Wetlands Working Group
TOWN OF PETERBOROUGH, New Hampshire

Minutes of October 29, 2010

Members of the Peterborough Planning Board and Peterborough Conservation Commission held a joint meeting on Friday, October 29, 2010 at 8:00 a.m. in the Selectmen's Meeting Room of the Town House.

Members Present: From the Planning Board Ivy Vann, and from the Conservation Commission JoAnne Carr and Matt Lundsted, and Alternate Francie Von Mertons. Also present were Select Board members Barbara Miller and Joe Byk.

Staff Present: Carol Ogilvie, Director and Laura Norton, Assistant, Office of Community Development.

The meeting was called to order at 8:00 a.m. Ms. Ogilvie noted this was a special meeting to discuss an idea for the wetlands proposal by Ivy Vann. Ms. Vann interjected "this is a why not a what." She went on to say "as the current amendment is proposed, it is lovely" adding "but I just don't think in the current climate that it will pass."

Ms. Vann went on to mention two prominent issues with the current regulation. "First it does not adequately protect the wetlands. It is not flexible and does not work well for the wetlands, the town or the applicants." She went on to note "and it is an administrative issue for us." Ms. Vann noted applicants must come in with their proposals fully engineered. "It is a huge expense" she said. Ms. Vann went on to note "and then an applicant brings their request to the ZBA which is a semi-judicial board that says yes or no." Mr. Byk interjected "isn't that the same under any ordinance?" With Ms. Vann replying "no, there is no opportunity for the applicant and their engineer to come to the Planning Board for a plan review; that is how we currently handle wetland impingements, it's a thumbs *up* or *down* after all the money has been spent." A brief discussion about the operations of the ZBA followed with Ms. Vann reiterating "going through the ZBA does not work well for the town or the applicant. Do we not have the chance to do the right thing?" Ms. Miller asked "do you think the ZBA thinks that?" with Mr. Byk interjecting "they would disagree." He added "they think they should do it not the Planning Board." Ms. Vann replied "I think it is a planning function." She went on to say "so, as we look at the current amendment of a 50-foot buffer and a 50-foot setback with a reduction of the trigger size of a minimum wetland to from ½ to ¼ acre, do you think it is going to pass?" adding "and if it does not it will be very difficult to revisit this in the near future." Ms. Vann concluded by noting she has been asked about the amendment several times with people saying "we don't want an increase." Ms. Miller nodded and said "I agree. I get that all the time." A brief discussion about the perception of how an increase in wetland protection affects land values and private ownership followed. Ms. Vann noted "everyone thinks their ox is being gored, *it's not true*, but that is what they believe."

When a member asked what might be better Ms. Vann replied "it would be better if we separate the administration issue from the increase in the setback." Ms. Vann then suggested the wetland protection stay at 50 feet. She explained the protection as 25 feet of an undisturbed, monumented buffer with more stringent protection and a 25-foot setback with permitted uses.

The members agreed undisturbed meant no mowing or cutting of brush or digging of bushes. Mr. Byk asked if it was in the purview of the Planning Board to waive some of the survey requirements on large parcel with Ms. Ogilvie stating that they could. Ms. Carr noted that the current wetland protection consisted of a wetland district with a 50-foot setback.

A brief discussion about the vocal and fervent opposition in recent months followed with Ms. Vann concluding "100 Feet and a ¼ acre will not sell." Ms. Miller asked about the consideration of the (high/low) functionality of the wetlands with Ms. Vann noting that information "is available and may be considered for uses." Ms. Miller then asked about whose responsibility it should be, with Ms. Vann replying "I think it is a Planning Board issue." A brief discussion about the judicial aspects of the ZBA with their lack of planning strategies followed. "How about working together?" asked Ms. Miller with several of the members pointing out several missed opportunities to work together because the ZBA had turned them down. Ms. Vann went onto note "right now we are not protecting the wetland and not fixing the administrative issues." Ms. Miller made a statement about baby steps with a member interjecting "and come back next year for another baby step?"

A brief discussion about the perception of the ordinance followed with Mr. Byk noting "the perception is that that the regulation is a taking. There has been zero education, none." Ms. Vann agreed adding "we still have to educate." The members went on to discuss the best recommendation for the minimum size of a wetland (currently ½ acre) noting one thought was that reducing the minimum size to ¼ acre would catch vernal pools. Ms. Vann noted "people visualize it and it looks like a puddle to them." She then recommended leaving the minimum size at ½ acre. Mr. Byk asked Ms. Vann "and how would this affect your project? (Referring to Ms. Vann's High Street development). Ms. Vann replied "not at all, I am all done." Ms. Vann added "from the start I could mitigate through it." The members went onto discuss Variances and Special Exceptions. Ms. Vann reiterated "we have what looks like broken zoning and it is."

The members then briefly discussed a zoning diagnostic analysis done in 2007 by Steven Keach and Mark Fougere, who strongly recommended a planning board process with Conditional Use Permits, and the ½ versus ¼ acre debate. Mr. Lundsted concluded by noting "even with education we are not going to overcome the perceived taking." Ms. Miller suggested creating examples of different parcels to show the flexibility of the proposed amendment and briefly discussed some of the feedback they had received from the community. Ms. Von Mertens noted "my initial reaction is that this is a reduction in protection." Another member interjected "if we did a better job of enforcing our existing 50 feet we would not even be here." In response to that comment another member asked "if we are doing a poor job now, will we be doing a poor job in the future?" A discussion about monumenting, the political climate and the prudency of tabling the amendment followed. Ms. Vann concluded by noting "I don't want to table it" adding "and I don't think the Planning Board wants to table it. Putting every wetland issue through the ZBA is not the right way to do things."

A discussion about rivers, lakes and ponds followed with the members agreeing that all wetlands are not treated as wetlands and that resource areas are also wetlands and should be treated as such. The members went onto discuss the functionality of wetlands, what they do and why they are so important. They also discussed the benefits of the consultant role the Planning Board could offer the ZBA.

The members reviewed the feedback expressed by some of the ZBA members that generally suggested the ordinance was too complicated and that a change in the process was not appropriate. Ms. Miller asked about a position that reassures the (ZBA) members that the process was not being taken away from them. Mr. Lundsted reiterated the flexibility of the new ordinance, citing the 5 criteria the ZBA must abide by versus the "what can you bring to the table" approach of the Planning Board. The members agreed that while the ZBA may not be happy with the recommendation "it is not about them, it is about the ordinance." Ms. Vann concluded with "and the applicant always has the choice to go to the ZBA."

The members re-reviewed how the current ordinance is not working, how it is a thumbs or thumbs down review where the Planning Board (through use of Condition Use Permits) would be able to look a the whole site and assist with planning. Ms. Miller noted "I agree it should be at the Planning Board level but we are at an impasse as to how to get it there."

The members briefly discussed how the proposed ordinance may have assisted several projects in town. "Using Conditional Use Permits is one-stop shopping" said one member. Another member warned "we need to take this to the Conservation Commission before we go public, the worse thing you can do is go out without their support." Ms. Vann replied "it is going to be a very hard sell" adding "but this has come before us as something we need to fix."

Ms. Miller asked again about the diagnostic analysis that was done in 2007 with Ms. Vann replying "we have essentially ignored it" adding "I just hate to see all this work go down the drain and not fix the problem."

The members then briefly discussed the consequences of filling in wetlands and culverts via the classic examples of the flooding in Keene, New Hampshire.

The meeting adjourned at 9:06 a.m.

Respectfully submitted,

Laura Norton
Administrative Assistant