



MADBURY PLANNING BOARD

13 Town Hall Road, Madbury NH 03823
Tel: 603 742-5131 • Fax: 603 742-2502

Approved

OFFICIAL BUSINESS

Minutes of: January 6th 2021

Meeting Convened: 7:00 p.m.

Members in Attendance:

Mark Avery – Chair
Tom Burbank
Michael Card
Bruce Hodsdon – Ex Officio
Doug Hoff – (Zoom)
Casey Jordan – (Zoom)

Support Staff in Attendance:

Liz Durfee – Contract Planner (Zoom)
Eric Fiegenbaum –Town Administrator

Agenda

1. Seating of Alternates

None seated.

2. COVID-19 Note

Before beginning the discussion, Chair Avery announced that the Board will be using Zoom as allowed under COVID-19 Executive Orders to help conduct this meeting and that all votes will be taken one member at a time by roll call.

3. Approval of Minutes:

The minutes from December 16th, 2020 were reviewed. **Motion** made by member Burbank to accept the minutes. **Seconded** by member Jordan. **Member Vote:** Jordan Y, Hoff Y, Burbank Y, Hodsdon Y, Card Y, Avery Y. **Motion Approved.**

4. Correspondence

None

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

Chair Avery read the public notice for the public hearing. He then read the public hearing rules.

Chair Avery then defined the wellhead and aquifer district, and showed a map reviewing the

wellhead protection areas and the public water supply wells. He then explained that the purpose of the proposed changes are to clarify the language and organization in order to make it easier to understand for residents and to correct a legally dubious rule.

Chair Avery then explained that legal concern is possible regulatory taking under Article IX-A, Section 6. He said that under regulatory taking government rules effectively deprive a property owner of the reasonable use of their property and its value without compensation. He then explained that our current Section 6's 400 foot "no use area" around all public water supply wells could cause regulatory taking. He said it could do this because the 400 foot rule can extend well off of the well owner's property and on to neighboring property possibly banning neighbors from using their property in a safe and reasonable way. This is unfair for residents living near a lower volume public water supply. Therefore the goal of the changes is to balance the protection of our water supply while maintaining the rights of landowners.

Chair Avery then reviewed a map of example public water supply wells and how in some instances the existing 400ft. rule encompass multiple lots.

Then, Chair Avery made it clear that the new ordinance does not affect the rules for septic systems, does not affect residential wells, does not affect the rules for density of development, and that uses within 400 feet of a public well supply would still be regulated in order to protect our water.

Chair Avery then moved on to read the Summary of Changes. At this time Member Jordan recused himself.

At 7:15 Chair Avery welcomed public comment.

James Petrovitis asked is this ordinance trying to make rules stricter? Planner Durfee reviewed the model ordinance, and assured that this is not more stringent of a regulation.

Sarah Greenshields then explained her concerns. Her first question was: Why the rush? Chair Avery explained that our current ordinance is not fair, and landowner rights need to be protected. He added that the current language is confusing and should be resolved.

Ms. Greenshields then explained that the State regulations are from the 1970s and the State is slow, she doesn't understand why we would use their standards. Chair Avery explained our current Section 6 radius is arbitrary and that towns use the DES standards to form ordinances. Chair Avery then reviewed how regulatory taking is not fair. The new rules would protect landowners, and relieve the town of possible litigation.

Ms. Greenshields then asked why not invite her hydrologist for professional advice and form a subcommittee? Member Card voiced his concerns that her hydrologist may be biased since her corporation paid for her report, and Madbury would have difficulty coming up with more

volunteers to form a committee. Ms. Greenshields said she would be willing to form a subcommittee and work to take out regulatory taking, and still keep a protected radii, but not the DES standards.

Chair Avery explained that the DES standards are defensible in court and that he would encourage Ms. Greenshields to form a subcommittee after we resolve the current issues first.

Ms. Greenshields asked if she were to form a subcommittee and provide information, would it stop these amendments from going to a vote? She explained that she'd rather spend her time and money in this way instead of fighting the changes the board suggests, like last year.

At this time member Hodsdon informed the Chair that this dialog is beyond a public hearing. Chair Avery agreed, but also conveyed his desire to let the public be heard.

Planner Durfee explained to Ms. Greenshields how the board had a schedule to adhere to, and that a subcommittee would not have enough time to be considered before deciding if this amendment is to be heard before the town.

Chair Avery then closed the public comments at 7:50, and asked the board for any thoughts and ideas.

Town Administrator Fiengenbaum then noted that the Water Board did not have any comment to add to the change in ordinance however they also do not have the expertise to weigh in. The water board has been active in P-fast testing and water testing, assuring there are many ways Madbury protects the water. Member Burbank asked Mr. Fiengenbaum if the Water Board believes that the state standards are sufficient? Mr. Fiengenbaum replied that they do not have enough expertise on the board to answer that, but he believes Madbury does more than the State standards in protecting water. Planner Durfee added that other municipalities do not have the aquifer overlay district or the groundwater protection like Madbury does.

Chair Avery then asked the board if they had any comments on Ms. Greenshields's public comment.

Member Card said that after reviewing the comment, he was disappointed as this, and Ms. Greenshields's other public comments, have a lot of subjective misinformation. He did want to clarify that the Planning Board had the blessing of the Water Board when trying to update this ordinance last year as Ms. Greenshields had suggested otherwise. Chair Avery confirmed that the Water Board had agreed to the changes last year. Chair Avery then agreed that Ms. Greenshields's public comments have contained incorrect information.

Chair Avery then asked the board if they had any comments on whether the board should hold another public hearing, meet again to discuss the ordinance, or move the amendments forward to be voted on by the public.

Member Burbank asked if there are any points of contention? Would there be any new information? Mr. Fiegenbaum said either way the Water Board's response would be the same. Member Card mentioned that Ms. Greenshields will likely continue to challenge the board, has strong passion against this amendment, and has funding, and influence over most of the voters as her business cares for Madbury's children. Member Burbank agreed, and added that our public relations, and a better way to voice our concerns needs to improve.

Member Hodsdon said that he is in favor of moving forward, and he does not believe another hearing would help anything. Member Hoff agreed with member Hodsdon, and added that this is the right thing to do regardless.

Chair Avery commented that we need to fix this immediate problem, but working together with Ms. Greenshields in the future would be welcome. **Motion** made by Chair Avery that we move the proposed amendments to zoning ordinances for a town vote. **Seconded** by member Hoff. **Member Vote:** Hoff Y, Burbank Y, Hodsdon Y, Card Y, Avery Y. **Motion Approved.**

6. Other Old Business

Chair Avery announced that the Gerrish subdivision in Durham will have a site walk 1/13/2021 at noon. They have updated their plans to incorporate walking trails in, and to manage stormwater entering, the Madbury portion of the site. The applicants will need to formally apply in Madbury.

7. Other New Business

Eric noted that 10. Lee Rd. Has been in contact with the police chief and they have delivered a packet to the selectmen. Tom Burke revealed that he is a planner, and plans to send notes regarding today's public hearing to the board.

8:35 - Meeting Adjourned

Meeting Attendees:

Sarah Greenshields

David Greenshields

David Redfearn

Steve Pappajohn

Tom Burke (Zoom)

James Petrovitsis (Zoom)

L (No name was provided only the initial) (Zoom)

Respectfully Submitted by Michael Card