

## NORTH BERWICK, ME 03906

### MINUTES OF PLANNING BOARD DECEMBER 8, 2016

**Present:** Barry Chase, Jon Morse, Anne Whitten, Matthew Qualls, David Ballard, Roger Frechette, CEO

**Absent:** Chairman Geoffrey Aleva

**Also Present:** Jonathan Hall, Charles Galemmo, Dwayne Morin, Michael Johnson, Sr., Michael Johnson, Jr.

1. Call To Order:

Barry Chase will be the Acting Chairman for tonight's meeting. He called the meeting to order at 6:30 pm.

Acting Chairman Chase stated that Vice Chairman Rick Reynolds had resigned from the Board because he moved out of town. Acting Chairman Chase welcomed the new member David Ballard to the Board.

2. Review Previous Minutes:

Anne Whitten asked that the Board hold off on approving the minutes because they were sent out late and she had not had a chance to read them yet. She asked to review them at the end of the meeting. The Board agreed.

3. Current Business:

3.1 The Planning Board will meet with the Town Selectmen to discuss any potential zoning changes for 2017 & other issues of mutual concern.

Dwayne Morin stated that David Ballard was just appointed by the Board of Selectmen on Tuesday night and is here for his first meeting tonight. Dwayne reiterated that Rick Reynolds had moved out of town so he had to resign. He stated that he has been a valued member of our community for many years.

Dwayne stated that it was requested that the Boards meet at least once every year. When the Planning Board met with the Selectmen last time, they requested that the Selectmen come to one of their meetings. He said that they are just looking to see if there is anything that they want to discuss in terms of zoning changes. In the past few years, they have made some pretty

significant zoning changes. The Selectmen have discussed 2 changes that they want to talk with the Planning Board about with the potential of a third one. They can also discuss any changes that the Planning Board might be interested in doing.

Jon Morse asked if they needed to move Matthew Quall up to a full voting member before going any further. Dwayne stated that the Selectmen did make him a full time member at Tuesday night's meeting so he is all set.

Acting Chairman Chase moved David Ballard up to a full voting member for tonight's meeting.

Dwayne stated that the first proposed zoning change was brought to the Selectmen by the Agricultural and Conservation Commission. The proposal is to allow for domesticated chickens in every zone within the town. They are currently only allowed in Farm and Forest. This would only be for domesticated chickens and not roosters or any other fowl. The idea is to allow people to have their own eggs and for food sustenance. The Agricultural and Conservation Commission is recommending no more than 6 chickens. They have also listed a lot of other things such as the chickens would need to be in a fenced in yard and the manure has to be taken care of. We want to make sure that the neighbors are protected and everybody is happy with it.

Dwayne stated that the Board of Selectmen voted unanimously to bring it before the Planning Board so they can review and make comments. Acting Chairman Chase asked if it was just going to be allowed with a permit or would it be just CU. Charles Galemmo stated that it is meant to be without a permit as long as they meet the criteria that is established. Matthew Qualls asked if they would have to add an entry in the Land Use Tables and Dwayne stated that they would need to do this. Dwayne said that we would also need to change a couple of definitions and add a definition for what domesticated chickens include. Jon Morse asked who would be enforcing it. Dwayne said that it will be up to the Code Enforcement Officer. Anne Whitten asked why they are only allowing up to 6 chickens in the Farm and Forest zone. Dwayne said that it is already allowed in Farm and Forest and this is only meant for all the other zones. Anne Whitten said that it states in the memo from Dwayne that it is to allow property owners in all zones to have up to 6. Matthew Qualls stated that there is another paragraph in the proposal itself that says that Farm and Forest is excluded from this change. Charles Galemmo said that the proposal was given to them by the Agricultural and Conservation Commission and it is just a starting point. Dwayne stated that there are some things in their proposal that he is not in favor of, such as some of the wording. They use words like perceptible and you can't have words like that because what is perceptible to one person may not be to another.

David Ballard asked how this proposal came about. Charles Galemmo stated that we have this Commission that looks at a lot of these things and determines if it is something that will benefit the community. He stated that he personally has no problem with the aspect of the proposal but they definitely need to go through it and clean it up.

Anne Whitten asked how that would work in her zone which is right by the water. Will people allow chickens to be near the water? Michael Johnson, Sr. said that cats and dogs are allowed to be near the water so he doesn't see a problem with chickens either. There are also ducks and geese around. Matthew Qualls said that he likes the proposal because it will help people of our community to get closer to sustaining themselves with their own food.

Jon Morse said that his concern is people not cleaning up after the chickens and making the neighbors unhappy. He said that the CEO will have to go tell them to clean it up and then have to go back the next day and check to make sure that it was done. It seems like a waste of time. Dwayne said that he appreciates the concern that Jon has for the job that the CEO has to do but our Zoning Ordinance book is very thick and that is what he does on a daily basis. He has to enforce every one of those Ordinances. Dwayne stated that the CEO is always doing some sort of enforcement action because someone is violating the Ordinance.

Acting Chairman Chase said that a lot of this proposal would need to be worked through. Dwayne stated that the idea was to basically allow people to have domesticated chickens. There has to be some rules to allow that to happen. They can't just be free range especially in the downtown area. There has to be some way that they keep them fenced in and protected. The manure cannot be built up so that it becomes a nuisance to abutting neighbors. Matthew Qualls stated that there is a big interest in people wanting to do farm to table. If we get on top of some of these things and come up with some good rules to follow, it would be a good thing.

Jon Morse stated that it doesn't matter what the lot size is for them to have 6 chickens. He wondered if they have over 40,000 sf if they can have extra. He asked if a person has 45,000 sf, could they have 12 chickens. Dwayne said that they could not. They would need an additional 40,000 sf. They would need at least 2 acres to have 12 chickens. Charles Galemme stated that ultimately it will be how the Planning Board decides to write it. Dwayne said that these figures were not set in stone. They are just a starting point for discussion. Jonathan Hall said that he believes that there is a lot of interest in town.

Anne Whitten asked what the Commission's thoughts were as to why the chicken pens can just be located in the rear yard. Dwayne believes it is so the chickens will not go into the road. Anne Whitten said that they need to be fenced in all the time anyway so why would it have to be limited to the rear of the property. Michael Johnson, Jr. stated that this is a pretty standard document that the Commission got on line. Dwayne stated that they used Portland and some of the other cities around to develop this. When we start working on it more closely we will be making it fit into our Ordinance.

Charles Galemme stated that they could probably invite some of the Commission members to a meeting and discuss it with them. Acting Chairman Chase said that would be a good idea. Dwayne stated that he and Roger can also work on it some more before the Planning Board meets to talk about it again.

Dwayne stated that the other change is concerning Category 3 surveys. Currently when you get a building permit in our community, at the time of footings you are required to present a Category 3 survey to make sure that the house will be in compliance with our Zoning Ordinance. This was put into our Zoning Ordinance back in the early 90's. The idea being that our CEO is not a surveyor and to make sure that the house will not be in violation of our Ordinance. For many years, there really hasn't been too many issues. There may have been some house that was misplaced but we were able to fix them so they could be in compliance. Dwayne stated that the CEO is getting steadily busier. When you look at our Ordinance, it currently states, "No construction shall be placed upon the footing until the footing has been inspected. A Category 3 survey is required at the time of footing." There is nothing that says that they have to actually give it to us at footing. They just need to give it to us before Certificate of Occupancy. That is the interpretation by our Attorney. Our understanding was always that we could stop them from doing any more construction until they supplied it to us but the Attorney says that that is not what our Ordinance says. We can hold Certificate of Occupancy until they provide it.

Dwayne stated that in the past 2 months, we have had 2 house in violation. One of them had to be torn down and one of them had to be moved. We would like to see something that would require that they would have to present the Category 3 survey at the time of footing. Dwayne said that they are also cognizant that, as contractors, we don't want to be the cog in the wheel as people are building their house. We are trying to figure out a way where we can do it so it serves a purpose so the house will be in the right place. They thought of a few ideas. One of them is issuing a foundation permit and then issuing the building permit afterwards. Dwayne said that the cement contractor pours the fitting and then wants to go back the next day and pour the walls. If you put footings down and have to wait until the surveyor is done and get his plan, this will mess things up. He stated that they have talked to surveyors and asked them how difficult it is to get the plans. The surveyors have said that it is not a big deal at all as long as they are called. The plans can be developed within a day. On the surveyor side, they have not found any concerns. We just want to make sure that the house is built at the right place. Unfortunately, Dwayne said that what they have been seeing for many years, is that if the setback is 100 feet, or 75 feet or 50 feet, they build right on the line. They don't take into consideration for any overhangs, stoops, decks or the possibility of a garage in the future.

Acting Chairman Chase asked about the 2 homes that had to be torn down or moved. He wondered if they just didn't know where their property line was. Dwayne said that both of those had a complete survey of the property and they still messed up. Dwayne stated that a Category 3 survey is \$300. It is cheap insurance to make sure that going forward nothing else is going to happen. It is also insurance for the person buying the home so that they make sure that they are buying a home that is in compliance. Dwayne stated that these 2 homes may have been a fluke. He said that in the 20 years that he has been here, he has not seen this happen. What they are seeing more and more, is that contractors are not supplying us the Category 3 Survey. Dwayne said that they have changed the look of the building permits. They have put all of the inspections in a row at the top of the page. It is the 2<sup>nd</sup> inspection listed and we have had more success with them providing the survey.

Jon Morse stated that 99% of the towns in this area with the exception of Lebanon and North Berwick do have a foundation inspection. He said that a foundation inspection to him is when the forms are stood, everything is ready, concrete trucks are on the way, and the CEO comes and tells them it is okay to pour it. Dwayne asked how they would know that it is okay to pour. Mr. Morse said that this is something they need to discuss. He doesn't feel that we penalize the contractor by asking for this survey at footing. He thinks that they need to ask for this survey right before the walls are poured. The day the footings are poured, 99% of the time you can go back the next day and do the walls. He said that the next day they go back and stand the forms and they have to call for an inspection. They come and look at the forms and look at what is in the forms and they approve the pour. At that time, there should be a Category 3 survey. Dwayne said that he agrees with this but the problem is that contractors are not doing this. They are saying that they think they are right and they will just supply it to the town later on because our Ordinance doesn't say that you have to supply it at that time. Acting Chairman Chase said that there should be a checklist for the CEO. When he goes out to inspect the forms he needs to tell them that they can't go any further unless he has the survey. Dwayne said that the only way that we can tell them this is if our Ordinance states that.

Jon Morse asked when the first inspection was required in North Berwick. Roger Frechette said that it is at the footings. Dwayne said that it is usually the general contractor that calls to have them come and do the inspection. Roger said that they weren't doing it when he first got here but when he changed the rotation on how you get inspections, now we are having the calls to have them done.

Acting Chairman Chase stated that when someone comes in for their building permit, rather than having 2 separate applications, you have one building permit. The CEO would give them a permit for the foundation and tell them that when they come back with the Category 3 survey, they will get the building permit. This way they could at least get in the foundation and doesn't slow any of that down. Dwayne said that this is one of the things that they were thinking of doing. Jonathan Hall stated that the idea was not to incur huge costs so what would the fee be for having 2 permits. Acting Chairman Chase stated that it is really still just the one permit but in 2 stages. Dwayne said that they are not trying to add cost so they can work it out to do it for the same price. Roger stated that they can have it all on one permit but have it in different stages.

Dwayne stated that the other proposal that he wanted to bring up is more of a housekeeping issue. He said that it hasn't been a problem but they are just looking down the line. When people apply before the Planning Board, they have to bring a certain number of plans which are specified in our Ordinance. They would like to add a component that says that they also submit a digital copy. For the most part, everybody that comes in, we have been asking for a digital copy and they have been supplying us with one. However, it would be a good idea to add to the Ordinance that as part of their submission they include a digital copy. Right now they bring us like 10 big copies and 10 little copies and we don't need that many. Dwayne stated that it is better if Roger could send it to the Board members prior to the meeting for them to review prior

to the meeting. We would also only need a couple of copies of the plan. If we need more copies we can also make copies here. This would be mostly for subdivisions. If somebody is just coming in for a Conditional Use because he is adding something, he is not necessarily doing plans on the computer. Most of their time they are just rough sketches. We should definitely get it for the subdivisions and large commercial projects.

Acting Chairman Chase stated that the Planning Board had really not talked about anything specifically for changes.

Matthew Qualls stated that since they met with the Selectmen last year, they have had only 2 times where they have had a lot of people at the meetings. One of the times was when we were discussing the Trailer Park and a lot of people showed up to voice their concerns. The other meeting was when we were discussing the medical marijuana. He asked the Selectmen if they had had any meetings where there was public that voiced any concerns about a situation. The Selectmen stated that they had quite a few people when they were discussing the Stub Marsh Road situation. Dwayne stated that it really depends on what is on the Agenda.

Dwayne stated that they will probably have people at meetings when they discuss the issues regarding the legalization of recreational marijuana. Dwayne stated that a lot of towns are starting to put a lot of moratoriums in. He believes that it is a waste of time, space and money because by the time the recount is done which will probably be by the end of December or mid-January. He believes that the Secretary of State will certify it. The Governor will certify it 30 days after the Secretary of State certifies it which will bring us into February. It then goes into rule making and that will take up to 9 months. During the rule making process, they will let us know as towns, what we can regulate. Dwayne stated that the law basically talks about the sale of marijuana but it doesn't allow us to regulate the growth of the marijuana. The law will allow towns to regulate smoking rooms/clubs and retail stores. One of the things that it doesn't really talk about is the edible market. He stated that we will have to eventually do something with our Ordinance but right now we don't even know what we can regulate yet. Why put a moratorium if you don't even know what you can regulate yet. Dwayne stated that they cannot regulate the use of it in your own home and we may not be able to regulate the growing facilities.

Dwayne stated that we currently have growth facilities for medical marijuana but the State of Maine will see some big commercial growth facilities. He stated that big tobacco is behind marijuana and they are in Maine scouting out areas for some facilities. Charles Galemno stated that it would be a good idea to survey the town and see where they stand on some of these issues.

David Ballard asked what the impact was on the police. Would it still be considered an OUI if people are driving after smoking. Dwayne said that the biggest issue regarding the police is that there is no standard for them to follow. It is observation only.

Jonathan Hall asked how the trailer park development was coming along. Dwayne said that we just received their DEP permits so they just received DEP for storm water. He said that they are probably a couple of months out before they come back to the Planning Board. Dwayne stated that the Planning Board will also be seeing the second phase of the Bodwell project on December 22<sup>nd</sup>. That is the 6 units across from Hannaford that was built this year. They are adding another 6 unit building. Aroma Joe's will also be starting within the next couple of weeks.

### 3.2 Other Business:

Jon Morse asked Roger if he had checked in with the real estate company in town that was supposed to have the parking area paved by the end of October. Jon had mentioned it at the last meeting. Roger stated that he didn't remember about the conversation. He will check into it now.

### 2. Review Previous Minutes:

Acting Chairman Chase asked the Board if they wanted to table the minutes until the next meeting so they have a chance to review them. They agreed.

Anne Whitten motioned to table the minutes of October 27, 2016 until our next meeting. Matthew Qualls seconded the motion. VOTE: 5-0

Acting Chairman Chase stated that they had to appoint a new Vice Chairman.

Matthew Qualls motioned to have Anne Whitten as the Vice Chairman. Barry Chase seconded the motion. VOTE: 4-0 Abstain: 1

### 4. Adjournment:

Anne Whitten motioned to adjourn the meeting at 7:40 pm. Jon Morse seconded the motion. VOTE: 5-0

Roger Frechette  
Planning Coordinator

Respectively submitted,  
Susan Niehoff, Stenographer

Chairman Geoffrey Aleva

Barry Chase

Jon Morse

Anne Whitten

Matthew Qualls

David Ballard