

**Town of Holland, Massachusetts,
Planning Board
Minutes of Tuesday, January 26, 2021
Approved July 20, 2021**

Members:	Function:	present:
Allen P. Johnson	Chair person	no
Bettina Schmidt	Secretary	yes
Dori-Ann Ference	Member	yes
Peter Frei	Member	yes
Josh Johnson	Member	no
Dennis Allard	Associate member	no

Call to Order: 6:08 pm

Old Business:

New Business: Approve public meeting minutes from November 16, 2020, and public hearing Minutes from November 16, 2020.
Review: mail, email, and voice mail.

Other Business:

Adjourned: 6:49 pm

This meeting was held online on the GoToMeeting.com platform and members of the Board met online. Participants from the general public were also able to call-in with any phone by calling a certain phone number which was published on the agenda to this meeting.
The chair person was absent, he resigned from the Board on January 28, see attached letter.

The secretary of the Board, Bettina Schmidt, opened the meeting at 6:08pm.
Frei had some questions about the minutes to the meeting, dated November 24, 2020. Frei was confused as he thought that the Board did not meet that day. It turned out that the date was wrong and should have read, November 16, 2020, as the minutes from November 16 were not approved yet. Frei pointed also out that different names were not spelled right, motion numbers did not seem to be consistent, and that he received two different versions of the minutes to the same meeting with the same dates (November 24, 2020) attached to the same email. Frei further pointed out that the minutes would also not give a reader any idea what was discussed during the important public hearing of November 16, 2020.

Frei stated that the minutes as submitted for approval would not meet the minimum legal standard and suggested that they need to be amended. Dori-Ann Ference suggested that Bettina Schmidt who is also the chair person on the Board of Selectmen ("BOS"), would be better off if she would give up the

position as secretary of the Planning Board to another member. Ference suggested that Frei should take over if he would be willing to do so. Ference made a motion to appoint Frei to the secretary position; Schmidt 2nd; all in favor.

It was also unanimously agreed on, that Frei was going to re-write the minutes to the meetings of November 16, 2020, and bring them in compliance with the Open Meeting Law. He promised to have them ready at the next meeting to be approved.

For completeness, Bettina Schmidt's minutes, both versions, are attached to the minutes of the previous meeting held on November 16, 2020.

According to the open meeting law [M.G.L. c.30A, s.22\(a\)](#) and [940 CMR 29.11\(1\)](#) the minutes do not require a verbatim record or a transcript, however the law requires the minutes to include, among other information, "a summary of the discussions on each subject."

During the public hearing of November 16, 2020, Allard disagreed with Frei on the correct interpretation of the Grandfather Clause, [M.G.L. c.40A, s.6](#).

Frei felt strongly that the issue would have to be resolved and clarified by the town counsel to prevent other disasters like the one with the proposed reduction of the frontage requirement for buildable lots (see minutes to public hearing of November 16, 2020). The proposal to change the frontage requirement for buildable lots which would have had a detrimental impact on the fiscal health of the community was based on, or justified with, a false interpretation of the Grandfather Clause by, as it seems, the entire Board as it existed at the time. The following members worked on the bylaw changes: Dennis Allard, Bettina Schmidt, Allan Johnson, Josh Johnson, and Cynthia Poirier.

Bettina Schmidt agreed to submit a letter to town counsel, with the question whether the Grandfather Clause would only protect a preexisting property for seven years, as former chair person Dennis Allard claimed, or whether it would protect a property once conforming indefinitely, as Frei claims. Frei agreed to write the letter to be submitted to the town counsel, see attached letter.

Bettina Schmidt moved to adjourn the meeting at 6:49 pm, Ference 2nd, all in favor.

Respectfully submitted,
Peter Frei, Secretary

Request for clarification to the town counsel on the so called “Grandfather Clause” M.G.L. c.40A, s.6.

During the public hearing held by the Planning Board on November 16, 2020, on proposed and far reaching changes to the town’s zoning bylaws, Peter Frei, a new member of the planning board, questioned the former, long time member and chairman of the the board, Dennis Allard, for the reason behind the proposed reduction of the frontage requirement for buildable lots from 200 feet down to 100 feet.

Dennis Allard stated that the reduction would be necessary to help property owners with nonconforming lots so these property-owners could make changes to their properties.

Peter Frei stated that there would be a difference between nonconforming lots and pre-existing nonconforming lots, and that such “help” to property owners with nonconforming lots would defy the purpose of the zoning bylaws. According to Frei, owners of pre-existing, once conforming lots, known as pre-existing nonconforming lots, would be grandfathered and owners of such properties would have the same rights as owners of conforming lots, and such properties could be further improved as long as such improvements would be in conformance with the rest of the zoning bylaws (the rest would be everything besides frontage and acreage).

Allard’s contention with Frei’s interpretation was, that the grandfather-clause would only apply for seven years, in other words, after seven years such pre-existing lots would lose their protection and would become nonconforming. Frei called Allard’s claim, “utter none mitigated nonsense.”

Allard’s and Frei’s interpretations of M.G.L., c.40A, s.6, seem to be profoundly different and the importance of the right interpretation, the clarification of the question whether the protection the grandfather-clause provides would be limited to seven years - as Allard claims, - or whether the grandfather-clause would have no time limit - as Frei claims, - is obvious.

With the exception of less than five properties located on Hamilton Reservoir, all properties with lake-frontage satisfied at one point in time the frontage and acreage requirements, and are therefore, as Frei claims, pre-existing nonconforming. Should any of the owners of such properties seek to improve his property, the question whether such property owner has a right to do so or not, needs to be clear for all members of the board in the future.

Bettina Schmidt,
chair of the Board of Selectman of the town of Holland

Amendment:

On January 28, two days after the meeting the forgoing minutes refer to, Allan Johnson responded to a letter I, Peter Frei, addressed to the Board. Allan Johnson explicitly requests his letter to be included in these minutes. **Here is Allan Johnson's letter:**

Good Morning,

The following is Allen's response. Please make sure that it is added to the minutes as required.

Regarding why I called "point of order" on November 16, 2020 was because Mr. Frei was making accusations and taunting members of the board that we had personal interests and that's why we wanted these bylaw changes. I found that to be the reason for calling point of order. I have no knowledge of the nonsense he claims. I am resigning from the Planning Board as I cannot tolerate someone making accusations that are just not true.

Allen Johnson

Allan Johnson's letter is a response to my letter dated January 11, 2021:

Dear chairman, dear members of the board,

During the virtual public hearing on GoToMeeting.com on November 16, 2020, former chairman and since November 10, 2020 an associate member of the planning board, Dennis Allard, made the following statement in answering my question for good reasons to support the proposed changes to the frontage and acreage requirement for buildable lots (especially the reduction of the required frontage in residential zoned areas from 200' down to 100' :

Allard: The change will make some none-conforming lots conforming.

Frei: Pre-existing none-conforming lots are "grandfathered" forever under the Grandfather-clause M.G.L. c.40A, s.6. And non-conforming lots are non-conforming because they do not conform to the requirements of the Zoning Bylaws.

Allard: That is not true, they are only grandfathered for seven Years.

Frei: That is utter none-sense.

It is a great concern of mine that an individual like Denis Allard who served on the Planning Board for years does not understand one of the most important statutes in connection with Zoning Bylaws as most lakefront properties around Hamilton Reservoir are pre-existing none-conforming lots and a basic understanding of the grandfather-clause is an absolute imperative. Furthermore, all other members serving on the Board seem to have adopted Allard's miss-conceived interpretation.

It is the purpose of the Zoning Bylaw to set the boundaries between what constitutes a "buildable lot" and what not. If an individual knowingly builds a house on a none-conforming lot, he should not count on a far reaching zoning bylaw change to bail him/her out. Such a practice defies the purpose of the very law which declares certain lots none-conforming.

I suggest that this question, the question whether M.G.L. c.40A, s.6, has a time restriction of seven years as Allard claims is correct be presented to the Town Counsel so this deep routed misconception can be corrected.

Allard further claimed to follow recommendations by the Pioneer Valley Planning Commission in drafting the proposed changes to the Zoning Bylaw. As I was just elected to be a member of this Board this past summer, I would kindly ask to be emailed a copy of such recommendations, thank you.

Whatever the motive behind the proposed bylaw changes was, it was contrary to the wishes of the majority of the community. In 2015, the town did a survey in form of a questionnaire. A majority of residents (78%) opposed zoning for higher residential densities; the rest of the results show a clear picture that the majority likes the way Holland is and do not want any changes. A copy of the survey synopsis is attached to this letter.

Also, I request to be informed by the chairman, Allan Johnson, about the reason he saw the need to call me, "out of order," during the public meeting of November 16, 2020. I also need to know who muted my microphone so I could not participate any longer on this public hearing. This is especially troubling as I'm an elected member of the Board. In order for me to participate in voting on the motion to table all proposed articles dealing with size of lots, and length of frontage to be voted on at the Special Town Meeting which took place the next day, I had to exit the virtual meeting and call-in again.

I request to have the following issues put on the agenda of the next regular meeting of the Planning Board:

- Discussion to reconsider the appointment of Dennis Allard as an associate member. This is necessary in my opinion as member Bettina Schmidt failed to recuse herself from the vote whether to appoint Mr. Allard or not, despite a glaring conflict of interest.

- Discussion to change the posted "Meetings-Time:" at the town's website from 7:00pm to 6:00pm

Please attach this letter with attachments to the minutes as required by law, thank you.

Peter Frei