



TOWN OF HUDSON

Planning Board



Vincent Russo, Chairman

Rick Maddox, Selectmen Liaison

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HUDSON PLANNING BOARD MEETING MINUTES January 5, 2011

I. CALL TO ORDER

Chairman Russo called this Planning Board meeting to order at 7:05 p.m. on Wednesday, January 5, 2011, in the Community Development meeting room in the Hudson Town Hall basement.

II. PLEDGE OF ALLEGIANCE

Chairman Russo asked Ms. Irene Merrill, the newly appointed alternate, to lead the assembly in pledging allegiance to the Flag of the United States of America.

III. ROLL CALL

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

Members

Present: Glen Della-Monica, Tim Malley, Vincent Russo, Ed van der Veen, Richard Maddox (Selectmen's Representative), and James Barnes (arrived at 7:34 p.m.).

Members

Absent: George Hall (excused).

Alternates

Present: Irene Merrill and Ken Massey (Selectmen's Representative Alternate).

Alternates

Absent: None. (All present.)

Staff

Present: Town Planner John Cashell.

Recorder: J. Bradford Seabury.

IV. SEATING OF ALTERNATES AND ANNOUNCEMENTS

Chairman Russo welcomed Ms. Merrill to the Planning Board and seated her in place of the absent Mr. Hall. He then announced that workshop Item B, the Prime Wetlands item, would be deferred until January 12th, as it had not been posted correctly to the public, as required by State law, but had been reposted for that date.

V. MINUTES OF PREVIOUS MEETING(S)

Chairman Russo said there were no minutes to be addressed this evening.

VI. CASES REQUESTED FOR DEFERRAL

No cases had requested deferral to this meeting date.

VII. CORRESPONDENCE

Chairman Russo stated that items of correspondence received in tonight's handouts would be taken up in conjunction with the associated matters.

VIII. PERFORMANCE SURETIES

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

IX. PUBLIC HEARINGS

A. Proposed Zoning Amendment to Amend §334-60. Sub-section "J." to Limit the Maximum Height of Freestanding Signs to 30 Feet.

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

Chairman Russo opened the public hearing at 7:07 p.m., and then read aloud the proposed change, as follows (added language shown in bold print):

§334-60.J. In zoning districts that allow freestanding signs, the maximum height of such signs shall be 30 feet. In addition to the language specific to advertising, all freestanding signs shall have the street number clearly identified. Numbers are to be four inches in height and black or white, whichever will contrast with the proposed sign colors.

Chairman Russo then called for public input and comment, in favor or opposition. No one coming forward from the public to provide input, despite two requests by the chairman for comment for or against, Chairman Russo closed the public hearing at 7:10 p.m. and asked if any members of the Board had any questions.

None being brought forward, Mr. Malley moved to approve for the 2011 Town Warrant, the proposed amendment to existing §334-60. Sub-section "J" to read (added language shown in bold print):

§334-60.J In zoning districts that allow freestanding signs, the maximum height of such signs shall be 30 feet. In addition to the language specific to advertising, all freestanding signs shall have the street number clearly identified. Numbers are to be four inches in height and black or white, whichever will contrast with the proposed sign colors.

Mr. van der Veen seconded the motion.

VOTE: Chairman Russo then called for a hand vote on the motion. All members present voted in favor except for Selectman Maddox, who voted in opposition, and Chairman Russo declared the motion to have carried (5–1).

C. Zoning Petition to Amend Article IX, Section 334-34, Definitions, to include new definitions, for “Artificial Wetlands” and “Incidental Wetlands,” and to amend the existing definition for “Wetland Buffer”.

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

Chairman Russo then read aloud the public hearing notice, as follows:

Amend Article IX, Section 334-34., Definitions, to include new definitions, for “Artificial Wetlands” and “Incidental Wetlands;” and to amend the existing definition for “Wetland Buffer.” The three amendments shall read as follows:

“Artificial Wetlands – Artificial Wetlands are all wetlands that are those wetlands or areas of poorly or very poorly drained soil created by human activity. This class of wetland includes, but is not limited to: ornamental and other ponds; ornamental streams; ornamental dry creeks; drainage ditches; drainage swales; other drainage features that are intentionally created by excavation or construction, or are created as a consequence of upstream excavation or construction.”

“Incidental Wetland” – Incidental Wetlands are all wetlands or areas of poorly or very poorly drained soil that have a surface area of five hundred (500) square feet or less.”

And by amending the definition of “Wetland Buffer” in Section 334-34, Definitions to read (added language shown in bold print and deleted language shown in strikethrough print):

*“Wetland Buffer – A zone of noninterference extending ~~fifty (50)~~ **one hundred (100)** feet from ~~the edge of a wetland area~~ Prime Wetlands, zero (0) feet from the edge of Artificial Wetlands and Incidental Wetlands and twenty-five (25) feet from the edge of all other naturally-occurring wetland areas, or areas of poorly drained or very poorly drained soils or from the top of the bank of a surface water body toward the adjacent upland environment.”*

NOTE: The proposed wetland buffers meet or exceed the State of New Hampshire Department of Environmental Services (NH DES) requirements for such Wetland Buffers. Although NH DES currently requires no buffer (zero feet) around any wetland that is not designated as a Prime Wetland, the Town of Hudson Conservation Commission currently enforces a fifty (50) foot buffer zone along any poorly drained

piece of land that they deem to be a wetland. Some property owners have lost use of over half of their land because of Hudson's fifty foot buffer zone. This Warrant Article will appropriately preserve water quality with a buffer zone that is the same as or greater than NH DES requirements, while protecting property owners from unnecessary overregulation.

Mr. Della-Monica announced that he would be stepping down from this matter. Chairman Russo noted that there were no alternates to seat in Mr. Della-Monica's place.

Chairman Russo opened the meeting at 7:15 p.m. for public input and comment, in favor.

Mr. Glenn Della-Monica, 28 Bush Hill Road, spoke in favor, saying he was speaking on behalf of the petitioner, Mr. John O'Brien, who was out of town this evening. He discussed the hydrological nature of wetlands, noting that the common practice of soil engineers was to look for aquatic plants first. He stated that some sites might have been wetlands at one time but were not any more, but they were still classified as wetlands, as once identified as wetlands they remained wetlands forever. He then discussed some of the impacts of sites that were called wetlands, saying what could and could not be done on such sites. Speaking of his past experience with respect to development of wetlands, he cited some documentation he had researched, noting that Page 11 gave a conclusion that soils near a "constructed" wetland attained characteristics of a wetland very quickly. He expressed a belief that manufactured wetlands might in fact harm some local environments, noting that the Sierra Club was adamant about protecting all wetlands except those created by dams, which they regarded as unnatural.

Noting that the Town of Hudson had created a 50-foot buffer, Mr. Della-Monica discussed the intent and purpose of that ordinance, saying the applicability of the ordinance to culverts was beyond the intent of the person who had framed the original law. He then referenced a 2006 United States Supreme Court case involving a certain Mr. Rapanos, a resident of the State of Michigan, who had filled in what he did not consider a river, and the Army Corps of Engineers had shut him down; Mr. Della-Monica reported that the Supreme Court had overruled, saying the definition of the Clean Water Act was created for major bodies of water and was applied incorrectly when extended to man-made drainage ditches, saying this was "beyond parity." Mr. Della-Monica said the Supreme Court had stated that enforcement bodies should not be making rules outside of the original intent of the law.

Mr. Barnes arrived at 7:34 p.m. and took his seat at the table although not recognized by the Chairman for the inprocess item.

Mr. Della-Monica said he thought the reasoning of the Rapanos case could be applied to other instances, citing as an example that the 50-foot buffer should not be applied to wet depressions so tiny they could hardly support a family of frogs, saying this was beyond the intent of the original law. Referring to New Hampshire law, he said there was no supporting evidence that a large buffer zone was even necessary. Mr. Della-Monica stated that the representative of the Conservation Commission, in making presentations for the proposed prime wetlands changes to the Planning Board in 2009 had said they did not know what the correct buffer zone should be and had said it might be more than 60 feet or might be less; he contended that this was an inappropriate method of setting restrictive limits that affected property use and ultimately property value. He then stated that current law, which he said affected millions of dollars of property value, appeared to have been set as a "guess."—adding that the 50-foot and 100-foot distances were both likely guesses, and that only one out of 5,000 cases would result in determination of those values, which he attributed to

“terminal digit syndrome.” He noted that the area affected would vary enormously if the buffer zone were increased or decreased by a few feet, because of the impact of πr^2 .

He then stated that the proposed warrant article, in order to correct the problems he had described, reduced the current buffers to half of what they currently were—hence, from 100 feet to 50 feet and from 50 feet to 25 feet, until science determined which way the buffers should go—adding that he would support increasing them if science supported increasing them, but that 50 feet was not an exact number he felt the Town should give some people back a little of their property. He said the proposal also deleted the buffer completely around man-made wetlands, arguing that people with drainage ditches on their property still should be able to use their property, even though it was called a wetland, although within reason. He clarified that people still should not be able to dump rubbish or motor oil on a drainage ditch. He contended that there should not be a buffer pond around a koi pond—adding that, if such a buffer existed, the property owner would have to have an environmental study in order to add another feature.

He said there was no relation to topography, saying buffers were applied equally in uphill and downhill directions but water and contamination in it could not run uphill. He concluded by saying he would support the 100-foot buffer zone if it were passed by the Town’s voters.

Mr. Rick Levasseur, 6 Glasgow Circle, said he was a former member of the Conservation Commission and also the Zoning Board of Adjustment, saying he had been the author of the article that proposed the 50-foot buffer zones for wetlands. He noted that there had been accusations at the time that the intent was to inhibit or prevent further construction in the Town of Hudson, saying that was not the intent, and he added that the proposal had been based on the U.S. Government’s overlay map of that time, not for incidental or recently man-made wetlands. He explained that there had been a big problem at that time with respect to Alvirne Estates development, where leaching systems were under water and people had two or three feet of water in their basements, and the ordinance had been created to prohibit that type of activity. He said the proposed ordinance would protect the environment but also would protect property owners, so that one could build on properties while in a dry spell and then have a serious problem when the rains came. Mr. Levasseur declared that the founding fathers had been adamant about property ownership, saying it was more important than most of our freedoms—and that, as far as he was concerned, it still was. If the use of existing properties on man-made or incidental wetlands was cut off, he said, that would be prohibiting people from using their property. In these economic times, he said, the Town could not be proposing more restrictive laws to prohibit use of property that the property owners had been accustomed to. He noted that there was another proposal being discussed this evening that would increase the buffer, saying he would be concerned if this affected even only one person. He said the environment had rights, but so did the citizens of this town, so he hoped the Planning Board would approve this proposed ordinance and bring back some common sense.

No one else coming forward to speak in favor of the proposed article, Chairman Russo asked if anyone wished to speak in opposition or with questions.

Mr. Adam Hanks, 3 Newton Street, said he agreed that 50 feet appeared to be arbitrary, but so did the 25 feet, and he asked why those specific distances were chosen. He then noted that Mr. Della-Monica was proposing a definition calling for 500 ft² as the size of an incidental pond and also citing 100 feet, asking what the sources of these numbers were.

Mr. Tim Quinn, 1 Fuller Road, chairman of the Conservation Commission, said this warrant article would reverse the wisdom exercised through decades in establishing buffers, saying this was not something deemed by the Conservation Commission members, as all plans coming before the Conservation Commission had to be certified by a wetland scientist. He said wetlands did more than protect local water (noting that there were more than 4,000 citizens depending on well water in this town), and he listed other benefits of the Wetland Ordinance, but instead went off about protecting townspeople's rights. He said the proposed warrant article did not provide any scientific justification for reducing buffers, saying the ordinance did not take away people's rights—adding that better than 80% of applicants were given approval.

Addressing the proposed warrant article, he stated that terms such as “human activity” and others were not defined—noting that the proposed article classified wetlands as “ornamental ponds,” “ornamental creeks,” “ornamental dry streams,” “ornamental ditches,” etc., but there were no definitions for these term—adding that he had looked up the term “ornamental” in a dictionary and found that it meant “supporting an ornament”; he pointed out that the term “ornamental” did not occur in any of the Town or State or Federal codes. He also cited such undefined terms as “open pond” and “other pond” (which he noted was “wide open”), “drainage ditches,” and others. He argued that property owner's rights were not taken away by imposing a buffer, pointing out that people had the right to petition for Wetlands Special Exceptions, and adding that these were usually granted, saying only twice in the eight years he had been on the Conservation Commission had the commission required a structure to be moved—with one of these two instances being the petitioner, Mr. O'Brien. He pointed out that the Conservation Commission did not enforce buffers, as stated by the article, saying buffers were enforced by the Code Enforcement Officer, and all; the Conservation Commission did was make recommendations. He then referenced definitions in State and Federal laws, contending that there was no backup data for the claim that some people had lost the use of 50% of their property, and he noted that the claim that the Department of Environmental Services required buffers or water quality was not valid, saying the State delegated that to the towns. He said “unnecessary overregulation” was an opinion and did not belong in any warrant article. He questioned the scientific basis for selecting 500 ft² for a pond, saying the Army Corps of Engineers had a definition (which he read aloud), and he then read the RSA definition, noting it was the same as the Army Corps of Engineers' definition. He reiterated that there was no scientific data to support reduction of the buffers, but there was scientific data to support the existing buffers. He then questioned the applicability of other terms used in the proposed warrant article, and he concluded by asking if there were any questions from the Board. No questions were brought forward.

Mr. James Battis, 6 Potter Road, said he had a question, noting that this petitioned warrant article was asking for a change of HTC Article IX, §334-34, but the wording listed in the proposed warrant article was not the wording of the existing ordinance, so he questioned whether this was legal or what the impact would be. He said he would reiterate the statements that had been made by Mr. Quinn, saying the presentation made in support of this proposed article showed a complete misunderstanding of how wetlands were defined, noting that it quoted terminology not in the existing ordinance, but then produced an whole set of artificial wetlands that were not well defined, so that homeowners with what they regarded as incidental wetlands might be required to get a wetland study; he suggested this warrant article might produce more arguments than now occurred.

Selectman Maddox said he felt that the terms needed to be defined, noting that there was an existing wetlands ordinance and three proposed warrant articles pertaining to wetlands—one wanting to extend the buffer from 50 feet to 100 feet in some cases, another wanting to remove the term “ornamental” and the other something different. Mr. Battis said this particular proposed warrant article was calling for changes to an article that did not exist, again asking how this could be legal.

Mr. Barnes asked if Town Counsel had reviewed these proposed warrant articles. Town Planner Cashell said all that he knew was that the Board of Selectmen had voted to forward these to the Planning Board and that the petition signatures had been verified. Selectman Maddox said the number of valid signatures as all that the Board of Selectmen considered.

Ms. Michelle, Champion, 7 Chiswick Road, said she was particularly concerned about the proposed definitions in this petitioned warrant article, saying she did not think they were defined very well. She said the ornamental ponds that she knew about would not meet the definition of a wetland, emphasizing that a koi pond would not be regarded as a wetland, as had been claimed by a previous speaker. She said some instances of wetlands were things that were dug a hundred years ago but were now natural wetlands, satisfying the definition in all respects. She noted that the Conservation Commission had handled a number of cases in which previously created wetlands had been addressed, including the Sam’s Club site, and she expressed concern that passage of this proposed article might result in Sam’s Club wanting to fill in the wetlands it had created as mitigation. She said the members of the Conservation Commission, the Planning Board, and the Zoning Board of Adjustment could decide what a wetland was, which was the way it worked now, but there were important classes of vernal pools, which developers always wanted to fill in, saying they were just “puddles.” She said the claim that there was no scientific background for the 50-foot buffer was absolute nonsense, noting that Mr. Battis had shown in previous presentations the long history of how that distance was determined. She noted that the Conservation Commission’s presentations in favor of prime wetlands had also provided extensive documentation and charts in evidence as to why these things were important. Adding that she could argue for 250 feet on the basis of the science, and pointing out that UNH had spent years studying the effects of storm water runoff and had contributed to that data. She spoke of having seen the impact wetland protection when she worked in the environmental field while living in New Jersey, saying her organization had found actual streams with concrete walls channeling water to downstream properties, and she then described other things she had seen. She noted that about 80% of cases appearing before the Zoning Board of Adjustment had been granted Wetlands Special Exceptions. She then cited a case that had come before the Conservation Commission this past summer, in which the Conservation Commission had been able to help homeowners with burdens by providing Wetlands Special Exceptions recommendations with protective conditions. She noted that she owned one of the properties impacted by the proposed Prime Wetlands ordinance but she was still in favor of it.

Ms. Sandra Rumbaugh, 39 Beechwood Road, said she had a question for the first speaker about the “artificial wetlands” definition described in the wetlands, asking how Ottarnic Pond and Robinson Pond would be addressed if this were approved. She then commented that the note to the proposed warrant article said protection would be provided by the NH-DES, saying this was very misleading, as the State had left the jurisdiction to the individual towns.

Mr. Della-Monica. Speaking for a second time, said the 500 ft² pond size had been chosen after looking at the relationship of the buffer zone to the size of the property. He said 11,000 ft², was now required to protect an area 5 feet in diameter; he then acknowledged the 500 ft² figure had been a terminal digit guess. He said it would be inappropriate to reduce buffer zones to zero, as some persons involved in the warrant proposal had wanted, so the 25 feet had been selected as a compromise between zero and the currently required 50 feet. He said nothing in the definition took away from the wetlands, arguing that all that it talked about was the buffers. He also acknowledged that not many ornamental ponds would become wetlands, but he contended that some did, saying he had seen this when living in California. As far as Robinson Pond and Ottarnic Pond were concerned, he continued, the Shoreland Protection Act superseded anything that the Town might do. He said he was talking about the free use of property, saying it could cost thousands of dollars to have a wetland engineer come out to survey the property, even to put up a swing set. He contended that a lot of people had lost free use of their property, noting that more than half of the petitioner's property was considered a wetland. He then cited the case of a neighbor of his, who had been denied permission to fill in a ditch on the basis that it was bigger fill than anything that had been done before. He said the Legislature and DES did not give a designation of buffer distance, leaving it up to the towns to decide, but the voters made the decision with guidance to and from the Board of Selectmen—adding that administrative people should not be doing that.

He said the petition was written and given only three or four days to get signatures, and 100% of the people to whom it was given had been eager to sign it, so he felt the voters wanted this. If a potential business owner wanted permission to do something, he said, such as Sam's Club, it was put right into the plan and treated like a natural wetland, so he did not think the argument that had been raised held water. He then contended that anything done that harmed a wetland was illegal, but what this proposed article did was allow homeowners to do things. He said the purpose of the petition was to get the people of the town to tell the administrative bodies what they felt it should be--adding that everyone he had spoken to had said they would vote for this if it were put in the ballot, so he had a sense that people were somewhat put out by the current application of the rules.

Town Planner Cashell noted that Mr. Battis had pointed out that the proposed warrant article proposed to change things that were not in the current law. Mr. Della-Monica responded that he agreed, but that if the Prime Wetlands ordinance passed, the 100-foot buffer zone had to be included. Mr. Cashell expressed concern that this set of petitioned warrant articles might pass but the Conservation Commission proposed articles might not pass. Mr. Della-Monica said this would not apply to anything, until or unless the Prime Wetlands were approved by the people of Hudson. Mr. Cashell expressed concern that the different articles might end up in competition. Mr. Della-Monica said the one that passed would supersede. Chairman Russo and Selectman Maddox both demurred, saying if all pass, they all pass.

Selectman Maddox asked why the petition had been introduced at this late time, after two years of work on the Conservation Commission articles, saying this was muddying the waters. Mr. Della-Monica expressed agreement, saying the timing was because of the petitioner, who had been very dissatisfied by the actions of the Conservation Commission, which was why he had pursued the matter. Selectman Maddox said the presence of all three articles on the ballot was going to make it difficult to determine what was being voted for.

Selectman Massey said the Conservation Commission did not deny the petitioner, or did not require the petitioner to do what had to be done, saying that decisions had been made by the Zoning Board of Adjustment. Chairman Russo expressed concern about the relevance of this statement with respect to the hearing process for this petitioned article.

Chairman Russo asked if anyone else wished to speak in favor for a second time. No one coming forward, he asked if anyone wished to speak for a second time in opposition or with questions.

Ms. Champion said a statement had been made that every homeowner had to spend thousands of dollars for environmental studies, saying that was not necessarily done, saying it was not required for small cases but only when major development was being proposed, adding that this was after the Conservation Commission had viewed the property. Selectman Maddox asked if engineering studies would not be required if the Prime Wetlands article was passed.

Selectman Massey and Selectman Maddox then became involved in discussion about the two Conservation Commission articles, questioning whether one would be heard tonight. Selectman Massey insisted that the Prime Wetlands designation would be deferred but not the other. Chairman Russo said Ms. Pam Lavoie, the Planning Office secretary, had said the one not published by the Hudson-Litchfield News was the one presented by the Conservation Commission, saying this had been posted in the Telegraph so that it could be heard next week. Selectman Massey asked for a sense from the Conservation Commission. Mr. Timothy Quinn said the others were correct, as the article about the definition never got published. Selectman Massey asked for further clarification. Chairman Russo said he would call for a recess so that he could get further clarification—adding that there had been three published articles, with Hudson-Litchfield News having posted the two submitted by Mr. O'Brien and the other being a double of one of the two articles petitioned by the Conservation Commission. Chairman Russo declared a recess at 8:30 p.m., calling the meeting back to order at 8:50 p.m.

Chairman Russo said a determination had been made that the postponed amendment to HTC Article IX, §334-34, would be taken up at next week's meeting.

Chairman Russo then asked if there were any further comment with respect to the petitioned warrant article currently under discussion.

Mr. James Battis, 6 Potter Road, said the Conservation Commission did not necessarily require people to get wetland scientists for every project brought before that group, saying it would not be needed for a swing set, as had been asserted unless it were needed—adding that he did not think a permit would be needed for a swing set, but if it were needed he doubted that the Conservation Commission would require a wetland survey, unless the legs of the swing were being put into Robinson Pond, as an example. He said the Conservation Commission did make judgments without inputs from a wetland scientist, but they might well require such inputs for major developments, such as multifamily homes—but not for swing sets or swimming pools, or deck extensions, etc. He pointed out that the 50-foot buffer, like the 25-foot buffer that preceded it, was put before the Town voters, which had approved it, and he said he wanted to make it clear that the Conservation Commission did not make arbitrary decisions about how large the buffer should be, or change those figures from day to day. He said there was no absolute number on what the buffer should be, but the scientific data, as he had shown twice earlier this year, represented the accumulation of recommendations by wetland scientists, which had been that 50 feet was the low end of the

recommended range for sedimentation and phosphates, and was below the recommended range for some things, especially for nitrates, adding that the 100-foot buffer that the State used for the prime wetlands was at the low end of the nitrate range. He said these were not arbitrary numbers but were a range of numbers that scientists had come up with, including consideration of wetlands in the south and west across the United States and elsewhere. He recalled the controversy and discussion that had taken place when the buffer was first extended from 25 feet to the current 50-foot buffer, saying it had been a best judgment, based on the type of wetlands found in Hudson.

Mr. Della-Monica said he should make it clear that an engineer would not be needed for a typical swing set, but such things were now monstrous wooden structures that required a foundation, grading, fill, etc. In the case of the petitioner, he said, there was an issue of what appeared to be a drainage ditch, and he had been forced to hire an engineer, which had cost him several thousand dollars

No one else coming forward, Chairman Russo closed the public hearing on this proposed article at 9:00 p.m.

Selectman Maddox expressed a desire to defer making a decision on this until the following week, so that all three articles could be reviewed at once and also so that the Town Counsel could have an opportunity to review the proposed articles, noting that he had particular concern about the note accompanying this proposed article.

Selectman Massey noted that there definitely was an inaccuracy in the note, in that the Conservation Commission did not make decisions. Mr. Barnes said he had wanted to ask if that note would be part of the Zoning Ordinance, adding that he would like to hear from Town Counsel on that.

Chairman Russo asked if there were a motion for deferral.

Selectman Maddox moved to defer action on this item to the meeting of January 12, 2011. No second was brought forward.

Mr. Malley moved to disapprove for the 2011 Town Warrant the following zoning petition amendments: to amend Article IX, Section 334-34., Definitions of the Zoning Ordinance, to include new definitions: "Artificial Wetlands" and "Incidental Wetlands," and to amend the existing definition for "Wetland Buffer," and for these amendments to read as cited in the petition.

Mr. van der Veen seconded the motion.

Mr. Malley spoke on his motion, saying he liked some of the things in the proposed article but did not like some others.

Mr. van der Veen said he thought the 50-foot buffer was an acceptable buffer, which had been accepted by the voters, but this proposal from a definition standpoint created a lot of confusion, saying he did not think it was an improvement for the town but was a step backward.

Chairman Russo said he liked some of the concept, such as the idea of a smaller buffer for incidental wetlands, but he thought it should have been worked through the Conservation Commission and went too far.

VOTE: Chairman Russo then called for a hand vote on the motion. All members present voted in favor except for Selectman Maddox, who voted in opposition, and Ms. Merrill, who abstained, and Chairman Russo declared the motion to have carried (3–1–1).

D. Zoning Petition to Amend Article IX, Section 334-34., Definitions, to include a new definition for “Prime Wetland Qualifications”.

Chairman Russo read aloud the published agenda item, as repeated above.

Cr then read aloud the proposed change, as follows:

To Amend Article IX, Section 334-34., Definitions, to include a new definition for “Prime Wetland Qualifications”. The amendment shall read as follows:

*Amend Article IX, Section 334-34., Definitions, to include a new definition: “**Prime Wetlands**” and amend the existing definition of “**Wetland Buffer**”; both amendments shall read as follows:*

*“**Prime Wetland Qualifications** — In addition to all other applicable sections of law, to be designated as a Prime Wetland, a special classification of wetlands delineated in accordance with the requirements of RSA 482-A:15, and NH Code of Administrative Rules Env-Wt700, a wetland within the Town of Hudson, NH, shall meet the following minimum qualifications:*

- 1. The boundary of the proposed one hundred (100) foot State of New Hampshire mandated wetland buffer that applies to Prime Wetlands shall not touch, intersect, or otherwise end inside an existing dwelling, or within a zone extending thirty (30) feet from any point on the exterior of such existing dwelling.*
- 2. If each and every owner of a dwelling or dwellings described in numbered Paragraph 1 of the definition of Prime Wetlands Qualifications freely and voluntarily submit a notarized affidavit to the Town of Hudson, NH, stating that she/he/they permanently waive the provisions of numbered Paragraph 1 with respect to the specific parcel or parcels of land owned by her/him/them, then the wetland to which she/he/they abut shall be considered to have satisfied the intent of numbered Paragraph 1 of the Definition of Prime Wetlands Qualifications.*
- 3. The boundary of the proposed one hundred (100) foot State of New Hampshire mandated wetland buffer that applies to Prime Wetlands shall not touch, intersect, or otherwise end inside an existing or currently-planned right-of-way of any class of Town or State maintained roadway.*

NOTE: This amendment will ensure that Constitutionally-protected property rights are preserved by preventing the creation of an unreasonably restrictive buffer zone inside an existing dwelling or its immediate access area by the designation of a wetland as a “Prime Wetland” unless all owners of such properties agree to do so.

Chairman Russo opened the meeting for a public hearing at 9:10 p.m.—noting that Mr. Barnes would be seated from this point on.

Mr. Glenn Della-Monica 38 Bush Hill Road, said currently a Prime Wetlands border was being proposed for a dozen or so prime wetlands, and the citizens needed to know what

they would be voting on and what the consequence might be. He said this particular article focused on people who already occupied houses where the State-mandated buffer zone came close to their house. He said people should have at least 30 feet outside their back door to shampoo their dog and do pretty much whatever else they might want to do. He said the consequences of allowing a 100-foot buffer to impact someone's residence would be to have to hire an engineer, and would prevent them from providing termite treatment, ant treatment, mosquito repellent, etc., as expert opinion from an engineer would be required. He said anything involving a structure, such as a shed, building berms, or erecting a full-size child swing set, removing trees, planting shrubs, etc., would require permission. He said people might or might not be able to do these things, adding that the real-estate agent would have to tell the prospective owners that they would have to get permission, including doing things in their basement if the buffer line went through their house, so he thought it was unfair to apply a Prime Wetland designation in an area that might affect the value of people's houses. He then questioned how much enforcement there might be on a beaver pond. He said there were people in support of the 100-foot buffer, even though they would be affected, adding that he would encourage them to proceed before March by deeding over to the Town the land that would be affected, saying they should volunteer for it now, but there were a lot of people in Hudson on a fixed income. He said he fully supported environmental protection but it should not be built on the backs of the poor.

Mr. Rick Levasseur, 6 Glasgow Circle, said this article gave some protection to homeowners but also protected the Town. He said he felt this article was not too restrictive, as it was very mildly worded, and he urged favorable consideration.

No one else coming forward to speak in favor of the proposed warrant article, Chairman Russo asked if there were anyone who wished to speak in opposition or neutrally, with question or comment.

Mr. Tim Quinn, 1 Fuller Drive, noting that he was chairman of the Conservation Commission's said there were a number of problems with the way this article was written.

Chairman Russo asked if a letter in the handouts was from Mr. Quinn. Mr. Quinn professed not to know anything about the letter but, after examining the document, he acknowledged that he was the author. He said that "minimum" was a wide-open term that was not defined. He said the cited example of not being able to do anything in the cellar was totally inaccurate, saying all existing structures would be grandfathered. He then read Paragraph 3 of the proposed article, saying this was essentially saying that someone was giving up their rights entirely and permanently, and he questioned who would do that. He then noted that the proposed article repeatedly referenced a paragraph on Prime Wetlands, saying there was no such paragraph in the existing ordinance. He then questioned the legal aspects of the aforementioned waiver of rights, asking if it remained in effect when the homeowner sold his property. He then cited other instances of wording he felt to be confused or inaccurate, questioning how they could be followed. Referring to the note at the end of the proposed article, he read the provided text and noted that there was a question of what the result would be if the homeowner, or any homeowner in a group of homeowners, disapproved. He then questioned what part of the Constitution pertained to property rights, saying he had a copy of the Constitution at home and had not found any reference to property rights in it. He noted the reference to "unusually restricted," saying this was an opinion. He noted other terms that were not adequately defined, and he then concluded by saying the result of the proposed article would reverse everything that had been done in the past few decades.

Town Planner Cashell said he had checked his E-mails during the recess, finding that each of the proposed articles had been sent to Atty. Buckley, but he did not know if Atty. Buckley had weighed everything—but he noted that Atty. Buckley had not flagged them.

Selectman Maddox said the Town could only do what the State Legislature allowed it to do—citing as an example that the Town could enact the Prime Wetlands ordinance but not part of it, so he questioned the legal implications of this proposed article, which changed the 100-foot buffer in some situations.

Chairman Russo said he would have hoped that a legal review would resolve such questions.

Town Planner Cashell said this Planning Board could say “Yea” or “Nay,” but if Town Counsel found that voted articles were improper, he could flag them; he suggested that the question be imposed on Atty. Buckley.

Selectman Maddox said the petitioned articles had to go forward, but the Planning Board could say “Yea” or “Nay”; he then expressed a belief that the Planning Board should check whether these articles were legal.

Selectman Massey said that, if the proposed articles went to the ballot and the Town Counsel then found there were not legal, they would not have the force of law and would not become enforceable ordinances. He then cited other past cases in which this had occurred.

Chairman Russo expressed a belief that the articles would be unenforceable if there were a conflict, as State law superseded.

Mr. Jim Battis, 6 Potter Road, said this petitioned warrant article actually stated that, if the Prime Wetlands were accepted, it was a State mandate, so he did not see how the Town could come up with some other buffer distance. He said this just seemed to be gobbledygook to complicate the ballot.

Chairman Russo asked if there were any further comments in favor;

Mr. Della-Monica, 38 Bush Hill Road, said that, if there were already wetlands, and this passed, this would not apply to those, as they would have been qualified prior to passage of this, but this would prevent the passage of any future Prime Wetlands that did not fit this definition. He argued that the article supported by the Conservation Commission would pass but this would prevent future wetlands from being added if they came within 30 feet of someone’s property. Selectman Maddox professed not to understand what was being said, and Mr. Della-Monica then attempted to clarify it by saying this was not a law, but the other had already been done and voted on, so this would be moot, but it would apply primarily to any future attempts to create additional prime wetlands, noting that the Conservation Commission had previously pared down their large list, saying this was a good start, which implied that the Conservation Commission intended to do more in the future. If one homeowner would be affected and did not waive their rights under the provisions of the second paragraph, he concluded, it could not be put on a future warrant article to become a prime wetland.

Selectman Massey called for a point of order, saying this was delving into legal issues that no one on the Board was prepared to understand at this point, and he said legal counseled should be obtained. Mr. Della-Monica said that would be most appropriate.

Mr. Della-Monica referenced an issue of a contaminated well, saying the prime wetland designation would not resolve that problem. He contended that well water contamination should not be brought up as an issue.

Selectman Massey expressed inability to understand how the first article endorsed a 100-foot buffer but this second article had a note that would prevent what it called an unreasonable restriction. Mr. Della-Monica said that, if the citizens of Hudson decided a body of water was a prime wetland, it was agreed that it must have a 100-foot buffer—contending that it was not endorsing it but just stating a matter of fact. Selectman Massey questioned how this worked with Paragraph 1, which said it applied to a lot of prime wetlands. Mr. Della-Monica said it was only when a resident would be impacted within 30 feet.

Mr. Tim Quinn, 1 Fuller Drive, noted that arsenic did not occur on the surface, saying there were no buffers designed to filter out arsenic.

No other member of the public coming forward with other comments or questions, Chairman Russo closed the public hearing at 9:40 p.m. and asked for comment from members of the Board.

Mr. Barnes stated that, after hearing the testimony, his reading of the proposed article was totally different from when he had first read it and other subsequent readings, so he was not in a position to recommend this going forward; he suggested that people might vote for this thinking they would get a 30-foot exemption, which was not what it was intended to do, adding that he thought there would be a lot of confusion on the part of the voters.

Selectman Maddox moved to defer action on his item to the January 12th meeting; Mr. Malley seconded the motion.

Mr. Malley then asked if the motion could be amended to have this reviewed by Town Counsel. Selectman Maddox said he had no problem with that, making it a friendly amendment.

Selectman Maddox noted that he, too, had heard something different from Mr. Della-Monica from what he had understood when he first read this, saying this was going to become a logistic nightmare, if nothing else.

VOTE: 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. Della-Monica resumed his seat at the table as a member of the Board.

X. WORKSHOP

No **Workshop** items were addressed this evening.

XI. ZBA INPUT ONLY

No **ZBA Input Only** items were addressed this evening.

XII. OLD BUSINESS

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

XIII. DESIGN REVIEW PHASE

No **Design Review Phase** items were addressed this evening.

XIV. CONCEPTUAL REVIEW ONLY

No **Conceptual Review Only** items were addressed this evening.

XV. NEW BUSINESS/PUBLIC HEARINGS

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

XVI. OTHER BUSINESS

Chairman Russo again welcomed Ms. Merrill to the Planning Board.

XIV. ADJOURNMENT

All scheduled items having been addressed, Selectman Maddox moved to adjourn; Mr. Malley 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 9:45 p.m.

Date: January 9, 2011

Vincent Russo, Chairman

J. Bradford Seabury, Recorder

Ed van der Veen, Secretary

These minutes were accepted as submitted following review at the 01-26-11 Planning Board meeting.