

Wetlands Working Group
TOWN OF PETERBOROUGH, New Hampshire

Minutes of February 1, 2010

Members of the Peterborough Planning Board and Peterborough Conservation Commission held a joint meeting on Monday, February 1, 2010 at 7:30 a.m. in the Selectmen's Meeting Room of the Town House. The purpose of the meeting is to continue recommendations for the preparation of an amended Wetlands Protection Ordinance.

Members Present: From the Planning Board David Enos, and from the Conservation Commission JoAnne Carr and Matt Lundsted. Also present was Francie Von Mertens.

Staff Present: Carol Ogilvie, Director and Laura Norton, Assistant, Office of Community Development; and Tom Weeks, Code Enforcement Officer.

The meeting was called to order at 7:30 a.m. Ms. Ogilvie noted the latest version of the draft was the one dated January 25, 2010. The members began with a brief review of the definition of "buffer" with the group agreeing the term is defined "and in the discussion of wetland buffers and setbacks is where the distances for non-encroachment are determined." Ms. Von Mertens also noted the importance of flexibility reiterating how she thought many people "came away from our public information meeting thinking the setback was 100 feet." Mr. Enos noted he felt that was due to the "cherry picking" of bits and pieces of different sections of the amendment at different times. Ms. Von Mertens replied "we should have a preamble for the voters to explain this; we should not go to sleep on that."

Mr. Enos reviewed a summation of his thoughts as to "where we are as a workgroup." He briefly reviewed a list that included the recommendations of wetland buffers to protect functional values and minimize impacts from humans per the Master Plan. He noted the Conservation Commission had maintained for some time that one of the best ways to maintain wetland function and water quality is to increase the size of the buffers. He reviewed buffer ranges from 75 to 300 feet or more depending on the functional values of a wetland. He also noted that in the past increasing buffers and setbacks were seen as "taking" and an infringement on a landowner to use their land as they see fit. He listed indiscriminate degradation of waters everywhere and the establishment of Superfunds and increased tax monies for clean-ups adding "we are still paying for that line of thinking."

Mr. Enos continued with a review of the degradation of natural resources by the daily activities of Peterborough households, and although unnoticed individually or immediately, "collectively affect our wetlands, water bodies and buffers." He emphasized the need for flexibility in tying functional values to the regulation or "our idyllic Monadnock Valley will find our wetlands affected and our surface waters impacted" adding "this is a result of activity that is largely indirect and very much unintended." He spoke briefly about accepting responsibility and a call to action that would implement a meaningful regulation.

He went on to note the “one size fits all” for wetlands buffer we currently have and added the new regulation would require a 50-foot naturally vegetated buffer and another 50-foot setback that would allow certain customary uses and activities associated with the property (lawns, driveways, etc.). He was emphatic when he reiterated the new regulation would not affect what existed in the already built environment, “only what newly occurs on a property after the adoption of the regulation.”

Lastly Mr. Enos stated that “all wetlands are not the same” and the new regulation would assess functional values of a wetland that would be site specific. He added “my belief is that the vast majority of people would want to avoid adverse impacts to the wetlands and their buffers and make every effort to comply.” He concluded by reiterating that flexibility, meeting Performance Standards and the issuance of Conditional Use Permits would provide relief where there may be site specific difficulties, adding “this is just my summation of where we are.”

Ms. Von Mertens noted “quite simply, the current ordinance is a setback; it does not protect the buffer at all. I would like to zoom right in to addressing what we have is not fine; we do not have a buffer protection right now.” The brief discussion that followed included the members wondering if the customary use of the land was more a *land enforcement* issue or an *ordinance* issue. Ms. Von Mertens noted “either way the buffer has functions that need to be protected; we have to head off the opposition immediately” adding “we do not have buffer protection right now.” A brief discussion that included incremental cumulative impacts to the wetlands and the minimum state standards followed with one member noting “we need to express that to the people.” Mr. Weeks added “you have to be clear about what the benefits are going to be for the people to vote for this.” He added “there are negative impacts to their wallets and property values here and they may not be able to use their land the way they may want to use their land.” Ms. Von Mertens interjected “really?” Mr. Enos asked “do you really think so?” with Mr. Weeks replying “yes I do.” Mr. Enos spoke briefly about the long run and increases in land values in the future with Mr. Weeks replying “we have to look at the impacts of today, and how is this ordinance going to benefit me and the town as a whole, **today**.” Mr. Weeks continued by noting “I have sat through the last 10 or 12 weeks with this group and I don’t clearly understand it. What is the benefit? You need to sell that” he said.

Ms. Ogilvie gave a brief presentation of an example of the new recommendations applied to an actual subdivision done in town. She pointed out the wetland and the current setback and what the property would look like with the additional 50 feet of wetland protection and how that may impact the landowner. Mr. Weeks interjected “in the real world people do not care. In here, yes, but not out there. They don’t care and I’ll say *that* because I hear *that*.” Mr. Weeks went on to say “I am not saying this is a bad thing, but you will have to sell it, you will have to convince the people in the voting booths.” Mr. Enos was quick to note the ordinance was only applicable to new applications for additions and structures and that existing buildings are grandfathered. A brief discussion about personal gain versus the overall good of the community followed. Mr. Lundsted noted “that is the connection you have to make to the landowner.” He also pointed out several differences (including financial) between the private and commercial sectors when seeking relief. Mr. Weeks suggested an opening statement “that is short and will catch them in such a way that it will maintain their interest, but it has to be clean, short and understandable.” A discussion on how to answer the nay-sayers and the fact (and consequences) that the ordinance would apply to wetlands less than a half acre in size followed. Mr. Enos pointed out several examples of non-point pollution sources and contaminants in the water and concluded “this is a social

responsibility.” Ms. Von Mertens added “to win this we have got to really do a campaign.” Mr. Enos replied “that is the hard nut.”

Mr. Enos then asked the members if anyone would be willing to take a stab at a draft purpose statement. Ms. Von Mertens replied that with the assistance of the Conservation Commission and Ms. Carr she would try to work something up. Ms. Carr suggested the statement be “one page with pictures and bullet items.”

The members then wondered what other communities in New Hampshire have expanded their buffers beyond 50 feet. Ms. Ogilvie reviewed a list supplied by the Office of Energy and Planning (OEP). Mr. Enos asked about prime wetlands and an online search showed 29 out of the 234 towns in New Hampshire have designated prime wetlands (which have an automatic 100 foot setback and employ Conditional Use Permits for relief). Mr. Enos also reiterated the reflection for protection of the wetlands in the Master Plan. Mr. Lundsted agreed, adding “that is a good point; we did not make this up. That should be in the purpose statement.”

Mr. Enso once again listed many of the non-point pollutants seeping into the wetlands as well as the unintended but dire consequences they create. Ms. Von Mertens noted “we all live downstream to someone; we need to respect the folks downstream from us.”

The members then briefly discussed a potential “minimum size” for a wetland area. Mr. Enos noted “that could be a very big push-back area.” Ms. Carr noted the state defines 10,000 square feet (about a quarter acre) as the minimum size. The members also discussed the soil makeup of a wetland as well as intermittent and perennial water bodies. They reviewed their previous discussion on the restrictive nature of the Shoreline Protection Act and how in a conflict, the more restrictive ordinance takes over. This led to a brief discussion about wetlands along water bodies (specifically the Contoocook River this morning) and steep slopes.

Mr. Enos asked the members to review the checklist once again as a homework assignment. He noted comments and concerns could be e-mailed to the other members with no responses or discussion until the next meeting. This led to a discussion about using or not using Moosewood’s checklist of functional values and the New Hampshire Method. Additional discussion about the checklist – from its complexity to who would be authorized to conduct it followed. Mr. Enos concluded by noting “it (the Moosewood Report) is a wonderful reference piece, it is a tool the town should have regardless.” A comparison of the New Hampshire Method and the Highway Method of wetlands assessment followed. They concluded with more site specific functional values. In conclusion Ms Carr noted “weighing the values gives a level of subjectivity that is hard to defend.” She went on to suggest a checklist that might be based on the intent of the land, such as what it may be used for or what might be built there.

The Workgroup adjourned at 9:15 a.m.

Respectfully submitted,
Laura Norton
Administrative Assistant