

Union Planning Board Minutes
Thursday, April 13, 2023, 6:30 p.m.
William L. Pullen Municipal Building Downstairs Meeting Room

Present: Jesse Thompson, Robin Milliken, Glenn Taylor, Gerald S. Brooks, Jr. (“Jerry,” Chair), Dale Flint, John Mountainland, Mike Johnson

Others Present: Grant Watmough (CEO), Bill Packard (Select Board), Linda Mountainland, and others

1. Meeting called to order: 6:30 p.m. by Jerry Brooks.

Jerry welcomed all. He said this is a public proceeding; you have a right to (muffled) as being discussed unless the board enters into executive session (muffled). He said you also have the right to refute any materials created and received by the board that relate to the board’s deliberation unless state law makes that document nonessential. Please notify the board if you are unable to see or hear or if you’d like to access any (muffled).

Jerry said some rules for tonight’s meeting: be respectful, be courteous, remember we as a board have sworn to put aside our opinions and are voting according to our best interpretation of town ordinances, that you the legislative body have voted into place. Just because we vote for or against an agenda item does not mean we could explain the creed, and everything discussed.

2. Petition regarding Land Use Ordinance changing of Industrial Metallic Mining. Planning Board review.

Jerry said before we begin the open discussion re: the citizen’s petition to propose an amendment to land use ordinances, he believes the board needs to understand the timeline of events and the two moratoriums potentially in play in the future.

He said on March 1 a commercial mining entity contacted the town manager and select board re: an informational outreach and notice of potential interest. On March 2 the Town of Warren had the same. On March 9 an anti-mining forum was held at Union Masonic Lodge. On March 16 the Union Town Manager and the Union Select Board received a proposed amendment to the Land Use Ordinance re: banning industrial metallic mining.

Jerry said to CEO Grant he was curious why they didn’t come to the planning board first as he understands from government and municipal law dealing with ordinances, amendments, and petitions. Grant said pretty much standard procedure is anything that comes in as a petition comes to the town clerk, and it goes to the select board first because the office has to go through a process of verifying all the signatures, and that has

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to be certified by the select board that it does in fact meet the requirement of signatures which is 10% of voters in the last gubernatorial election.

Jerry said that initial response should have been to certify. Grant believed it was. Jerry believed they did reject it. He said they would relax Robert's Rules of Order to discuss. Linda Mountainland and others said they accepted it. Jerry said this for the first meeting when attorney Patrick Mellor presented an amendment... Bill Packard said they wanted an accelerated timeline, do everything on these dates, yes, we (select board) rejected that. Jerry said it's unfortunate as he feels a lot of issues with this particular petition could have been corrected had it been put after that or before that however you want to look at it –the select board certifies it, kicks it down to the planning board for review, due diligence, and to vet it; at that time we could have pointed out the deficiency in the wording.

Bill said they certified the signatures and accepted the petition this Monday night. They did not have the option back then. Jerry said March 21 you rejected that initial proposal by the opposition group to put a straightforward – not the citizen's petition – the opposition group put before the select board an amendment, and the select board rejected that idea. Grant said they rejected the wording; it wasn't a petition at that point. Jerry said we are not even talking petition yet, just going down through the timeline.

Jerry said in the future if the select board either rejects or accepts, or should even do such a thing, they should review it and kick it down to the planning board to be properly vetted, then kick it back up, or resubmit it to the particular opposition group saying these things are not in compliance – fix them or don't, this is my take.

Grant said there are basically three ways that something can come as a change to the ordinance: 1) the planning board initiates something, it moves up through the process, and we vote on it; 2) the select board initiates something, it moves through the process, and gets voted on; 3) the petition. The select board could have initiated some kind of change if they chose to. Jerry felt it was most unwise. Grant said usually they do not. The select board can come up with wording on the ordinance as they choose to. All three cases would get reviewed by the planning board, hence we are here tonight.

Jerry said the planning board has jurisdiction to review amendments and petitions, guided by page 7 which is actually literally page 1 of the Land Use Ordinance. Page 7 says: "Methods for Proposed Amendments (as Grant said). Amendments to this ordinance shall be considered following petition, motion of the planning board, or motion of the select board. All proposals for amendment of the Land Use Ordinance shall contain the recommendations whether for or against of the Planning Board." We did not get an opportunity at that time. We are not talking petition, we are talking (muffled).

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Bill said he was only speaking as a member of the board, his interpretation. What he saw was a request or a demonstration of how we could circumvent the process that is in place in order to get that on the June 13. From his point of view, he was not interested in what was on the ballot; he voted as a select board member to not modify the process. It had nothing to do with the content of that, it was they didn't want it, combine the public hearing, the town clerk does this, that, the whole thing was laid out. What he voted basically no was the process, and assumed it would have gone to the planning board from there – the process, not the content.

Jerry thought a lot of things could be alleviated had the select board just rejected the intent of what they were doing, kicked it down for review by the planning board, we'll do our due diligence and say wow this doesn't comply with the Comprehensive Plan, we've got two competing ordinances, these are the changes you'd need to make, and they could go and do with it what they will.

So, what happened: it did get rejected on March 21. Instead of accepting a proposed amendment as presented to the select board, the board voted to put forth the idea of a moratorium ordinance in reference to the existing Metallic Mining Ordinance. That was sound. On March 23 the planning board met at the normally scheduled time and resolved an existing subdivision. On April 4 at 9:00, 10:00 a.m., the Town of Union received the proposed moratorium ordinance re: the Metallic Mining Ordinance of 1994 in the Town of Union. We received the newly proposed from the town attorney.

Mike Johnson arrived.

Jerry said they had been going over the timeline to catch everyone up and recapped. We had a commercial mining entity come to town, showed interest, two informational meetings, anti-mining forum at the masonic lodge, the 16th the town manager received a proposed amendment to the land use ordinance (strictly an amendment not a petition), March 21 the select board reviewed and rejected that, and here we are. Instead of accepting the proposed amendment as presented, the select board voted to put forth the idea of a moratorium ordinance in reference to the existing Metallic Mining Ordinance of 1994. March 23 we had our meeting here, uneventful. April 4 the Town of Union received a proposed moratorium ordinance re: the Metallic Mining Ordinance of 1994, received that email code enforcement.

Unfortunately, the use of wording in terms of industrial metallic mining is erroneously entered into that text. No such description exists in the current overseeing ordinances, the Metallic Mining, Land Use Ordinance, nor the Comprehensive Plan. Additionally, the planning board received a copy of the citizens petition (for proposed amendment) at the same date. April 4, 6:30 p.m., the Town of Union Select Board voted in approval of a moratorium ordinance and approved it while setting a date of April 19, 2023 for a special

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town election re: the moratorium. Also, noting we (the planning board) had no say in that moratorium ordinance, and he thinks that's unfortunate.

Also, during the exploration, a discussion of other business which is #9 on the select board agenda, the board approved the citizens petition as written without the consultation of the Union Planning Board. April 4, at that same meeting, subsequent to all of this, the town manager with the apparent approval of the town attorney, outlined a plan to request a second moratorium to revise the wording of that proposed amendment by citizens petition in the event that it passes with support of the legislative body, the voters. That moratorium if passed would allow the planning board to revise the document and the Comprehensive Plan simultaneously, because that petition/amendment that is currently presented does not comply with the Comprehensive Plan revised in the year 2017.

Jerry's question is what happens if that second moratorium does not pass. That means the citizens petition/ordinance amendment for land use will be applied directly to the Land Use Ordinance as written. Glenn confirmed they don't vote. Jerry said they have no choice; a citizens petition carries extreme weight under home rule. He asked Grant to correct him if any of this is wrong so far and invited Bill to speak up at any moment.

Jerry said the second moratorium, if passed, would allow them to revise and make that petition/amendment compliant. They will have to reconcile because as written it leaves in place the metallic mining ordinance and a ban on industrial metallic mining. Industrial metallic mining is not anywhere in the Comprehensive Plan nor is it any of the documents (muffled).

Jerry continued so April 11, at a special select board meeting, the board accepted certification of the petition warrant. They discussed the content of the petition amendment with at least two members agreeing that it's conflicting and problematic yet voted to approve that petition as a warrant article. The fourth item on that agenda that evening was a vote to approve a new moratorium, that second moratorium, put that on the warrant articles in order to correct deficiencies in the petition amendment as presently written and make it comply with the Comprehensive Plan. This item was carried forth by motion and vote without the presence of a draft of that proposed moratorium. Grant said they have it before them tonight; he just got it today. Bill believed they (select board) had the wording that night; he read it. Jerry said this is a quandary, a cache-22.

Jerry read aloud:

Petition to Place a Warrant Article before the Voters of the Town of Union for their consideration at the next secret ballot referendum to enact an ordinance titled "Amendments to the Town of Union Land Use Ordinance to Regulate and Control Industrial Metallic Mineral Mining."

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Grant said there are two. The first one will be voted on this month (April). The second one will be at the annual town meeting. (*Incorporated by reference.*)

Addressing Grant, Jerry said when we are working on this moratorium, this is the direction we'll be taking, to ban metallic mining. Grant said no, this does it so that you can, with potential for extension 180 days by the select board.

Jerry continued reading the Moratorium Ordinance. He said this is stating the current petition as written would appear to be in conflict with the town's comprehensive plan. He hesitated to go any further right now.

He said the purpose of tonight's meeting was to review page 7, 1.5.3, Planning Board Review of Petitions and read it aloud:

“Upon receiving a proposed amendment, the Town Clerk shall notify the Planning Board Chairperson within five (5) working days. The Planning Board, at its next regular or special meeting following notification from the Town Clerk, shall determine whether the proposed amendment is consistent with the Comprehensive Plan of the Town of Union. The Board shall indicate, within thirty (30) days, in a written decision, whether a proposed amendment would be consistent with the Comprehensive Plan. The decision of the Planning Board may be appealed to the Board of Appeals within thirty (30) days of the Planning Board's decision.”

Jerry said in this document, the second moratorium, it says that that petition appears to not comply with the current Comprehensive Plan. He doesn't know they could possibly pass that petition as presented and invited anyone to review that.

Mike said our (planning board's) whole goal is to follow the Comprehensive Plan.

Jerry continued reading aloud page 7, 1.5.4, Reconciliation with Comprehensive Plan:

25:16 – 55:21

“If the Planning Board finds the proposed amendment to be inconsistent with the Comprehensive Plan, unless overruled by the Board of Appeals or the Superior Court, such article shall not be considered by the Town Meeting until the Comprehensive Plan shall be amended in such a manner that the proposed Land Use Ordinance amendment would be consistent with the amended Comprehensive Plan. The Town may consider the proposed Land Use Ordinance amendment and the proposed amendment to the Comprehensive Plan simultaneously.”

Jerry said it's too late and that's unfortunate. Grant said a few things to be aware of: if it seems like the select board is rushing things, they are forced to. This is our first year of voting by referendum, so that means the deadlines of getting things ready to go before the

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voters ahead, because we have to have absentee ballots available. That put us in a way tighter timeframe.

Jerry said he thought that was the first mistake. If the Citizens Petition didn't make it, or the proposed amendment did not make it in time, that is not for the Planning Board to consider their time, consequences. We can go through other methods, there are special town meetings, but we cannot be pressured as a board into voting.

Grant said the select board was, because the petition that came in says right in it "June 13, we want you to vote on this for June 13." So they were between a rock and a hard place.

Jerry said they may feel the pressure, but they don't have to comply. Do they legally have to comply? Grant said if they feel that that's a valid petition to go before the voters, yes they do.

Jerry said at each and every select board meeting he attended, it was said how poorly written or devised this instrument was. It didn't comply with conflicting ordinances, it doesn't comply with the Comprehensive Plan, but it's a Citizens Petition and they felt like they needed to push it forward.

Grant said just as an overview, having spent way more time on the Comprehensive Plan than he wanted to, he looked at it with the idea of: ok, is this petition in compliance with the Comprehensive Plan nor not? He found one area where he found it's not, on page 172 where mining is listed; but the wording in that little paragraph where it talks about future land use planning recommendations, is convoluted. Grant handed out copies saying this is where it talks about mining: agriculture, forestry, and mining.

Jerry said one page (172), under Future Land Use Plan, it describes a rural area as "a geographic area designated in a community's comprehensive plan as an area deserving of some level of regulatory protection from unrestricted development for purposes that may include but are not limited to supporting agriculture, forestry, mining, open space, wildlife habitat, fisheries habitat, and scenic lands, and away from which most development projected over 10 years is diverted."

He said it specifically includes mining as an allowable land use, and why would it not? We've had a sleeping giant in a mining ordinance from 1994. This Comprehensive Plan, revised in June 2017... This ordinance has been dormant for that many years, and no one has attacked the Comprehensive Plan with even an inkling of mining. In that period of time there's been no movement to ban mining, strictly beyond that monster of a document, 109 pages. He can only make an assumption that we felt safe because it was so stringent. We had all this opportunity for years and years since '94 to make changes, and the Planning Board did not, didn't do it. And now, we're going to potentially approve a

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petition with an amendment to ban industrial metallic mining. It does not sit well with him. This is why he requested they meet with the town attorney here.

John didn't think they could go forward until they got a legal (opinion).

Grant said he went through the code plan looking at is it compatible or isn't it. He showed them what he found that he thinks might steer them in the direction that it isn't. He handed out papers with information (pages out of the Comp Plan) that might steer them in the direction that it is. Nothing is black and white.

Jerry said that Comp Plan Committee had the ability to add mining. Grant said he thought generally speaking both Warren and Union felt that the ordinances were strict enough. Blackhawk Mining went away. Part of the reason Blackhawk Mining went away is because the price of nickel dropped. It's partly because we enacted those ordinances, partly because the price of nickel dropped. Our ordinances have never been challenged. Warren's ordinance has never been challenged. They certainly could be.

Jerry said he thought a moratorium was rightfully due. Grant added we do not have any say over another town. Jerry said it's interesting in the Comprehensive Plan it indicates we should initiate, participate in an interlocal and/or regional planning management and regulatory efforts around shared natural resources between towns. Grant thought that was a positive thing, but we have not done it. We enacted our current metallic mining ordinance by ourselves. Warren didn't help us do that other than they fact that they wrote most of it. Warren also did their own. It was not a collaboration.

Jerry would like for the town attorney, who wrote this second moratorium, to explain where in his/her interpretation of the Comprehensive Plan, it does not comply.

John said he wondered about a complete ban on mining. His understanding was you couldn't do that. Grant said no attorney has been saying no you can't ban it completely. Grant continued first of all it's not a federal thing like the tower; you couldn't outright ban cell towers. No federal regulation says you can't outright ban metallic mining. Someday there might be. There isn't right now. They are not a protected class. No attorney's saying you can't ban it town wide. He's not heard that. Their attorney's not saying that. Our attorneys are not saying that.

John said where we have an ordinance in place dealing with mining, then to put a ban on the top of that – Grant said now you're entering the idea of why we have two moratoriums.

Grant continued by saying he would explain a little why we have two moratoriums. The first, if it passes, is April 19. That one is specifically talking about industrial metallic mining. The difference between "industrial metallic mining" and "metallic mining" – in

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his book they are one and the same, in a court of law not necessarily. So we put a ban on in April, and that ban also includes exploration, which the wording of this petition does not by the way.

The moratorium is up to – not 180 days flat – it's *up to* 180 days, until or if something is enacted because of that. Guess what? If in fact the petition moves forward, it in fact says “industrial metallic mining” which is what our moratorium says. If that passes in June, that moratorium is automatically lifted. That's why there's a presentation on the second one, and it's spelled out that it's “industrial metallic mining” AND “metallic mining” so that it covers both ordinances so they're not competing against each other because we've put a stop to them until you can work on it.

Jerry said there are so many if's in what he's hearing. The other night he presented to the chairman of the select board, what happens if that second moratorium does not pass? He said we're screwed. Jerry said you're damn right we are. Grant said we're really not. Jerry said we are, because now we've enacted – potentially, if the petition passes – we've got that passed, and we are back to the same... Grant said we are more susceptible to litigation. Jerry repeated there are too many if's: if this passes, and if that passes, or if they don't pass... As planning board, we have to consider each option, consider the moratorium. Tonight, we just simply have to decide, or not decide, on this petition. He felt we are in a legal cache-22. As chair he welcomed anyone to find a way out of this.

Jerry read aloud for Glenn (surgery, voice problems): couldn't we enact a moratorium, then work on the Comp Plan and land use mining ordinance, and come back in the fall with a special town meeting with both? Glenn clarified by “land use mining ordinance,” he meant the petition.

Grant said if the things as set in place happen, that's exactly what you'd be doing. The first moratorium puts a stop to everything. The vote happens on the referendum and the moratorium, if everything passes, you're right where you just said. You're working on it to present something to the voters at a later date.

Jerry said tonight we are in a quandary as he sees it. Grant said they're hung up on that issue of is it compatible with the Comp Plan or not. Jerry said the attorney, in his own words, appears to be... Grant said “appears” is a pretty vague word and in a court of law means very little. He thought what they're reading in our ordinance has to be clarified; if they see something so egregious that it's so far outside our Comp Plan, then it shouldn't be before the voters, that's what you say: don't send it to the voters; otherwise, you've got a couple hundred people that signed the petition that says I want this to go to a vote.

Jerry said he of all people respects the power of a Citizens Petition; however, he will not be pressured into something that is wrong. He does only see it one way with this. He invited anyone feeling he's biased in his approach this evening to stand right up.

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Grant said he respected Jerry's position. His goal would be to make this go as efficiently and smoothly as possible.

Jerry said, not speaking for the board, he thought if the town attorney were here or a written statement after regarding this video this evening, a written statement clear cut that spells it out...

Bill, speaking for himself, addressed the select board vote. He said it was clear and he probably said he did not think this was compatible, and he doubted it was legal. But it was not their business, again not speaking for the select board. This needed to be right where it is here tonight, therefore he did not feel he could vote no we won't accept it because he didn't think it was legal. To him he thought they should (roll the ball) over to the planning board, so it was to allow it to happen. He did not feel he could vote no don't put the petition on the town meeting because he did not think it was legal, and there were no corroborating – he never got a letter from the town attorney or whoever that said don't do this. His reasoning was this is where it needs to be, and it got here in a backwards way, but it's here now.

Jerry said he understood the opposition group presented the select board with a timeline. He thought trying to comply with that was problematic. This has to be right, correct. Time is a construct, that is not for the planning board.

Robin asked how do we get where we need to be. Jerry said we need to get the attorney clarification. Grant said we charged the chairman with talking to the town manager about getting the attorney here at your next meeting. Jerry said he spoke with him three times and asked that. He knows it's short notice. Grant reminded we meet again in two weeks. The board concurred that is appropriate. Grant reminded board members need to feel comfortable with their decision.

Jerry said again you've got an amendment and a petition that don't necessarily go in the same line. He urged board members to consider re: the moratorium, even though it says "industrial metallic mining," we will be spending our time working on beefing this (Metallic Mining Ordinance) up, only to potentially throw it out the window at a later date. This is his only social life, but he's not so sure he wants to waste a lot of time if it's going to get hucked in the future. Glenn said hear from the town attorney and go from there.

Jerry said if we were to pass the Citizens Petition with the amendment as presented, it doesn't comply. He thinks it's wrong. He also thought the initiation of a second moratorium a sketchy idea. If it doesn't pass, again... we're in the same boat. Two wrongs don't make a right.

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Mike suggested getting hold of him (town attorney) and have a special meeting filling the board in on what he means. Dale felt the board needs to talk to the attorney, echoed by John, Robin, and Jesse.

Motion to table it until we talk with the town attorney by: John Mountainland
2nd by: Glenn Taylor
7-0

Jerry asked if we reconvene at a specified date. It probably has to be from the town attorney. Mike said just be open to a special day. Jerry said take it as it comes. Grant said they absolutely need to feel comfortable with what they're doing, and on the second moratorium – finding the wording again – it also appears to conflict with the Comprehensive Plan. This is written with the idea that that petition passes; that's what makes it in conflict. Jerry said that defies logic. This is a logic problem.

Grant said he and Jerry can talk to the town attorney together.

Jerry said if the select board had the second moratorium on the night of the 11th – it would have been great to have seen it at the same time – they should as a planning board be apprised – technically they should be generating any moratorium. Grant disagreed and said they don't have that power. Jerry said the town warrant, the planning board generated the moratorium, sent it to the attorney, he tweaked it and sent it back. Grant said it was at the request of management, because the (planning board) doesn't have that power, the select board has that power. Jerry said to write the moratorium; this is what we do – just the opportunity to write it. He felt in the future the board needs that opportunity and doesn't think they should feel rushed, especially with this magnitude. This makes a cell tower look like a playdate.

3. Approve minutes of September 8, 2022 and December 8, 2022:

Motion by: Glenn Taylor
2nd by: Mike Johnson
7-0

Approve minutes of March 23, 2023: Tabled.

4. Any other business by the board: None.

5. Adjourn:

Motion by: Glenn Taylor
2nd by: Mike Johnson
7-0

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Meeting adjourned at 6:50 p.m.

Respectfully submitted,

Sherry Abaldo
Secretary