



MADBURY PLANNING BOARD

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Approved

OFFICIAL BUSINESS

Minutes of: January 15, 2020

Meeting Convened: 7:00 p.m.

Members in Attendance:

Mark Avery - Chair
Tom Burbank
Michael Card
Wally Dunham
Marcia Goodnow - Vice Chair
Fritz Green - Ex Officio
Casey Jordan

Support Staff:

Laurie Plantamuro - Recording Secretary
Elizabeth Durfee - Contract Planner

Agenda

1. Seating of Alternates:

Wally Dunham was seated.

2. Approval of Minutes:

The minutes from December 18th, 2019 were postponed until the next meeting since tonight's meeting did not have a quorum of those present on the 18th.

3. Correspondence:

Chair Avery informed the board there was a new Town and City available.

4. Review of Water Board Comments: Proposed Amendments to Zoning Ordinance Article IX-A, Aquifer and Wellhead Protection Overlay District

The board reviewed the letter from the Madbury Water Board regarding its review of the proposed Aquifer and Wellhead amendments. The letter indicated that the Water Board had no objections to the proposed amendments. Chair Avery also mentioned that he attended the Water Board's review and that the Water Board didn't seem to have any issues with the proposed amendments.

Chair Avery did note that the Water Board questioned if compost piles were included in the ordinance's definition of "Vegetation Debris" (Section Five (5), Paragraph B.2.). Consultant Durfee asked the board if there had been any complaints regarding "stump dumps" in town. None were noted. She went on to explain that if the board felt comfortable with the term "Vegetative Debris," it would be fine. Chair Avery stated his opinion is that the definition does not include compost piles. Member Jordan said the whole point of this was to not have these areas as dumps. He also noted that he felt ok with what the ordinance says now. Member Card said he felt no reason to narrow the definition down more. The board agreed not to change the wording.

5. Public Hearing: Proposed Amendments to Zoning Ordinance Article IX-A, Aquifer and Wellhead Protection Overlay District

7:09 pm: Chair Avery read the procedures for a public hearing and opened the public hearing. He requested Consultant Durfee start the hearing with a description of the revised language; however, he then asked her to pause while he read the public notice for the hearing.

Consultant Durfee began again explaining the ordinance's revisions. She pointed out that the amendment does not change the area of the district or its district's permitted, prohibited, or conditional (i.e., when a permit is required) uses. She went on to say that the amendment primarily clarifies the ordinance's existing language, improves its organization, and better aligns it with the state's model ordinance and regulations. She also commented that part of the project was to make sure there was a current overlay district map on file.

Consultant Durfee then detailed changes to Section 6 of the ordinance. She advised the board that because of the way the ordinance is currently written, Section 6 essentially prohibits all land use within 400 feet of a public water system wellhead. She explained that this is overly restrictive, does not align with state standards, and could lead to legally questionable "taking" of property owners' rights to use their land. She then offered that the proposed changes correct this by replacing Madbury's fixed 400 foot no development protection area with the state's protective area standard which ranges in size from 75 to 400 feet based on the amount of water withdrawn from the well. She also affirmed that following the state standard would maintain protection Madbury's water supplies.

Chair Avery agreed that proposed changes were not substantial and that they were designed to work in parallel with the state regulations. He then informed the public that this was not the first discussion the Planning Board has had regarding these changes. He then asked if the board had any other thoughts or questions.

Member Green asked if the District Map they received was the map that would be published. Consultant Durfee responded saying yes, but that the proposed map is only a draft until it is adopted. Member Green then asked if the accompanying Wellhead Map hadn't been published due to rules of Homeland Security and she responded yes.

Chair Avery commented that the existing ordinance language explicitly exempted the storage of less than 550 gallons of heating oil, but that the changed language does not address less than 550 gallons. He asked if heating oil should be explicitly listed as an exemption. Member Green commented that it caused no confusion. Chair Avery responded that if the ordinance doesn't say you can't do it then you can do it, so he felt ok with the new wording. Member Jordan felt the same. The board decided to leave the change.

Member Green commented there are some small format changes. The changes were noted and will be incorporated before publishing if approved.

7:20 pm: Chair Avery opened the meeting for public comment.

Sarah Greenshields stated that she owns and operates Little Tree Education at 314 Route 108 and that she owns the property that houses the school. Ms. Greenshields commented that over the last year and a half she had learned a tremendous amount about water. She stated she was here today to discuss what she had learned and advocate for a possible subcommittee to talk about the situation further. She felt as someone who owns and operates a public well that, while she received

a letter in the mail and had read all the meeting notes, she really and truly felt that those that this would affect should be having an active voice in the process. She stated that she felt the board should seek expert advice from scientists, hydrologists, and others who work with water and the importance of it every day. She stated she felt strongly that this is fundamentally against the Town of Madbury's Master Plan.

Ms. Greenshields went on to discuss the information in the packet she passed out to the Planning Board. She commented that she felt it was the Department of Environmental Services (DES) job to set minimum standards and it was up to the town's residents hold higher standards. She commented that she personally chose to buy property in Madbury for her business because of the water protections in place and also because of the 400 foot well water radius in place. She feels it's really important to listen to expert opinions and keep in mind that, once we consider the minimum standards, it is really hard to regain any control moving forward or to look at a project on a case by case basis.

She stated that Madbury was currently not on a list of communities the DES has that requires local approvals for a project and she stated that list was included with the packet she passed out to the board. She mentioned all of our surrounding towns were on said list except for Madbury.

Ms. Greenshields stated our water is our most precious resource and that DES was here to work with us, but even DES was stuck. She informed the board that last fall the DES asked public water suppliers to start testing for contaminants and right now even DES was being stopped. She stated they can't create new enforcements and we could be creating contaminants.

She mentioned at Little Tree they had been working with Hydrologist Dana Treslow. She stated she has done a lot of work for Little Tree and her work was backed by science.

Ms. Greenshields asked the board to hold this decision until they could truly seek the opinions of those who understand the science of water. She stated once we choose the standards of the state we lose the ability to really pick and choose what happens in our community. She went on to encourage the board to review the information she gave them and wait to vote.

Chair Avery clarified that this wasn't being voted to go into effect tonight. It was being voted on by the board tonight to go to the voters of the Town of Madbury.

Chair Avery asked Ms. Greenshields if she was seeking to table the 400 foot protective area requirement and not necessarily the organizational changes. She said that's correct.

Chair Avery asked if there was anyone else who would like to speak.

Mr. David Redfearn, the owner of Old Stage Campground, commented that his well was put in 1962 before state or Madbury requirements and that he has been having his well-tested year after year. He commented because he is a public water source he does whatever the state asks of him. He asked why cheapen it with the possible changes. He stated he wasn't saying don't look at things, but he felt things are made a certain way for certain reasons and asked the board how they came up with the 400 feet.

Chair Avery commented that the board hadn't been able to discover why the fixed 400 foot distance was used. He explained that the ordinance was based on a model ordinance from Strafford

Regional Planning Commission and that the commission also did not know the origin of this fixed standard.

Mr. Redfearn then stated that he had a question regarding Section 7.B “Impervious areas.” He asked what “future or existing” meant. Chair Avery responded that generally impervious meant paving, rooftops, etc. He stated that particular item wasn’t changing and would remain the same. He mentioned if you as a property owner already have it before an ordinance goes in to force you are grandfathered.

Chair Avery asked if there was anyone else who would like to comment.

Mr. Greenshields asked the board if the current 400 feet they have would be grandfathered. Chair Avery responded that for Little Tree, the question would really be for someone next door. Mr. Redfearn stated he was going to say the same thing.

Katrin Siegels of 339 Knox Marsh asked what a public water supply meant. Chair Avery said the DES has thresholds based on the number of people served by a well and whether they are resident or transient. She asked if the 400 foot standard applied to her well and Chair Avery said it only applied to public water supplies. He informed her that a private well is usually 75 feet.

Ms. Greenshields said Kevin from DES gave her information she outlined in her packet. She said he informed her that the 400 foot distance was in some respect arbitrary and developed in 1965 and hasn’t been revisited since 1978. She stated DES should be the “fall back” and Madbury should be well above standard. Chair Avery commented that the question was why did Madbury apply a single fixed standard and not just the 400 feet itself. Ms. Greenshield responded fair enough.

Ms. Greenshields then mentioned that she listed 12 critical questions she was hoping to get answered by the board. She felt she was really optimistic in Madbury creating their new water plan and she wanted to call attention to those who intentionally selected this community for businesses and how changing this rule could actually make us violate other rules.

Chair Avery asked Ms. Greenshields to expand on her comment regarding violating rules. Ms. Greenshields said that she is a licensed child care center so she has to follow rules by the department of health and human services and that other schools would be in the same situation. She stated they will be faced with a new set of challenges.

Chair Avery asked what rules specifically she would be violating. Ms. Greenshields commented if they have any water contamination the school could be shut down.

Member Green commented that would not be good and asked what is her well’s flow rate. Ms. Greenshields commented if the board narrowed the protective area to 75 feet, someone could come in and build on lot next door which they felt could potentially cause contamination to their property. Ms. Greenshields said if we divert to DES standards and time passes and rules change, our water could be contaminated and we could be in violation because we said it was okay to shrink the requirement of 400 feet.

Member Green asked how her water would be contaminated. Ms. Greenshields responded by people urinating medications next door to them. Member Green asked why that would change because of the issue being discussed tonight?

Chair Avery commented that the approved plan for the alluded to assisted living facility leach field is 400 feet away. Ms. Greenshields said yes, but if the proposal is passed and another assisted living facility wanted to open next door to her they could come within 400 feet. Chair Avery responded, maybe but it would be based on the draw of your well.

Member Green asked Ms. Greenshields what was the draw of her well and she commented she honestly didn't know that she defers to the experts.

Ms. Greenshields asked the board why they would want to say that the state standards are acceptable, adding that the state has created new standards and can't even implement them because of politics. Chair Avery asked if that was for PFA or for wellhead protective areas. Ms. Greenshields responded that was for PFA not for radius. Chair Avery stated the board was discussing wellhead radii.

Ms. Greenshields stated she would like to invite Dana Truslow to come and speak and to be active in this process. She felt that Dana Truslow could explain that reducing the radius does threaten our water supply.

Member Green asked Ms. Greenshields, as the owner of Little Tree, where was her residence? She answered that she lives in Dover.

Consultant Durfee commented that she wanted to make sure everyone was on the same page. She felt the intent of the changes wasn't to breakdown Madbury's water protection, but instead to better align Madbury's rules with the state's model ordinance. She said that the changes are structured to make the Town's ordinance read more clearly and that there are still a number of standards and conditional uses that go way beyond the state standards. Consultant Durfee mentioned none of that would change and Madbury would continue to have high water protections standards.

She also impressed on the board that under the proposed amendments the 400 foot area around public water supply wells would still be subject to the underlying requirements and restrictions of the overlay district. The only difference would be to change the amount of area required to remain in a natural state around a public water supply wellhead from the current fixed 400 feet to the state's 75 to 400 feet. As such, land use in the area between 75 and 400 feet would still be regulated as part of the ordinance.

Consultant Durfee also reaffirmed that the changes are needed because there is concern about over regulating and the potential for a "taking" to occur if the no-development area is too large.

Chair Avery commented that the district protections are still in effect and that owners are still limited as to what they can do.

Ms. Greenshields commented there are a lot of layers to this issue, but she didn't want to outstay her welcome. She would like to be an active participate in finding the solution. She mentioned that she "kicked up a lot of dust" over Johnson Creek and mentioned they were not open or operational and her business is and they have done nothing but improve the water situation in Madbury. She felt Madbury should be on the Seacoast Water Board to hear their thoughts on the water situation.

Ms. Greenshields went on to apologize to the board about what she caused last year and said she came to them tonight with peace and kindness. She asked the board to “pump the breaks” and work together to do what is best for Madbury and the water.

Chair Avery closed the public comment period and thanked the public. He suggested the board recess to read the packet presented to them.

Member Green commented that Madbury is committed to having a plan to protect water resources and have appointed a Water Resource Board to make sure that happens. He also emphasized that the Water Board had reviewed the proposed amendments and did not object to them.

7:53 pm: The board recessed to read the packet submitted to them by Ms. Greenshields.

8:25 pm: The board reconvened and began its deliberation.

Member Jordan offered that the board had five or six previous discussions regarding this issue and felt the board had reached a good balance. He mentioned that the vast majority of the Town is a residential area which limits what property owners can do and provides additional protections.

Member Jordan also noted that the Performance Standards in Section 7 are pretty strict, so basically anything that wasn't a normal substance is regulated and required to be properly handled so it does not affect others.

Member Burbank commented that the board had reviewed this issue several times. He said it considered if it was in the Town's best interest to reduce the 400 foot requirement or not. He stated the board believed they had to change the language and in reference to the 400 foot area that it should be based on the flow rate. He stated, if the flow rate warrants having a larger radius, then this would take care of that issue.

Chair Avery commented the board had considered completely eliminating the 400 foot area, but decided to keep it as part of the overall district to maintain added protection.

Member Card commented the set 400 foot standard by itself doesn't carry much weight, but basing the protective area on flow rate, as member Burbank mentioned, gives a reason for having a larger radius. He commented that he learned that in the future the board may need to think about areas that are high with antibiotics use. He mentioned that would probably include Ms. Greenshields population as these days children are on a lot of antibiotics.

Member Green suggested that the Greenshields bring their packet to the next Water Board meeting. Chair Avery asked Member Green if his recommendation to the Greenshields meant that he was suggesting that the board table its vote on the amended ordinance. Member Green said he was not.

Member Goodnow commented that this is a unique situation with regard to the Greenshields being potentially affected by a Dover facility and needing to assume that the Dover facility has some regulation for controlling medication in its waste water. She stated we are relying on something that is not in our control. She stated that this leaves the board at the mercy of something it has no control over.

Chair Avery went on to discuss the answers to the questions asked by Ms. Greenshields included in her packet.

Chair Avery asked if anyone felt there should be any other modifications at this time. The board briefly discussed adding language to Section 6 that would codify following future changes in state standards. The board chose to leave the amendment as drafted.

Chair Avery reminded the board that this vote was for whether or not this amendment should go to the voters on town meeting day.

Motion by Member Green to send the amended Wellhead and Aquifer Overlay District ordinance to the voters. **Seconded** by Member Dunham. All Aye. **Motion Approved.**

8:51 pm: Public hearing was closed.

6. Review of Ballot Language: Proposed Amendments to Zoning Ordinance Article IX-A, Aquifer and Wellhead Protection Overlay District

The board reviewed a draft Warrant Article and associated voter information for the proposed Aquifer and Wellhead ordinance amendments. The Chair explained that this is the information voters will see on Town Meeting Day and that it is due to the Town Clerk before the board's next meeting.

Consultant Durfee recommended additional voter information be included regarding Section 6. She recommended adding that the existing 400 foot radius remains subject to the district's permitted, prohibited and conditional uses. The board agreed with the change.

Motion by Member Jordan to accept the ballot language as amended. **Seconded** by Member Green. All Aye. **Motion Approved.**

7. Review: Planning Board Report for Town Report

The board reviewed a draft Planning Board report for the Annual Town Report. Minor edits were made.

Motion by Member Jordan to accept the 2019 Planning Board Annual Report as amended. **Seconded** by Member Green. All Aye. **Motion Approved.**

8. Other New Business:

Chair Avery provided a legislative update summary. He notified the board that a bill being considered would require formal training, including a test, for all Planning and Zoning Board members. He also advised the board of a bill that would mandate that any zoning incentives provided for age 55 and over housing would have to be made available to other types of housing in an effort to further work force housing.

Member Green commented on the possibility of engaging a third party to complete the Master Plan update.

9. Other Old Business:

None

Meeting Adjourned 8:53pm

Meeting Attendees:

Loraine Morong - Madbury Beach

David Redfearn - 46 Old Stage Road

Alexander Redfearn - 46 Old Stage Road

Peter Szacik - 1 Kelley Road

David Greenshields - 314 Route 108 (Business Address)

Sarah Greenshields - 314 Route 108 (Business Address)

Katrin Siegels - 339 Knox Marsh Road

S. Pappajohn - 323 Route 108

Janet Wall - 9 Kelley Road

Respectfully submitted by Laurie Plantamuro