

**JOINT MEETING
PLANNING BOARD &
CONSERVATION COMMISSION
Town of Peterborough, New Hampshire**

Minutes of January 14, 2019

Members Present: Bob Holt, Ivy Vann, Alan Zeller, Sarah Steinberg Heller, Tyler Ward, Jerry Galus, and Dario Carrara

Conservation Commission Present: John Patterson, Francie Von Mertens, Robert Wood, Joann Carr, Liz Thomas, and Matt Lundsted

Staff Present: Peter Throop, Laura Norton, and Kristin Bixby, Office of Community Development

Chair Holt called the meeting to order at 6:32 p.m. He introduced the Planning Board Members and asked the Conservation Commission Members to introduce themselves.

Minutes:

A motion was made/seconded (Heller/Carrara) to approve the Minutes of December 17, 2018 as written with all in favor.

Chair Holt then reiterated this workshop was a joint discussion with the Conservation Commission regarding 245-15 Wetlands Protection Overlay Zone (WPOZ). Ms. Von Mertens noted she would begin with some background information and then hand the discussion over to Mr. Lundsted to review what they saw as problematic with the ordinance. Ms. Carr interjected, “and then we’d like to discuss the concept of a solution.”

Referring to a letter to the Planning Board (November 12, 2018) in response to a project on Old Street Road, Ms. Von Mertens noted that the Conservation Commission’s strong recommendation against permitting extensive stormwater treatment in the WPOZ. “It was six pages long” Ms. Von Mertens said, adding, “to our dismay we later learned that underground basins are allowed in the wetland buffer (*Exemptions: b. sedimentation/detention basin or ponds*). Our attention was directed to these five words in the wetland code. This has never come up before, so we contacted Mr. Throop and this meeting was set up to allow us to present our concerns. We hope to work together to address the issue.” She went on to say, “before we get back to those specific five words, I’d like to give you a little

background.” She told the Board that the town has a strong history of valuing and protecting its wetlands. She noted the definition of the Wetland Protection Overlay Zone and its 50-foot buffer. She also noted numerous opportunities available to discuss potential wetland issues when an applicant first comes in with an idea or project, including a sit down with town staff including the Office of Community Development and the Code Officer, and a Conservation Commission site visit with written recommendations (required by law) *prior* to a ZBA or Planning Board hearing. She went on to say, “we always have three criteria in mind: *avoid impacts, minimize and mitigate impacts*... the result is: buffers *rarely* encroached on and wetlands *rarely* filled.”

Ms. Von Mertens told the Members, “when encroachment in the buffer has been permitted, there typically are offsetting benefits elsewhere on the property.” She gave several examples of this, including the recently constructed Catholic Church, The Global Montello All Town convenience store, and recent expansion on the Rivermead Campus, all of which honored the Conservation Commission’s recommendations. She noted, “while New Hampshire regulates wetlands, it leaves the wetland buffer protection up to the individual towns.” She cited a model ordinance drafted by NHDES with the NH Association of Regional Planning Commissions, the NH Office of Energy and Planning, and the NH Local Government Center, “recommending a 100-foot (minimum) wetland buffer that is science-based.”

Ms. Von Mertens told the Members that Peterborough’s wetland buffer is 50 feet. She noted efforts to expand the buffer at Town Meeting by both the Conservation Commission and the Planning Board (where one was defeated and the other was withdrawn). She noted the Master Plan’s directive to the Planning Board to take a fresh look at wetland buffers and a 2011 wetlands assessment that was completed by Moosewood Environmental to assist in drafting an ordinance that had tiered buffers (three widths depending on the wetland’s functional value). Ms. Von Mertens said, “with so many variables in assessing wetlands, that idea became unwieldy in a hurry.” She noted what they did conclude was that the wetland buffer remains naturally vegetated (ie. not stumped or graded) and silt fencing be installed along the buffer prior to any construction activity and small circular wetland buffer tags be posted at the buffer’s edge if encroachment seemed likely.

“In summary” said Ms. Von Mertens, “the town has a history of protecting the wetlands with its overlay district, staff, Town Boards and the Conservation Commission. With a wetland buffer far less than what science has recommended it is all the more important that the 50-foot line remains firm.” She concluded with the “yes but” category, where some wetlands are cited as being too degraded, too

small, or too lacking in high functional values to care about. She cautioned the Board to tread lightly and with caution before dismissing “unimportant” wetlands. She noted that Catherine Owen Koning from Franklin Pierce University has offered to come and discuss this topic.

Ms. Von Mertens concluded, “as you know, the Conservation Commission reacted strongly when the Stone Barn project placed most of the stormwater treatment in the buffer. Unprecedented. We were then told that town code allows that as a permitted use (through exemption). Can that be possible? Our town wetland code? There it was, five words. Effectively five words can do away with wetland buffers. Cut, stump, regrade to the wetland edge, and perhaps beyond. We pointed out in our letter of comment, that given recent zoning changes that allow greater building density, replacing naturally-vegetated buffers with stormwater treatment swales, detention basins, riprap, and culverts, this could become routine; first option, not the very last option. If it's black and white that it is a permitted use.” She then introduced Mr. Lundsted as a registered environmental and civil engineer and principal with Comprehensive Environmental Inc. “Having worked with developers and zoning and planning boards, he is invaluable on the Conservation Commission” she said.

Mr. Lundsted began by noting he had participated in one of the work groups in 2011, “and there was a lot of back and forth on things like size and perceptions of *taking of land*.” He noted the purpose of the Wetland Protection Overlay Zone was to “control what we do want to allow and not allow in the buffer.”

Mr. Throop projected a graphic listing the permitted uses in the district within the wetlands and within the wetlands buffer (245-15. J. 1, and 2) as well as exemptions (245-15 J. 3) which include pre-existing stormwater management devices and sedimentation/detention basins or ponds.

A brief discussion followed with Mr. Lundsted noting that the Conservation Commission’s main concern was putting storm water in the buffer. “It is an easy fix to say ‘*preexisting*’, but we don’t want any new management systems in the buffer. Developers see the buffer as a land taking and we see it as a wetland taking. The question is: how do we meet in the middle” he said.

A brief discussion about employing a Conditional Use Permit (CUP) from the Planning Board (noting flexibility in the permit) versus going to the ZBA (which is typically a yes or no response). Mr. Throop said the 2011 work group did support the idea of a Conditional Use Permits. He said noted the detailing of CUPs with Site Plan Review “and we support that” he said.

Noting the exceptions clause, Ms. Carr suggested that like *pre-existing* stormwater management devices, the second exception (sedimentation/detention basins or ponds) should also be *pre-existing*. Mr. Lundsted added, “the problem is that the buffer becomes the wetland.” Ms. Carr explained, “wetlands degrade and shift into different categories but generally the wetland quality and the quality of clean water they provide is imperative and must be protected.”

A brief discussion about the provisions of RSA 674-21 II (innovative land use control containing the guiding standards in granting conditional or special use permits) and incorporating these standards into the Exceptions clause followed. Ms. Vann noted that the language should be as straight forward as possible. Ms. Carr suggested the Planning Board’s Site Plan Review Regulations contained good language for CUP in the wetland buffer. “We will review it,” said Chair Holt. Mr. Throop suggested a small one-hour work group be created to vet the Conditional Use Permit for clarity and how the terms are applied.

Ms. Von Mertens concluded, “we want no encroachment into the buffer ... maintaining a naturally vegetated buffer is the goal of the town.” Mr. Zeller asked for clarification regarding the differences between the wetland buffer and the wetland protection overlay. Ms. Von Mertens defined the wetland area and the area surrounding that distinction noting the state only protects the wetland it implies the buffer is not important. “The Conservation Commission thinks of the entire area as wetlands. We don’t use the distinction of ‘buffer;’ all of it is important” she said. Ms. Vann interjected, “the buffer is part of the protection.” Mr. Lundsted noted, “wetland areas are not just the standing water. It extends far beyond that in supporting a prevalence of vegetation.”

Mr. Throop reiterated most of the zoning amendments were housekeeping items but encouraged the Members to review the criteria of CUPs noting, “I want to make sure we are all on the same page and I’d like to have draft language ready for our workshop which is two weeks from today so that we might start public hearing on February 11th.” He said. Mr. Ward replied, “many of the changes may be minor but they are important.”

Zoning Workshop/Possible Amendments:

245-24.7 Solar Ordinance: Mr. Throop reviewed the existing and proposed changes to the solar ordinance using an email he had received from the Ad Hoc Group responsible for creating the Solar Energy Systems Ordinance adopted last year at Town Meeting.

Mr. Throop noted that he had met with Emily Manns and Gregg Blake of the Ad Hoc energy group and reviewed each of the seven amendments requested. He prefaced the request by noting the original solar ordinance was written in the eleventh hour and drafted without public engagement. He noted the intent for an Energy Chapter for the Master Plan had been planned by the Ad Hoc Group but not created and again cited the lack of public outreach. "I am concerned with the visual impacts," he said adding "and there has been little research on the stormwater implication of clear cutting up to 100 acres. We have not really looked into the details and consequences, so we kept the ordinance conservative at 1 megawatt (1 MW)." He noted the solar array located at the Wastewater Treatment Facility is a 1 MW array, "so we know what that looks like."

Mr. Throop noted that roof-mounted energy systems are allowed anywhere, "but ground-mounted systems are different." He added, "and we don't want solar farms in residential neighborhoods." He noted the scale and size of the solar system is based on how much energy a residence is using. He said, "it is intended to be a secondary use, not a primary use" and reiterated the importance of the preservation of the character of the town. "It is our golden egg" he said.

The Members briefly discussed the efficiency of today's solar panels, regulating kilowatt numbers versus acreage for an array, aesthetics, and public engagement. Ms. Vann interjected, "I don't think we have enough time to do the public engagement necessary to promote all of this." Mr. Throop noted two amendments in particular (reducing the front setback to 50 feet in the Rural District and increasing the acreage limit from 5 to 25 acres). He told the Members, "there is not enough time to do the public engagement to allow us to propose these." Ms. Vann agreed adding, "we need to do the outreach. This is the type of thing that sets people's hair on fire." Ms. Heller also agreed and added her concern that this was the second year in a row the Ad Hoc group has come in at the last minute. "I understand they have concerns, but the Energy Chapter of the Master Plan has not been drafted. I think they should get started now on amendments for Town Meeting in 2020." Chair Holt agreed, noting that it was January 14th and the Board was just now seeing a list of requested amendments. "I want the work to be done," he said. Mr. Throop explained that if the Board did not recommend any or all of the amendments it was likely there would be a petition warrant article at the 2019 Town Meeting.

The Members ultimately agreed to consider what the Ad Hoc Group referred to as subsection *B.3.a.* (Delete roof or building mounted systems and replace it with solar energy systems); *D.3.b.i.* (Raise upper limits for 50 kW to 100 kW in the Rural District and 25 kW to 50 kW in residential districts making the new limits

100 kW and 50 kW in the section for freestanding solar arrays for single-family and duplex systems); *D.3.c.i.* (Increase the upper size limit from 300 kW to 1000 kW [1 megawatt] allowing the proposed system to take full advantage of state net metering rules currently capped at 1 MW) and *D.3.d.iii.* (Increase the upper size limit from 1 MW to 5 MW as well as increasing the 5-acre limit to 25 acres.)

Ms. Vann noted that the other amendments need research, public outreach and reasoning. Mr. Ward encouraged the Ad Hoc group to work with the Planning Board for consideration of the remaining amendments in 2020.

245-41. D. Special Exception Uses and Criteria: Mr. Throop distributed a handout highlighting any reference to special exception in the zoning regulations “wherever it appears” he said. He pointed to a potpourri of criteria and special criteria and noted, “we are looking for consistency of the language. We want to clarify, streamline, and simplify it and eliminate it where appropriate.” Mr. Throop noted the criteria often drives the Zoning Board of Adjustment into Site Plan Review territory “when the ZBA should be looking at a yes or no for the use.” Mr. Throop also noted that *churches* would be removed as a permitted use by special exception in all districts “under federal law.”

Consistent application of impervious surface definitions and make them consistent Definition and districts for clinic use and drug treatment clinics to be limited to Healthcare District.

245-5 districts established clarity that only existing Right-of-ways or easements are deducted from land area available for minimum lot size calculation

245-32 provisions to parking requirements that authorize the Board to waive requirements for minimum number of spaces if applicant can demonstrate that less is needed. This was discussed as not necessary and deleted.

Add workforce housing to the Family District to be consistent with the provisions of 245-24.6

245-4 Definitions: Mr. Throop specifically noted the proposal to change the definition of *Bed & Breakfast Establishments* to be 3 to 12 guestrooms; to modify *Recreational Facilities* by adding a provision limiting shooting ranges to be indoor facilities; and adding a definition for *Clinic*.

Other Business:

1. Mr. Throop gave the Board a brief update of the Master Plan Steering Committee's progress on completing an update of the Economic Vitality Chapter of the Master Plan as they got started on the Housing Chapter update. He noted that this update would be done as part of the zoning amendment process. He told the Board he had budgeted \$9,500 for a consultant to assist in its implementation. "This will be our public outreach, with goals being fairly similar to the new zoning amendment for 2020" he said. He noted the necessary creation of a Housing Steering Committee to detail the process and that two members of the Master Plan Steering Committee had volunteered to assist. He then asked for a Planning Board member to assist. Mr. Zeller volunteered. Mr. Throop noted the committee would work with the consultant, industry, business, and housing groups "to get out and into the neighborhoods for input."
2. As a State Representative, Ms. Vann noted that the House was introducing a bill that would provide enabling language to allow a town to prohibit formula retail. Generally referred to as "chain stores," formula retailers are establishments with multiple locations and standardized features or a recognizable appearance. Recognition is dependent upon the repetition of the same characteristics of one store in multiple locations. The sameness of formula retail outlets, while providing clear branding for consumers, counters the general direction of certain land use controls and General Plan Policies which value unique community character and therefore need controls, in certain areas, to *maintain neighborhood individuality* (Source: Section 303.1 of the San Francisco Planning Code). Ms. Vann concluded, "it is defined by criteria on what is sold and in what manner." She also added, "it really should go through. It merely makes it possible without requiring anyone to do anything."

The meeting adjourned at 8:15 p.m.

Next Meeting:

January 28, 2019 Planning Board Workshop

Respectfully submitted,

Laura Norton
Administrative Assistant