PLANNING BOARD
TOWN OF PETERBOROUGH, New Hampshire

Minutes of July 12, 2010

The Peterborough Planning Board held a Public Hearing on Monday, July 12, 2010 at 6:00 p.m. in the Selectmen's Meeting Room of the Town House for a proposed amendment to the wetlands ordinance. The intent of the proposal is to replace §245-15 Wetland Protection District with a new §245-15 Wetlands Protection Overlay Zone, and to add to the Site Plan Review Regulation a new Article IX Conditional Use Permits for Wetland buffer/setback reductions.

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

Staff Present: Carol Ogilvie, Director and Laura Norton, Administrative Assistant, Office of Community Development; Fash Farashahi, IT Specialist.

Chair MacDonald called the meeting to order at 6:00 p.m. and introduced the members and staff. Chair MacDonald asked that anyone wishing to speak from the audience please identify themselves for the record.

Wetland Workgroup Chairman David Enos (Mr. Enos) said "let me start by saying that you know we have been thinking about a change to our wetland ordinance for a long time." He noted other proposals in the past that had not been brought forward. He said "we have put a lot of time and effort into having a study done and we did not want to lose steam." Mr. Enos gave a brief history of the ongoing work the Workgroup had done and noted a series of concepts and proposals to enhance the present ordinance. He noted "preservation and protection of the wetlands" was indicated in the Master Plan and that "it was a long standing process for this Board to enhance the wetlands through buffers and setbacks."

Mr. Enos gave a brief history of the wetland assessments done by Moosewood Ecological, LLC in the spring and summer of 2009. He noted they used the New Hampshire Method to assess the functional values of the wetlands they had permission to access. He reviewed the Workgroup's initial attraction to the benefit of a tiered system but "through that process and internal discussions we concluded that wetlands are not created equal and do not function the same." He went on to say "we need to protect them based on their functional values and tailor an ordinance where the wetland buffers and setbacks depend on those values." He added "we do not want to take the lowest common denominator to bring high functioning wetlands down or low functioning wetlands up." Mr. Enos concluded by noting "we need a method to attenuate buffer disturbances, that is it in a nutshell." He told the audience "the original ordinance was four pages but has grown to eight pages spelling everything out and justly so." He concluded by noting "how to apply the recommended ordinance is where we are."

A synopsis of the wetland ordinance was distributed. This document explained the primary requirements of the proposal, the process for requesting a reduction and how the proposal is different from the existing wetlands ordinance.

Heather Peterson introduced herself. She told the group she had been at other hearings and seen the process in action. She stated "I think it is improved" adding "the other one was too complex." She stated her concern for parcel access and best sight distances for pre-existing lots, noting that it is often impossible to access a lot without crossing a wetland, but that sight distance is a very important consideration.

Chair MacDonald noted that with Conditional Use Permits all planning issues could be considered where as "if you go to the ZBA is it strictly access."

Hans Kaufhold introduced himself and asked for clarification on the definition of impervious surfaces. He also asked about the Shaw's supermarket location and the lack of a 50-foot setback. Chair MacDonald stated that that was a previously-developed lot and that they had gone to the ZBA for relief.

Jim Stewart introduced himself and stated he would like to follow up on Ms. Peterson's concerns of Section J. (Permitted Uses) (2) (d). He noted that under this section roads and driveways were included in the setback area and asked "if a road or driveway goes 75 to 99 feet to the wetland reference line is that allowed? Does and applicant need to delineate and have a functional analysis done?" Ms. Ogilvie replied the wetlands would have to be delineated but an assessment would not be necessary.

Mr. Stewart then stated he has heard the Board talking about more flexibility for planning purposes but noted "over 85% of the taxable properties in town are residential uses" and asked how a homeowner's reasonable use of their land for "say a shed or a pool or a dog house would be affected?" He added "my wife wants chickens – how would a chicken coop (under 120 square feet) affect the 100 foot setback?" Mr. Stewart cautioned the Board by noting "as Planning Board members keep that in mind when projects come and you want to plan." A brief discussion about the placement or construction of a structure, permitted uses and use of best management practices followed.

Mr. Stewart then asked "thinking in practical terms, when an applicant wants to do something on his property how does he get architectural or engineering plans until he knows exactly what his building envelope is?" Mr. Stewart continued by noting "he knows he has wetland on the property but how does he know if the setback is 50 or 100 feet? "Have you thought about that in practical terms?" he asked. Ms. Ogilvie replied that it is not different under today's rules, in that the setback is 50 feet, the applicant designs his project around that number. If he can't or doesn't want to meet it, he goes to the ZBA for a variance.

Lastly Mr. Stewart noted "doubling of the wetland setback from 50 to 100 feet to me is contrary to the scientific evidence stated." He added "the major purpose of the ordinance is to protect the water quality of Peterborough; I agree with that but feel it is thoroughly protected with the 50-foot buffer." He mentioned the Moosewood Ecological study and their reference to the phosphorus, nitrogen and sediment leading to poor water quality adding "the majority of them can be removed with a 30 to 50 foot buffer." Mr. Stewart concluded by noting "this ordinance is contrary to good science and will create considerable hardship for property owners in Peterborough. Thank you."

Ms. Ogilvie reviewed an example of how the comparative wetlands analysis would work using the Evan's Flat parcel. She noted the wetlands with the current 50 foot setback and the hatching of the 100 foot setback if the new ordinance were applied. She reviewed the 14 functions and values used in the New Hampshire Method noting eight of them were used specifically for Peterborough. Ms. Ogilvie reviewed how points were scored and totaled with the highest functioning parcels assigned a 100 foot setback/buffer.

Mr. Monahon in at 6:30 p.m.

Ms. Ogilvie explained how the Planning Board reviews things like traffic, lights and noise through site plan review and noted "this gives them the tools to do the same thing for the wetlands." She explained how an applicant could use some of the technology available to get a reduction in the setback/buffer. Mr. Lundsted cited an example using wildlife noting an applicant could come to the Planning Board and illustrate that with the use of Performance Standards they could achieve a reduction in the setback with no net loss of wildlife value as a result of the reduction.

David Simpson addressed the Board by noting the Shaw's supermarket and CVS Pharmacy would have been very difficult to build under the new ordinance. A brief discussion about how the site was developed and what the developers had done followed. Mr. Lundsted reviewed the innovative designs of swales and bio-retention systems used at the site. Mr. Simpson interjected "and what did that add to the cost?" with Mr. Lundsted replying he did not know but that often with innovative designs and technology "there is a reduction in cost, not an increase in them."

Mr. Stewart asked for additional clarification on the wetland buffer/setback width determination table and a brief discussion about how requests for a reduction would be determined. It was noted that the applicant could use Performance Standards to get a reduction; the Planning Board would work that out with them. It was also noted that there would most likely be site specific circumstances "so there is no hard and fast number, it is a negotiation process on a case by case basis." Hearing this, Mr. Stewart immediately replied "with all due respect that does not sound very equitable." A member asked "why?" with Mr. Stewart replying "because each application is treated differently." A brief discussion about the computation of the formula used in the wetland buffer/setback width determination table followed.

Ms. Laurenitis noted her confusion with the determination table stating "a wetland could be high functioning in one area (functional value) but low functioning in all the other areas and get a low score." She also stated it was her understanding the computation of a wetland score should *not* be carried out in a cumulative way." She read a portion of the Moosewood report and asked "in effect aren't you using it in a cumulative way?" Jeff Littleton of Moosewood Ecological was present in the audience and when asked about the use of the chart he replied "I don't think there is anything wrong with the way you are adding it up." Chair MacDonald interjected that the difference was that the proposed method only added up points for an individual wetland; it did not use the points to compare one wetland against another. Ms. Laurenitis then asked about the appeal process for Condition Use Permits and a brief discussion regarding the requirements for appeals followed.

John Kaufhold introduced himself and stated "I am in favor of leaving it at 50 feet. That is enough." He noted the proposed ordinance would be "land taking without tax credit" adding "this is opening a can of worms and adding to landowner's restrictions. We do a damn good job of protecting the wetlands already" and in referring to the May Town Meeting noted "I thought you got the message the last time."

Peter Brown introduced himself and stated "The total confusion of this is shown; there is no straight answer as to what the process is and what the scoring means." He added "I am not happy with this and to think that in 8 or 10 weeks it goes for a vote is mind-boggling. This (meeting) has just proven it." He went to suggest a larger workgroup (that might include an attorney) "that would not be so focused on the 100-foot thing."

Mr. Simpson stood and began by saying "well members (of the Board) here we are again." He added "the merry-go-round on this issue might be telling us something." Mr. Simpson began reading from a prepared statement that is attached to these minutes. At one point Mr. Simpson spoke of the seizure of private land adding "and then there is the issue of the judge, the jury and the hangman, better expressed as executive, legislative and judicial power vested in one body, the Conservation Commission." He referred to the Conservation Commission as being responsible for creating the proposed amendment and added "nine people run the whole show, just how impartial do you think these people can be on the issue of wetlands?"

Chair MacDonald interjected "Excuse Me" and told Mr. Simpson to stop. She said would not listen to an attack on another town board. "Not at this meeting" she said. Chair MacDonald told Mr. Simpson "these people give their time and work very hard" adding "I will not listen to unfair remarks."

Mr. Simpson asked if he may finish with Chair MacDonald replying "yes, as long there are no more attacks." Mr. Simpson finished his statement and concluded with a quote by George Mason of Virginia (a member of the Constitutional Convention of 1778). That quote was "is there any greater or more dangerous error in government than that of governing too much?" Chair MacDonald replied "I believe George Mason was a slave owner, but he might have changed his tune by now."

In conclusion, Chair MacDonald asked when the next Public Hearing would be with Ms. Ogilvie replying July 26, 2010. As the meeting ended Mr. Stewart noted that in 2004 the Conservation Commission had supported a 100-foot setback for wetlands "that was voted down at Town Meeting." Chair MacDonald replied "yes, you are right but it has been six years; we can look at it again."

The Public Hearing adjourned at 6:55 p.m.

Respectfully submitted,

Laura Norton
Administrative Assistant