

# Town of Manchester - PLANNING BOARD

## MINUTES

FEBRUARY 16, 2016

6:30 PM

TOWN OFFICE CONFERENCE ROOM

<b>MEETING CALLED BY</b>	Leon Strout-Chairman, Jim Pelsor, Charlie Hippler, Tom Leveen, Stephanie Daggett Nichols and Therese Gay
<b>MEMBERS ABSENT</b>	Jeff Reardon
<b>TYPE OF MEETING</b>	PLANNING BOARD
<b>SECRETARY</b>	Debbie Southiere
<b>ATTENDEES</b>	CEO – Keegen Ballard, Troy McDonald, Travis Letellier, Khanh Vo, Mai Vo, Kathleen Lyons, Malcom Lyons, Sid Rao, Christina Rao, Tony Loiko, Mike Lane, Joyce Rollins, Ralph Rollins, Jac Arbour, and David Hastings

## CEO REPORT

<b>WRITTEN</b>	No report
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## Site Visit

	No site visits

## Agenda topics

### **Arrowhead Landing Amend Declaration of Covenants**

<b>DISCUSSION</b>	<p>Michael Lane from Preti Flaherty, representative for Arrowhead Landing stated that he wanted on record that he is a registered agent for Bunker and Savage where Jim Pelsor is employed. Jim stated that he has no personal interest in Arrowhead Landing and would gladly recuse himself.</p> <p>Leon Strout stated he and the Board had no problem with Mr. Pelsor being involved with this matter. Mr. lane stated Arrowhead landing is seeking an amendment to the current Declaration of Covenants. The proposed change shortens them from 15 pages to 7 pages. They are less confusing. They are consistent with the State Laws and give the buyers more certainty. Changes do not change number of lots, density, layout, open requirements. They do not lessen the protection and preserve the natural resources. The proposed changes have been approved by DEP.</p> <p>The summary of changes are: The buyers will not need to get approval from the declarant, Reduce the square footage of living space from 2500 sq.ft. to 1500 sq.ft., delete the cutting restrictions and substitute the Manchester Shoreland Zoning Ordinance Delete requirement for DEP and Manchester Planning Board approval for amending the Declaration, and delete the lien language that the Lien primes the mortgage.</p> <p>Mr. Lane spoke to the Board stating what he thought the role of the Planning Board is, He obtained his information from the "Maine Municipal Association " manual.</p>
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Mr. Strout stated that Declaration of Covenants states that they could not be changed unless everyone was in agreement.

Mr. Lane stated article 4 sec 2 of the existing Declaration Covenants states that there needs to be an affirmative vote of 11 lot owners. The vote was 12 to 4.

Mr. Strout stated the Declaration of Covenants says "Owners" not "Lots". Twelve of the Lots are owned by the same "Owner" therefore they should only get one vote.

Mr. Lane stated that he felt each Lot should get a vote.

Mr. Lane asked if the Board had spoken to any of the opponents off the record.

Mr. Strout stated that to his knowledge, they have not.

Mr. Lane stated the changes are not changing the intent of the Declaration.

Mr. Lane stated that the building envelopes would remain.

He referred to Article 4 sec 1 states that each member will be allowed 1 vote

Jim Pelsor is concern with the Article 1 Sec 2b of the Covenants.

There could be a frontage issue.

Mr. Lane stated the lots will still be used for single family homes.

The changes are to simplify the Declaration of Covenants

Mr. Lane stated he could do away the 600 sq ft requirement for in-law/handy man apartments..

Mr. Pelsor has concern with the 40% square foot reduction. It's a pretty significant change.

Mr. Lane stated that it's a "Buyer Beware" all Buyers were given a copy of the Declaration of Covenants and knew the Covenants could be changed.

Tony Lioko, listing agent for the property stated that people want smaller homes. He has found that 90% of the issues with this property is the size requirement of the houses.

Malcolm Lyons, owner of a home in this development stated he and his neighbors are totally committed to opposing these suggested changes. They are trying to take away all of our protection and protective covenants that they came up with and we signed onto. We complied with all of these covenants. Now they are saying "well that's too bad, times have changed, you're out of luck".

They are saying that the big houses are dinosaurs yet their web page show the Vo's home which is clearly over 2500 sq.ft. Web page states "restrictive covenants and restrictions, natural character of the landscape will be retained and owners will continue to enjoy privacy and ensure that their investment is protected". This website was still up today. I can assure you that" if these robust regulations were not in place, we would not have signed up, we wouldn't have built because we would have been concerned about who would have built next to us". The idea that they can come in and amend this whenever they please, is not valid. I f you read the covenants, restrictions and declarations, yes these can be amended but they cannot be amended to change the intent of the declaration of the restrictions and of other protections. This is clearly what they are trying to do. Some of the changes are: anything can be used on the outside of the home, Modular Homes were not allowed, now they would be, houses were to be 2500 sq. ft. now 1500 sq. ft. would be allowed. If this goes through we do not have any rights.

Mr. Lyons referred to paragraph 7 Article 1 it says no mobile home or other temporary structure or manufactured homes may be placed or maintained on any lot.

Mr. Lyons also stated that Article 6 3B clearly states the covenants may be amended but they may not be amended to alter the intent of the declaration and require prior consent of the Town of Manchester.

Mr. Lyons stated that Mr. Lane said it reduced the number of pages in the Declaration from 15 to 7. Everything in those deleted pages are the protections that the residents had. Amendments are when you change something a little bit. These are not amendments, they are deletions and major changes. They are also trying to change the cutting restrictions. The development across the way has even more restrictions and yet all those lots have been sold and some even two or three times. Mr. Flannigan of Outlet Park Subdivision had met with the owners of Arrowhead Head Landing; there is quite a similarity between the two developments. It's very clear they are trying to sell cheaper houses than there are in there now.

Also, when the Rao's were building their home, they wanted to put up vinyl siding. They asked for permission to do that. It was 2-3 months after Arrowhead had tried to make changes last time (summer 2013). The Rao's received a letter stating that vinyl siding was not allowed and they were obligated to insure that all homes in Arrowhead Landing completely comply with all the provisions in the provided covenants for the subdivision.

Mr. Lane had previously described the document as cumbersome, repetitive, and onerous. I would prefer to think of it as a document that protects all of us.

Tom LeVein asked Mr. Lyons if a 1500 sq ft would be compatible with the houses that are in the neighborhood. Mr. Lyons stated that would not even be close to compatible.

Mr. LeVeen stated that Neighborhood Compatibility is part of the Town's Land and Uses Ordinance (pg 155 Sec J).

Joyce Rollins, an abutter to this development stated that changes to the cutting restrictions will harm the environment. This land houses deer and endangered owl species. Owls nest there every year. I feel blessed to be able to see these beautiful birds. They need to have someone come in to analyze the wildlife on this land. If you deplete this land you are going to hurt our tax base. We have people coming in from out of state looking for an environment like this to build.

Ralph Rollins spoke of the original owner and his intent to develop this land the way it was set up with the covenants that are in place.

Mr. Lane spoke of the intent that Mr. Lyons had spoke of, that intent refers to the intent of the plan (Article 6 sec 3B) not the intent of the Declaration of covenants.

Mr. Lane stated that if the Board approves the changes it will not be "Willy Nilly", people will still have to come it to get building permits. They will have to comply with all the Towns Ordinances. The Planning Board cannot prohibit Manufactured Houses, the private developer may. By requiring that you approve the declaration of covenants, you, the Planning Board therefore is prohibiting Manufactured Housing.

Mr. Strout strongly disagreed with Mr. Lane.

Mr. Pelsor stated that language is such that you cannot exclude from the Town Law as long as there are places where they are allowed you have met the law as a Town.

Mr. Lanes response to Mrs. Rollins is that the all the animals are protected by DEP, Shoreland Zoning, Vernal Pools and NERPA. They are not proposing to make changes to the harvest standards.

Mr. Lane stated that it is the Planning Boards job to make sure that the developments comply with the ordinance. It's not to protect the buyer. It's not to settle disputes between property owners. It's whether the development complies with the ordinance. For instance nowhere does the ordinance say you can only use wood siding.

Therese Gay stated that she thought this is an integrity issue. This was a contract signed by these people. Mr. Lane stated it comes back to the original declaration and it states it can be amended.

Mr. Pelsor stated that a change is not just by their eleven votes, it is also requires the Planning Board's approval because it is registered document as far as the subdivision approval. Mr. Lane agreed.

Mr. Pelsor asked if Mr. Lane would be able to go back to Arrowhead Landing and perhaps a suggestion to restore some of the quality issues in design review so that the quality and appearance of the houses are the same. Perhaps a concession on size. Smaller house are less impact on the environment.

The lots are already approved with envelopes for development. Maybe 2500 sq ft including out buildings and barns.

Mrs. Rollins disagreed with the statement of smaller homes. They are lesser quality and are depleting areas on the coast because of the lesser quality.

Mr. Leveen stated that the subdivision was approved by the documents presented by Arrowhead Landing. Now Arrowhead Landing is changing the character of the neighborhood ( Sec 8 J).

Mr. Lane stated that the Board is not legally permissible for the board to consider "Compatible with the neighborhood" that is straight out of the MMA planning handbook.

Mr. Pelsor stated this is a "Home Rule" state. It does not matter what that says.

Mr. Strout stated the Manchester residents have approved these ordinances. These are the rules which we follow.

Mr. Strout stated if you do not agree you can take it to a higher appeal but that is the rules which the Board will follow.

Mr. Strout stated he would like to consult with MMA.

Mr. Lane asked what the Board will do; vote it down or table it until next meeting.

Mr. Pelsor asked if Mr. Lane had any ability to go back to the Arrowhead Landing, is it all or nothing or is this draft. Mr. Lane stated he could go back to Arrowhead Landing and come back in a month and try again.

Mr. Lyons stated no one has ever approached the owners about any compromises. They have left the owners out in the dark, they obviously do not care about us, they are trying to shove this through and quite frankly I'm not willing to compromise on anything now. "I made a deal, my neighbors made a deal We've got a great neighborhood and they are trying to change it for the worst."

Mr. LeVeen made a motion to take a vote this evening. Second by Stephanie Daggett Nichols  
Vote 5-1. Further discussion.

Mr. Lane asked what the procedure is for appeal.

Mr. Strout stated it is in the back of the ordinances.

Mr. Lane asked what the reason for the disapproval is.

	Mr. Strout asked Mr. LeVeen to state the reason for disapproval. Mr. Leveen stated his decision is based On "Neighborhood Compatibility" Section 8 –J. amended motion Mr. Strout asked for a second on the amended motion. Second by Stephanie Daggett Nichols. Vote on the amended motion 6-0.
<b>MOTION</b>	Motion made by Tom LeVeen to disallow the changes based on Ordinance of Compatibility Sec 8- J
<b>SECOND</b>	Second by Stephanie Daggett-Nichols
<b>PASS/FAIL</b>	Vote 6-0

**Jac Michael Arbour  
Boat House/Bunk House  
Cuba Drive  
Map U05 Lot 10  
Shoreland Zoning**

<b>DISCUSSION</b>	Mr. Arbour presented his plans to remove an existing boathouse and replace it with the allowable 30% increase on the same footprint. There will be no septic or well required. There will be no clearing or new roads required. The increase will be in the wall height. The structure cannot be moved back without taking down some considerably large trees. Also it would be taking away from the cleared area which the former owners have a right of way. Mr. Arbour asked if there would be a problem if he could make the walls 10 ft. Mr. Strout stated he could not go over the 30% increase. Walls could not be more than 9.2 inches. Mr. Pelsor stated the floor elevation should be determined. Also 100 year flood plan. Establish the lot lines and shoreline on a diagram. The Board will need to do a site inspection. Site inspection set up for Saturday, February 20, 2016 at 9AM.
<b>MOTION</b>	Motion by Jim Pelsor the application is complete to move forward
<b>SECOND</b>	Second by Tom LeVeen
<b>PASS/FAIL</b>	Vote 6-0

**Dollar General  
Preliminary Application  
1034 Western Avenue**

<b>DISCUSSION</b>	Further discussion on the application for the proposed Dollar General. Changes to the parking area. Changes to the look of the building. Set back changes. Asked to be put on agenda for next meeting.
<b>MOTION</b>	No Motion at this time
<b>SECOND</b>	
<b>PASS/FAIL</b>	

**Lynn Bouchard  
In Home Daycare  
Map R5 Lot 31  
Conditional Use**

<b>DISCUSSION</b>	All aspects of the application are complete.
<b>MOTION</b>	Motion by Jim Pelsor to approve
<b>SECOND</b>	Second by Terry Gay
<b>PASS/FAIL</b>	Vote 6-0 to approve

**Minutes**

<b>MINUTES</b>	Minutes from 02-02-2016
<b>MOTION</b>	Motion by Tom LeVeen to approve
<b>SECOND</b>	Second by Jim Pelsor
<b>PASS/FAIL</b>	Vote 6-0 to approve

<b>TICKLER FILE</b>	Page 90, B3 – Soil Boundaries
<b>TICKLER FILE</b>	Special Exception Permits
<b>TICKLER FILE</b>	Site Plan Review
<b>TICKLER FILE</b>	Real Estate Signs
<b>TICKLER FILE</b>	Low Value Wet Lands in GD
<b>TICKLER FILE</b>	"Estimated"
<b>TICKLER FILE</b>	**Fee for Major Project Site Reviews
<b>TICKLER FILE</b>	Parking Space Ordinance
<b>TICKLER FILE</b>	Invite David Rocque to Planning Board Meeting
<b>TICKLER FILE</b>	Solar Access

**ADJOURNMENT**

<b>MOTION</b>	Motion by Charlie Hippler to adjourn
<b>Second</b>	Second by Jim Pelsor
<b>Vote</b>	Vote 6-0 To adjourn

**NEXT MEETING:** *March 1, 2016*

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Leon Strout – Chairman

Submitted by \_\_\_\_\_ Debbie Southiere - Secretary