



**TOWN OF WEARE**  
PLANNING BOARD  
ZONING BOARD OF ADJUSTMENT  
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Naomi L. Bolton  
Land Use Coordinator

**Office Hours:**  
Monday  
thru  
Friday  
8 AM – 4:30 PM

**PLANNING BOARD  
MINUTES  
JANUARY 16, 2007  
(Approved as written 2/22/07)**

**PRESENT:** Paul Morin, Chairman; Frank Bolton, Vice Chairman; George Malette, Secretary; Tom Clow, Exofficio; Craig Francisco, Alternate; Neal Kurk, Alternate; Naomi L. Bolton, Land Use Coordinator.

**GUESTS:** Bruce Fillmore; Nancy Fillmore; Rod Hansen – Goffstown News; Paul Kosciuszek; Steve Najjar; Joe Fiala; Dale Savoy; Mike Melcher; Kathi Melcher

**I. CALL TO ORDER:**

Chairman Paul Morin called this meeting to order at 7:00 PM at the Weare Town Office Building. Chairman Morin appointed Neal Kurk to sit in place of Mike Palmisano for tonight's meeting.

**II. FINAL ZONING AMENDMENT PUBLIC HEARING:**

Chairman Morin stated that purpose of tonight's meeting is driven by the rules that govern SB2 (senate bill 2). Chairman Morin stated that if the board is going to make zoning amendments, there needs to be a final public hearing. Tonight is the final public hearing on the proposed zoning amendments for the 2007 year. Some of the amendments were approved at the December 28, 2006 meeting. The rest will be finalized tonight.

Amendment No. 1:

Shall the Town amend the Zoning's Ordinance as proposed by the Planning Board as follows?

To propose increasing the lot size and frontage in the RA zone as follows:

(1) Amend Article 14:

(a) Amend section 14.1 to read: "Lot Size Regulations: Land on streets with gravel surface may be subdivided with a minimum lot size of 10 acres. Land on streets with a paved surface shall follow the lot size table in section 14.2, except land in the Rural/Agricultural (RA) District which shall be governed by section 14.3."

(b) Amend the first sentence in section 14.2 to read: "This section 14.2 shall apply (a) to any use in the Residential (R) District and (b) to any use involving housing (but excluding hotels and other housing for transients) in the Commercial (C) District and in the Industrial (I) District.

(c) Add section 14.3:

“14.3 This section applies to the Rural/Agricultural (RA) District.

“14.3.1 In the Rural/Agricultural (RA) District, the minimum lot size shall be 217, 800 square feet (5 acres), and must meet the requirements of table 1-1.

“14.3.2 Where condominiums or duplexes are proposed in the Rural/Agricultural (RA) District, the requirements of this section 14.3 shall apply for each dwelling unit. For the purposes of this section, a dwelling accessory attached apartment (in-law apartment) shall not be considered a separate dwelling unit.

“14.3.3 Where a cluster development is proposed in the Rural/Agricultural (RA) District, a yield plan shall be presented to demonstrate the maximum number of conventional lots achievable, which shall be increased by 20% (rounded to the nearest whole number) and shall then be the number of cluster dwelling units allowed.

(2) Amend section 18.2.1 by replacing the first three sentences with the following:

“Frontage: All lots less than 10 acres in the Rural/Agricultural (RA) District must have a minimum of 250 feet of frontage, and all lots less than 10 acres in the Residential (R) District must have a minimum of 200 feet of frontage. All lots of 10 acre or more must have a minimum of 50 feet of frontage on a paved Town road or, if on a gravel road, 250 feet of frontage if in the Rural/Agricultural (RA) District or 200 feet of frontage if in the Residential (R) District. Where the frontage of a proposed lot can be measured on paved and gravel road surfaces, the paved surface frontage must be at least 250 feet if in the Rural/Agricultural (RA) District or 200 feet if in the Residential (R) District, and the driveway entrance must be on the paved surface in order to qualify for the minimum lot size as defined in Article 14.

(3) Amend Article 27.3.3 by adding the following sentence: “A 20% density bonus will be allowed for cluster developments in the Rural/Agricultural (RA) District, as set forth in Article 14.3.4.”

(4) Amend section 30.4.1 by adding a new sentence: “This doubling shall not apply to the minimum lot size requirement in section 14.3.”

(5) If any portion of this warrant article be determined to be invalid or otherwise unenforceable, the other portions shall remain in effect, and for this purpose the provisions of this warrant article are severable.

This article is the Planning Board sponsored article looking to increase the minimum lot size in the RA; increase the frontage to 250 feet and allow a 20% density bonus for allowing cluster.

Bruce Fillmore stated in section 14.3.1 he thought there should be some wording to add wording like the buildable area would need to meet table 1-1. The board felt it was a duplication. Tom Clow stated that the changes made at the last hearing improved this. He hopes everyone will take a look at and focus on the changes. The requirement of adding the requirements of table 1-1 there is less of a difference when you are going to 5 acres. Tom Clow stated that he supports this because at the previous meeting there is really no distinction between the R and RA now and there should be a difference. Tom Clow understands there is a lot of planning that goes into creating and studies and time just slips away.

George Malette stated that every planning board member should have a copy of this book from SNHPC dated October 26, 2006. It states that planning commissions often have two distinct functions. The first is preparation of a comprehensive plan for the communities for focusing on the long term before they arise. The second function involves review of subdivisions plats. Citizens are the most essential part of the planning universal. He is against this article for these reasons. He felt that it was too little to quick to late.

Frank Bolton felt that in response to George Malette's comments, this topic has been discussed for a number of years. It was also an interest from the survey that went out when the Town was updating the master plan. He would like to see lot size averaging and protection our farm lands for next year. Each year we have to try to enhance what we are doing tonight. We need to press forward.

Craig Francisco stated that in general he is for the increase in size in the RA, now we have R and RA with same density requirement, now we have the RA and RC with the same requirements. He agreed with Mr. Malette and the Town probably does need to study it more. There are some of the lots that should be rezoned and we may be applying something now that can't be changed.

Chairman Morin stated that Mr. Clow brought up something, we have often gone back to and there is no practical difference between the R and RA today, which is true. That was one of the reasons that all of us were interest in this particular discussion. We realize something needs to change. George Mallette is proposing the best way to go about it, if there is money, time and patience. Obviously professional assistance with public input and this board inputs is the best way to bring about our ambitions of our master plan. Craig Francisco pointed out that the first item is the zoning map and is it really reflective of where it should be. No one has really made a good argument of why the map looks like it does today. Are the zones in the right place? With professional assistance we could make changes so they do make sense and aligned with the master plan. To go in the right direction is to take on a financial obligation for professional assistance and a certain amount of patience that is just not out there. He agreed, Mr. Malette is right the majority is not going to agree because there is some impatience on this. He comes down to an ordinance that has the majority of the board asking for, absent of any real comprehensive plans without infringing anyone's property rights. All we've done is to take away from the RA density, while he is glad some compromise is made but he is still

not going to support it. If this passes he would like to urge the board to seek profession assistance.

Frank Bolton stated that Chairman Morin, Craig Francisco and George Malette alluded to the fact. What prevents us from pursuing the inadequate zoning, where the districts are? He doesn't see a great change of whether it is two or five acres, but the zoning map can be changed. One reason to pursue the zoning is because we are going to have people coming in with piece meal requests. The goal for the board is to take a look at the zoning map and we then wouldn't have any reason to change zones by petition.

Chairman Morin wanted to clarify this is proposed the planning board and there is another article that is petitioned and cannot be changed. If this gets on the ballot it will be a competing article. This is the planning board sponsored article, so there is no more confusing.

Frank Bolton moved to recommend Amendment No. 1 as written, Tom Clow seconded the motion. Vote: 3 in favor (Kurk, Clow, and Bolton) and 2 opposed (Malette, Morin).

Amendment No. 2 – No action is necessary the action was taken at the December 28, 2006 meeting.

Amendment No. 3 – No action is necessary, the action was taken at the December 28, 2006 meeting.

Amendment No. 4:

Shall the Town amend the Town's Zoning Ordinance, as proposed by the Planning Board as follows?

To repeal Article 15-A referred to as the Planning Board's Growth Management Ordinance, in its entirety.

This amendment is to repeal the Planning Board Growth Management ordinance, leaving the Citizen's Growth Management Ordinance in place.

The board had no discussion. Chairman Morin opened this amendment up for public input. There was no public input. Neal Kurk stated that he thinks this is like belts and suspenders. He doesn't think the board should repeal this. Chairman Morin stated that he is opposed to having a safety net ordinance. It is not what we should be writing. The board should not be writing zoning ordinances being afraid it will be challenged and not have another one waiting in the wings. Tom Clow stated he is opposed to Mr. Kurk's position but in favor of this article. George Malette stated that the laws governing the adoption of Growth Management Ordinances (GMO) are so strict that having a backup is not a good idea.

Frank Bolton stated that it certainly wasn't the intent to be a backup. He is against getting rid of this one. Mr. Bolton asked, what is in place in the event the citizens GMO is not valid; or something happens at the school dropping the need for the GMO; or the

sunset clause is enforced, what is in place at that time? Chairman Morin responded that Article 15 with the phasing table requirement would be the indicator.

Neal Kurk stated that he would like to respond to the comment. While the planning board proposed article and the petitioners proposed articles were posted the citizens decided to do both. He felt that eliminating one might deny them from their right.

Chairman Morin responded that they have the right now again to leave it or remove it. Mr. Kurk stated that the larger majority of those voting will not know there is two competing GMO's. Mr. Kurk stated that he would agree as long as the mailer lets the voters know. We didn't intend to have two GMO's and we have an opportunity to propose a fix and it doesn't take away the opportunity to control growth.

Tom Clow moved to recommend Amendment No. 4, George Malette seconded the motion. Mr. Clow felt that this could be spelled out in the mailer that there would still be a GMO. Vote: 4 in favor (Kurk,, Clow, Malette, and Morin) and 1 opposed (Bolton).

Amendment No.5:

Shall the Town amend the Town's Zoning Ordinance, as proposed by the Planning Board as follows?

To add two sections, 28.9 entitled *Buffers* and 28.9.1 entitled *Exceptions* to Article 28 which will read: *Buffers*: A buffer of native vegetation with no ground disturbance allowed except for planting shall be maintained within 25 feet of all jurisdictional wetlands. In forested areas no more than 50 percent of the basal area shall be removed in any 10 year period. *Exceptions*: Buffer distances are not required within the right of way for any proposed class V or higher road or any related Class V road construction and/or maintenance activities. This section does not apply to any forest management or agricultural activity.

Chairman Morin stated that this amendment was brought forth by a member of the Conservation Commission. The board addressed this amendment at the December 28, 2006 hearing but at that time Mr. Najjar was not present to see if he was fine with the proposed change. The proposed change was to add "or any related Class V road construction and/or maintenance activities" to the second to last sentence.

Steve Najjar stated that was a good addition for slope easements. Technically this is correct and implements the parts of the master plan. Chairman Morin asked if this would be enforced largely by notes on the plan, because currently wetlands are delineated on the plans and another setback line for this buffer as well. This is a buffer that protects wetlands if implemented. This is an addition to the existing zone and the only issue the Town ordinance has is a building setback. This amendment leaves a buffer from parking areas, lawns, etc being put in the buffer. This increases the stability and leaves an uplands buffer and protects from changes. This should add a level of protection. This is somewhat mirrored from the shoreline protection ordinance with a compromise and does provide some level of enforcement and flexibility. It is in the master plan, just implementing the master plan.

Bruce Fillmore stated that he didn't think about it to the full intent. To force someone to get a variance for any purpose is not necessary. The State will be looking at this as they have more authority and understand what is going on more than the local zoning board. To make someone get a variance for driveway or access to a back lot you are putting the decision on the wrong board to approve. That is the proper place for the conservation commission with expertise and not the zoning board. He would like to see it a special exception versus a variance.

Chairman Morin stated that it occurs to him that if we are accepting roads and rights of ways, we are not talking about the best and least traveled way but didn't think it though enough to put in the special exception requirement. Is this something that we can put into the subdivision regulations through a public hearing where this board has the power to look at reason suggestions and grant waivers. Chairman Morin felt this might it be impractical to kick it to the zoning board of adjustment.

Steve Najjar said that he is sympathetic to the concern, but the bar should be set at a higher level. Chairman Morin felt that his thought is there are probably significant requests that would have to have a variance. Mr. Najjar stated that he would like to move forward, monitor and see if there are problems. If there are problems bring it back for correction next year.

Mike Melcher stated that he thinks the article has good point but is concerned about a driveway issue. Mr. Najjar responded that in that scenario it is ground disturbing. The key point is that you are not tearing up the ground, leave native vegetation to keep the good root base.

Craig Francisco stated that he felt this does belong in the zoning and not in the subdivision regulations. He likes this right where it is. Most towns have it worded this very similar way. He is happy with the way it is written.

Tom Clow said that like a previous article, you have put all the cards on the table and if there are a lot of issues it could be fixed next year. Chairman Morin stated that he has a hard time supporting or recommending something that has a built in flaw that we know about. In general he supports this.

Frank Bolton moved to recommend Amendment No. 5, George Malette seconded the motion, all in favor.

Amendment No. 6 – No action is necessary the action was taken at the December 28, 2006 meeting.

Amendment No. 7 – No action is necessary, the action was taken at the December 28, 2006 meeting.

Amendment No. 8:

To amend the Town of Weare Zoning Map by modifying the zoning of 7.5+/- acres, Tax Map 404 Lot 171; and 57.5 +/- acres, Map 407 Lot 39, said parcels being located on Buckley Road, to change from Rural Agricultural (RA) to Residential (R). (By Petition)

This is a petition article from the owners, Michael and Kathi Melcher, requesting the zoning of their parcels located on Buckley Road from RA (rural agricultural) to R (residential).

Mike and Kathi Melcher were present. They are requesting that the land be changed from RA to R some of the reason they would like to see this considered. The proximity to the center of Weare is 2.3 miles which are where the schools, police and fire are located. Second, it is surrounded by other lots zoned residential. Mrs. Melcher showed the board a copy of the tax map. The land highlighted is in the residential land and the circled lots are their lots. They are asking to be changed and there were a couple members that wanted to do a site walk. When they were looking and reviewing the master plan of the Town a couple of things they noticed, land would be zoned by the soils type, which this is not the soil type that is for prime wetlands soils.

Board members: Tom Clow stated that he up and asked for clarification on this.

Public members: Steve Najjar showed the course filter analysis from NH Fish and Game and he pointed over to the prime habitat of significance and the two significant wetlands. That is in an area that has a few different features and questions the benefit for having a higher density. It seems like there is some potential habitat and wetlands there. He questions the benefit and encouraged the board to not recommend this.

Mrs. Melcher stated that first of all there is a road that separates the areas. At the other end they are looking at the condo campground. If this was changed to residential in the future it would be set up as a cluster because the wetlands are contained in the lower part of Buckley Road that wetlands area could be left as an open space easement to the Town. Mr. Melcher added that the area in the back is sloped and it where the wildlife area and the wetlands would also stay. The other alternative, if they sold the land to someone who was to develop that and went for 5 large lots to them it would not be as a good of a use of the land as a cluster type arrange might be. The land as it is right now, if someone buys it would be 5 - 10 acre lots, those lots would be owned by individuals, which would leave no open space or green space. Neal Kurk asked on each of the parcel, how much of the land is wetlands on each one. The response was that on the 54 acre parcel it contains about 4 acres. In the back of the property it is a steep ridge with a little bit of wetlands containing 3 acres. The small pieces are about 4 acres of wetlands. Mrs. Melcher stated that it is relative close to town given the size of Weare. If this were ever developed and as far as using town services it is close. The lot sizes in the area are small lots. George Malette stated that the town has an open space plan and the Melcher lots are actually in there, part of the north south corridor, the strength and the weaknesses sets a list of properties they would like protection but there is no real written way of doing it.

Steve Najjar commented that an open space plan should be viewed as a regulatory enforcement. The Melcher's shouldn't have to worry about their lands as it is a good piece to protect. The question would be, what is the benefit to the Town to make this change. No one is trying to force the protection and they have the right to exercise their right.

Mrs. Melcher stated that she is a little unsure with the map that Steve Najjar brought up, what relevance having a town forest across the road that is relevant to that zoning change. To say there is conservation land here and you should do this there it is all over town. As far as the wildlife corridor, changing the zoning of the land does not mean that anyone will immediately be going to go out and destroy any wildlife habitat. The property is not posted at the present time.

Chairman Morin then closed the public portion of this hearing.

Tom Clow stated that the issue of impact can be looked at a couple of different ways. Driving up there and seeing the development; the campground; the development along the road he would tend to support this. The other reason is that if Amendment No. 1 passed the development of this land is not going to be that great. If it is Residential and take out the wetlands the difference would be about three lots possibly. The difference is such a small one. It would also be coming back to the board for approval for a cluster. He felt the area is almost the same regardless of the zone.

Neal Kurk stated that he went out to look at the land and also looked at the Colby Road property and came away with a different opinion. The Colby Road one was totally surrounded by development. The property off Buckley Road is totally different. It is not surrounded by development it abuts a campground and there is significant open land that abuts the other property. This parcel is very different it stands along as part of the RA district. If the only criteria is that one of the neighboring properties is zoned the same, there would be no reasons to have different zones. He felt we should keep the zone line. Under Amendment No. 1 (article 2) they could get 11 but his figuring is not the same as Mr. Clows. The issue for this board is, is this a proper parcel to be rezoned.

George Malette stated that he feels the opposite and doesn't see the reason to deny it. Mr. Clow clarified that the difference of the calculations with the density bonus, then taking out the wetlands and the area for road construction up with 45-47 acres, then divided it by 3 acres to get his lots.

Chairman Morin stated that his point of view comes down on this is that it is on the open space plan and there are some large properties and there are also some surrounding properties in the residential. He stated that he would like to confess that in light of the changes that are being made to the RA zone he is sympathetic to the petitioner. He felt the case could go either way and he is sympathetic to the petitioner on this.

Frank Bolton stated that he wanted some clarification that the campground will never be developed and the Town forest will not be developed as well so both of those parcels will

really never be developed. He also felt that if we took all the property 2.3 miles and make a circle, there would be a lot of parcels that could make the same argument.

Neal Kurk made a motion to not recommend amendment no. 8, Frank Bolton seconded the motion. Vote: 2 in favor (Kurk and Bolton) and 3 opposed (Clow, Malette and Morin). Therefore the motion fails. Tom Clow moved to recommend amendment no. 8, George Malette seconded the motion. Vote: 3 in favor (Clow, Malette and Morin) and 2 opposed (Kurk and Bolton).

Amendment No. 9 – No action is necessary, the action was taken at the December 28, 2006 meeting.

Frank Bolton stated that he will be removing himself from the board as he is the lead signer for the next amendment. Neal Kurk also removed himself from the board. Chairman Morin appointed Craig Francisco to sit in place of Frank Bolton for the next amendment.

Amendment No. 10:

The undersigned, each of whom is a registered voter in Weare, petition the Weare Planning Board to place the following article on the warrant for the 2007 town meeting:

In order to preserve open space and our rural character, as well as reduce property taxes, shall the Town vote to amend its zoning ordinance (a) to increase the minimum lot size in the Rural/Agricultural District to 5 acres and the minimum frontage requirement to 250 feet, while (b) providing a 10% density bonus for cluster developments, as follows:

(1) Amend Article 14:

(a) Amend section 14.1 to read: “Lot Size Regulations: Land on Class V streets with gravel surface which are maintained by the Town may be subdivided with a minimum lot size of 10 acres. Land on Class V streets with a paved surface shall follow the lot size table in section 14.2, except land in the Rural/Agricultural (RA) District which shall be governed by section 14.3.”

(b) Amend the first sentence in section 14.2 to read: “This section 14.2 shall apply (a) to any use in the Residential (R) District and (b) to any use involving housing (but excluding hotels and other housing for transients) in the Commercial (C) District and in the Industrial (I) District.

(c) Add section 14.3:

“14.3 This section applies to the Rural/Agricultural (RA) District.

“14.3.1 In the Rural/Agricultural (RA) District, the minimum lot size shall be 217, 800 square feet (5 acres).

“14.3.2 Where condominiums, duplex or multi-family housing is proposed in the Rural/Agricultural (RA) District, the requirements of this section 14.3 shall apply for each dwelling unit. For the purposes of this section, a dwelling accessory attached apartment (in-law apartment) shall not be considered a separate dwelling unit.

“14.3.3 For purposes of calculating the maximum number of dwelling units in a conventional or cluster development in the Rural/Agricultural (RA) District, the entire area used to calculate size must be non-wetlands soils.

“14.3.4 Where a cluster development is proposed in the Rural/Agricultural (RA) District, a yield plan shall be presented to demonstrate the maximum number of conventional lots achievable, which shall be increased by 10% (rounded to the nearest lower whole number) and shall then be the number of cluster dwelling units allowed.

(2) Amend section 18.2.1 by replacing the first three sentences with the following:  
“Frontage: All lots less than 10 acres in the Rural/Agricultural (RA) District must have a minimum of 250 feet of frontage, and all lots less than 10 acres in the Residential (R) District must have a minimum of 200 feet of frontage. All lots of 10 acre or more must have a minimum of 50 feet of frontage on a paved Town road or, if on a gravel road, 250 feet of frontage if in the Rural/Agricultural (RA) District or 200 feet of frontage if in the Residential (R) District. Where the frontage of a proposed lot can be measured on paved and gravel road surfaces, the paved surface frontage must be at least 250 feet if in the Rural/Agricultural (RA) District or 200 feet if in the Residential (R) District, and the driveway entrance must be on the paved surface in order to qualify for the minimum lot size as defined in Article 14.

(3) Amend Article 27.3.3 by adding the following sentence: “A 10% density bonus will be allowed for cluster developments in the Rural/Agricultural (RA) District, as set forth in Article 14.3.4.”

(4) Amend section 30.4.1 by adding a new sentence: “This doubling shall not apply to the minimum lot size requirement in section 14.3.”

(5) Amend section 30.4.3 by replacing it with the following: “All other setback and distance requirements shall be the same as those in the Rural/Agricultural District, except that the frontage requirements in section 18.2.1 as they apply to the Rural Conservation Overlay District shall be a minimum of 200 feet in each instance in that section where there appears a minimum of 250 feet.”

(6) It is the intent of this warrant article to make certain changes to the Rural/Agricultural (RA) District but to make no changes to the Rural Conservation Overlay District, and this warrant article shall be so interpreted.

(7) If any portion of this warrant article be determined to be invalid or otherwise unenforceable, the other portions shall remain in effect, and for this purpose the provisions of this warrant article are severable.  
(By Petition)

Frank Bolton stated that he moved to hold off the vote on this to see the outcome of the first article. He is happy that with the support of the first article and is not asking for the board to support this one. This was an effort to move something forward. He would encourage the board to get the word out so that there is no competing ordinances like was previously done in previous years. He agreed it would be rather confusing. He is asking to come out with a strong statement for Amendment No. 1 (Article 2) and not this petition. He is happy the board supported Amendment No. 1 and this is no longer necessary and doesn't want to create problems.

Bruce Fillmore stated that his is the last item on the agenda tonight and he would hope that whatever mailing goes to the town but would like to suggest a town mailer and not a couple of peoples opinions.

Frank Bolton commented on Mr. Fillmore's comment about a mailer. Mr. Bolton added that certainly he has been working with it for 4 years and reserves his right as a citizen to do whatever he wants to expend, signs or a mailer.

Chairman Morin closed the public portion of this hearing.

Craig Francisco stated that a similar petition came up on another town about 5 years. He was wondering if there was a possibility of getting all the signatures rescinded. Frank Bolton stated that off the top of his head he didn't think it was possible. Tom Clow stated we obviously don't want to recommend it, but in the mailer there should be something that gives a reason for that for clarity, there is no need to editorialize just state the facts.

George Malette asked that the one thing we would be allowed to do is in the general information areas this one would be different, but not to urge the voters to support one.

Tom Clow made a motion to not recommend Amendment No. 10, George Malette seconded the motion. Vote: 4 in favor (Clow, Malette, Morin and Francisco).

Tom Clow commented that the simpler the better on reasoning because with two articles the voters will be getting them confused.

### **III. OTHER BUSINESS:**

REMINDER OF WORK SESSION MEETING: Naomi informed the board that the work session is next Thursday, January 25, 2007 and it will be held at the safety complex.

**IV. ADJOURNMENT:**

As there was no further business to come before the board, Tom Clow moved to adjourn at 10:00 PM, George Malette seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton  
Land Use Coordinator