

**PLANNING BOARD**  
TOWN OF PETERBOROUGH, New Hampshire  
Public Hearing

Minutes of March 15, 2010

The Peterborough Planning Board held a Public Hearing on Monday, March 15, 2010 at 7:00 p.m. in the Upper Hall of the Town House. The purpose of this hearing was to review Proposed Amendments to the Zoning Ordinance and Building Code. .

**Members Present:** Chairman Leandra MacDonald, Vice Chair David Enos, Rick Monahan, Michael Henry, Richard Freitas, and Barbara Miller, *ex officio*.

**Staff Present:** Laura Norton, Administrative Assistant, Office of Community Development and Fash Farashahi, GIS/IT Specialist.

Chair MacDonald called the hearing to order at 7:00 p.m. She introduced the Board members and staff. She noted copies of the amendments were available at the door and announced the Board would go through the proposals sequentially. She asked that anyone with a question, statement or concern please state their name for the record.

Amendment #1: Internally-Lit Signs

To amend §245-18. Signs, by including a definition of an internally-lit signs and adding a provision that would prohibit such signs in the Downtown Commercial District. It was noted that the purpose of this amendment is to preserve the character of the Downtown by not allowing a type of sign that is not in keeping with this character.

Chair MacDonald asked if there was anyone in the audience that would like to speak to this amendment. Craig Hicks asked “what led to this?” A brief discussion about the historic quality and charm of the downtown followed with a general consensus that this type of lighting does not enhance that environment. Fran Chapman asked for an example with Chair MacDonald replying “a sign like the Pizza Peddler, it is *very* bright.” The definition of an internally-lit sign was reviewed and noted to be lighted by a source within the translucent sign panel. The gross parameter of the downtown was also discussed. David Simpson noted his concern for “one more restriction on a business or individual that probably is not necessary.” He noted that “good common sense and good taste would cover a lot of these issues without enforcement.” He also noted a town board should not have to act as policemen, “that is not appropriate for a town committee” he said. Chair MacDonald noted some internally-lit signs do exist in the downtown and they would be grandfathered. A very brief discussion about the competitive disadvantage to a new business that would not be allowed to have such a sign in the future followed. Andy Peterson noted “as a property owner in the downtown I think this is fine.”

The discussion ended at 7:10 p.m.

Amendment #2: Pollution and Disturbance

To amend §245-33. Pollution and Disturbance, by exempting emergency generators, customary residential uses, and equipment used during home construction from the noise limitations of the ordinance. It was noted the purpose of the amendment is make allowances for certain uses that are either temporary in nature or are associated with customary residential uses so that they do not require Zoning Board approval.

Gil Duval asked if the amendment could include lawn mowers and chain saws with Chair MacDonald replying “this would be considered intermittent and accepted within the regulation .” “Is it written?” asked Mr. Duval with Chair MacDonald replying “specifically, no.” Mr. Duval requested both lawn mowers and chain saws be named in the amendment adding “it will never get in there if it is not done now.”

The discussion ended at 7:12 p.m.

Amendments 3 and 4 were discussed together.

Amendment #3: Re-zoning of the Office District

To amend Article X – Zoning Districts by rezoning the two parcels on Scott Mitchell Road zoned Office District back to the Rural District. It was noted the purpose of this amendment is to remove Office use from those parcels where the use is unlikely to occur and is out of character with the area.

Amendment #4: Re-zoning of the Office District

To amend Article X –Zoning Districts by rezoning the state-owned parcel located at the intersection of Routes 202 and 136 back to the Rural District. It was noted the purpose of this amendment is to take the parcel out of Office as it was acquired by the state as a wetland mitigation site and is now in use as a boat/canoe/kayak launching area.

Andy Peterson spoke in favor of the amendment. On behalf of the parcel located on Scott Mitchell Road he noted “the Office District is a hybrid type district that the Board may wish to consider as time goes by.” Mr. Hicks noted the land is a three acre piece of property the owner clearly wants to sell, why not give him an out and an opportunity.” Ms. Monahon said she thought it was a great idea and noted four reasons she supported the amendment: 1) its proximity to a secondary aquifer, 2) the fact that the amendment has been recommended before, 3). it is too far out of the center of town for office use, and 4) the fact that the Heritage Commission Master Plan (of which she is member) has an interest in the corridors and gateways to the town. “I think it should be changed to Rural and/or stay a community garden.” Mr. Hicks cautioned the audience by pointing out that a large business had wanted to locate there and that the business would have created jobs and paid taxes. “At some point we have to pay our bills” he said, adding “a community garden is not a business, you should find another location for that before you take more land off the tax rolls, it is constantly made harder for businesses in and coming to town.” Mr. Hicks concluded by noting “that land is made up of 9 acres (and I’ll say it) across from the **dump**. I don’t think many houses want to be there.”

Sharon Monahan stated she agreed with Mr. Hicks, “there are so few areas for commercial uses left – this is an ideal site.” Ms. Monahan returned to the microphone and said “Number 5. A study done on rural space and conservation land costs less than Office space because of the services Office space has to provide.”

The discussion ended at 7:20 p.m.

#### Amendment #5: Wetlands Protection District

To amend §245-15 Wetlands Protection District by replacing it in its entirety with a new Wetland Protection Overlay Zone. It was noted the purpose of this amendment is to strengthen the ability of the ordinance to protect wetlands by means of converting the current 50-foot setback to a do-not-disturb buffer where certain uses are allowed and adding an additional 50-foot setback from the buffer edge where certain uses are allowed. The amendment also replaces the current Special Exception process at the ZBA level for certain uses with a Conditional Use Permit process that is administered by the Planning Board. The use of Conditional use Permits would allow landowners to apply to the Planning Board for a reduction in their buffer and/or setback areas.

Mr. Enos reviewed the Wetlands Workgroup statement (attached as an addendum to these minutes) and a history of the protection of the wetlands starting back in 1972. He spoke about the flexibility of the amendment and noted “not all wetlands are created equal and do not all have the same functions.” He noted the methodologies (including the New Hampshire Method, the Highway Method, the Army Corps of Engineers Method, and a Hydrogeomorphic Method) were based on science and recognized the differences in the ways the wetlands vary. He noted “82 communities used the New Hampshire Method to establish their prime wetlands.” He reviewed the Moosewood Ecological study, the functional analysis of wetlands, the creation and makeup (a builder, a land manager, a planner and a civil engineer) of the Wetlands Workgroup in 2009/2010 and their conclusions. He explained why a tiered approach did not work in our town. “When the study came to fruition it became clear that a tiered approach would arbitrarily lump some wetlands without being evaluated on an individual basis” he said.

Francie Von Mertens was first to speak for the amendment. She said the current 50-foot buffer “is not a real protection to keep the buffer intact.” She also spoke briefly about the flexibility the amendment offered.

Jim Stewart had a series of questions he had prepared for the Board (attached as an addendum to these minutes). He began by noting “I find it (the amendment) very, very confusing.” Mr. Stewart inquired about septic system setbacks, the definition of a “qualified professional” (who can delineate the wetlands and perform the wetland functional value assessment), the wetland setback/buffer width determination table embedded in the amendment, (in response to which Ms. Carr presented a walk-through exercise of the table using a random wetland parcel). As Mr. Stewart stated “I am just trying to understand” he noted his concern that the table for relief or reduction for setbacks seemed “very arbitrary.”

Mr. Stewart continued by asking “will the Village Commercial District be eliminated if this passes?” with the Chairman replying “yes.” Mr. Stewart told the Board he “strongly objected to the use of Conditional Use Permits by the Planning Board” and the relief is better suited to be granted by the Zoning Board of Adjustment. Chair MacDonald replied “the ZBA by its nature is not going to look at the totality of the site; it is not in their purview. Many times the ZBA makes a decision before the Planning Board gets to see the proposal. In the old days the applicant went to the Planning Board first and then to the ZBA.” She noted the amendment would allow coordination between the applicant and the Planning Board “to actually look at the site and work with the applicant.” She also noted the opportunity for conceptual conversations where the Planning Board can review and discuss a plan in its early stages. “It is an innovative way to expand on their plan without spending money.”

Mr. Hicks reminded the audience of unintended consequences using the Village Commercial District and its 5 foot setbacks as an example. He also briefly spoke about his EMS (Eastern Mountain Sports) project and asked the Board “with the enactment of this ordinance are you telling me stop? He went on to note “if there is no longer a 5 foot setback in that district I will stop trying to keep EMS in town.” Mr. Hicks went on to advise the Board “you cannot do this in isolation, there will be lost revenue if things cannot be built, I do not know the unintended consequences and I don’t think you guys do either.” Mr. Hicks noted a project he was involved with “had to chuck 8 units to meet the setbacks. That is housing and revenue lost forever due to setbacks” he said. He concluded by noting the intent of the Master Plan, noting “we should truly look at the wetlands in the town and try to understand what we need to do to protect them and then do something, but this is not it.” He added “we keep getting bits and pieces (of land) taken away from us. As a property owner I have to think about how to survive and pay to live here while protecting Mother Nature.”

Ms. Von Mertens clarified the 5-foot setback limit in the Village Commercial District noting “it was crafted by Peter Ryner, and it was crafted very rigidly” she said. She noted the 5-foot setback “is not a given, there are quite a few criteria you have to meet.” She also noted “the effort was to be flexible, not arbitrary.”

George Duncan introduced himself as the Chairman of the Business Support Group in town. He requested the Planning Board “defer putting this on the ballot at this time” noting “more information is needed.”

Ellen Derby introduced herself and stated she did not feel the amendment was a well thought out thing. She told the Board “it looks like you worked hard but there are questions that cannot be answered. Are we ready to bring this to ballot? I am not sure what is happening with this ordinance, and I think others are confused as well. It needs more work, I ask you not to put it on the ballot this year.”

Heather Peterson spoke briefly on the flexibility of the amendment to include input from the Conservation Commission but added “it is also very true that safety and historic issues come into play, and not just the wetland buffer.” She gave an example of a parcel where the road that was built could have gone in another place but it would have hurt the integrity of that home. She noted scenic vistas, the integrity of a historic house, and safety for sight distances were also

important. She went on to note she did not feel these were taken into account “and are not showing in this ordinance.”

Sharon Monahan introduced herself and distributed a handout that she then read to the Board and the audience (attached as an addendum to these Minutes). Ms. Monahan told the audience “this is hard for me but for the record I oppose the Wetland Protection Zoning Ordinance.” Ms. Monahan went on to say “I love the wetlands and it is my life’s work to protect them.” She went on to read the four basic points of her opposition without interruption.

Ms. Von Mertens addressed the audience once again reiterating the talent and credentials of the Wetland Workgroup members. “They are not babes in the woods” she said. Ms. Von Mertens reviewed the research that had been done and the misunderstandings that surrounded the amendment.

Peter Brown introduced himself and said “I feel like I am home watching Law and Order.” He went on to say he thought there was enough damning testimony of the amendment. He noted “if you put this on the ballot after all this you will put anything on the ballot.” He pointed out what he called a point of confusion and that there was also a steep slope calculation that had not been discussed. He also noted he felt the amendment needed more criteria for a developer.

Loretta Laurenitis introduced herself and stated “I am in opposition to this. There are way too many questions, way too many concerns.” She suggested a second look with a comprehensive committee. She also suggested a meeting time other than 7:30 a.m. on Monday mornings. “We work at that time” she said. Ms. Laurenitis went on to express her concern for the abutters. “There is no specific criteria included in the ordinance for the abutters, the effect on properties or the character of the neighborhood.” She noted “there are models out there (suggesting Salem and Bow, New Hampshire)” and suggested the amendment “include specific criteria” to these issues. Ms. Laurenitis handed the Minute Taker various handouts including the Salem and Bow, New Hampshire Wetland Ordinances and as well as generic language for a model and guidance for implementation of wetlands conservation overlay districts.

Richard Estes introduced himself and noted “I have been listening to this and I think there are enough serious concerns and serious opposition that it should be considered further.” Mr. Estes said “I am a biologist and my main concern is the conservation of the wildlife habitat. I think more work has to be done” he said.

Andy Peterson introduced himself and noted “I find the Planning Board a fair and even-handed group of individuals and I appreciate the work you do.” He added “I am I opposition to this and hope you will listen to the input tonight and take it into account when considering putting it to ballot.” Mr. Peterson went onto note “the ordinance does a lot of things and those who put it together have worked hard” but the property owners have not had the amount of input necessary.” He mentioned the unintended consequences of grandfathered properties being left in the status “that we currently find them, with the owners choosing to do nothing.” He added “if we are not careful in how we structure our ordinance they may have the opposite effect of what we are trying to achieve.” He concluded by noting “under this ordinance, Shaw’s wouldn’t have been built but now we see cleaner run off to the wetlands up there than ever before.”

Chair MacDonald clarified that the Shaw's Grocery store could have been built "as it was already disturbed land." She also clarified another point in that the downtown area is covered by the Shoreline Protection Overlay not the wetlands ordinance and that "the rivers are not addressed by this ordinance."

Mr. Peterson replied "from my side of the table it seems very different." He questioned a property owner's "reasonable use of their land if we pass this" and suggested "we pull back and not move forward on this *this* year."

David Simpson introduced himself and noted "there has to be a lot more conversation about this" and suggested the Board table the amendment for future discussion.

Maude Salinger introduced herself and noted that the current ordinance (§245-15D (2)) discussed incorrectly designated wetlands. She added "there is nothing like that in the proposed amendment." Ms. Salinger went on to ask "is there a process for mitigation of disputes about wetlands?" A brief discussion about the proposed ordinance's section §245-15G Boundary Disputes that followed included the current process of an appeal to the ZBA involving Superior Court but with the new ordinance it is an appeal of the Planning Board decision to the Superior Court. Ms. Salinger noted "it seems to me, that shouldn't be the case."

Jo Anne Carr reiterated the expertise of the Wetland Workgroup. "We are not novices" she said. She explained the workgroup's approach to the amendment and noted "we did not outright reject the Moosewood study." She reviewed the purpose of a Conditional Use Permit as a tool to replace Special Exceptions currently granted by the ZBA but was adamant to note "the idea that the ZBA has been written out of the process is very wrong" adding "there is a full role for the ZBA in achieving relief in this ordinance." She concluded that "if the ordinance has to go back to the study committee, it has to go back to the study committee, but it has been a good process."

Mark Fernald introduced himself and noted "as a lawyer, I find reading this is difficult and I think it would be hard to explain to a client where they stand." He noted he also found the functional value table difficult to understand. "Just the way it is worded is unclear" he said.

Mr. Fernald noted the potential for different scores from different methods and suggested the ordinance "pick a method" and stick with it. He also noted Section K. Conditional Uses (1) (e) stated that "in no case shall any approved reduction in setback result in a setback of less than 25 feet." He warned the Board of the "tons of litigation" they may be subjecting themselves to. He concluded by noting "the ordinance has to be clear so people know where they stand."

Chair MacDonald asked Mr. Fernald if he was a concerned citizen or was speaking on behalf of an interest. Mr. Fernald replied he was present on the request of Juniper (Peter Brown).

Fran Chapman stood and said "I don't know what the hell is going on. I know one thing – we have not been having problems, we have been doing well, we have been doing a lot of things right so why do all of a sudden we need all this?" He went on to agree the subject was a difficult

one “and it comes up over the years.” He told the Board “I wish you well and wish you would take this and put it somewhere.”

Chair MacDonald thanked the audience for coming. In conclusion she noted the tight time frame and the early Monday morning hours put in by the Workgroup. She said, “in summary we appreciate the fact that some of you came out last month for the informational session, it is a very difficult process.” She advocated the public pay attention to what they see in the paper “especially early in the process.” She noted “the question is *what is reasonable protection?* that is what everyone is trying to get to.”

Ms. Von Mertens stood for the final time and spoke briefly about protection for the wetland buffers. She noted how the invitations sent to all boards to participate in the Conservation Commission meetings were fruitless, she mentioned an informational video that was created and available but never checked out. “That is my frustration” she said, “I don’t know how to do the education piece.”

The discussion ended at 9:40 p.m.

#### Amendment #6 Demolition Review

Duffy Monahan spoke about the amendment. “It is a win-win situation” she said adding “it is also an opportunity to maintain economic vitality and historic preservation.” Ms. Monahan introduced several members of the Conservation Commission that were present in the audience as well as Liz Hengen who gave a brief overview of the demolition delay ordinance in Concord, New Hampshire. Ms. Monahan also noted the 2006 Master Plan chapter that advocated “making historic preservation a part of the process.” She noted the ordinance would allow a review process to be initiated to determine if a building slated for demolition is architecturally or historically significant to the town. She noted the structure must be greater than 450 square feet and be 50 years of age or older. “It allows a dialogue” she said. She went on to review the process which included an initial eight-day waiting period. If the Demolition Review Committee (consisting of three Heritage Commission members and two alternates appointed by the Committee Chairman) determined the building was significantly historic, a public hearing would be held to see if there were any alternatives to demolition. A decision of potentially significant or not would come out of the hearing. If not potentially significant the demolition permit would be issued with 14 business days of the application. If a building is found to have significant or historic value at public hearing the committee and owner will seek alternatives to the demolition. If there is no agreed upon alternative a demolition permit will be issued within 29 business days of the application. A brief discussion about the criteria for the permit followed.

“The Mariposa Museum is a perfect example” said Ms. Monahan. Mr. Stewart spoke briefly about the proposed ordinance. He agreed in the case of the Mariposa Museum “it was a good thing” but asked “is the Planning Board authorized to propose this?” He continued “have the Board of Selectmen looked at this?” Ms. Miller replied “the Board of Selectmen did discuss it and are in favor if it.” Mr. Stewart asked “are there any legal challenges to it?” Ms. Hengen replied there were not. Mr. Stewart asked “is it enforceable?” with Ms. Hengen replying “no.”

Ms. Monahon interjected “it is really just a cooling off period and opportunity for an owner to see the potential value they may have in a building.”

Heather Peterson noted the “business days” involved and asked can the process be expedited?” She noted the blueberry processing plant as an example. She added “time is money” and waiting for permits for old sheds or greenhouses should be expedited. Mr. Simpson noted he was concerned with the criteria of 50 years “that brings you back to the 1960’s” he said, adding “it should look more like 100 years.” Mr. Monahon noted the national criteria of 50 years.

The discussion ended at 10:00 p.m.

In conclusion Mr. Stewart stood and addressed the Board. He noted “with all due respect, in the future please plan two or three public hearings.” Chair MacDonald briefly reviewed the time frame the Board and the Wetlands Workgroup had been up against but agreed the more input the better.

The Public Hearing was adjourned at 10:00 p.m.

***Deliberation:***

Chair MacDonald appointed Mr. Freitas to sit. She then explained the general procedure of the Chairman making the motion to bring the amendment to ballot. If the motion was seconded deliberation would follow. Once deliberation was complete, a vote would be taken.

Amendment #1: Internally-Lit Signs

Chair MacDonald made a motion to bring the amendment to ballot. The motion was seconded by Mr. Enos. There was no discussion and the Board voted unanimously to bring the amendment forward.

Amendment #2: Pollution and Disturbance

Chair MacDonald made a motion to bring the amendment to ballot. The motion was seconded by Mr. Henry. There was no discussion and the Board voted unanimously to bring the amendment forward.

Amendment #3: Re-zoning of the Office District

Chair MacDonald made a motion to bring the amendment to ballot. The motion was seconded by Mr. Monahon. There was a brief review of the areas affected. Chair MacDonald, Mr. Enos, Mr. Henry, Mr. Monahon and Mr. Freitas voted in favor. Ms. Miller voted against.

Amendment #4: Re-zoning of the Office District

Chair MacDonald made a motion to bring the amendment to ballot. The motion was seconded by Mr. Enos. There was another brief review of the areas affected. Chair MacDonald, Mr. Enos, Mr. Henry, Mr. Monahan and Mr. Freitas voted in favor. Ms. Miller abstained.

Amendment #5: Wetlands Protection District

Chair MacDonald made a motion to bring the amendment to ballot. The motion was seconded by Mr. Enos. There was brief discussion about pursuing more input from the stakeholders. They discussed how people perceived the ordinance and that it needs to be clear and easily understood. Chair MacDonald noted “the town has been trying to figure this out for a long time.” They briefly discussed additional research in going with a single functional analysis method. They all agreed November to now is too short a time frame and there was not enough time to get public feedback. “You learn the most from that” said Mr. Enos. Mr. Monahan agreed noting “we got our best input tonight.” The members reviewed the input they had received and agreed more work needed to be done “but we do not want to drop the ball on this” interjected Chair MacDonald. They briefly discussed other workshop exercises that could be done on applications in the future, as well as the use of Conditional Use Permits versus Special Exceptions from the ZBA.

Chair MacDonald called for a vote with no one in favor.

Amendment #6 Demolition Review

Chair MacDonald made a motion to bring the amendment to ballot. The motion was seconded by Mr. Henry. There was a brief discussion with Ms. Miller noting “I don’t have a problem with this at all, it surprised me there was so much discussion about it.” Mr. Monahan noted “it buys a little piece of time where you might find a better solution for a historic property.” Mr. Freitas noted “worse case scenario is a 29 day wait.”

Chair MacDonald called for a vote and the members voted unanimously to bring the amendment forward.

The meeting ended at 10:25 p.m.

Respectfully submitted,

Laura Norton Administrative Assistant

(PDFs of the statements mentioned above are attached to the pdf file of these minutes in the 2010 Planning Board Minutes section.)

**Approved as corrected April 19, 2010**

QUESTIONS for Moosewood Ecological regarding the proposed Town of Peterborough Wetland Ordinance:

Answers provided by Jeffrey Littleton (Principal Ecologist, Moosewood Ecological LLC) and Michael Simpson (Certified Wetlands Scientist)

1. Have you reviewed the current draft of the proposed Wetland Protection District Ordinance for the Town of Peterborough? When was the last time the Town consulted you regarding the draft ordinance?

**Yes, we have reviewed the current draft of the proposed Wetland Protection District Ordinance for the Town of Peterborough. The last time we were consulted regarding the draft ordinance was the week of March 8, 2010. Carol had asked us to review the document.**

2. Does the proposed wetlands ordinance utilize the Town of Peterborough Comparative Wetlands Evaluation Study conducted by your firm in determining reductions to the 100' setback and buffer or the 100' setback and buffer from all wetlands?

**Our report did not explicitly provide recommendations on determining reductions to a 100-foot setback and buffer. In our report, we have provided information and literature resources regarding scientific research on wetland buffer capacity to help reduce negative impacts on water quality and wildlife habitat. In this sense, the report was used to help determine a 100-foot buffer.**

3. It is my understanding that 100' setbacks/buffers are recommended from Prime Wetlands. The ordinance proposes 100' setbacks from ALL wetlands in town. Your study evaluated 85% of the wetlands in town. Did the results of your study demonstrate that all of the wetlands in Peterborough are Prime Wetlands justifying the 100' setback? Did your firm recommend the 100' setback from all wetlands in the Town of Peterborough based on your study?

**This study was not focused on the identification of Prime Wetlands, as defined by RSA 482-A:15. The report did not recommend a 100-foot buffer. However, this is a generally recognized buffer that can help reduce impacts to water quality while providing some form of wildlife habitat for various species.**

4. Did your firm design "Table 1" to be used in determining reductions in the buffer? Do you know the origin of "Table 1" and what method the Town is using to assess wetland functions and values?

**Moosewood Ecological did not design "Table 1" of the proposed Wetland Protection District Ordinance for the Town of Peterborough. It is my understanding that "Table 1" was prepared by the wetlands working group. It is my understanding that the town would use the NH Method to assess wetland functions and values. This is the same method used by our study.**

5. Are certified wetland scientists the "qualified professional" to delineate wetlands and perform wetland function and value assessments? (HB 1487)

**Currently, the certification for CWS in the State of NH explicitly is for wetlands delineations, and the stamping of plans are for those explicitly required by RSA 482-a in support of dredge and fill of wetlands in accordance with (Env-Wt 303.2 or 303.03). For 'major' classified projects, classification of wetlands is also required, so de facto, requires a certified wetlands scientist.**

**However, under Wetland Bureau rules there are references to a 'qualified professional' where it can be interpreted to include wetlands scientists since the definition for this includes any individual with a combination of education and experience regarding identification and understanding of hydric soils, hydrophytic vegetation, and wetland hydrology, sufficient to enable the individual to evaluate wetland systems and to create the conditions necessary to sustain a wetland ecosystem (Env-Wt 802.05). But that does not exclude others with sufficient training.**

**This designation of a qualified professional does specifically apply to the section of the rules when there is an evaluation of wetlands for 'mitigation' purposes (Env-Wt 803, et sec).**

**Another aspect of the NH rules that should also be considered is the prime wetlands section (Env-Wt 700, et sec) whose purpose is to provide criteria to municipalities for use to designate wetlands of significant value that are worthy of extra protection because of their uniqueness, fragility, and/or unspoiled character pursuant to RSA 482-A:15.**

**Under these specific rules there is no reference to either a certified wetlands scientists not a qualified professional, except in the case where there are disputes over prime wetlands boundaries delineations (de jure) falls under domain of a certified wetlands scientist and the possible mitigation of impact (de jure) under the domain of qualified professional.**

6. Can a town pass an ordinance requiring a certified wetland scientist to perform a wetland function and value assessment that has not been adopted by the NH DES or the US Army Corps of Engineers?

**That is a question for a lawyer...but for consideration is the fact certified soil scientists have been designated in town ordinances, where there have not been a comparable reference to them in state rules.**

7. Will certified wetland scientists recognize "Table 1" as a legitimate method for determining wetland functional value assessment? Would you?

**Table 1 does not designate any specific method for responding to the assessment of values. Thus, any number of recognized comparative evaluation methods could be used to complete such a table. The NH rules recognized the NH Method as the comparative evaluation method for designation of prime wetlands (Env-Wt 700, et sec). But this is not a prime wetlands designation process, so others could be used that have been recognized as valid procedures.**

**However, the table indicates that in order to get points, there must be a score in each functional value. Even using the NH Method, there are few, if any, wetlands that would not get a score in any of these functional values, albeit possibly a low score. Thus, as it now reads, most wetlands would probably get a high score.**

8. All applicants seeking a reduction in the 100' setback and buffer will be required to hire a certified wetland scientist or qualified professional to fill out Table 1. In your opinion, will certified wetland scientists understand Table 1 and does it render an unbiased form of professional judgment which will hold up in superior court?

**Table 1 does not require the applicant to hire a certified wetlands scientist. However as a wetland scientist, I can understand the intent of Table 1 and the methodology I would choose to use to fill in table one, I could defend.**

9. In your Report, you made reference that the study was to be used for planning and educational purposes but "This study has not provided any site-specific information that would be sufficient for a site review of any proposed development project." In your opinion, is the use of functional values to determine site-specific development; such as a buffer on an individual lot, a recognized use of wetland functional value determinations?

**Under section Env-Wt 700, where the evaluation should be done using the Method for Comparative Evaluation of Nontidal Wetlands in New Hampshire (1991) or a possible alternative method (Env-Wt 701.02 (c)). Activities in the buffers are used to ascertain a score for specific functional values. Thus, there is already an explicit relationship between the impact of buffer activities and the functional values of wetlands.**

**Buffers are also inferred in the NH rules for designated wetlands having "prime" status. Under this section, prior to approval of an application, the department shall review any application that is in or adjacent to a prime wetland (Env-Wt 703.01(a)). Historically, this was the first time that the NH Wetlands Bureau had considered a buffer and its impact on the functional assessment of a wetland. Such projects in/or adjacent to prime wetlands are automatically deemed a 'major' project (Env-Wt 303.02(f)).**

10. How many other towns in New Hampshire use Conditional Use permits regarding wetland setback reductions and which towns are they?

**I am not sure how many towns in New Hampshire use Conditional Use permits regarding wetland setback reductions. Maybe this question is best answered by Southwest Region Planning Commission, Peterborough Office of Community Development, or PlanLink list serve.**

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March 15, 2010

RE: Amendment #5: To amend the Wetland Protection District Ordinance

Dear Town of Peterborough Planning Board:

As a certified wetland scientist, land use professional, and resident of Peterborough, I oppose the proposed Wetlands Protection District Zoning Ordinance for the following reasons:

1. The Town of Peterborough spent \$15,000 to have Moosewood Ecological LLC do a scientific study to evaluate the town's wetlands in terms of their functional value, subsequent need for protection, and what sort of setbacks should be imposed. Eighty-Five Percent of the wetlands in town were evaluated in the Town of Peterborough Comparative Wetlands Evaluation Report. The Wetlands Working Group rejected the results of the study and drafted an ordinance proposing 100' setbacks from all wetlands against the scientific and professional judgment of the consultants hired by the taxpayers of this town.

What the Wetlands Working Group and the Planning Board do not seem to understand, is that when they rejected the Moosewood Ecological Report to pre-determine buffer distances, they rejected the use of all wetland functional value assessments to be used in determining a buffer. It wouldn't matter whether I or another consultant assessed this; the results will always be the same because we all use the same method to make this determination. Therefore, the zoning ordinance needs to either use the wetland functional values from the Moosewood Report that the people in town already paid for, or they don't use any functional value assessments in the zoning ordinance at all.

2. Wetlands in the Shoreland Conservation Zone only require a 100' setback with no vegetated buffer. The proposed Wetland Protection Overlay Zone has higher minimum standards than the Shoreland Conservation Zone which includes public waters protected by the State through the CSPA. CSPA requires a 50' vegetated buffer from public waters. This ordinance is backwards. I do not see the logic of a town proposing a wetlands ordinance that requires a 50' vegetated buffer from a seasonal stream but not the Contoocook River, lakes, and ponds.

The ordinance proposes a 100' setback and a 50' vegetated buffer from all wetlands. It needs to be clear that these are wetlands not within the Shoreland Conservation Zone. This is important because reductions to the setback in the shoreland conservation zone will still be administered as a special exception through the ZBA, not the planning board. In the case of zone overlap, it will be very confusing to the applicants and the agents they hire, when a person has to go to two different boards and which board rules first. I have looked at the few towns that have wetlands ordinance relief reviewed as a conditional use permit by the planning board, and none of them say surface water setbacks go to the ZBA and other wetlands go to the planning board.

3. The proposed wetlands ordinance requires applicants seeking a reduction in the 100' setback or 50' vegetative buffer within the setback, to go before the planning board for relief through a conditional use permit. Any zoning criteria and "performance standards" can be waived or modified by the planning board in a conditional use permit. It is a 100% political process that does NOT protect the wetlands or the landowner's rights from the whims or bias of the planning board and conservation commission. It is a kangaroo court manipulated procedure that is arbitrary and capricious, and the town calls this a more "flexible" process. The proposed performance standards are impossible to meet and perform. In a conditional use permit, any appeals to the planning board's decision must go directly to superior court and the superior court evaluates how well the applicant met the criteria and performance standards of the zoning ordinance. Under this zoning ordinance, all applicants seeking relief are first required to hire a certified wetland scientist or "qualified person" to fill out "Table 1", in order to obtain a reduction in the 100' setback and buffer. It was brought before the planning board's attention January 11<sup>th</sup> and the wetlands working group that certified wetland scientists shall only perform wetland function and value assessments by state approved methods and there are no state approved methods to determine wetland functional values proposed in this wetlands ordinance. Table 1 is not a legal or legitimate method for assessing wetland functional values. Therefore no state licensed professional whether it be a wetland scientist, soil scientist, forester, geologist, civil engineer, land surveyor, etc. will fill out Table 1 because it is not a state recognized method for wetland functional value assessment.

How do I know this? The ordinance does not specify what method is to be used and anyone who has performed wetland functional value assessments knows that the functional value ranges from zero (0) to one (1). One is the highest value for any wetland function. The ordinance proposes that scores of half a point be rounded to zero. The chart has "points" using numbers 1, 2, and 3. No "qualified person" would understand Table 1 or how to fill it out. For these two reasons, a wetland scientist or other qualified person would not want the professional liability of becoming involved with this sort of zoning ordinance.

Therefore, the applicant is either stuck with 100' setbacks and 50' vegetated buffers or to ask the planning board to waive or modify all requirements. The procedure prevents "qualified persons" as agents, from giving an outside professional opinion. The landowner is subject solely to the conservation commission and planning board's opinions, prejudices and biases. In an appeal to the superior court, the planning board will lose every time.

4. Wetland functional analysis is used to assess Prime wetlands (as Moosewood Ecological did by the Comparative Evaluation Method) and to determine wetland mitigation (U.S. Army Corps of Engineers New England District highway methodology workbook supplement, 1999 edition). For the residents and the land use professionals they must hire, the zoning ordinance must specify what method of wetland functional analysis is to be used. Of equal importance, the boards (whether it be the ZBA or Planning Board) using these assessments to grant conditional use permits or special exceptions, must understand what they mean.

The performance standards as it is worded now in the zoning ordinance have to do with proposed impacts to the wetlands and NOT the wetland buffer. Applicants who are not impacting the wetlands cannot perform these standards. Applicants before the board will be seeking reductions to the buffer and the setback.

These are the same performance standards in the existing wetlands ordinance for the commercial district to obtain a reduction in the setback to 5' as a special exception before the ZBA. There has never been a landowner or a landowner's hired agents able to meet or more importantly, understand these performance standards. I was in this position years ago. The performance standards didn't make sense then and they certainly don't make sense now by being more difficult and contradictory.

The problem is that the persons proposing our wetlands zoning ordinances are not familiar with wetland terminology, wetland functional value assessments, wetland mitigation, and wetland rules and RSAs. This needs to stop; for the protection of the residents and the wetlands in our town. The language of a wetlands zoning ordinance should be in terms that the public understands, and if the people proposing the ordinance don't understand the terms, they shouldn't be using them. I apologize for having to explain the technical incorrectness of this zoning ordinance, because I know it is difficult for you to follow. But that is precisely my point. No one understands this ordinance. Not the public, not their agents, and not the planning board. The zoning ordinance needs to be simple, fair, and executable; and in a language that people understand.

Sincerely,

A handwritten signature in cursive script that reads "Sharon Monahan".

Sharon Monahan, CWS