PLANNING BOARD
TOWN OF PETERBOROUGH, New Hampshire

Minutes of January 11, 2010

The Peterborough Planning Board held its regular monthly meeting on Monday, January 11, 2010 at 7:00 p.m. in the Selectmen's Meeting Room of the Town House.

Members Present: Chairman Leandra MacDonald, Vice Chair David Enos, Richard Freitas Michael Henry, Ivy Vann, Posy Bass, Rick Monahon, and Barbara Miller, *ex officio*.

Staff Present: Carol Ogilvie, Director and Laura Norton, Administrative Assistant, Office of Community Development: Tom Weeks, Code Enforcement Officer, and Fash Farashahi, GIS Specialist.

Chair MacDonald called the meeting to order at 7:00 p.m. She introduced the Board members and staff. Chair MacDonald also welcomed newly appointed Board of Selectman Liaison Barbara Miller, who is taking Ms. Thomas's place. Ms. Miller spoke briefly, noting she was delighted to be present. She noted she was filling in for Ms Thomas as she was taking care of a family member. She noted she would be stepping into her shoes "and they are big shoes to fill" adding "hopefully I will be helpful." Ms. Miller also noted that this Liaison position was the only one that allowed the representative to vote.

Chair MacDonald again welcomed Ms. Miller, adding if she had her way every Board of Selectman member would serve a one year term on the Planning Board as "it is an educational part of the job."

Chair MacDonald noted that the first item on the agenda was a request for a waiver of public hearing for a boundary line adjustment between land owned by Philip and Jennifer Dubois and the Town of Peterborough just north of Gulf Road and west of the Greenfield Town line. She also noted the Board was not complete and appointed Alternate Freitas to sit.

DuBois Request for Waiver:
Richard Fernald introduced himself as the attorney for Philip and Jennifer Dubois. He went on to note that "about three weeks ago the Dubois family gifted a conservation easement of over 1000 acres of land in Peterborough and Greenfield." Mr. Fernald noted the recipient of the easement was the Monadnock Conservancy and that during the survey the surveyor had discovered an error on the boundary plan. That error results in a loss of some land for Mr. Dubois and an increase for the Town parcels. Mr. Fernald pointed the area out on a map he provided that was color coded to show the parcels in question. He noted the parcel was approximately 70,000 square feet.

Mr. Fernald then noted "the Planning Board can waive the necessity for a public hearing if there is a land boundary dispute." He said "you can work it out, this is not a subdivision, it is a correction of a boundary line." Mr. Fernald told the members that the Board of Selectmen had heard the request at their meeting "and they agree with it" he said.

Chair MacDonald noted granting the waiver must include a notice to all abutters (who would be the only potential opposition). Mr. Enos asked if Board of Selectmen's support was documented with Ms. Miller replying "yes it is in the meeting minutes" and added "we support it, it is a correction of an error." Mr. Enos then asked if the parcel was the old Babine lot with an audience member replying "no, it is the Frank Lowe lot."

There were no other questions from the members and no questions from the audience. The waiver request closed at 7:08 p.m.

Wilson Farm Site Plan Approval Extension:
Peter LaRoche introduced himself as a representative of the Wilson Farm Condominiums project. He briefly reviewed the project and the extensive permitting process they went through with the state, adding "and due to the economy we have not started construction." He explained the oversight of their permit expiring adding "otherwise I would have been back here in September" and requested an extension of their site plan approval. Chair MacDonald asked if there had been any changes to the plan with Mr. LaRoche replying "absolutely none." Chair MacDonald then asked Ms. Ogilvie to briefly review the process of granting a waiver. Ms. Ogilvie noted that the relief came in two stages, the first stage would be to waive §233:42B (the provision that approvals expire if work is not substantially completed). The second being an agreement of how long to extend the permits. "How long?" Chair MacDonald asked Mr. LaRoche with Mr. LaRoche replying "to the spring of 2012." "That is an 18 month extension" replied the Chair.

There were no other questions from the members. There were several questions from audience members that involved the site and the condominium type of construction that had been approved. Mr. Hicks clarified how the applicants had essentially lost 6 months of construction time due to the timing of receipt of their permits. He added "18 months will get us back on track." With no further questions the request closed at 7:14 p.m.

Public Information on Amendments to §245-15 Wetland Protection District:
Mr. Enos gave a brief history of the Wetlands Workgroup which was conceived to provide guidance to the Planning Board on wetland protection issues. Specifically the group's charge is to recommend whether amendments should be made to the existing ordinance and if so, what those should be. The group consisted of two members from the Planning Board (Mr. Enos and Mr. Freitas) and two members from the Conservation Commission (Joanne Carr and Matt Lundsted). He noted the Workgroup had been meeting for many weeks to review the Wetland Assessment Report by Moosewood Ecological, LLC, noting "our goal was to get some of the issues with that report resolved and figure out how to make the information work for us." He noted the intent of the ad hoc group was to have the Conservation Commission involved with the review of the report by Moosehead Ecological and any consequent regulation amendment for the town.

Mr. Enos made it very clear that this meeting was **not** a public hearing on the ordinance and that the purpose of the presentation was "to present their findings and recommendations for the wetlands amendment to the Planning Board, educate the public about the amendment and bring everyone up to speed."

Mr. Enos mentioned the long-standing request of both the Planning Board and the Conservation Commission to strengthen the wetland regulations. He briefly reviewed an aborted attempt in 2005. He noted the group was very involved with looking at the equity in the ordinance adding clearly "the *one size fits all* does not address all the individual wetlands in town." He reviewed the New Hampshire Method and how an adaptation of that method was used for the Peterborough assessment. It was noted that the Conservation Commission provided the funds for the evaluation. It was also noted the assessment included approximately 85% of the town's wetlands and the report was posted on the town website.

Mr. Enos briefly reviewed the current ordinance noting "we have buffer zones that do not have the teeth to protect them from non point-source pollutions." He went on to note the Workgroup had looked for deficiencies in the old regulations and reviewed several specific items, including changing the process for obtaining relief from a Special Exception from the ZBA to a Conditional Use Permit from the Planning Board. He noted the group felt the current ordinance did not provide the ZBA with specific criteria to address environmental concerns. He explained that while the Conservation Commission is usually involved in wetland applications "the ordinance only requires their input for special exceptions for streets and access ways." He also noted the current process necessitates two boards when there is an application for a subdivision or site plan review. He noted the proposed changes would allow all permitting to take place with one board, the Planning Board, and would provide specific criteria for wetland concerns. He reiterated the "*one size fits all*" approach was not a part of the proposed process. Mr. Enos went on to note the fact that the proposed process provides flexibility with Condition Use Permits. "We don't have that now" he said adding "best of all it allows planning to be done at the Planning Board." Mr. Enos concluded by reiterating "these are only recommendations being made to the Panning Board, they have not discussed any portion of it. The discussion is to be had **here**. He added "the Wetland Workgroup is presenting their view of what is best for the wetlands, all the other aspects still need to be discussed." He explained that "in looking at buffers and setbacks and realizing in all our planning, the activities that take place within those regulations do not accomplish the goals of the current ordinance." He added the ultimate goal was to obtain a set of values (buffer and setback area) based on what the wetland is really doing, "not just a number picked out of the sky."

Chair MacDonald suggested the Board not waste the opportunity for public input, since there were so many people in attendance, and go straight to the audience for comments and questions.

Jack Belletete introduced himself and with reference to pollution of the wetlands noted the impact of the tons of salt put on the road through the winter months by both the town and the state. He noted the runoff from the roads inevitably reaches streams and rivers creating "an incredible impact on the environment." He asked "where do you start on the problem?" adding "it is almost like you are wearing blinders to the real problem" and asked "has it ever really been brought up and dealt with?"

Peter Brown introduced himself and noted the phrase "the wetlands are suffering" had been brought up. He asked about scientific evidence to support the statement. A brief discussion of benchmarking both the functional values and the functioning levels of the wetlands followed. Mr. Brown concluded by referring to the extension of 50 feet in the proposed ordinance. He

asked "is 50 feet making a difference? Where does it start and where does it end?" Mr. Enos replied "in the early part of this we were discussing 35 feet to 300 feet; it depends on what you are looking at." Mr. Brown noted an area of a couple of acres of dry land off the cul-du-sac by the old NEBS building currently owned by his company. He referred to a potential hockey rink project "that is not at a stage to present" but added "you double the setback all the way around and that project will be hugely impacted." He added "you say 100 feet is better than 50 but does it really need it?" A brief discussion followed with Mr. Brown concluding "this will make lots unbuildable. Is that what you really want to do? Is that the message you want to send?"

Jim Stewart introduced himself and asked for clarification that this meeting was just an informational hearing. When that fact was confirmed Mr. Stewart noted he had many technical questions that may be more appropriately asked at the public hearing. He also asked if Moosewood Ecological would be available to answer questions and concerns. Ms. Ogilvie noted they were committed to attend one hearing and had already been to two Planning Board meetings. "So they will probably be at the first session?" asked Mr. Stewart with Ms. Ogilvie replying "probably." Mr. Stewart had several more questions about the process. He noted that many in attendance may know he was also a member of the Zoning Board of Adjustment adding "I am just trying to understand how you guys would do this, you would be doing what we have been doing." Mr. Stewart had several more process questions, specifically what would happen to the applicant who could not meet the Performance Standards for a Conditional Use Permit. "The process is exactly the same" interjected Mr. Enos, who reviewed the process for a denial from the ZBA. "I am just trying to understand how you guys would do this" replied Mr. Stewart. Another brief discussion followed with Chair MacDonald stating "that is part of the thinking, to get everyone in the room together and come up with a better solution." She added "the whole process of it is going to be interesting, and remember we are just seeing this whole idea for the first time."

Mr. Stewart noted that "in practice you guys (Planning Board) would be taking over about 50% of what we (ZBA) are doing so if you like long meetings, go for it." Mr. Stewart then requested the Board and the public "carefully read the report and the proposed zoning" adding "the report (Moosewood) is not what is in the ordinance." He urged the Board to compare the report with the ordinance "and think about it." A very brief discussion about the total acreage of wetlands in Peterborough and the subset of functional values used in the Moosewood report followed. Mr. Enos noted it was important to "at least maintain what we have for the functions they do serve and not see them diminish in the capacity and functions of where they are now." There was also brief discussion about the tiers mentioned in the Moosewood report. Mr. Enos once again elaborated "this is the beginning; the function of the Wetland Workgroup is to provide the best protection of the wetlands with public input **from the beginning** versus the end when we present it as a draft ordinance."

Mr. Hicks asked about baseline data on the current functionality of the wetlands. He also asked about commercial versus private parcels adding "it is a big balancing act, I don't envy you."

David Simpson introduced himself and asked the Board if they were prepared to reimburse townspeople for the economic loss from this restriction. He gave an example from his own house where he abuts a wetland that overflows into his basement. Heather Peterson asked for

clarification on when an applicant would go to the Planning Board for a Conditional Use Permit versus the ZBA for a Variance. "It is not clear in here" she said. She spoke about zoning in the 1970s and 1980s and her concerns about accessing multi-acre lots. She concluded by asking "is this a ZBA thing? A Planning Board thing? Or a Code Enforcement Officer thing?"

Scott Gutwein introduced himself and stated that he spoke for a lot of (hockey-oriented) people in Peterborough "that will be effected in a negative way" if the new ordinance is thrown into play. He added "I just wanted to claim my seat on that."

John Kaufhold introduced himself and stated that he was "against any changes to what we have now that makes things more restrictive. I am against *anything* that is more restrictive" he said. He went on to note "I am all for protecting what we have; the current regulations are working fine. A new restriction of the wetlands ends in taking our rights and there is no relief for it." Mr. Kaufhold went on to say "it is the taking of someone's property rights with taxes still being paid on it." He also noted very strict state regulations adding "I have lost the right to use my land the way that I want to use it. Here I have a chance to vote against it and I will."

Francie Von Mertens introduced herself. She noted she often sat in on the Workgroup's meetings and reiterated the point that one size does not fit all and the need for flexibility in the ordinance. She went on to talk about the potential for wetland tiers and all the little nuts and bolts that would be needed to make the system work with flexibility being the key feature.

Joanne Carr introduced herself and spoke briefly on the 85% of the wetland that had been assessed and that the Workgroup was confident of the research in the report. She noted she liked the idea of tiers and reduced setbacks for lower functioning wetlands but asked "how do you make that determination, how do you make cut-off points that are not based on science but arbitrary points?" She also mentioned the example of a "low functioning" wetland that in the report was scored as a Tier III because of its size and added "that is where our town wells are. To say the wetlands adjacent to our wellhead are low functioning is problematic." She added "we have been wrestling with this for weeks now." A discussion about the "everything is equal" and providing relief through Conditional Use Permits followed. That discussion included functional analysis, sizes of buffers, reduction relief, and vernal pools. It was also noted the "political decisions" that will have to come out through the process.

John Patterson introduced himself during a discussion on the delineation of the wetlands and noted a full delineation should not be necessary when a project is free of disturbing any wetlands. "It is when you are coming close to a disturbance type of thing" he said, that delineation would be necessary.

Mr. Stewart spoke again about the Conditional Use Permit potential and asked where the report was located on the website as well as the time line for the amendment to come before the townspeople. Mr. Stewart was told where to find the report and that the time line was "early to mid-March." Mr. Stewart replied in a surprised voice "so it is for this year?" With Chair MacDonald replying "yes if we can get it that far."

Jeff King introduced himself and acknowledged the importance of the wetlands but added "it is the political reality as well that causes some concerns." He noted he felt the administration of this proposal would create much more work for the Office of Community Development as well as the potential for abatement and tax revenue loss, "which is lost revenue for the town." Mr. King also noted his concern for the town's reputation of already being anti-business "and as a resident that should concern all of us" he said. Mr. King went on to express his concerns from a recreational standpoint as well as a parent and a coach. He concluded by noting "I have many concerns on many levels." He echoed Mr. Gutwein's view of the benefit of having the real opportunity of a hockey facility that would be tax-dollar generating. He concluded by noting "I am concerned that this proposal may de-rail that." Chair MacDonald noted a hockey rink "may be a feature of the town that brings people in" but reminded the members and audience "we have no details on this project; it has not come before us."

Chub Whitten introduced himself and reiterated what he had been hearing all night and that was "trouble with the buffers." He noted "they are 50 feet now" and advocated **enforcing** the use in the 50 foot buffer zones versus taking more land to add to them.

Ms. Mohanon thanked the Workgroup for their research and encouraged them to proceed "based on the science you have done so well." A brief discussion about the wetlands evaluation checklist followed with Ms. Von Mertens noting the role of a wetland scientist in that process. Mr. Monahon mentioned a letter submitted by Sharon Monahan to both the Wetlands Workgroup and the Board. He noted Ms. Monahan's lack of support for the wetlands evaluation checklist being proposed as well as her support for a three-tier buffer system as suggested by Moosewood Ecological. A brief discussion about the New Hampshire Method and functional analysis followed.

Mr. Kaufhold noted that he appreciated the Group's effort and energy, but noted "this will still cost the applicant money." He went on to say "if we really want to save the wetlands we need to address the salt problem and the Japanese Weed growing along the river banks. No one is doing anything about that."

The members had another brief discussion about Conditional Use Permits and the potential burden the process may put on the Planning Board. Chair MacDonald concluded that discussion by noting "it is good to talk about the process but I don't think that we are anywhere close to having everything we need to know. There is a lot of work to be done."

Mr. King mentioned another concern he had was the potential impact of the ordinance to the redevelopment of the Evans Flats property.

Andy Peterson introduced himself and cautioned the Board "to be very, very careful about this." He referenced several newly listed properties on small lots where "100 foot setback would take up the lot." He noted if the standards had been applied to other projects in town "they would not have been able to be built." He concluded with "I would be very careful in increasing these standards without very good science and consideration of their effect on the town."

Ms. Bass mentioned the Shoreline Protection Act and a brief discussion about shoreline versus wetland protection measures followed. Ms. Vann noted that a way to protect more pristine or higher value wetlands might be to say "perhaps we should encourage or privilege in some way the use of land in already developed areas." Ms. Carr stated she could not emphasize enough the value of the rivers coming through town. "They are our life's blood" she said adding "it is key to business and industrial development and we must assure its high quality and high quantity or we will not be able to develop." Ms. Bass reiterated addressing the problems with the winter use of salt in town. Mr. Henry thanked the Workgroup for their time, effort and energies.

The public information meeting ended at 9:05 p.m.

Deliberation:

Request for Waiver:
A motion was made and seconded (Enos/Bass) to waive a public hearing for a boundary line adjustment and correct a boundary line subject to abutters of the property being provided notice of the application and there being no objection to the waiver of public hearing. All were in favor.

Site Plan Approval Extension:
A motion was made/seconded (Vann/Bass) to waive §233-42(B) and grant an extension of secured permits for the period of one year (to January 11, 2011). All were in favor.

Next Wetland Workgroup Meeting:
Wednesday, January 20, 2010 at 7:30 a.m.

Next Workshop:
Monday, January 25, 2010 at 5:15 p.m. (subject to confirmation)

Next Meeting:
February 8, 2010 at 7:00 p.m.

The meeting adjourned at 9:15 p.m.

Respectfully submitted,

Laura Norton
Administrative Assistant