



TOWN OF HUDSON

Planning Board



Vincent Russo, Chairman

Rick Maddox, Selectmen Liaison

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HUDSON PLANNING BOARD WORKSHOP MEETING MINUTES October 3, 2012

I. CALL TO ORDER

Chairman Russo called this Planning Board meeting to order at 7:12 p.m. on Wednesday, October 3, 2012, in the Community Development's Paul Buxton meeting room in the Hudson Town Hall basement.

II. PLEDGE OF ALLEGIANCE

Chairman Russo asked Mr. Malley to lead the assembly in pledging allegiance to the Flag of the United States of America.

III. ROLL CALL

Chairman Russo asked Mr. Malley to serve as Acting Secretary in the absence of Secretary van der Veen and to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

Present: George Hall, Tim Malley, and Vincent Russo.

Members

Absent: James Barnes (excused), Glenn Della-Monica (excused), Ed van der Veen (excused) and Richard Maddox (Selectmen's Representative, excused).

Alternates

Present: Marilyn McGrath, Jordan Ulery, and Nancy Brucker (Selectmen's Representative Alternate).

Alternates

Absent: Irene Merrill (excused).

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Staff

Present: Town Planner John Cashell.

Recorder: J. Bradford Seabury.

IV. SEATING OF ALTERNATES AND ANNOUNCEMENTS

Chairman Russo seated Selectwoman Brucker in place of the absent Selectman Maddox, Ms. McGrath in place of Mr. van der Veen, and Mr. Ulery in place of Mr. Della-Monica

V. MINUTES OF PREVIOUS MEETING(S)

09-26-12 Minutes - (10-03-12 Packet)

Chairman Russo addressed the minutes for the meetings of 09-26-12, asking if anyone were prepared to review those minutes.

Mr. Malley referenced page 6, 4th paragraph, 2nd sentence, noting that the words "that" and "omitted" were misspelled.

No other changes being brought forward, Ms. McGrath moved to approve the 09-26-12 minutes as amended; Mr. Hall seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. All members present voted in favor, and Chairman Russo declared the motion to have carried (6-0-0).

X WORKSHOP

A. Review Existing Driveway Application and Regulations (Deferred from the 09-05-12 Workshop).

Chairman Russo read aloud the published notice, as repeated above.

Town Planner Cashell noted that a letter from Atty. Buckley made a number of references, as cited in his staff report. Due to that input, he said, the Planning Board was in the right to include the Fire Department as a signatory for the driveway application, which would validate that NFPA 1141 was in compliance. Mr. Cashell said the Hudson driveway regulations were more stringent than NFPA.

Mr. Ulery commented that this last statement was contrary to what was stated in the second paragraph of the staff report. Town Planner Cashell clarified that the word "if" should be added.

Mr. Ulery said the terminology of means of access did not appear on the application, and he asked if it should. Town Planner Cashell said the Town Attorney had addressed that particular issue in his legal opinion.

Mr. Hall moved that the Planning Board adopt the Driveway Permit Application, as revised on this 3rd day of October 2012.

Mr. Malley seconded the motion.

VOTE: No further comment being brought forward, Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (6-0-0).

Mr. Hall moved that the Planning Board hold a public hearing at the November 14, 2012, meeting on the proposed amendment to HTC §193-10.C of the Planning Board's Driveway Regulations.

Ms. McGrath seconded the motion.

VOTE: No further comment being brought forward, Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (6-0-0).

B. Discussion on Electronic Message Center Signs.

Chairman Russo read aloud the published notice, as repeated above.

Town Planner Cashell said he had nothing to add to his staff report.

Mr. J. Bradford Seabury, a member of the Zoning Board of Adjustment, noted that he had not yet had an opportunity to read Town Planner Cashell's staff report, but he wished to point out, as he had before, that there was yet to be an electronic message changing sign erected in this town that was not in violation of the Zoning Ordinance at the time it was installed. He expressed a belief that something should be done about that.

Mr. Hall asked for additional information as to why Mr. Seabury felt the signs were in violation. Mr. Seabury said the latest one was erected in the R-2 zoning district, where it was not allowed, noting that the first one was erected before the ordinance was approved, adding that it had a tendency to be on when the business was closed, including holidays—and adding further that this seemed to be true of most of the signs. He said the illumination intensity of some of the signs had been questionable—adding that he was not at all sure whether the Town had the capability of measuring the intensity of the signs, and adding further that he had had a discussion with a lighting expert who had told him that the measuring provisions were absolutely crazy, as the industry did not use Nits as a standard and there was no way to measure the intensity

of a working sign. He noted that another sign had been installed with graphical illustrations, which had not been expected, but the major problem had been the intensity of the light (some of which did not get dimmed at night) and how long they remained on after the businesses closed. He then concluded by commenting that to his mind many of these signs were ineffective, because he did not feel he had time to read them—adding that he could not see how drivers going around a curve at a high rate of speed had time to read four lines of print without becoming distracted.

Ms. Maryellen Davis, 14 Nathaniel Drive, said she thought the Town had an obligation to uphold the ordinances, saying the ordinances should be enforced. As a member of the Zoning Board of Adjustment, she continued, she and the other board members worked hard to create the ordinances and expected the owners to uphold what they said they were going to do. She expressed agreement with Mr. Seabury that there were a number of signs in the town that were in violation. She said she was not advocating abolition of the ordinance but thought there should be improvements. She noted that the majority of the signs were on after the associated business had closed.

Chairman Russo said some of these issues appeared to be enforcement issues, saying the Planning Board had tried to put the ordinance together so that it would be enforceable, but some people thought the Town was at the mercy of whoever designed the signs, saying it was hard to measure the intensity. He expressed doubt that there was anything the Planning Board could do with respect to measuring the intensity of illumination, but he did not understand why enforcement of hours of operation could not be done. He said he had hoped that the Zoning Administrator or the Code Enforcement Officer could attend this meeting to give guidance for the future. He noted that there were always growing pains with a new ordinance. He concluded by noting that the ordinance had been put to review by staff, which had expressed a belief that there would be no issue. He said he was aware of several signs that had been erected in violation or operated in violation, noting that probably three of them should not have been permitted to start with.

Mr. Malley said, from an enforcement standpoint, it mostly pertained to hours of operation, noting that this was the only ordinance that required businesses to shut down something.

Ms. McGrath said the businesses shut off their lights, made sure the doors were locked and the security systems were on—she then asked how difficult it would be to turn off the signs at the same time. She said businesses seemed to lose recollection of what they had agreed to do.

Mr. Malley said what he was saying that it was from a code enforcement standpoint that this seemed to be a conflict.

Town Planner Cashell said his staff report noted that the signs were being left on throughout town after business hours, noting that it was specifically required that they be turned off. He said each applicant was required to sign off on an affidavit, as per HTC §334-64 (11), subsection c, which he then read aloud. He said this was legal language that all of the applicants signed off on, so they did know that they had to comply, but they were leaving the signs turned on at night. He noted that one also could see translucent signs being left on all night, so some people were challenging this

requirement, but they did sign off on the requirement. He said this had not been challenged, so no judge had ruled on the issue as yet.

Mr. Malley said the affidavit had been reviewed by legal counsel, so it was an enforcement issue, and he questioned why the Planning Board was talking about it.

Selectwoman Brucker said she thought it should be important if it was enforced—but if it was not really harming anything and might create issues, the Selectmen might not want to do it. She questioned if the signs were disturbing local people, saying she did not know.

Ms. Davis said there were mixed uses in the B and I areas, so it had been thought that this would be giving relief to people living in or near those areas.

Mr. Hall asked if any of the signs had been issued a notice of violation. Town Planner Cashell said one was. Mr. Hall asked about the others, saying the first step was a notice of violation. He questioned why it should get to courts, but noted that another problem was the Code Enforcement Officer did not work at night.

Mr. Ulery said there seemed to be a couple issues, with one being residents living in a commercial area, such as Lowell Road. He said perhaps the zoning where the signs were, and the corridors, should be reevaluated. He said the rights of the residents of the area needed to be balanced with the rights of the business owner, arguing that signs had a purpose beyond the hours of operation—adding that he suspected a business owner taken to court would result in a long battle. He said the present issue seemed to be enforcement and the brightness of illumination, and he questioned how brightness could be enforced if the Town did not have the capacity to measure the brightness. He then asked if any residents in the areas had complained, saying the Board needed to look at the entire regulation if no one was complaining.

Ms. McGrath said she thought the entire ordinance should be abolished, saying it had been nothing but a problem since the day it was adopted. She recalled that representatives of the sign companies had attended the workshop meetings, to make sure that the ordinance could be upheld. She said the EMC signs took away from the character of the town, and if allowed to be in existence they should at least be turned off at night, so as not to light up the sky. She said the owners' not wishing to turn off the signs spoke to their integrity. She said she had complained and had been told that signs would not be an enforcement item because the Town did not have staff to do it.

Ms. McGrath noted that one of the recent signs was approved without any determination of what zone it was in, saying this was a problem that the Board of Selectmen should address. She noted that she had heard the President talking about discrimination about people, not signs, and she thought it was ridiculous to argue that a judge would say this was discrimination. She said the latest sign owner might not have known it was in the wrong zone, but the others all knew what they were signing for.

Mr. Gary Dearborn, Highland Street, a member of the Zoning Board of Adjustment, said he had heard hours of operation bandied about. He asked what if the ordinance said all signs should be shut off at a certain time, so that people would see the signs, saying most drivers did not know what the hours of operation were.

Selectwoman Brucker said that, if this Board felt enforcement was important, she would take it to the Board of Selectmen, and the Selectmen would discuss how it could be accomplished, adding that there was a shortage of manpower in the Community Development Department—but it did not seem that the Board was ready to say that. She said she thought the hours of operation issue could be addressed in a letter to the businesses, noting that they could be fined. As far as the intensity, it sounded as though it should be okay.

Mr. J. Bradford Seabury said complaints tended to fade away, citing as an example that he and his neighbors had complained bitterly about the noise from the business behind his home. He said the business had set up a telephone line for complaints, and he and his neighbors had called many times, but the firm's engineer had twice stated at subsequent Planning Board meetings that no complaints had been received, and the complaints just faded away. He then expressed a belief that the members of the Planning Board were not aware of the complexity of the process that the Community Development Department felt it had to follow when following up complaints, involving cycles of violation notices that could continue for months. He then questioned why the Town's police officers, who patrolled all over the town at night, could not see and report lighted signs being left on, saying he believed some other towns had done similar things in the past.

Mr. Malley said he felt all ordinances should be enforced, saying there was no need in having any of them if some of them were not enforced. As for the enforcement of intensity, he said, he did not see why that was anything other than an engineering problem, and the Town could hire experts to make the measurements and get the money back in fines. If it was a staffing issue, he said, that went back to the Board of Selectmen.

Town Planner Cashell said the number one problem was that everything was spelled out and agreed to, with the Planning Board's endorsement, but the people who had the signs were not playing fairly, and they knew that, with respect to leaving them turned on at night or with full illumination. He said every EMC sign had to be equipped with an automatic control to tone down the illumination at night, but he had witnessed that no one was dimming any signs and no one was turning them off. He asked if the Town really wanted to start cracking down on these the signs, which would probably create a lot of animosity with the business leaders of the town. He expressed agreement with Ms. McGrath, saying enough was enough, and the evidence was clear that the sign-owners did not want to play by the rules that they were legally bound by. He suggested putting up a warrant article to prohibit the signs, saying the results after two years was not what people had agreed to.

Selectwoman Brucker said putting it on a warrant article would be a good thing, saying it would be expensive to enforce this.

Town Planner Cashell said trying to enforce this was almost utterly impossible.

Chairman Russo said light intensity was probably the most difficult portion to be enforced, saying he did not see too many issues other than that. When it came to something such as images, he continued, he could not see how that could be construed as being in compliance with a requirement to have only four lines of text,

saying there was absolutely no reason that images should be on the signs. As far as hours of operation, he said, he could understand that staff was stretched—but he noted that it had not been stretched that long. He said he agreed that not enough people had complained, expressing doubt that most homeowner would question something that had gone through the process, as they felt someone tasked with doing their job would have done it. He expressed agreement with Mr. Malley, saying every ordinance needed to be enforced, but this was not the Planning Board's responsibility. He said he had a real problem with people who signed agreements and then just threw them out. Otherwise, he said, he would agree with Ms. McGrath, saying “if we’re not going to enforced it, let’s get rid of it.” He said the Town could not pick and choose which ordinances it wanted to enforce.

Mr. Malley said the ordinance did not say anything about images. He asked why the Town could not have a sign coming in for application evaluated by an outside engineering firm, to make sure it had the automatic control, the required number of NITS, etc. Chairman Russo asked if Mr. Malley were suggesting to bring the signs before the Planning Board for review.

Ms. McGrath said the applicant that applied for the signs signed an affidavit saying they understood and agreed to the requirements of the sign ordinance—and in her estimation they walked out of Town Hall and threw the affidavit in the trash, as they did not believe there would be any enforcement activity. She said she was particularly disturbed that a sign was just erected with a permit in a zone where it was not allowed, which indicated that the permitting authority did not check or ignored the requirement.

Selectwoman Brucker asked if Ms. McGrath would like her to fire that individual. Ms. McGrath said she did not know, but noted that one of the Selectmen was nitpicking the department, and maybe the others should say that the department was needed, but something was wrong. She said this ordinance had been nothing but problems since it was adopted.

Mr. Hall said enforcement in this case was different, as there had been a hue and cry by the sign industry because the previous ordinance said EMC signs were not allowed, and the Chamber of Commerce had backed up the sign industry, with one of the promises being that the Board did not have to worry as they would take care that the controls were in effect. If the sign industry was not complying, he continued, this was a different situation, but the ordinance should be enforced. If the Selectmen felt it was too much of a burden, he continued, the Town should have a fee to make sure that the sign was correct, saying there were ways to enforce the ordinance without having staff in place—adding that if the Selectmen were not in favor of that he was in favor of putting forth a warrant article to prohibit EMC signs. He said staff should be able to figure out how to do this.

Selectwoman Brucker said every time hiring someone was brought up, even if it was just a consultant, there was a budget problem. Mr. Hall said he was not saying that someone should be hired; but that there should be a fee to cover the costs of a consultant to make sure that the signs were in compliance.

Chairman Russo said he recalled that that was one of the stipulations that had been talked about, but the Board had been talked out of that.

Town Planner Cashell said the Town already had an ordinance saying that, if the Town had to hire a consultant, the applicant had to pay for that, as part of the affidavit. Everyone at the table at that time, he continued, had said the only electronic message component was four lines of text, with everyone in agreement that there would not be any imagery or graphics involved, but there had subsequently been an interpretation that these things would be allowed. He said only four lines of text were allowed.

Ms. McGrath suggested that the Board have Town Planner Cashell draft a warrant article to abolish the EMC sign ordinance for discussion at the next workshop. She noted that a full Board was not present, saying they should be here to discuss it. She then made that as a motion. Mr. Hall seconded the motion.

Mr. Ulery said if it was not prohibited, it was allowed. Chairman Russo demurred, saying the Hudson Zoning Ordinance said if not there, not allowed. Mr. Ulery said he thought Mr. Malley had the right approach: if the ordinance was not enforced, it became moot. He said a sign was a structure, which modified the site plan, so if someone put in a sign it had to come before the Planning Board—adding that something had to be done about enforcement.

Town Planner Cashell said the site plan regulations were specific to commercial development, but the sign ordinance gave jurisdiction to the ZBA. If a sign was applied for and was in compliance, he said, the Zoning Department had authority to issue the permit—adding that, if the sign did not comply in all respects, it then had to go before the Zoning Board of Adjustment. He said the Planning Board only viewed the location but had no authority for the sign itself and had no statutory authority with respect to issuing building permits for signs. He then said he had discussed this with Atty. Buckley, who had said the Town could adopt an article to amend the Zoning Ordinance to bring these signs under the authority of the Planning Board.

Mr. Hall protested that this discussion was inappropriate for the voting mode the Board was in.

Mr. Malley said he would not vote in support of this motion, as he believed the Town had the tools and the ability to enforce the ordinance—and just because it had not been doing so for the past two years did not mean the ordinance should be removed, noting that sign owners had spent a lot of money. He said outside enforcement would be the solution.

Selectwoman Brucker said she took a different view on why people were not complying, saying it was not that they thought no one would catch them but it was just a business decision. She said she was in favor of keeping an ordinance, saying the businesses wanted it and she thought the Town should be business friendly—but the Town needed to tell the owners that the Town was serious about enforcement.

Ms. McGrath said the business owners, who applied for the permit and signed the affidavit saying they understood and would comply with the ordinance, either had integrity or did not. She said she understood about being business friendly, but questioned if the Town wanted to be so business friendly that they thumbed their noses at the citizens who had voted in the ordinance, based on what it said. She reiterated her belief that there should be a full discussion with all members present.

Mr. Hall noted that the motion was only to ask staff to draft a motion to discuss the proposed article at the next workshop—expressing a hope that by drafting the motion some people might take it seriously. If the Board did not get feedback from the Selectmen that something was going to change, he said, he would agree that the article should go forward.

Chairman Russo said he disagreed with Town Planner Cashell, saying he thought the signs came under several people's purview, citing HTC §275-6 M, saying signage and exterior lighting were under the Planning Board's purview, noting that the Board had just gone through a thorough review of lighting, and he did not see that this was any different. Town Planner Cashell said he could legally disagree, as it had already been rendered by Town Counsel that the sign ordinance was under the jurisdiction of the Zoning Board of Adjustment. Chairman Russo said that regulation should be removed from the regulations, then. Town Planner Cashell said the Planning Board could obtain the authority by a Town warrant article. Chairman Russo said he was just saying that the Planning Board had a right to review it. Town Planner Cashell reiterated that the permitting jurisdiction was exclusive to the Zoning Department.

VOTE: No further comment being brought forward, Chairman Russo called for a verbal vote on the motion. Mr. Hall, Ms. McGrath, and Selectwoman Brucker voted in favor; Mr. Ulery, Mr. Malley, and Mr. Russo voted in opposition. Chairman Russo then declared the motion to have failed because of the tie vote (3-3).

Mr. Ulery said there were two options: to reintroduce it at another time or to have a citizen-introduced amendment.

Ms. McGrath moved to defer further discussion on this matter to the November workshop. Mr. Ulery seconded the motion.

Ms. McGrath said she would appreciate it if the Board of Selectmen would have some discussions about this issue and bring comment back to the Planning Board.

VOTE: No further comment being brought forward, Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (6-0-0).

VI. CORRESPONDENCE

Chairman Russo note there was some correspondence regarding school impact fees.

Town Planner Cashell said the owner of the Sparkling River subdivision was requesting the Planning Board to have a hearing to consider appealing the collection of school impact fees. He noted there was a 30-day appeal period, which was long gone,

saying having this before the Board might not be in the Board's best interest or the Town's best interest.

Mr. Ulery said asking for an opinion did not say what action this Board would take, noting that it was required before going to court.

Mr. Hall said this Board did not do anything with appeals, saying he was not aware of any process for appeals, and that the only possibility was an amendment to the site plan, but he did not think this Board should take any action without first consulting with Town Counsel.

Ms. McGrath moved to defer further discussion on this matter to the next workshop meeting. Mr. Ulery seconded the motion.

Mr. Hall said he would vote in the negative, as he did not believe the Planning Board should take any action.

Ms. McGrath withdrew her motion; Mr. Ulery withdrew his second.

Mr. Ulery called for a parliamentary inquiry, saying taking no action nullified the request and placed it in abeyance until such times as the applicant made the request again and followed it through. He said the applicant deserved to know what action was being taken.

Mr. Hall said appeals went to court, not to the Planning Board.

Chairman Russo said no action was taken, but he asked Town Planner Cashell to ask Atty. Buckley to keep the Board apprised of where this went.

VII. PERFORMANCE SURETIES

No **Performance Sureties** items were addressed this evening.

VIII OLD BUSINESS/PUBLIC HEARINGS

No **Old Business/Public Hearings** items were addressed this evening.

IX NEW BUSINESS/PUBLIC HEARINGS

No **New Business** items were addressed this evening.

XI OTHER BUSINESS

Chairman Russo noted that the Board had established that it was in the purview of the Chairman to determine whether meetings would be held, and he had decided there would be no specific workshops until further notice, but workshop items would be incorporated into regular meetings.

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XII. ADJOURNMENT

All scheduled items having been addressed, Ms. McGrath moved to adjourn; Mr. Hall seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor.

Chairman Russo then declared the meeting to be adjourned at 8:50 p.m.

Date: November 1, 2012

Vincent Russo, Chairman

J. Bradford Seabury, Recorder

Tim Malley, Acting, Secretary

These minutes were accepted as amended following review at the 02-13-13 Planning Board meeting.

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**HUDSON PLANNING BOARD Workshop Meeting Minutes
October 3, 2012**

Page 12

The following changes were made to the draft copy in accordance with review comments at the Planning Board meeting of 02-13-13

Page 1, first line — the word “unanticipated” was removed, so that the phrase now reads “another sign had been installed with graphical illustrations, which had not been expected.”

The year date heading on all secondary pages was changed from 2011 to 2012.