

PLANNING BOARD
TOWN OF PETERBOROUGH, New Hampshire

Minutes of November 8, 2010

The Peterborough Planning Board held its regular monthly meeting on Monday, November 8, 2010 at 7:00 p.m. in the Selectmen's Meeting Room of the Town House.

Members Present: Chairman Leandra MacDonald, Alternate Richard Freitas, Alternate Bill Groff, Michael Henry, and Ivy Vann.

Also Present: Jo Anne Carr and Francie Von Mertens, member and alternate member of the Wetlands Working Group.

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

Chair MacDonald called the meeting to order at 7:00 p.m. and began by noting there were no applications before the Board this evening. She added she had been reviewing and thinking about the proposed ordinance and said "I have some questions."

"First" she said, "I need to ask what is a do not disturb naturally vegetated buffer?" She went on to note there was no definition of "do not disturb" and went on to point out the permitted uses in the buffer/setback areas. Chair MacDonald noted examples of permitted uses such as a gravel path and a horse trail asking "but how does the path get there? And you can't have a horse path unless you take the branches off the trees." Chair MacDonald asked "who determines that and how do they do it?"

A brief discussion that included Best Management Practices for Agriculture, Timber Harvesting Operations and Erosion Control followed.

Chair MacDonald's second question went back to a conversation the Board had had with a local stone mason at a meeting one night. She noted the restrictions regarding the use of gravel, in that pea stone and gravel can be packed down to become virtually 98% impervious and asked "is gravel inherently different on a path than a parking lot?"

The discussion on impervious surfaces that followed included what is, what is not, and at what point does it become condensed enough to change. The members also discussed the definition of a naturally vegetated buffer and the potential to redefine the buffer. Chair MacDonald noted "we need to spell out something about no lawns; we need to define it more."

The members spent a significant amount of time discussing §245-15 H (1) the minimum 50-foot buffer area maintained from all wetlands larger than 10,000 square feet in size, and (2) the 50-foot minimum setback area that must be maintained from the edge of the buffer area. They also acknowledged the fact that property owners may often encroach into the buffer innocently and with good intentions. This led to a discussion on permitted uses within the buffer and setback

areas. They also discussed the repair, restoration and maintenance of permitted uses in the buffers/setbacks.

The members went on to have a general discussion about the definitions, alteration, restoration, and excavation and erosion control to protect water surfaces. They talked about Conditional Use Permits, the recommended Wetland Buffer/Setback Width Determination and Determination of Applicability (generally for real estate purposes). Ms. Vann interjected "I would never buy a piece of property without knowing what the setback was."

The members discussed scenarios with Ms. Vann noting "it is very much like plan review." Mr. Henry acknowledged the non-binding nature of the review but noted he was uncomfortable with it. They went on to spend time discussing how to determine what is buffer and what is setback, high and low functioning wetlands, delineating the wetland areas and sediment control measures.

Chair MacDonald noted "there is no guidance from the regulation on how to allocate the buffer and setback." Ms. Von Mertens noted "it would be good to have a ratio" and Ms. Carr mentioned the diversity of each wetland being evaluated. "It depends" she said, adding "but it says a minimum 50-foot setback area must be maintained for the edge of the buffer area." The members then discussed requests for reduction in that setback with the use of Conditional Use Permits. "Which are determined based on the functional values of the wetland" said Chair MacDonald. Ms. Carr agreed adding "it will depend on the application and the wetland; it is not reliant on a chart." She added "you cannot prescribe in advance; you would have to come up with every scenario available, it is impossible." The members then discussed a 65 foot combination of what they considered the smallest combination of buffer/setback, and discussed several scenarios that included functionality, high and low flows and habitat. Mr. Henry noted "I like the language we have regarding wetlands and evaluation for site specific circumstances." He added "but we don't want to make too specific or we will lose the political capital we have in it. The more we try to knit-pick ourselves, the more we lose value in this at the ballot, and that is one more reason to turn it down."

A discussion of how wetlands may be evaluated followed with one member recalling "we considered prime wetlands evaluation but that was too complicated." They also talked about stricter enforcement of the naturally vegetative buffer in that "do not disturb *means* do not disturb." Ms. Vann reiterated "I feel quite strongly we need to make this a planning process." Chair MacDonald interjected "it may be too complicated for people to comprehend; people look at an ordinance and believe the worst." She went on to note the flexibility of the amendment would allow more than the current ordinance allows. She gave an example of adding on in the Commercial Industrial District stating "you cannot do that now." The members also talked about the expenses involved in the Variance process. Ms. Carr concluded by noting "I am not in opposition to development, but we need to work with developers to protect our community interests in the long term." Chair MacDonald noted "people have to think about how other people's properties (wetlands) are treated and how that may affect their land and their neighbor's land." She gave an example of a degraded wetland area allowing runoff and causing flooding in another area.

The members moved on to discussing how the regulation could change and be “tweaked.” They discussed enforcement of the regulations without being capricious and arbitrary in any way. Ms. Vann interjected “you can look right at the regulations here and say this is how these determinations will be made.” They discussed the use of Performance Standards and the fact that this amendment “is something we can defend and work with.”

Mr. Groff agreed noting “as long as you stick to the point system nothing is capricious and arbitrary.” Ms. Vann agreed noting decisions are based on the functionality of the wetlands and the planning goals from the Master Plan, “we are working from that information” she said. Ms. Von Mertens interjected “this allows a dialogue that is not available now.”

The members briefly acknowledged the thought and expertise that went into the wetland buffer/setback width determination table. They also noted the ability of the new ordinance, through Conditional Use Permits that allows a pre-disposition to design the site, which is critical to point out. A member added “and the Planning Board will be there to help rather than a potentially confrontational situation with the ZBA and their thumbs up or thumbs down response.” Ms. Vann interjected “that is the most compelling argument to them (the public), in my mind that is critical.”

The members went on to discuss the wording of the amendment regarding the 100-foot distance from the wetlands, with Ms. Carr noting “we need to massage it but not make a false impression. We need it to be a little more positive.” The members offered suggestions with Ms. Ogilvie noting “I have a lot of notes.” Ms. Ogilvie said she would do some wordsmithing and send out an updated draft of the proposed amendment. In conclusion the members agreed to keep Figure #1 in the proposal (the wetland protection overlay zone components that shows the buffer and setback areas of the overlay) but to take out the square footage numbers.

The meeting adjourned at 8:15 p.m.

Respectfully submitted,

Laura Norton
Administrative Assistant