PLANNING BOARD
TOWN OF PETERBOROUGH, New Hampshire

Minutes of January 10, 2011

The Peterborough Planning Board held a Public Hearing on the Wetland Proposal Monday, January 10, 2011 at 7:00 p.m. in the Selectmen's Meeting Room at the Town House.

Members Present: Chairman Leandra MacDonald, Richard Freitas, Michael Henry, Rick Monahon, Ivy Vann, and Barbara Miller.

Also Present: Carol Ogilvie, Director Office of Community Development, Laura Norton, OCD Administrative Assistant. Tom Weeks and Dario Carrara, Code Enforcement Officers, Fash Farashahi, Mapping Specialist and Matt Lundsted, Wetland Workgroup Committee member.

Chair MacDonald called the Hearing to order at 7:00 p.m. She welcomed the audience and introduced the Board members and staff. She asked that anyone wishing to speak please state their name for the record.

Chair MacDonald then gave the floor to Ms. Ogilvie who proceeded with a brief presentation on the proposed ordinance. Her presentation reviewed five general categories that included why the change is necessary, several highlights of the proposal, a comparison of the existing ordinance to the proposed ordinance, public input received and how the proposal has been modified from its original state. A PDF of the presentation is attached to these Minutes.

As Ms. Ogilvie concluded she told the Board and audience Mr. Lundsted was present to answer their technical questions. Tom Weeks introduced himself and asked for a clarification in the definition section of the proposed ordinance. He noted that on Page 2 of the proposal "it currently says Wetlands Protection District is where the wetland is but it does not say *where* the wetlands are." Ms. Vann interjected "the dimension depends on how the Table comes out." Mr. Weeks added "and my next question is on Page 3 regarding wetland buffers and setbacks." He went to note "it describes a minimum of 50 feet for a buffer and 50 feet for a setback and how to get a reduction through a Conditional Use Permit from the Planning Board" adding "but when you talk about the Wetland Protection District, where is it? Someone will ask."

Mr. Weeks also noted the permitted uses in the setback areas included lawns, gardens/horticultural plantings, building foundations, perimeter, and roof drains. "I don't think we want building foundations in the setback" adding "this should be clarified."

Hope Taylor introduced herself and asked for clarification of the Wetland Protection Overlay Zone Components Chart on page 2 of the proposal. The brief discussion that followed included the differences in getting a Special Exception from the ZBA or a Conditional Use Permit from the Planning Board. John Stanek introduced himself and noted there was no change in the ordinance as he, in either case would be accessing his land through wetlands by right. "My point is there is no benefit in this process to accessing my property because it is going to happen anyway. There is no change" he said. He added "the fact that I will be able to access my land

through this or our current ordinance should not be represented as a benefit." Chair MacDonald replied "I did not realize we were representing that as a benefit" with Mr. Stanek replying "we will get to that later."

Dr. Patterson introduced himself and reviewed the criteria that govern the decision making process of the ZBA regarding requests for variances. He noted consideration of property values, hardships, substantial justice and the spirit of the ordinance. He noted that in granting Conditional Use Permits from the Planning Board "I am not swayed by the thought that you guys may be too arbitrary." He added his home was adjacent to Cranberry Meadow Pond, that he most likely "would (will) have some of the most restrictive level on the functionality charts" and could potentially lose "upwards of 2 acres" of his 5 acre lot and "just about half of my property would be restricted." Dr. Patterson added "having said that I support the ordinance." Chair MacDonald asked "so you have an interest but you are coming down on the side of the water?" with Dr. Patterson replying "yes."

Cy Gregg introduced himself and asked "can anybody tell me why we are doing this other than you are worried about something in the future? Is there anything you can point to?" He went on to add "we just put a pond in at our property" adding "but why would I ever do anything like that again?" Mr. Gregg asked why anyone would consider creating wetland areas if "now all of a sudden it is an opportunity for land taking." He noted "that is what it is; it is just a question of how you want to define it." Mr. Gregg concluded by noting "I have lived here 30 years and I feel we have actually gained wetlands over time – lost some yes, but gained a lot of others."

The discussion that followed included consideration of the town's already large built environment close to the wetlands, the existing ordinance of 50 feet, the flexibility of the proposed ordinance (especially for commercial or industrial properties) for expansion, mitigation for wetlands and why high functioning wetlands should get more attention/protection.

Mr. Gregg asked if there was any particular study to show a significant loss of wetland over the years adding "my guess is no." Mr. Lundsted noted the Wetland Workgroup had spent an enormous amount of time with the proposal adding "it is not the loss of wetland over time; it is the value of the resource." He added "research done by the Workgroup indicates 50 feet is not enough to protect the wetlands. We need to protect and maintain them while providing flexibility for them." Mr. Gregg replied "that still does not answer my question" adding "it seems you are penalizing people for doing anything." Mr. Lundsted noted several organizations (both state and federal) that recommended larger buffers rather than smaller buffers "as we move forward in protecting the wetlands."

Francie Von Mertens introduced herself and stated "it is hard to get beyond the hundred feet. That (number) got frozen in people's minds." She briefly reviewed the need for greater protection of the wetlands, noted Mr. Gregg's pond would most likely "not score high in functionality" and reminded the audience "and this does offer planning." She noted the opportunities to minimize impacts and look at setbacks and buffers for grades. "You are in good hands with the Planning Board" she said adding "I believe in the science. I believe we should have 100 foot buffers." Ms. Von Mertens noted several planning commission (including our own Local Government Center) as well as the NH Model Ordinance advocate greater protection.

Gil Duval introduced himself and spoke briefly about a situation of a neighbor who moved to "Perfectboro" bought a home and built a shed. He explained that it was not long before the "Zoning Gestapo" arrived to inform the neighbor his shed was in violation of the Wetland Protection District. Mr. Duval noted the soil had been tested by the state and deemed "not wet" adding "so you don't even know where the wetlands are." He concluded by noting "you have a big problem here kids, this is the Planning Board and the Conservation Commission trying to take our land and our land rights away form us. That is not right, it is not America."

Mr. Weeks responded to Mr. Duval's comments explaining the neighbor had been advised to hire a soil scientist, who reported that the shed location actually was in violation of the Wetlands Protection District. Mr. Duval argued about previous documentation on the location and money spent for frivolous reasons. "Who is right?" he asked. Chair MacDonald interjected "wetlands change over time right?" with Mr. Duval replying "it depends on who moves into town." He concluded by noting "this is dangerous, it is so dangerous. Taking the rights and devaluating a person's property. Do you have the right to do that?"

Ms. Vann suggested they may be losing sight of the quality of wetlands where the development is going to occur. Mr. Stanek noted a roundtable exercise that had occurred a few days before where the wetlands of a particular property had been evaluated and scored. He noted "this ordinance covers the whole town limits of Peterborough. Cloaking in the guise of going to the Planning Board to seek a reduction is just that – a cloaking."

Ms. Taylor asked if there was proof that this was the vital thing to do. Mr. Lundsted responded by briefly reviewing the watershed report card and DES water sampling results that indicate "it is." He briefly reviewed the decline of water quality over the past 15 to 20 years "with the number one source being non-point source pollution." He noted "these are contaminants running off the roads, pavement and lawns." A brief discussion followed. Heather Peterson acknowledged the runoff problems adding "the solution has not been to take property for more protection; it has been to change how the roads are treated." Chair MacDonald asked "is there phosphorus in salt? Where does it come from?" Ms. Vann replied "from lawns." A brief discussion about non-point source pollution and assessment summary reports from the state followed.

Dario Carrara introduced himself and asked about the total number of wetland acres in Peterborough. 'That is not answerable" replied Mr. Farashahi. "Nobody knows" interjected Mr. Stanek. Mr. Carrara also asked what sort of enforcement or spot checking of the buffer were in place now. Chair MacDonald suggested taking a look at existing buffers with Ms. Taylor adding "that way we can see what the impact is currently before we go further." Mr. Mohahon noted with a smile "enforcement occurs when a new project comes but there are no midnight raids on buffer infringements." In conclusion the members agreed any enforcement interventions "are only on paper." The members went on to discuss monumentation of the wetland buffer, specifically discussing §233-54 of the proposed ordinance.

Ms. Von Mertens reiterated "we basically have no wetland protection now." She reiterated her example of how a resident may build a home within the proper wetland setbacks, get their certificate of occupancy "and fertilize away. We have no protection." She briefly reviewed past

attempts to increase wetland protection specifically noting 2004 "where we were defeated for a number of reasons - it was a perfect storm of defeat." She noted Catherine Owen Koning, a Professor of Environmental Science at Franklin Pierce University, had been invited to speak about the importance of increased wetland protection. She looked over at Chair MacDonald and noted "and I think you and I were the only two people there." Ms. Von Mertens added "she is willing to come again but how can we schedule this and have the people who want to know why we are doing this attend? What is a good time? When should we have her come, in May just before the vote?" She concluded by noting "why we want to increase protection is a good obvious question and we are not doing a good job in answering that."

A brief discussion about wetland buffer violations followed with Ms. Peterson noting that she took exception to the "notion" mentioned earlier that a person buys a property and then tampers with it. "Most citizens try to be very respectful and are aware of the constraints on their lots. The vast majority are respectful of their wetlands" she said. Ms. Peterson went on to briefly discuss a personal experience in crossing a wetland and her experience with the ZBA. The discussion that followed included the "thumbs up or down" decision making process of the ZBA versus "putting applications in the planning board hands where all the parts of the site are considered." Mr. Stanek told the members "I am a small builder, this does not really apply to me, a Shaw's project or a project like Wilson Farms perhaps." He went on to note that from a design perspective it is a good thing for storm water management amongst other things. He asked that a graphic be put up on the screen. He noted the parcel shown was a result of a sub-division approved in 2005. He reviewed the small lot pointing to the outlines of the 50-foot wetland setback yellow line) and the proposed 100-foot setback (red line) and told the Board "the new ordinance makes it absolutely impossible to put a house on the lot, it has been rendered absolutely useless." A brief discussion of whether the lot was grandfathered or not and well as what might become of it followed. Chair MacDonald interjected "there is a lot like that on Lobacki Drive as well" with Mr. Stanek replying "exactly my point Leandra, and who knows how many others there are?" Mr. Stanek went on to note "it is called hard math, these lots come off the tax revenue, my taxes go up." Mr. Gregg mentioned the burden to the landowner as well "in both time and money."

Mr. Carrara suggested a compromise for the ordinance where the planning aspects of an application could be taken advantage of via the use of Conditional Use Permits through the Planning Board while the setback number of 50 feet stayed the same for the first year or two. "Bring the (setback) number down and let people get used to the new process" he said adding "you could do this without drastic changes." Mr. Carrara also noted the importance of the Code Officer's role in the new ordinance should it pass. "We are the ones who have to explain it and enforce it" he said adding "we have to show them the rules; we are the ambassadors and educators of the ordinance."

A brief discussion about the time clock involved in the public hearing processes for Town Meeting in May followed. It was noted there was enough time to schedule two more Public Hearings, as Ms. Ogilvie explained "even though the meeting is in May the ballot must be completed by mid-March."

Ms. Peterson noted clarification on subdivisions vested with roads and improvements versus those not vested with approvals remaining good for only four years from the time of the

subdivision. She reiterated “a lot of record is a lot of record” but acknowledged the lot must meet the setbacks for its district. She concluded with an example of a property with a long skinny wetland “right down the middle of it.” She calculated the frontage and the size of the property noting “this ordinance would be taking 3 acres of land away.”

The Hearing adjourned at 8:30 p.m.

Respectfully submitted,

Laura Norton,
Administrative Assistant