PLANNING BOARD
TOWN OF PETERBOROUGH, New Hampshire

Minutes of January 24, 2011

The Peterborough Planning Board held a Workshop on the Wetlands Proposal on Monday, January 24, 2011 at 5:30 p.m. in the Selectmen's Meeting Room at the Town House.

Members Present: Chairman Leandra MacDonald, Ivy Vann, and Barbara Miller, *ex officio*.

Also Present: Carol Ogilvie, Director Office of Community Development, Laura Norton, OCD Administrative Assistant. Tom Weeks and Dario Carrara, Code Enforcement Officers; Matt Lundsted, Jo Ann Carr, and Francie Von Mertons, Wetland Working Group members; and Matt Waitkins, ZBA Chair.

Chair MacDonald called the Workshop to order at 5:30 p.m. She began by asking the code officials about their feelings on how a process would work and what form of enforcement was available to them under the current iteration of the proposed wetland ordinance. A brief discussion about the use of plot plans followed with Mr. Weeks noting "we try to do what we can to save the applicant money. If we identify what we believe are wetlands present, we decide if they are a factor or not. If the wetland is questionable the applicant needs to get a wetland delineation." Chair MacDonald asked about setbacks as well with Mr. Weeks replying "It is the same thing, you have setbacks from property lines and you have setbacks from wetlands." Mr. Weeks also noted the role of the Conservation Commission when a particular wetland area is in question. "We invite them to come out and see" he said.

A brief discussion about knowing *what* and *where* the setbacks are was followed with Mr. Weeks noting references to subdivision plans, wetland delineations, aerial photography, and GIS mapping. Mr. Lundsted added "it would also be helpful to have monumenation on the scene." The members also discussed the advantages of getting the wetland information and town mapping into its own GIS as well as the ultimate accuracy of it. "You can use GIS as a first stop, but you should never use GIS in replacement of a survey" interjected Ms. Carr. Another member agreed adding "right, you should go back to the original survey and the decision of whatever Board was involved."

Mr. Carrara noted "delineation done by a wetland scientist is not a survey; they are not the same thing." Mr. Weeks agreed noting "some delineations we get are hand drawn, specific to the structure needing a Building Permit." He added "many are not like what you would find on a subdivision plan and might not even be to scale."

A discussion about monumentation followed. Mr. Weeks noted monuments would be helpful but noted "with homeowner human nature being what it is" that the markers may move over time. Ms. Vann noted "that is not a reason *not* to do it." The member also briefly discussed enforcement of maintaining the naturally vegetative buffers.

Chair MacDonald noted her concern that the proposed ordinance may not pass Planning Board muster let alone the voters. “I want something better than what we have” she said. She went to say she had expressed her concerns with Ms. Ogilvie “and would like to have some feedback or help from the Board and Wetland Workgroup.” She asked “who would like to weigh in on this? Am I crazy?” She asked the group “do you think it will pass?” Ms. Vann replied “no.”

Ms. Vann went on to note she had brought this to the Board’s attention two months ago when she suggested they change the administrative rules but not increase the setback or reduce the minimum acreage size. “I don’t believe it will pass in its current iteration” she said. A brief discussion followed with Ms. Vann concluding “our chances are better if we stay at 50 feet” adding “I think people have firmly latched on to the idea it is a taking. That is what people believe and that is how they will vote.” She also added that the reduction of the minimum size acreage from one half to one quarter acre “makes people believe any puddle will be protected with an enormous setback and buffer.” Ms. Miller interjected “I agree with everything Ivy just said.” A brief discussion about the reduction of the minimum acreage size and the functional values of wetlands followed. Ms. Vann noted “the half an acre versus a quarter acre discussion had a huge amount of resistance to it” adding “this strikes the people as a big bite, half of what it was.”

Ms. Miller noted ZBA Chairman Matt Waitkins was present in the audience and asked him why it was the ZBA has spoken so strongly against the process and the use of Conditional Use Permits. Mr. Waitkins replied he has not publically spoken about it. He noted “some feel that way, but I am not sure I know enough about the proposal to comment on it.” He added “what ever the ordinance is we maintain its integrity while trying to provide some flexibility” adding “but the applicant has the burden of truth.” A brief discussion about the planning aspects of changing the process followed with Mr. Waitkins concluding “we are not planners, we go by what the ordinance says.” They also briefly discussed RSA§676:4 including preliminary conceptual consultations and design review, both being non-binding.

Ms. Carr weighed in noting “I have some thoughts about the 50 versus 100 foot limit. My first consideration is that I have real concerns about going from the proposed 100 to 50-foot buffer. I think is sends a very conflicting message.” She noted “a 50-foot inviolate buffer was the whole purpose of this ordinance.” After a brief discussion she added “it seems we have gone from having the developers up in arms to handing them permits on platters.”

Mr. Carrara brought up the table with the points and buffer/setback distances, and in trying to explain his thoughts about to convert that from the 100 feet to 50 feet, led the group in a short exercise. He gave a couple of scenarios in an effort to come up with a more average range of 25 to 65 feet of buffer/setbacl. “What that does is give you a maximum” he said. Ms. Von Mertens interjected “the goal of this was not to decrease wetlands protection. I don’t understand what is going on.” She added “this would be a negative step back in terms of getting a 25 foot inviolate buffer.” Ms. Carr noted the use of research, science, functional analysis and community interest in prioritizing wetlands, adding “the Wetland Workgroup did that.”

“Practically and politically” replied Mr. Carrara “100 against 50, maybe you start out in the middle if you want to get something passed.” Chair MacDonald noted the time spent in the past

with attempts "to get something to the voters" and reiterated her concern that the proposed ordinance would "not get past the Planning Board" adding "I am feeling like making a proposal that everyone hates is the only way to go, one that would not satisfy any of us."

Ms. Von Mertens interjected "the nature of public hearings is that only the opposition shows up;" adding "we do not have buffer protection now." She also advocated monumentation of the buffer. "I would go home smiling if I knew the buffer would be naturally vegetated and not disturbed" she said. Ms. Carr noted the lack of planning board members present and noted "we are not having a complete conversation here." A brief discussion followed about an inviolate 50-foot buffer with the Board having planning ability to put driveways or street crossings in the best place. Protection of the wetlands adjacent to the Nubanusit and Contoocook Rivers was also discussed. Ms. Carr concluded with "changing the ordinance to a 50-foot inviolate buffer is basically tweaking the current ordinance." Another member interjected "right, using Conditional Use Permits for driveways and street crossing using the Moosewood criteria." Another member noted monumentation in the zoning code and when they discussed the change in minimum size. Ms. Vann stated "make it quarter acre, run it up the flagpole and see how it does."

Ms. Von Mertens noted "I am not a gambler. If this goes through and crashes we have not got the appropriate protection." She spoke briefly about the role of the Conservation Commission and their input as well as limiting buffer reductions to Variances from the ZBA.

Mr. Weeks asked the Board "so you are proposing keeping the ordinance you have but have driveways and streets permitted by Conditional Use Permits with improvement on criteria as well as monumentation?" Adding "everything gets monumented and the minimum acreage size goes from one-half to one-quarter acre in size. Is that what you are saying?"

The members basically agreed with Ms. Ogilvie qualifying that the "proposal we have" has gone through a long and metamorphic process. She noted "a lot of work has been done here and I think it is an improvement." She noted it would be very complicated to take what they have now decided and back it into the existing ordinance while plugging all the holes. Ms. Vann noted she felt if they brought the list they had come up with and applied it to the proposed ordinance, "we could come up with something acceptable." Here we can get two, three, four of the things we really want" adding "five if you include getting all the wetlands around the rivers back."

Ms. Von Mertens reiterated the fact that during public hearings "the Planning Board listens to those who find flaws, orate them and then have the newspaper headline "opposition is strong." Ms. Vann disagreed noting "too many feel it is too much whether they come (to the public hearing) or not." Ms. Von Mertens replied "they are responding to misinformation."

A brief discussion about the public's reaction and the current economy followed. Chair MacDonald noted "I feel there is a sense of the ordinance doubling the rules and people vote based on that." She added "this is a time of a lot of fear with the economy the way it is and their automatic reaction is to vote no. People are afraid this will have negative effects on them and they are fearful." Mr. Waitkins immediately interjected "I am not afraid of clean air and clean water" adding "it may be true that many do not understand it but I don't know too many people that want less protection for the wetlands." "Are you looking for more (protection)?" asked Ms.

Miller with Mr. Waitkins replying "well I am not looking for less." A brief discussion about the functional values of the wetlands in town followed with one member noting "with the Moosewood report most (wetlands) fall on the upper end of the chart. It is hard to get the point across that this will do more to protect the wetlands and this is a good start."

Chair MacDonald summarized with a review of the potential to take out the provision for expansion of non residential property and the brief discussion that followed included Ms. Vann noting "I would be inclined to treat all buildings the same" and Ms. Von Mertens stating she was against it "I think there should be more push-back for industrial/commercial" she said. The members then agreed that non-residential buildings could also have an exception, but by Conditional Use Permit.

The members reviewed the suggested changes, as follows:

1. Designating the existing 50-foot setback as a 50-foot inviolate, naturally vegetative buffer with monumentation.
2. Keep the proposed applicability to ¼ acre of wetland.
3. Continue to allow exemptions for additions/expansions to nonconforming residential structures, but not allow encroachment any closer to the wetland;
4. Use a Conditional Use Permit process to allow additions/expansions to nonconforming non-residential structures.
5. Use a Conditional Use Permit Process for applications involving streets, driveways and other access ways to cross the buffer.

Ms. Ogilvie noted she would update the draft and e-mail it out for review. The members agreed they would meet again in a workshop format next Monday, January 31st at 5:30 for a final review.

The Workshop adjourned at 7:00 p.m.

Respectfully submitted,

Laura Norton,
Administrative Assistant