

Webster Planning Board

Minutes - Meeting of January 31, 2008

Present: Chairman Cliff Broker, selectmen member Tom Mullins; members Jere Buckley (Secretary), Richard Doucette, and Alan Hofmann; and alternates Richard Cummings, Sue Rauth, and Susan Roman. Also present: Planning and Zoning Secretary Mary Smith and resident M.J. Turcotte.

Chairman Broker convened the meeting at 7:00 p.m. Attendance was taken, with the results noted above.

The Board reviewed the draft minutes of their 17 January meeting. It was suggested that the phrase "and is a part hereof" be added at the end of the second sentence of the paragraph starting "7:10 p.m.". Upon motion made by Mr. Buckley and seconded by Mr. Doucette, the minutes were unanimously approved with that addition.

At 7:10 p.m., Chairman Broker opened the scheduled public hearing on the proposed zoning ordinance amendment dealing with the extension of the about-to-expire 4% growth control cap. Mr. Broker indicated some concern at the provision whereby any building permit waiting list is discarded at year end and the application process starts anew. This creates the prospect of a competitive rush for application slots at the first available opportunity in the new year. It was noted that Hopkinton and perhaps other towns use the same system and that there have in fact been instances of applicants standing in line at the start of the year. After some discussion, the Board decided not to change the subject provision. There was no public input. Upon motion made by Mr. Doucette and seconded by Mr. Hofmann, the Board voted unanimously to approve the proposed ordinance for inclusion on the 2008 Town Warrant list.

The Board then convened the scheduled public hearing on the petition article calling for a 2% growth cap in the Pillsbury Lake district. Board members responded favorably to a suggestion by Chairman Broker that the study group planning to consider the Town-wide 4% cap should also consider the 2% Pillsbury Lake district cap and should include a representative from that district.

The Board reviewed a "findings" document prepared by Ms. Roman for the purpose of documenting the Board's assessment of the arguments for and against the petition article, and to provide a record of the Board's deliberation on the subject as well as the legal opinions from Town Counsel. Several typographical corrections were made, and a phrase was added to document the Board's understanding that the Pillsbury Lake water supply problem is scheduled to be rectified by the end of 2008. Upon motion made by Mr. Doucette and seconded by Mr. Hofmann, the Board voted unanimously to accept the subject findings document and to include same in these minutes. It is accordingly appended hereto.

Mr. Cummings expressed some concern that the proposed growth cap could increase the likelihood of a federally mandated sewage plant requiring an expensive bond issue.

There was some discussion about the water supply limitation cited in the findings document not being applicable to lots on which a well and a septic system could legally coexist, but the number of such lots was deemed to be negligibly small.

In response to a request from resident M.J. Turcotte, the Board accepted for incorporation in the record of the public hearing a 7 December 2007 data package submitted by her in support of the 2% cap petition.

In response to the statutory requirement that petitioned warrant items include an indication of Board approval or disapproval, upon motion made by Mr. Doucette and seconded by Mr. Hofmann, the Board voted unanimously to indicate their approval of the petitioned item.

Board members were presented with a draft copy of the warrant articles to be considered by the 2008 Town Meeting. There was universal consensus that the articles as drafted were confusing and unclear, and that a substantial revision was required. It was agreed that that message should be conveyed to the Town office.

It was noted that the Selectmen's review of the warrant list in anticipation of the 2008 Town Meeting is scheduled for 12 February.

The meeting was adjourned by unanimous consent at 8:40 p.m.

The next Board meeting will be on 21 February at 7:00 p.m.

Respectfully submitted,

Jere D. Buckley, Secretary

Appendix to 31 January 2008 Planning Board Minutes

Findings re Petition for 2% Pillsbury Lake Growth Control Cap

With respect to the petitioned article to limit growth within the Pillsbury Lake Community to 2% (the "Article"), the Board makes the following findings:

- A. The Board finds that there are flaws in the Article as drafted that may, if the Article is challenged, provide arguments for legal insufficiency. Those flaws include the following:
- the failure to cite statutory authority for enacting a timing of development limitation;
 - the area comprising the 'Pillsbury Lake Community' is not defined in the article;
 - there is no settled law on the question of whether a town can impose timing of development controls within a particular zoning district or other subsection of the town;
 - there are no explicit findings *within the Article* substantiating the timing of development limit that the Article would impose.
 - the article as written lacks some definitional clarity with respect to its implementation.
- B. The Board also finds that there exists a significant infrastructure problem and limitation with respect to the community water supply to the Pillsbury Lake District. There exists a State moratorium on new connections to the District's Water Supply and it is expected that the problems giving rise to the moratorium will not be resolved until the end of calendar year 2008 and possibly as late as the first quarter of 2009. To permit growth in the Pillsbury Lake District, which is small in proportion to the total town area, at a rate that equals or exceeds the town-wide growth rate would create an unsupportable burden on the quality and quantity of the District's water resources. Town counsel, Barton L. Meyer, Esq., in his December 18, 2007 letter to the Board of Selectmen, which is incorporated in its entirety by reference in these findings, stated

"Growth within the District is a problem, given the original intent of creating a resort community of quarter-acre lots, served by a public water supply. Now, people live in the District year-round, overtaking the capacity of the land to accept wastewater disposal, and the public water supply is insufficient to allow further connections. Thus a

compelling case can be made for supporting a growth management ordinance which would limit all growth until such time as, at a minimum, the water supply can serve the needs of the individuals who will come to be located within the community. These points however do not address how the 2% was chosen. In fact a good argument could be made for prohibiting any development. But the information provided does not make that argument.”

The Board finds that factual circumstances do exist to prohibit all development until a water supply can be provided to accommodate new residents. Accordingly, the Board reasons that the factual circumstances that would support a 0% timing of development limitation can be argued as supporting a 2% limitation during such time as the water supply problem is being remedied, which is expected to occur by the end of 2008.

- C. The Board also finds that certain arguments, in addition to the factual findings in paragraph B above, combined with administratively prescribed methods of implementation of the proposed Article, all delineated below, may be supportive of the legal sufficiency of the proposed Article:

-The Board should, and hereby does state its intent, to research, develop and recommend an ordinance under NH RSA 674.22 relating to growth timing in the Pillsbury Lake District, if and to the extent legally appropriate, that would be proposed for enactment at the March, 2009 Town meeting and which, in any event, by its terms will provide for the expiration of the proposed Article (if it has been enacted by the Town).

-RSA 674.22 does not expressly restrict a town from allocating an otherwise valid town-wide development timing limitation, among districts within the town if infrastructure and other necessities for public health and safety so require;

-Deference should be given, to the extent legally possible, to the will of the town's people expressed in a petitioned warrant article;

-The petitioned Article, if passed, should be implemented as applying within the Pillsbury Lake District as that area is defined in the Town's Zoning Ordinance. Further, in implementing the proposed Article if enacted, any definitional ambiguity within the Article should be resolved in favor of the permit applicant within the bounds of the spirit and intent of the Article. Town counsel should be consulted as needed to appropriately resolve perceived ambiguities.

- D. The Planning Board finds that there are arguments both for and against the legal sufficiency of the petitioned Article as drafted and the outcome to any challenge to its legal sufficiency is uncertain.