PLANNING BOARD
TOWN OF PETERBOROUGH, New Hampshire

Workshop Minutes of July 19, 2010

The Peterborough Planning Board held a workshop on Monday, July 19, 2010 at 5:45 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 and Barbara Miller.

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

Chair MacDonald called the Workshop to order at 5:45 p.m. and appointed Alternate Richard Freitas to sit.

Ms. Ogilvie redistributed the Synopsis of Wetland Proposal the Frequently Asked Questions (FAQs) handout she had created. She also distributed a list of questions/concerns from Selectman Barbara Miller. Ms. Miller told the members that the handout was very helpful but noted "I think my questions are pretty indicative of what we will get at Public Hearing."

Ms. Miller asked "how close is the state to mandating a statewide 100-foot wetland buffer?" A brief discussion followed with Mr. Enos concluding "it will take a long time to overcome the political hurdles." Ms. Miller asked if it would be helpful to have a state legislator come in and do a presentation on what is going on at the state level with Chair MacDonald replying "sure, if you know someone."

The members then had a general discussion about the opposition heard at the Public Hearing held last Monday evening. Chair MacDonald reiterated that she had several people approach her and tell her they thought the ordinance was a good idea "but they just don't understand it completely." She noted it might be helpful if they took 10 minutes at the beginning of the next Public Hearing to give a history of the wetland ordinance established in 1990 that initially required a 100-foot (that was later reduced to 50-feet) buffer for the wetlands. She noted that over the last 20 years the 50-foot setback "has not been a real buffer" and that the Planning Board has been trying to figure out how to responsibly protect the buffer for a long time. She added things like drainage or septic systems should not be within the buffer. A brief discussion about setbacks in zoning followed with Chair MacDonald concluding "it is the same as it is for zoning, having a setback doesn't mean you can't use the land, it has uses." Chair MacDonald noted that the Rural Gateway Overlay District has a 50- or 80-foot vegetative buffer, but people haven't claimed that that is a taking.

The members briefly discussed the difference between an application for a Variance from the ZBA and Conditional Use Permits from the Planning Board. The members agreed the biggest difference is that a Variance comes with a strong, hard set of criteria that must be met where Conditional Use Permits "allow an opportunity to engineer your way out of a situation."

Mr. Freitas interjected "it seems like it is better to come in here than go to the ZBA." Chair MacDonald noted "a Variance is not that easy to get." She added "an applicant can come to the Planning Board and get input and advice without spending money." The members continued to discuss the judicial process the ZBA is bound by, with Chair MacDonald concluding "it is not a negotiable or interactive process."

Ms. Miller noted that many people see the ordinance as taking of property but noted "we are not taking property; in fact in some instances we are giving it back." She went on to say "if we can say that comfortably that would be a big plus." Chair MacDonald interjected "people think this is dealing with already built environments but we are not dealing with existing properties."

The members then discussed the separation of residential from commercial properties with Mr. Enos noting "it cannot be done." He added "and you will continue to get the same question from the same people, *not* because it has *not* been answered, but because they don't want to hear the answer." The members went on to discuss some examples of how land use might be affected with the proposed ordinance. They also discussed examples of changes in use, using land to its highest and best use, zoning and the right to abatements.

Chair MacDonald reiterated the new ordinance "is not to take land away, it is to protect the town's safety." The members discussed the consequences of filling a wetland in one area and having a flood in another. They also discussed the consequences of building on the edge of a wetland "which we do" interjected Chair MacDonald and how erosion can fill a wetland to the point that is does not function anymore. They discussed the flooding in Keene several years ago as a good example to use.

Mr. Henry contended the members "have good answers to the questions that make people nervous." He suggested they mention the 30 or more towns in New Hampshire that have (at least) a 100-foot minimum setback noting the ordinance is not an egregious taking of property "that is a scare tactic" he said. Chair MacDonald agreed and added "right now the buffer is *not* maintained and not monumented, marking them is important." The members briefly discussed the fact that the wetlands were not static and that occasional "snapshots" were necessary to map them correctly. They then discussed the Master Plan recommendations for water resource management and protection.

Ms. Miller noted the benefit of meeting one-on-one with specific nay-sayers "to talk about the ordinance, understand their feelings and concerns and answer their questions." Chair MacDonald replied "there is a certain group of people who won't listen to the answers." Mr. Henry interjected "you have to be aware of those people talking to others inside the bell curve." Mr. Freitas suggested the members write a letter to the editor of the local paper. Mr. Henry reiterated the responses "must be clear and concise as to how the ordinance works." He added "íf it comes down to us versus them we don't have a chance."

The members briefly discussed the degraded quality of the water in town, climate change and more severe storms leading to flash floods. They also discussed natural attenuation by maintaining setbacks from the wetlands. They briefly re-discussed the 180 degree turn the City of Keene has made with aggressive changes in their regulations to protect more land. Ms. Miller

noted "when people say *taking* we should say *reclaiming* and when they refer to *water quality* we respond with *degraded*, because that is the truth." Mr. Henry interjected "you have to realize we have to live in balance, in harmony" adding "the ordinance gives the opportunity to encroach where applicable while maintaining the integrity of the wetlands." Mr. Henry also noted "look how I responded to the Keene information; we need to give the voter that type of information, this is an ongoing thing."

The members talked about the "what if's" (what if there was no MacDowell Dam, what if the wetlands at Evans Flats had been completely filled in) and all agreed "another disaster like the hurricane and flooding of 1938 was inevitable."

Ms. Miller interjected "I am a good example of the uninformed citizen" adding "I can only feel for the voters sitting in the audience." She went on to say "we have got to provide a solid foundation of what we are doing." Mr. Henry agreed adding "we need to use the KISS (keep it simple) principal." Ms. Miller also acknowledged the emotional aspect of the questions that would be asked.

Chair MacDonald outlined her plan to review the history of the wetlands regulation, pointing out the Master Plan water resource management and protection chapter for the protection of the wetlands, reviewing the work and wetland assessments by Moosewood Ecological, the formation of the Wetlands Workgroup and the regular meetings to come up with the recommendation of a 100 foot buffer/setback for high functioning wetlands based on their functional value. Mr. Henry added "and that is why we went for the opportunity of Conditional Use Permits for flexibility." Another member added "it is all for the long term health and benefit of the town."

A brief discussion about the allowable uses in the setback/buffer followed with some examples of intrusion that equate to loss of integrity. In conclusion Mr. Enos noted "the setback is important, there is a reason for it." Another member interjected "it is the perception that this ordinance will make it harder but it really makes it easier, if you want to intrude one foot under the current ordinance you ***have*** to go to the ZBA for a Variance and meet the criteria for approval." The members agreed "the process is a judicial one with no way of engineering your way out of it. It is black and white, yes or no." They re-visited the opportunity to negotiate the process of reduction of setbacks through the use of Conditional Use Permits through the Planning Board with a member noting "you can not do that at the ZBA."

Mr. Freitas said "our wetlands are going in the wrong direction; they are degraded" adding "the new ordinance is difficult to understand but it gives flexibility." He went on to say "but we have to be honest, if an applicant has high functioning wetlands and steep slopes he may not get what he wants."

The members briefly discussed the format of the Public Hearing, the Wetland Buffer/Setback Width Determination Table and a Power Point of two separate examples (one high functioning, one low functioning) of how the buffer/setback width is assigned. They agreed from there they would move into the synopsis and FAQs before entertaining questions.

Ms. Miller suggested a side-by-side flow chart as a visual for a Variance application and a Conditional Use Permit application. One member suggested looking at Pelham, Salem or Rochester New Hampshire as examples of towns that have not preserved the integrity of their wetlands. Chair MacDonald noted "we have done the easy land, what we have left is the hard land, a lot of parcels with wetlands on them. Our biodiversity is there." Mr. Henry agreed adding "the easy choices are gone, the hard choices are here, and without protection they will be lost."

A brief discussion about providing wetland protection and Low Impact Development (LID) followed.

Ms. Ogilvie reviewed the meeting schedule with the members and reminded them of tomorrow night's decision on the request for a special town meeting by the Board of Selectmen. Ms. Miller asked for clarification about the cost of a wetland scientist to assess the functional value of an applicant's wetland. It was noted that the wetland would have to be delineated no matter what and that the wetland scientist could easily fill out the New Hampshire Method of functional analysis in a minimal amount of time. Mr. Henry concluded with "It is clearly written and ready to go to vote."

Ms. Ogilvie reported she had received an as-built for five condominium units that were approved in 2005. She noted they were located at 84 Summer Street. Referring to a sketch she noted the as-built showed two gravel parking spaces were not constructed and the area designated for them had been landscaped, that the light poles on the original plan had not been installed and the trees in front of the parking spaces were installed one foot closer to the pavement (5 feet rather than 6 feet) than the approved plan indicated. She noted the first two items were not violations but they had been offered by the applicant and not carried out. She added that the trees, on the other hand were a condition of approval and were mandated to be six feet from the edge of the pavement. She noted the trees were still alive and had been there for 5 years. "This makes us wonder if they would survive an uprooting and replanting" she said. The members reviewed the as-built and a motion was made/seconded (Fretias/Henry) to approve the as-built as submitted with all in favor.

Chair MacDonald noted she had a small technical issue for the members. She noted that the Board had not formally voted to move the proposed wetlands ordinance to Public Hearing. After a very brief discussion a motion was made/seconded (Henry/Enos) to move the draft ordinance to Public Hearing with all in favor.

The Workshop ended at 7:15 p.m.

Respectfully submitted,

Laura Norton
Administrative Assistant