

## **Draft minutes Public Hearing on Proposed Zoning Regulations December 6, 2016**

### Attending:

Jean Boardman, Forrest Holzapfel, Steven John, Jim Herrick, Gary MacArthur, Brent Seabruck, Adam Gebb, Nat Waring, Ashley Biel, Mary Sargent

From the Planning Commission: Matt Tell, Staley McDermet, Patti Smith, Edie Mas, Bennett Grout, Tim Segar

Matt Tell, chair of the Planning Commission, opened the hearing at 7:10 by welcoming all and referring to the handouts, a “Preamble to the Zoning Regulations” and a three-page “Highlights of Major Proposed Revisions”. The full zoning draft is available for review at the Town’s website, as are the maps which were also posted around the room, and projected on-screen. He then turned over the hearing to Staley McDermet, Vice-Chair of the Planning Commission (PC) , who continued to chair the remainder of the meeting.

Staley asked for feedback and/or questions from those attending. The following is a summary of these:

- Adam asked for clarification on the sequence of meetings. Answer: The PC will take comments today, and make changes as needed, holding another hearing if changes are made. Once this aspect is complete, Draft Regulations will be forwarded to the Select Board, who will review them and hold a public hearing. If changes need to be made, the document goes back to the PC, and resubmitted to the Select Board for another hearing. When all the changes have been made and reviewed publically, it will be brought to the town for a vote.
- Ashley, speaking for the Conservation Commission (CC), questioned the exemptions listed in Section 343 and 353. The CC takes issue with these, despite the State requirements that say that Towns do not have jurisdiction over farming and forestry operations. He said that riparian buffer habitats are excluded from State regulations, so it could be done here also. Answer: Staley clarified that the purpose of the wildlife overlays was to regulate structures, not uses.
- Adam said that he felt there was a potential change in use that could occur here, i.e. changing forest to agricultural use, that should be considered a conditional use that would need to be run by the DRB.
- Forrest asked how do the CC and the DRB look at giving a land owner a review in a timely manner? He also asked how can you be sure that there will be people able to carry this through? Jean added, what is the role of the CC? Answer (from Adam): Advisory. Jim pointed out that there is a timetable for the CC to act within 45 days, and the DRB within 45 days. If the CC doesn’t comment within that period, then the DRB will move on to make its decision. Staley confirmed that yes, the whole process can not take longer than 45 + 45 days.
- Forrest added that as Town Clerk, he is the first person who will have contact with the public, so will have to get very familiar with all of the steps and procedures. Answer: Tim said that the PC is also concerned about the potential of this being difficult for the public. Mentioned maybe there could be a trial period to see if it is swamping the Town and the DRB.
- Jim thanked the PC for addressing many of the concerns that had come up at the informal hearings held in April, but said he is still confused about what activities would need DRB review within the wildlife overlay. These are separate from any new development. He gave some anecdotal examples from work he did for landowners this summer : replacement septic because existing one failed, involving a new road, clearing, etc. This is allowed under State septic regs, but the Town overlay is more restrictive and section 130 of proposed Bylaw says the more restrictive requirement prevails; how would Town react? Answer (Adam) : This needs to be exempted. Jim continued with other examples: new drilled well; changed stone wall; patio; new culverts and shoulders etc. for driveway; draining a small pond. Answer: (Staley) these regulations are for new constructions. Jim said he felt it needs to be very clearly stated then. If it is ambiguous, some will decide just to go ahead, others will try to abide by the letter of what is written. It sets up a very bad dynamic. Staley responded that the intent is if you have something there already, you can do what you need to keep it.
- Steven added that clarity helps lower the numbers of time people will be approaching the DRB . The more you are able not to go to the DRB, the better. The more that the Zoning Administrator (ZA) does, the better. These exemptions need to be written up. Jim added, Where is the line? How much activity can I do on these properties before the owner has to go to the DRB?
- Ashley offered a form of an answer, by pointing out that these are many grey areas, as right now the regulations go up to the footprint of the structure. Most of these activities occur right around the house in question, so he suggested it might be easier to create a buffer zone of a certain amount of feet around roads and

structures. He went on to say that could allow the 500-foot setback to become variable. Staley asked, would this buffer only exist around existing structures? How about new structures? Adam asked what does the 25-foot maximum distance between a main structure and an accessory structure refer to? Answer from Bennett was that it refers to distance between nearest edges of the buildings, regardless how large the accessory structure is.

- Ashley went on to clarify what he meant by changing the 500-foot setback. He feels that 200 feet does a better job of protecting wildlife. Gary responded that that would affect a LOT more potential sites in town.
- Gary went on to comment that a lot of this seems very complicated. Is it really going to steer the Town in the direction we want? He questioned whether we should do this complexity of implementing versus looking at what will we gain? Forty years ago, he said, he was more concerned about the potential for growth in the town. He isn't so much now. Ashley asked, Why do you think this? Gary answered that the town hasn't grown as I thought it might. Answer: Staley said that one concern that guided the Planning Commission was to prevent fragmentation of land in town. He talked about keeping out wealthy who want to build removed from the roads, who come and break up habitat. He went on to say that many of the standards within the overlay district say "should" not "shall".
- Jim pointed out that when someone had mentioned that to him, he had counted a total number of 27 "shalls" in Section 355, pp. 28-31. This is not advisory for the DRB. The CC may be advisory, but for the DRB this is a "hard read". Jean added, and how do you enforce it on the DRB, if it is the law? Ashley answered by saying he felt we were losing sight of the purpose of these regulations. Each "shall" does carry weight; the idea is to discuss what is possible.
- Steven summarized by saying there is clearly a workload here. Section 344 (3) a/b/c/d/e has very specific "shalls" where the DRB has to make a judgment. There is a cost here to implement, which is quite big. Jean added that the DRB is semi-judicial, so is guided by that. But she again questioned enforcement. Is there an estimate of how much this is going to impact the DRB? Answer: Tim said PC could look at the number of permit applications. Adam said that CC can not review a proposed project unless owner places markings, or flagging on the land, in the field. Steven went on to ask, what are the unintended consequences of this? Are we creating a monster that is unenforceable? He added, he did think it was worth it, but to understand it creates a semi-litigious situation, so it might be important for the Select Board to look at the implications, as it involves more work. Adam added that 22 of the wildlife crossings are riparian so are protected anyway.
- Jim brought up the topic of roads. He is concerned that the road system is random, having very little to do with natural characteristics of the Town, yet the overlays are defined from the roads. As an example, he mentioned that the Northwestern part of town has very few houses, as opposed to Center of Town, and South Street area. Proposed zoning overlays apply the same guidelines to all areas. Ashley answered by saying that roads are relevant as they fragment habitat. Tim added that in the Zoning regulations the PC did not only look at the needs of wildlife, but the needs for people to use the land for their own intentions. Forrest also answered by pointing out that Conservation Priority areas can reflect these differences in parts of Town- people have the choice of opting in if they choose. Jim mentioned that he has brought up in the past the option of the Town owning development rights on certain areas in town. He said he felt that people were going to feel that the overlays were interfering with their lives. Adam answered that the Town needs to be a leader here for the State.
- Steven suggested that the PC could expand conservation priority areas that need to be protected. Staley responded by saying PC felt owners had to agree, seeing as it is fairly difficult to opt out (same process of opting in, i.e. hearings, town vote).
- Edie changed the topic by asking if there were any comments concerning another new overlay, Shoreland and Surface Water Buffers, seeing as it is proposed to expand the protected area on each side to 300 feet (from 50) 500 feet beyond roads. Adam responded that 300 feet is not enough to protect streams. Ashley said 300 has to do with the atmosphere around and in a stream, Patti adding that this follows state recommendations. Gary said he felt this was another example of things getting complex, especially as some of the streams aren't correct. For example a large stream shown on his land is actually intermittent, not perennial, and is where he often will cut firewood, for example, that wouldn't be allowed. Tim added there is also little Towns can do to protect water quality during forestry and agricultural operations.
- Adam returned the conversation to land cover changes, e.g. forest to agriculture, which he called a "conversion", and is a problem, especially in a wildlife crossing area. Mary again said that these regulations were unenforceable. She felt she, as ZA, had no way to do it. Staley disagreed with this, saying that a lot of the

regulations are there for educational purposes, even though some people will disregard them. There was further discussion on the definitions used by the PC for farming and forestry, how the State defines that. Bennett said that the definition we have in the draft Zoning Regulations is the one the PC decided to use in the exemptions in Sections 343 and 353.

- Jim had questions concerning the definition of Vernal Ponds, and Mass Stands. He felt “natural” should be added to vernal ponds definition. He destroys man-made vernal ponds as they kill wildlife. Mass Stands definition is too broad- under it, probably 40% of his land is a mass stand. Patti mentioned a definition that it defines it as a stand that has 10 or more trees marked by bear. Jim felt that was a better definition.
- Ashley said he had more questions and comments, like the Agricultural and Forest Production zoning area, but given lateness of the hour would submit them in writing.
- Jim asked about way to disseminate this information. He said he felt that very few people knew about this hearing. If it is really to happen, people need to be sent information about these big changes. Edie mentioned that one motive for the “Highlights” was to get it to the Mixer by the next deadline (Forrest mentioned that was December 15<sup>th</sup>) so all households would receive and hopefully read it, looking at the Town’s website to look at the maps and read the full document if interested. Steven said he thought it would be a good idea to send each property-owner something showing their property and all the zoning overlays etc. that would affect it. Forrest said he could create the mailing labels for this. General agreement that something needs to be sent out to all owners that these changes, which are quite large, are in the works.

Hearing ended 9:15

Submitted by Edie Mas  
Planning Commission  
December 8<sup>th</sup>, 2016