amendment No. 3: Chair Ebel recommended that the rationale state that trailers are not permitted except as temporary storage facilities during construction. All agreed.

Amendment No. 4: Consensus was that the draft rationale didn't sufficiently get at the goal of protecting the environment, i.e., wetlands and watershed. Chair Ebel recommended that the rationale refer to the purposes listed under Article XIII. Wetlands Conservation Overlay District. The PB recommended changing "prohibited uses" to "not allowed" in **A**. In **B**, the PB recommended adding "by Variance" at the end of the sentence. In **C**, the PB recommended replacing "exclude" with "reduce the amount of". In **D**, the PB recommended replacing "pertaining to" with "to allow" and adding "if approved by the PB" at the end of the sentence.

Amendment No. 5: Chair Ebel and PB member Conly both opined that the rationale should reflect the PB's environmental concerns and the comments made by Jack Sheehan at the second public hearing. Ken McWilliams said that the rationale could refer to the Steep Slope Overlay District. Chair Ebel recommended using wording similar to that used in the rationale for Amendment No. 4. In **B**, the PB recommended substituting "Add a section that would exclude slopes of 25% and over from the calculation of minimum lot size." Chair Ebel also recommended addition of section **D**, regarding the contiguous area requirement.

Amendment No. 6: PB recommended deleting "to relax the requirements".

Amendment No. 7: PB member Clough recommended identifying which streams. She suggested "Currently protected streams" with an explanation regarding the manner in which the streams are identified.

Amendment No. 8: PB approved draft rationale statement as presented.

**V. OTHER BUSINESS**

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Ken McWilliams called the PB's attention to the materials distributed in regard to the proposed Harborview subdivision in Sutton in anticipation of the February 14 agenda.

Chair Ebel asked him to explain the current procedural status of the Harborview subdivision. Mr. McWilliams advised that the Sutton PB had deemed the matter a "project of regional impact," as permitted by NH law. He said that, pursuant to the prevailing New Hampshire statute, New London had the same status as any abutter. He explained that abutter status differed from the original status when the sole access to the subdivision had been through New London which gave New London joint approval authority. He advised that the subdivision no longer needed New London to sign off on the plans now that another means of access was available. Mr. McWilliams opined that none of the information, e.g., traffic study for the intersection of Stonehouse Road and King Hill Road, has been provided.

Chair Ebel asked what authority the NLPB had to require/request changes from the applicant. Mr. McWilliams replied that the NLPB had authority to require what it needed to make its recommendations to Sutton, but that it had no authority to require Sutton to make any changes on the plans. The NLPB can only hope that the Sutton PB will be sympathetic to its concerns. Chair Ebel stated that it was unfortunate that the Sutton PB met on the same nights as the NLPB and that, perhaps, a NLPB member might have to skip a NLPB meeting in order to attend a PB meeting in Sutton.

PB member Cottrill asked if the Sutton PB would take comments from the February 14, 2006 review back to include in its review materials. Mr. McWilliams replied in the negative and said that the NLPB should forward a copy of its Minutes and a letter outlining its concerns. He said that the NLPB's concerns need to be raised at the February 14 review. Mr. Cottrill observed that access over Haynes Road is now proposed.

The **MEETING** was **ADJOURNED** at **9:35 PM**.

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

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

CHAIRMAN \_\_\_\_\_