

**Waterboro Board of Selectmen Meeting
January 26, 2016 Meeting Minutes**

PRESENT: Chairman Abbott, Selectmen Gale, Girard, Littlefield & Woodsome, Town Administrator Gary Lamb, Planning Board members Kurt Clason & Katie Mann, Roger Lauzier, Brigit McCallum, Bryan Carpenter, Norman Carpenter, John Ellingwood, Zoning Board of Appeals members Tim Neill & David Barker, Administrative Assistant to Code Enforcement and Planning Office Tammy Bellman, Code Enforcement Officer Glenn Charette, Public Works Director Doug Foglio, Sr., Administrative Assistant Christina Silberman & IT Manager David Lowe.

PLEDGE OF ALLEGIANCE: Chairman Abbott opened the meeting with the Pledge of Allegiance at 6:00 pm.

PUBLIC HEARING: Chairman Abbott opened the public hearing to receive comment regarding a proposed amendment to the Zoning Ordinance, Article 2, Section 2.08, Size Reductions or Increases at 6:01 pm. He provided some background information and invited Planning Board Chairman Kurt Clason to explain the proposed amendment.

Mr. Clason explained that this is an ongoing issue that was brought up by the Town Attorney. Under the current ordinance, the Planning Board is given the authority to reduce setbacks for nonconforming lots of record. This is directly against Maine State law which dictates only the Zoning Board of Appeals (ZBA) has the authority to reduce setbacks. The proposed amendment to remove section 2.08 will effectively move the authority to grant variances from the Planning Board to the ZBA. The Planning Board looked at creating another version for nonconforming lots but that gets really complicated. The Planning Board has held two public hearings and no selectmen came. They have submitted other renditions to the Selectmen and this is their latest one. Mr. Clason said that the Planning Board is not trying to stop people with nonconforming lots from building, they just want to move the authority to the correct board.

Selectman Littlefield said he spoke previously with Public Works Director Doug Foglio, Sr. about this and he asked Mr. Foglio to share his concerns. Mr. Foglio said that in 1975 the Town began working on a zoning ordinance. The first attempts failed because there was no mechanism in place to recognize lots of record. The Zoning Ordinance was designed to be protective, not restrictive. They wished to allow the Planning Board to set conditional uses for undersized lots of record so that on the date of enactment of the ordinance they would still be considered buildable lots. We have been told that if section 2.08 is challenged, it could be declared illegal. In 38 years it has not been challenged. If section 2.08 is removed from the Zoning Ordinance, a lot of these lots of record will be deemed unbuildable. Mr. Foglio urged the Board not to pass this amendment and recommended it be put to the voters if the Selectmen want it. This is a major change. The Town Attorney drafted a revision to section 2.08 that would be legal in her opinion but it does not appear here. If you are going to do away with this, you need to do something to replace it. What will you do about the lots that people have been paying taxes on and can't build on if this passes? There should be a change that respects the rights of people that have been paying taxes.

David Barker of the ZBA said State law says that any municipality that creates and adopts a zoning ordinance must have a ZBA to deal with all variances. He feels that section 2.08 is illegal. Article 3, section 3 allows a grandfather of non-conforming lots with structures. Selectman Woodsome said that Mr. Foglio's concern is with the lots that do not have structures. Mr. Barker said he wishes to abide by the State law to protect the town.

Code Enforcement Officer Glenn Charette explained how he currently handles building requests for non-conforming lots. He recommends that section 2.08 be eliminated from the Zoning Ordinance.

Chairman Abbott asked what the cost is today to have an audience with the Planning Board. Administrative Assistant to Code Enforcement and Planning Office Tammy Bellman responded that the cost is \$100 for the Planning Board. The cost is \$330 to go before the ZBA. Advertising fees are additional for both boards. Chairman Abbott said this has never been challenged but there is a legal dilemma here. A person could obtain a variance through the ZBA if they can prove a hardship, but there is no guarantee with that. Chairman Abbott noted that the Town Attorney proposed something that she thinks will satisfy everyone's concerns. He is disappointed that is not being proposed here.

Tim Neill of the ZBA said he served on the Planning Board when the Town Attorney brought this to their attention as an action item that should be addressed.

Mr. Charrette shared a case the Planning Board had on Connolly Point where the Planning Board denied their request. The people chose not to go to the ZBA. Mr. Charette feels that had they gone to the ZBA it may have met the hardship requirement.

Mr. Foglio said that any lot less than 10,000 square feet has a difficult time getting anything from Dept. of Human Services unless it has public water. Mr. Foglio said it can be very difficult to prove a hardship. There have been cases in Lake Arrowhead where the State will allow building within 50' of the high water mark but the Zoning Ordinance says it must be 100'. The Planning Board can go by the State requirements when they are less than restrictive but the ZBA can't. Other instances of nonconforming lots were discussed.

Roger Lauzier said that he served previously on the ZBA. After sitting on the Board for about 1 ½ years, he felt that he was not qualified because he did not know enough about land use and ordinances to be able to make such important decisions. This is why he did not seek another term. He asked if the ZBA is qualified to make these decisions. Chairman Abbott said we have citizen boards and there is no criteria that members be engineers, certified contractors or anything. Any technical questions can be answered by the Town Attorney. Selectman Gale pointed out that a jury can put a person in prison and he asked what sort of training they have.

Selectman Littlefield asked if Southern Maine Planning & Development Commission (SMPDC) has given input on this. Mr. Clason said that Lee Jay Feldman of SMPDC, who provides Waterboro's Town Planning service, has been involved with this and he is in favor of eliminating section 2.08. The revision drafted by the Town Attorney that was not forwarded granted a reduction in setbacks. The definition by the State is that any change in dimensional requirements is a variance and variances must be handled by the ZBA.

Selectman Woodsome asked where other provisions of 2.08 will be covered in the Zoning Ordinance. Mr. Clason said the body of 2.08 is already covered in other parts of the

Ordinance. Selectman Woodsome suggested changing the reference to “Planning Board” in section 2.08 to “ZBA”. Mr. Clason said that would do it.

Chairman Abbott said the issue tonight is to remove 2.08 or not. There was a proposal from the Town Attorney previously to amend the 2.08 that would accommodate the substandard lots of record by setting setbacks for those lots.

Mr. Foglio said that Mr. Feldman told him a couple of months ago that he had a sliding scale proposal to amend 2.08 that he would present to the Planning Board but we do not see that here. He asked that the Board not remove section 2.08 and have another public hearing to look at the Town Attorney’s proposal and Mr. Feldman’s proposal. Mr. Foglio said that it is time to take a hard look at the entire Zoning Ordinance.

Chairman Abbott closed the public hearing at 6:55 pm.

Discuss/vote to approve an amendment to the Zoning Ordinance, Article 2, Section 2.08 – Size Reductions or Increases: Selectman Girard thanked the Planning Board for their due diligence and said she is not in favor of eliminating 2.08. She would like to take another look at the Town Attorney’s proposal in a timely fashion. Selectman Girard moved to postpone action on this until the next Selectmen’s meeting and get the consideration of the Town Attorney back before us and get something in writing from SMPDC and take another look at it, seconded by Selectman Littlefield, voted and passed, **5 yeas**.

ANNOUNCEMENTS: None.

ADDITIONS OR DELETIONS TO AGENDA: None.

APPOINTMENTS: None.

HEARING OF DELEGATION: Mr. Foglio said that he is concerned that the ice derby is still scheduled and the ice is not thick enough. He asked what the town can do to prohibit people from going on the ice when it is unsafe. Chairman Abbott asked Mr. Lamb to meet with the Fire Chief, the fishing derby people and Fish & Wildlife Officers to discuss this.

CORRESPONDENCE: Chairman Abbott reviewed the following correspondence:

- a. Treasurer’s reports
- b. Senator Woodsome’s newsletter

REPORTS & STAFF INITIATIVES:

a. Selectmen’s reports: Selectman Woodsome said he is attending the Budget Committee meetings as often as he can.

Selectman Girard reported that she attended the 12 Town Group meeting last week. They reviewed the results of the broadband survey. There are many people still using dial up service. People are using the internet for informational and educational purposes. People are interested in increasing the internet speed and only 2 said they were not interested in paying for the service. The 12 Town Group has some money and their next step is to engage SMPDC to combine all of the towns’ surveys together for municipalities to look at where we are and then develop an action plan. Selectman Girard attended the Road

Review Committee meeting last week. They are working on plans for next year for CIP. They discussed a problem with Holmes Road. The town has been maintaining/plowing this and we recently learned that the town may not own the road. Charlie Brown from Sebago Technics is meeting with the Road Review Committee tomorrow to discuss this. The York County Budget Committee Caucus is coming up. Selectman Girard is resigning her position on the Budget Committee because she will not be running for Selectman again so there will be an opening for an elected official on the Budget Committee.

Selectman Gale will attend the Library Trustees meeting on Thursday.

Chairman Abbott reported that he has not been able to make the EcoMaine meetings and he would like to see if someone else is interested in taking his seat. Mr. Lamb said he will try to attend when Chairman Abbott is unable to.

Selectman Girard moved to take new business item a out of order and hear it now, seconded by Selectmen Littlefield, voted and passed, **5 years. Discuss/vote to schedule a public hearing to consider approval of a new State Malt & Vinous Liquor License for Flippin' Good at 236 Main St.:** Mr. Carpenter talked about the Flippin' Good restaurant that will be opening soon next to Aroma Joe's. A public hearing was scheduled for Feb. 9th with mutual agreement of the Board of Selectmen.

b. Town Administrator Gary Lamb's report: Mr. Lamb reported on the following:

- A total of 99 foreclosure notices were mailed out last week. If you received such a notice, please come in and talk to me about what you owe. Such notices tell the homeowner they owe a full three years in back taxes. If you cannot pay off the entire three year amount, at least make full payment on the oldest bill and that will buy you another year before you get another foreclosure notice. If you let your property go to the State imposed foreclosure deadline of February 19, 2016, then the town will automatically own your property on Feb 20th. After Feb 20th, you can regain title to your property but you must pay all three years back taxes and any other associated fees all at once.
- The Public Safety Committee and Town Administrator are both recommending that the Selectmen and Annual Town Meeting consider adding a second deputy to the FY 16/17 budget. Sheriff Bill King has offered to come and talk with the Budget Committee about police services. I held off accepting his invitation until I knew whether or not the Selectmen wanted to have such a discussion jointly with the Budget Committee and Public Safety Committee.
- Our library basement is once again ready for public use. Pete Cote has completed a considerable overhaul of this old school space. Many thanks, mostly to Pete Cote, but also to Doug Foglio, Sr. and Glenn Charette.
- The federal mileage reimbursement rate will be 54 cents per mile as of Feb. 1st.

NEW BUSINESS:

a. Discuss/vote to schedule a public hearing to consider approval of a new State Malt & Vinous Liquor License for Flippin' Good at 236 Main St.: This item was heard prior to the Town Administrator's report.

b. Discuss/vote to schedule a Comprehensive Plan task list workshop: The Selectmen agreed to conduct a workshop on the third Tuesday of each month beginning on February 16th to work on the Comprehensive Plan task list and review town ordinances.

c. Discuss/vote to schedule an Ordinance review workshop: The Selectmen agreed to conduct a workshop on the third Tuesday of each month beginning on February 16th to work on the Comprehensive Plan task list and review town ordinances.

d. Discuss quarterly budget review: Mr. Lamb reviewed his quarterly budget report.

e. Discuss/vote to appoint two Deputy Code Enforcement Officers / Licensed Plumbing Inspectors: Selectman Littlefield moved to appoint James Allaire and Patti McKenna as Deputy Code Enforcement Officers / Licensed Plumbing Inspectors, seconded by Selectman Woodsome, voted and passed, **5 years**.

OLD BUSINESS:

a. Discuss/vote on a committee appointment: Selectman Gale moved to appoint Joel Plourde to the Zoning Board of Appeals, seconded by Selectman Littlefield, voted and passed, **5 years**.

OTHER:

a. Discuss/vote to approve the minutes of the January 12, 2016 regular meeting: Selectman Gale moved to approve the minutes of the January 12, 2016 regular meeting, seconded by Selectman Littlefield, voted and passed, **3 years, 2 abstained (Girard & Woodsome-not present)**.

PENDING DECISIONS:

a. Review Comprehensive Plan task list.

WEEK'S ACTION LIST:

- Mr. Lamb will schedule a workshop for the Board of Selectmen and Public Safety Committee at the Budget Committee meeting on February 11th focused on Waterboro's public safety needs.

DISCUSSION OF AGENDA ITEMS:

- Further discussion on Zoning Ordinance Article 2, section 2.08.
- Conduct executive sessions beginning at 5:30 pm for board/committee applicants.
- Vote on board/committee appointments.

ITEMS NEEDING SIGNATURE:

a. Minutes of the January 12, 2016 regular meeting

ADJOURN: Selectman Woodsome moved to adjourn the meeting at 7:48 pm, seconded by Selectman Gale, voted and passed, **5 years**.

APPROVED: Date: _____

