

1 **Approved: \_\_\_\_\_ Approved with changes: 3/7/2024 Minutes are draft until approved**

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3 Town of Effingham Planning Board  
4 Minutes for Public Hearing: 2024 Proposed Zoning Amendments, Article 22  
5 February 2, 2024  
6

7 **Members Present:** George Bull (Chair), Elaine Chick, Grace Fuller, Gary Jewell, Chris Seamans  
8 (Selectmen’s representative)  
9

10 **Members Absent:** Paul Potter, Bridget Perry, Mike Cahalane, Linda Edwards, Nate Williams  
11

12 **Meeting Minutes Taken By:** Joanna Bull  
13

14 **Members of the public in attendance who provided their names and town of residence:**  
15

- 16 Brian Taylor – Freedom
- 17 Carole Taylor – Freedom
- 18 Alan Taylor – Effingham
- 19 Susan Slack – Effingham
- 20 JT Harmon – Wakefield
- 21 Matt Howe – GMCG, Effingham
- 22 R.A. Oram – Freedom
- 23 Paul Elie – Freedom
- 24 Marcia McKenna – Madison
- 25 Blair Folts – Effingham
- 26 Tara Wu – Holderness
- 27 Grace Piselli – Effingham
- 28 Richard Fahy - Ossipee

29  
30 Chair George Bull called hearing to order at 6:35pm  
31

32 Chair Bull provided an overview of the proposed changes to the Ground Water Protection Ordinance.  
33 They relate only to the Spill Prevention Control and Countermeasure Plan (SPCC); and they do not  
34 change the role of the Conservation Commission in this Ordinance in any way. The changes only have to  
35 do with removing the requirement that the fire chief must sign off on the SPCC.  
36

37 The Planning Board’s attorney recommended this change as the current requirement puts the fire chief  
38 in a predicament, where he has to approve something which has no basis in the fire code, and where he  
39 has no standards to go by. The list of federally listed substances is very long, including chemicals  
40 commonly used by households, such as bleach.  
41

42 Requiring the fire chief’s approval of an SPCC is not something which most towns do, and it is not  
43 required by the state. It is not in the fire code. Chair Bull researched this and could not identify another  
44 town in NH where a fire chief has to approve an SPCC. In the proposed changes, we are only removing  
45 the requirement that the fire chief has to approve the SPCC. Both the fire chief and the Conservation  
46 Commission still have to be notified.

*These minutes are considered draft until approved by the Board. Corrections will be incorporated into the finalized version of the minutes posted on the Town’s website.*

47  
48 The Board received letters from residents of Tamworth and Sandwich. The Chair noted that neither of  
49 those towns require the fire chief to sign off on an SPCC, and neither does Ossipee.  
50  
51 Requiring this for Effingham would put us in legal limbo as a Town. It could result in costly litigation,  
52 which we want to avoid. These changes will remove a requirement for the fire chief which is not in his  
53 jurisdiction.  
54  
55 It was noted that in the Ordinance, both the Conservation Commission and fire chief have to be notified.  
56  
57 Susan Slack (Effingham) asked for clarification on the role of the fire chief in the Ordinance. Chair Bull  
58 responded that the Fire chief's role as it pertains to fire code regulations, maintenance and inspections;  
59 that has not changed. The changes pertain only to the SPCC where the fire chief does not have  
60 jurisdiction.  
61  
62 Chair Bull explained that with these changes, the following paragraph was removed from the four criteria  
63 in Section 2212 Maintenance and Inspection, "All properties in the Groundwater Protection District  
64 known to the Fire Chief as using or storing regulated substances in containers with a capacity of five  
65 gallons or more, except for facilities where all regulated substances storage is exempt from this Article  
66 under Section 2204, Exemptions, shall be subject to inspections under this Section."  
67  
68 Chair Bull noted "what is known to the fire chief" is not defined and not a good legal basis. It is unclear  
69 how or what the fire chief would know what to enforce.  
70  
71 It was noted that the Ordinance as we have it now does not require the fire chief to do inspections. It  
72 can be required by the Board of Selectmen or their designated agent.  
73  
74 Chair Bull commented on the breadth of the listed substances, with the question if people have more  
75 than 5 gallons of bleach, or 5 gallons of gasoline in their garage.  
76  
77 The proposed changes are not preventing the fire chief the ability to do inspections.  
78  
79 Chair Bull spoke with DES about this, and they advised that the appropriate person to review an SPCC  
80 plan would be a licensed engineer.  
81  
82 As part of the application process, the Planning Board can require a third-party independent review as a  
83 condition of approval. This would be at the applicant's expense, as is reflected in the application form.  
84  
85 Conservation Conversion would get notification of the SPCC 30 days in advance of the hearing.  
86  
87 Susan Slack commented it appeared there was misinformation out there about tonight's changes.  
88  
89 Outside of the SPCC, the fire chief's role remains the same. Fire safety code responsibilities; all of that  
90 remains.

91 Paul Elie (Freedom) asked if there was an accident, would that be owned by the fire chief. Chair Bull and  
92 Chris Seamans responded it would not. If there was a spill it would be the responsibility of the property  
93 owner or business, and they would need go to DES.

94  
95 Chair Bull said that he talked with Matthew Jones at DES. An engineer would be able to identify what  
96 state or federal regulation applies, depending on the substance, and what the applicant would need to  
97 do for the SPCC plan. A licensed engineer would have more experience in these situations and would be  
98 able to advise on what SPCC remediation would be appropriate.

99  
100 Blair Folts (Effingham) identified that a verb was missing in Section 2208. It was discussed as a possible  
101 scrivener's error, but not confirmed that a correction was needed.

102  
103 Marsha Mckenna (Madison) asked where the ordinance originated from. Susan Slack responded that it  
104 was based on a model DES Ground Water Ordinance. She (Susan) and others on a committee worked  
105 with DES and the Lakes Region Planning Commission to draft the one we have now.

106  
107 Blair Folts asked who would be in charge, if we removed the fire chief. Chair Bull responded that the  
108 SPCC would be submitted to the fire chief for recommendations. The Ordinance currently requires that  
109 1 copy shall be submitted to the fire chief and 1 copy to the Conservation Commission. The changes only  
110 take out the fire chief having to approve the SPCC.

111  
112 Matt Howe (Green Mountain Conservation Group, Effingham) asked about getting input from the  
113 Conversation Commission. Chair Bull responded that the Board will take their input. The Conservation  
114 Commission has the right to come to public hearing and provide comment. They have to be given this  
115 application; it is required in the Ordinance that they get notified.

116  
117 Marsha McKenna commented about the fire chief being a conduit. Chair Bull responded that the  
118 changes are not trying to take anyone out of the loop. The fire chief will still be notified of every SPCC.

119  
120 Blair Folts asked why the Board took out the part out to minimize spills. Chair Bull responded that is  
121 covered in the larger Ordinance and in the application form it states that the applicant is responsible for  
122 a third-party review. What is being removed in 2212 is a clause which is extremely broad and difficult to  
123 enforce. The fire chief could spend every day trying to find 6 gallons of every listed substance in town.

124  
125 Blair Folts asked if the wording could be increased to 25 gallons. Grace Fuller responded that this would  
126 be addressed in the application process. This is not preventing the town from having to make  
127 inspections. We are just not designating the fire chief specifically.

128  
129 Susan Slack suggested that what she would like to see, is not approval of the application or plan by the  
130 Conservation Commission or fire chief; but that a copy of the application goes to the Conservation  
131 Commission and fire chief, and their advisory comments, if they choose to give them, are welcomed by  
132 the Board. Getting Conservation Commission input needs to be added back into this section.  
133 Chair Bull responded that is a good point but unfortunately, we don't have time for another hearing.

134  
135 Susan Slack and Chair Bull discussed that for next year, the Planning Board will start working on updating  
136 the wording to explicitly state that the Planning Board will seek input from the Conservation Commission  
137 before approving the application.

138 Joanna Bull (Effingham) commented that the changes related to the Conservation Commission are not  
139 part of the changes being reviewed in this hearing tonight. Chair Bull said it would not be a burden of  
140 the Board to inject a sentence like this, and in hindsight they were thinking it was going without saying.  
141 The Board could work on this for review in next year's hearing.

142  
143 Susan Slack offered to provide some suggested wording, which Chair Bull welcomed.

144  
145 Blair Folts asked why there is a hurry to do this now. Chair Bull responded that there could be multiple  
146 applications that come before the Board in the interim. That would put the town in a legal quandary.

147  
148 The list of federally listed substances is pages long. It would be good to give the Planning Board  
149 discretion for applications where if a small struggling business needs an SPSCC and wants to do  
150 something minor, we don't have to require they go through an expensive long process.

151  
152 Blair Folts inquired if for Section 2212, could we keep C and edit it. Chair Bull responded the  
153 requirements are covered in A, B, and D already. C is vague and hard to enforce.

154  
155 Marsha McKenna asked if Town Council reviewed this. Chair Bull responded that the Town Council said  
156 we should remove fire chief for approval from a legal point of view. Otherwise, this could end up in a  
157 lawsuit expensive to the town. We are trying to keep the town out of unnecessary and costly litigation.

158  
159 Brian Taylor (Freedom) asked as the Ordinance has been in place for 10 years, isn't it too important to  
160 rush through. Chair Bull responded that the attorney representing the Planning Board recommended  
161 that the fire chief approval be removed, as it would be difficult to legally defend if it ended in litigation.  
162 There haven't been any other applications in the past 10 years where this came up or we would have  
163 likely made these changes then.

164  
165 Blair Folts asked Brian Taylor to comment as a prior fire chief. Mr. Taylor said he did not feel comfortable  
166 doing so.

167  
168 Grace Piselli (Effingham) revisited adding a verb to Section 2208. Board reviewed this again and  
169 concluded a scrivener's error correction would be appropriate.

170  
171 The word "that" will be replaced with "there is":

172  
173           "...provided that an adequate spill prevention..."  
174           now reads,  
175           "...provided there is an adequate spill prevention..."

176  
177 Richard Fahy presented a letter to the Board.

178  
179 Chair Bull brought public comments to a close and said that now it will be up to the voters of Effingham  
180 to vote on the proposed changes.

181  
182 Grace Fuller motioned to put forward the proposed zoning amendments, as edited for Section 2208 with  
183 the scrivener's error correction. Elaine Chick seconded. All in favor.

184

185 Board confirmed that this motion which carried pertains to the entirety of the changes, not just Section  
186 2208 with the scrivener’s error correction.

187  
188 Chair Bull commented to Susan Slack that the Board will work to include the point she raised for the next  
189 round of changes, next year. Susan expressed appreciation.

190  
191 Grace Fuller motioned to adjourn. Elaine Chick seconded. All in favor. Hearing ended at 7:32pm.

192  
193 ++++++

194  
195 Included for reference below are the existing and proposed changes:  
196

197 **Existing Text**

198  
199 Section 2208 Uses Requiring a Special Use Permit

- 200 A. The Planning Board may grant a Special Use Permit, in accordance with the provisions of this Section, for a  
201 use otherwise permitted in the underlying district, if the permitted use is involved in one or more of the  
202 following:  
203 1. Storage, handling, and use of regulated substances in quantities exceeding 100 gallons or 800 pounds  
204 dry weight at any one time, provided that an adequate spill prevention, control and countermeasure  
205 (SPCC) plan, in accordance with Section 2111, Spill Prevention Control and Countermeasure (SPCC) Plan,  
206 is approved by the Fire Chief;  
207

208 **Proposed Text**

- 209 1. Storage, handling, and use of regulated substances in quantities exceeding 100 gallons or 800 pounds dry  
210 weight at any one time, provided there is an adequate spill prevention, control and countermeasure  
211 (SPCC) plan, in accordance with Section 2211, Spill Prevention Control and Countermeasure (SPCC) Plan.  
212

213 **Existing Text**

214  
215 Section 2208 Uses Requiring a Special Use Permit

- 216  
217 G. Upon acceptance of a complete Special Use Permit application, the Planning Board shall transmit one copy  
218 of any Spill Prevention, Control, and Countermeasure Plan, furnished by the applicant, to the Fire Chief, as  
219 provided in Section 2208.A and detailed in Section 2211, for his/her written recommendations and  
220 approval. The Planning Board shall transmit one copy of the complete application, furnished by the  
221 applicant, to the Conservation Commission for its written recommendations as well. Failure of the Fire  
222 Chief or Conservation Commission to respond within 30 days shall indicate their approval.  
223

224 **Proposed Text**

- 225  
226 G. Upon acceptance of a complete Special Use Permit application, the Planning Board shall transmit one copy of  
227 any Spill Prevention, Control, and Countermeasure Plan, furnished by the applicant, to the Fire Chief and The  
228 Planning Board shall transmit one copy of the complete application, furnished by the applicant, to the  
229 Conservation Commission.  
230  
231

232 **Existing Text**

233

234 **Section 2211 Spill Prevention, Control and Countermeasure Plan**

235 Special Uses, as described under Section 2208, Uses Requiring a Special Use Permit, 1, using regulated  
236 substances, shall submit a Spill Control and Countermeasure (SPCC) Plan to the Fire Chief who shall  
237 determine whether the plan will prevent, contain, and minimize releases from ordinary or catastrophic  
238 events such as spills, floods or fires that may cause large releases of regulated substances. It shall include:

239

240 **Proposed Text**

241

242 **Section 2211 Spill Prevention, Control and Countermeasure Plan**

243 Special Uses, as described under Section 2208, Uses Requiring a Special Use Permit, 1, using regulated  
244 substances, shall submit a Spill Prevention Control and Countermeasure (SPCC) plan, as defined by the NH  
245 Department of Environmental Services (DES). Review by a qualified third party may be required.

246 It shall include:

247

248 **Existing Text**

249

250 **Section 2212 Maintenance and Inspection**

251 A. For uses requiring Planning Board approval for any reason, a narrative description of maintenance  
252 requirements for structures required to comply with Section 2210, Performance Standards, shall be  
253 recorded so as to run with the land on which such structures are located, at the Carroll County Registry  
254 of Deeds. The description so prepared shall comply with the requirements of RSA 478:4-a.

255 B. Inspections may be required to verify compliance with Performance Standards. Such inspections shall  
256 be performed by the Board of Selectmen or their designated agent at reasonable times with prior notice  
257 to the landowner.

258 C. All properties in the Groundwater Protection District known to the Fire Chief as using or storing  
259 regulated substances in containers with a capacity of five gallons or more, except for facilities where all  
260 regulated substances storage is exempt from this Article under Section 2204, Exemptions, shall be  
261 subject to inspections under this Section.

262 D. The Board of Selectmen may require a fee for compliance inspections. The fee shall be paid by the property  
263 owner. A fee schedule may be established by the Board of Selectmen as provided in RSA 41:9-a.

264

265 **Proposed Text**

266

267 **Section 2212 Maintenance and Inspection**

268 A. For uses requiring Planning Board approval for any reason, a narrative description of maintenance  
269 requirements for structures required to comply with Section 2210, Performance Standards, shall be  
270 recorded so as to run with the land on which such structures are located, at the Carroll County Registry  
271 of Deeds. The description so prepared shall comply with the requirements of RSA 478:4-a.

272 B. Inspections may be required to verify compliance with Performance Standards. Such inspections shall  
273 be performed by the Board of Selectmen or their designated agent at reasonable times with prior notice  
274 to the landowner.

275 C. The Board of Selectmen may require a fee for compliance inspections. The fee shall be paid by the property  
276 owner. A fee schedule may be established by the Board of Selectmen as provided in RSA 41:9-a.