

ROCKINGHAM PLANNING COMMISSION

February 10, 2016
Minutes

Kingston Town Hall

Members Present: Phil Wilson, Chair, North Hampton; Glenn Coppelman and Peter Coffin, Kingston; Joan Whitney, Kensington; Michael McAndrew, New Castle; Mike Turell, Atkinson; and Stephen Gerrato, Greenland; Mark Traeger and Don Hawkins, Sandown; Susan Hastings, Hampstead; James VanBokkelen, South Hampton; Rick Taintor, Portsmouth; Don Marshall, Fremont; Tim Moore, Plaistow.

Others Present: Lisa Wilson, North Hampton; Don Woodward, Exeter; Ann McAndrew, New Castle; and Stan Shalett, Kingston.

Staff Present: Cliff Sinnott, Glenn Greenwood, Dave Walker, Scott Bogle and Roxanne Rines.

Commission Meeting opened following adjournment of the MPO Policy Committee meeting at 7:28 p.m.

I. Welcome/Introductions

Attendees introduced themselves and stated what municipality they were from or the agency they represented.

II. Minutes from September 9, 2015

Motion: **Moore** made a motion to accept the minutes of September 9, 2015, as written. **Turell** seconded the motion. **Motion carried with 5 abstentions.**

III. FY 2015 Financial Statements and Audit Report

Sinnott reviewed the documents included in the packet and explained them. He noted that again this year the Audit included an unqualified ("clean") opinion, and found no material weaknesses or significant deficiencies in our internal control and continued our qualification under federal guidelines as a low-risk auditee. Results also showed a significant positive change in fund balance of about \$67,000 in FY 15, nearly doubling the agency fund balance from about \$68,000 to \$135,000. He also called attention to the fact, as explained in the audit

cover memo that this is the first year that the GASB 68¹ reporting requirement comes into effect for us. That means that our financial statements must now account for our 'share' of the unfunded liabilities of the NH Retirement System (we participate under Group 1 - Employees and Teachers). This very large negative liability is now included in the computation of net position in our financial statements. As a consequence, whereas without this liability our position is +\$135,307, with it our net position is -\$297,920. Discussion ensued about whether this is a real liability and what remedies the state and NHRS should be taking to reduce the liability. Sinnott indicated that the Commission could not pay this liability if ever required to do so, as we have virtually no assets. According to our auditors this GASB-68 accounting does not affect our status as a 'going concern' or low risk auditee.

Motion: **Hastings** made a motion to approve the FY 2015 Financial Statements and Audit Report. **Moore** seconded the motion. **Motion carried.**

VI. Current Planning Issues:

- Local Regulation of Signs, after Reed vs. Gilbert, US Supreme Court Decision – Greenwood gave a powerpoint presentation and stated that the court case was heard as a freedom of speech issue. He explained the decision and stated that most municipal sign regulations in the region are now likely considered unconstitutional. The RPC strongly recommends that all municipalities review their sign regulations to ensure regulations are content neutral, amend regulations as necessary and cease enforcing regulations that are not content neutral; and also recommends that all municipalities seek legal counsel regarding existing and proposed changes to sign regulations.

He continued that the following elements should be in all municipal sign regulations:

- 1) A severability clause;
- 2) A purpose statement for the sign regulation that at a minimum references traffic safety and aesthetics;
- 3) A substitution clause to allow any message on one type of permitted sign to be substituted on any other type of permitted sign.

Discussion ensued amongst members.

Greenwood further explained how municipalities can regulate signs; the enforcement of current sign regulations and gave a resource for further information: <https://www.nh.gov/oep/resource-library/planning/documents/municipal-sign-ordinances-nhma.pdf>.

- SB 146: Adapting to Accessory Dwelling Unit Mandate – Sinnott gave a powerpoint presentation explaining the bill, which states that "a municipality that adopts a zoning ordinance pursuant to the authority granted in the chapter shall allow accessory dwelling units as a matter of right or by either conditional use permit pursuant to RSA 674:21 or by special exception, in all zoning districts that permit single-family dwellings". The effective date is June 1, 2017.

Sinnott continued that staff has both concerns and positives with SB 146, some of

¹ Government Accounting Standards Board (GASB) - Accounting and Financial Reporting For Pensions

those are: water quality; lake, pond and beach mandates; and that "single-family dwelling" is not defined by any NH Planning RSA; non-conformity issues; requiring a minimum square footage of all accessory dwelling units; towns can control the appearance of accessory dwelling unit; using the accessory dwelling units as part of the town's workforce housing supply; and the town can now limit accessory units as attached only. **Taintor** stated that Portsmouth's building permit defines a single-family dwelling.

- Q & A – Discussion ensued with members about town specific sign regulations, what if a town does not have a sign regulation, making sure septic systems are of adequate size, developments in highly dense areas; and the sloppiness of the bill language.

Sinnott asked members if the RPC should recommend minor changes to the bill for next year's session. The consensus was yes, the language and intent needs to be clearer.

VII. Commissioner Roundtable

Hawkins stated the Seabrook Board of Selectmen do not want to be responsible for liability on the portion of the rail trail located in town. He asked if staff could review the contract language for the rail trail. The town agreed to maintenance of the trail, but not liability. **Sinnott** stated he will speak with Scott Bogle. Discussion ensued.

VIII. Other Business & Announcements

- Contract Authorization: Seabrook Source Water Protection

Motion: Whitney made a motion to approve the Seabrook Source Water Protection Contract Authorization. **Turell** seconded the motion.

VanBokkelen gave two typo's that need correcting and members asked about acronyms included in the document. **Motion carried.**

- Distribution of 2016 Commissioner Handbook – **Sinnott** told members that new Commissioner Handbooks are available on the back table and to please sign the sheet.
- March Commission meeting: Local Ag and Agri-tourism – **Wilson** gave the meeting topics.
- Other – **Sinnott** stated at the next Executive Committee there will be a new Commissioner Orientation before the meeting and all members are welcome to attend. A notice will be sent soon.

X. Adjourn

Meeting Adjourned at 9:08 p.m.

Respectfully Submitted,

Roxanne Rines

Sign regulations after *Reed v. Gilbert*



NH Housing Finance Authority

presented by
Glenn Greenwood
Rockingham Planning Commission
February 10, 2016




First Amendment

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; **or abridging the freedom of speech**, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Applied to states through the 14th Amendment

Reed v. Town of Gilbert, U.S. Supreme Court (June 18, 2015)

The Good News Community Church and its pastor, Clyde Reed placed temporary signs in the public right of way to direct people to its Sunday services. The Church did not have a permanent location, and used the temporary signs as an simple way to alert parishioners about the location, date and time of its events



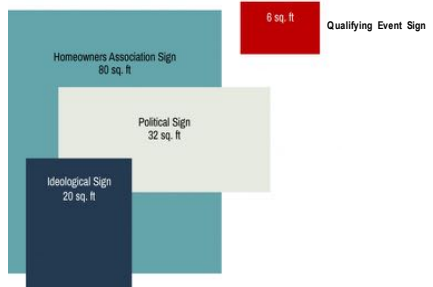
Gilbert’s Sign Standards

- Nonpolitical, non-ideological, non-commercial “Qualifying Event” signs can’t exceed 6 sq. ft.
- Maximum time up: 12 hours before, until 1 hour after the event
- Political temp signs may be up to 32 sq. ft. (in nonresidential zones)
- Maximum time up: 60 days before and 15 days after elections

And “Ideological” Signs

- They can be larger (i.e. 20 sq. ft.) than “qualifying event” signs but not as big as political signs
- They can be displayed for an unlimited period of time.
- However, they can’t be displayed in the right-of-way.

Maximum Sizes for Noncommercial Temporary Signs in Gilbert



Majority Opinion



"A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of 'animus toward the ideas contained' in the regulated speech."

Note: "Strict scrutiny" – content-based restriction is necessary to serve a compelling governmental interest and is narrowly drawn to achieve that end.

Majority Opinion



"The Town's Sign Code is content based on its face. It defines 'Temporary Directional Signs' on the basis of whether a sign conveys the message of directing the public to church or some other 'qualifying event.'"

Majority Opinion



"The Town's Sign Code likewise singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter. Ideological messages are given more favorable treatment than messages concerning a political candidate, which are themselves given more favorable treatment than messages announcing an assembly of like-minded individuals. That is a paradigmatic example of content-based discrimination."

Majority Opinion



"Yet the [Gilbert]Code allows unlimited proliferation of larger ideological signs while strictly limiting the number, size, and duration of smaller directional ones. **The Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town while at the same time allowing unlimited numbers of other types of signs that create the same problem.**"

Majority Opinion



"An innocuous justification cannot transform a facially content-based law into one that is content neutral" and "Innocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech."

Outcome: regulations on event-based signs are not content neutral because they are different from regulations on signs with other content; ∴ unconstitutional. *But how far does this go?*
It's a unanimous decision, after all...

"Signs" of Hope in the Court

OPINION OF THE COURT

Thomas
Roberts
Scalia
Alito
Kennedy
Sotomayor

CONCURRING OPINIONS

Alito Kagan Breyer
Kennedy Ginsburg
Sotomayor Breyer

The Court's Middle Ground



Helpful Hints from Alito

- Content Neutral Sign Regulations:
 - Size and location standards
 - Lighting
 - Fixed vs. changing (e.g., electronic)
 - Commercial vs. residential property
 - On-premises vs. off-premises
 - Sign limits per unit of distance
 - Time restrictions on signs for one-time events
 - Government speech OK
- Time, place, manner restrictions must still be narrowly tailored to serve government's legitimate, content-neutral interests.

Concrete Solutions

- Every resident is allocated a particular amount of square feet of signage that they can use for any noncommercial signage on their property
 - For example: ten square feet per resident, in a residentially-zoned area
- For particular periods (which can relate to the dates of elections), all size and number restrictions on noncommercial signs may be suspended
- Universal message substitution –any legal sign (location, structure) can display any legal message

Concrete solution: exempt signs based on activity on the site, not sign content

<ul style="list-style-type: none"> ■ <u>Before Reed</u>: an exemption allowing "for sale or rent" signs ■ <u>After Reed</u>: an exemption allowing an extra sign on property that is currently for sale or rent 	<ul style="list-style-type: none"> ■ <u>Before Reed</u>: an exemption for "drive-in" directional sign ■ <u>After Reed</u>: exemptions allowing an extra sign (<10 sq. ft., < 48 inches in height, and <six feet from a curb cut), for a lot that includes a drive-through window
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Concrete solution: issuing temporary sign permits tied to the date of issuance

- Citizens can apply, by postcard or perhaps online, for seven-day sign permits, and receive a receipt and a sticker to put on the sign that bears a date seven days after issuance, and the city or county's name.
- The sticker must be put on the sign, so that enforcement officers can determine whether it's expired.
- Because the expiration date is tied to the date of issuance, there is no risk of content-discrimination.
- The sticker itself would be considered government speech.

Immediate Practice Pointer

- **Talk with your legal counsel:** Municipal zoning regulations that give greater leeway in terms of time of display and size for political and ideological type signs when compared to directional signs for non-profits and religiously affiliated organizations will likely be found to violate the First Amendment.
- Local zoning regulations with regards to signs should be promptly reviewed in consultation with legal counsel to determine if amendments should be made.

SB 146 – Accessory Dwelling Units


Material from: NH Housing Finance Authority & Rockingham Planning Commission

Presented by Cliff Sinnott
 Rockingham Planning Commission
 February 10, 2016




Accessory Dwelling Units

- An **accessory dwelling unit** is a really simple and old idea
 - Early 20th century. A common feature in SF homes
 - A second small **dwelling** right on the same grounds (attached to or within) your regular single-family house
 - *Ex. An apartment over the garage, in the basement.*
- ADUs are also called *accessory apartments, in-law apartments, family apartments, or secondary units*

Accessory Dwelling Units

- An **accessory dwelling unit** is a really simple and old idea




Accessory Dwelling Units

- An **accessory dwelling unit** is a really simple and old idea



Accessory Dwelling Units

Accessory Apartment
Warner, NH



Accessory Dwelling Units

- Benefits of ADU's
 - Increase a community's housing supply without further land development
 - Facilitates efficient use of existing housing stock & infrastructure
 - An affordable housing option for many low- and moderate-income residents
 - Elderly and/or disabled persons who may want to live close to family members
 - or caregivers, empty nesters, and young adults

Accessory Dwelling Units

- ADU's are an important component of affordable housing advocacy
- Municipal land use ordinances for ADU's vary widely and many restrict to family members.

Accessory Dwelling Units

- Impetus for SB 146
 - New Hampshire's changing demographics
 - New Hampshire Housing 2014 study: "Housing Needs and Preferences in New Hampshire"
 - Slower population growth
 - Job quality/income
 - Mismatch of housing stock and needs and desires of changing population-young AND old
 - Older adults want to "Age in Place" or "Age in Community"
 - Homebuilders unable to fulfill homeowner requests to create ADU's for a family member or caregiver

Accessory Dwelling Units

- **SB 146 (passed by both Senate and House)**
 - Requires all municipalities to allow an *attached* ADU in any single-family house by right, special exception, or conditional use permit
 - Standards for a single-family home also apply to combined SF and ADU (ex. lot coverage, occupancy per bedroom)
 - Municipality can limit the number of unrelated individuals that occupy a single unit
 - Applicant for permit to construct an ADU must make adequate provisions for water supply and sewage disposal
 - Requires interior door between units but prohibits from requiring it to be unlocked

Accessory Dwelling Units

- **SB 146 (passed by both Senate and House)**
 - Municipality may
 - Require adequate parking to accommodate an ADU
 - Require owner occupancy of one of the units (but can't say which)
 - Require demonstration that a unit is the owner's *primary* dwelling unit
 - Control for architectural appearance
 - Limit how many ADU's per single family dwelling
 - Municipality may not
 - Limit ADU to 1 bedroom or to be less than 750 s.f.
 - Require familial relationship between occupants of different units
 - Require additional lot area or other dimensional standards for ADU (but it may for a detached ADU)

Accessory Dwelling Units

- **Other elements of SB 146**
 - Detached ADU's
 - Municipalities may permit but is NOT a requirement
 - A municipality may require increased lot size
 - Must comply with elements of SB 146
 - Amends NH RSA 674:21 Innovative Land Use Controls
 - ADU's are removed from list along with its definition

Accessory Dwelling Units

- **SB 146 Next Steps**
 - Requires signature by Governor Hassan
 - Effective date: June 1, 2017

Accessory Dwelling Units

- Concerns
 1. State zoning mandate
 - Others: Excavations, Workforce Housing, Manuf. Housing
 2. Must allow ADUs everywhere single family dwelling are permitted. No local discretion re:
 - High density lakeshore development (WQ)
 - High density beach development (Crowding, parking)
 - Urban SF neighborhoods (Crowding, parking)
 - Provides 'end-around' from intentional density limits

Accessory Dwelling Units

- Concerns
 3. 'Single family dwelling' not defined RSAs
 - Does it mean a detached single family house?
 4. Minimum Square Foot ADU requirement (750) may be to large for some settings
 5. SB146 - a solution in search of a problem?

Towns with Accessory Units/In-Law Apartment Regulations

RPC Region: 23 of 26

Town	Article/Chapter/Section	Page	Town	Article/Chapter/Section	Page
Atkinson	Section 460	231	New Castle	6.6	239
Brentwood	300.002.004	15	Newfields	4.14	20
Danville	Article 4	23	Newington	none	
East Kingston	Article 8	25	Newton	Section 13	6
Epping	6.13	44	North Hampton	V – Section 513	no page #
Eeter	4.2	4.7	Plaistow	Section 8	56
Fremont	IV-a	no page #	Plymouth	none	
Greenland	3.7.11	30	Rye	Section 506	78
Hampstead	IV-14	223	Salem	490.802	no page #
Hampton	none		Sandown	Article 2 – Section 5	64
Hampton Falls	III – 7.2	19	Seabrook	Section 8.200	225
Kendington	8.4.F	23	South Hampton	Not available on line	
Kingston	206	206-1	Stratham	5.4	77

Accessory Dwelling Units

- Positives
 1. ADUs = Affordable Units under 674:58-61
 2. An ADU that would non-conforming use can be denied
 3. ADUs are one of the least disruptive ways to expand Workforce Housing supply.
 4. Positive changes made to the original bill in House:
 1. Local option to limit to 'attached' only
 2. Counted as workforce housing units
 3. Allowed under conditional use permit (and spec. exception)
 4. Local option for "Appearance" controls

Going Forward

- Next Steps for RPC?
 - Planning Advisory Memo – Spring /Summer 2016
 - Regional Workshop - Summer / Fall 2016
 - Model / Sample ADU Ordinance? Fall 2016
 - Request amendment to address concerns? – Fall 2016