

DRAFT Minutes
Planning Commission Public Hearing on Proposed Zoning Regulations
June 13th, 2017

Attendance:

Planning Commission: Matt Tell, Staley McDermet, Edie Mas, Bennett Grout, Patti Smith, Tim Segar
Conservation Commission: Ashley Bies
Zoning Administrator: Mary Sargent

Public Attendance: Ed Metcalf, Phil Howe, Mark Wellage, Susan Burt, Richard Hamilton, Robert Mosgrove, Marcia Hamilton, Gail MacArthur, Sarah RobbGriego, Anthony Berner, Karla Bills, Michael Bills, Tim Whitney, Pieter Van Loon, Nat Waring, Sunny Tappan, Jason Petrelli (sp?) . Secretary also noted the following attendees who had not been able to sign in, but who made comments (apologies if only got the first name: Jim Herrick; Judy Mosgrove; T. Hunter Wilson; Peter Robb; Bill Esses; Judy;.. John..)

Comments and Questions

Hearing began at 5:02.

After a brief introduction by Matt and Staley, who outlined the changes since the last public hearing. Staley showed an overhead of the proposed wildlife overlays, and also gave a background about the zoning areas, and the two overlays, the need to file for a conditional use permit and present to the DRB. The Conservation Commission will advise the DRB. The floor was opened to comments and questions.

Ed Metcalf had come early and needed to leave for another meeting, so was acknowledged first. He has a problem with the Eastern part of Hogback which is placed in the wildlife crossing area, as he does not feel that any wildlife cross there. The other part is appropriate.

Sarah Robb Griego ask if the PC would go into how these overlays came about?

Staley reviewed the State map, which places the middle area of Marlboro as high priority. It has also designated (in red lines) as highest priority these wildlife crossings.

Bob Mosgrow, and Judy, made the comment that there are millions of crossings in Marlboro, and his feeling that you're not going to stop the animals by zoning. – they will continue to cross where they decide to. So he does not understand what the State is trying to do here. He gave lots of examples.

Staley responded that the crossing areas will influence what people can do, and to clarify high priority areas for the Town.

Karla Bills asked whether it was the intent not to allow an owner to build at all? Expressed the feeling that animals just go around buildings. Also made the observation that, over time, she sees a lot more animals now than years ago.

Staley answered it was not the intent to prohibit owners from building, just to have them review options related to wildlife.

Someone asked whether we didn't think that there were enough restrictions in the town. What was the research here to establish the crossing areas?

Sonny Tappan mentioned that she has lived in her home for 39 years, and found, when they built a driveway and created a field, that they had created a good wildlife habitat, at the edge of the forest. Sees

many more animals now. She said that she feels the overlays have been created as too black and too white.

She went on to say that she was concerned about the advisory role of the Conservation Commission, as it forces people to go through a process. She worries about the legal issue as people could push stuff through and it will be an expense for the town. She said she also doesn't see the point of creating the overlays, seeing as there doesn't seem to be a problem now.

Staley responded that the PC is trying to get in front of things before they happen.

There was a comment that it will lower property values.

Jim Herrick said that feels that this is a great concept, he is a strong supporter of protecting wildlife, but it doesn't have teeth to enforce the changes that might damage wildlife. As an example, he said that if the Marlboro population were to double in the next five years, these overlays wouldn't have the power to stop it. It just makes it more difficult for a certain class of owners to do what they want to do (as they have a lack of resources, lack of time, etc) . So it is unequal as a pressure and will come down on those people who can least afford it – as it comes down to the expertise the owner can bring to bear on the decision.

He went on that he does not see these overlays working – as of now, most of the houses have been built where it is easy to build them. Often, there is just one place you can often build a driveway , find septic, etc. The objective is noble, but the mechanism doesn't work, and it will be very irritating for many people.

A comment was made by Jason . The map now shows that 99% is animal habitat, so there is no problem. If you try to block things up, you will stifle business.

Another comment was made that there are no animal crossing signs on the roads, that that might be a way to slow traffic down.

T. Hunter Wilson made a comment from his experience on the DRB . He said that he was concerned that there are not clear criteria for the DRB to be able to use to make a decision. If the only condition is to consult with the Conservation Commission, which can only provide advisory information, this not going to stop things, just will provide a level of frustration for owners. Road frontage is the most valuable land you have.

Staley mentioned there is a list of things for the DRB to consider when reviewing an application. Someone asked if he could walk the group through these. Anthony Berner also asked if Staley could start with the general overlay, and the steps landowners are required to follow.

Staley scrolled, on the overhead, to the section in the proposed ByLaws covering this, and went over the steps.

Anthony continued by saying that, as he sees it, projects not currently needing review now will need DRB review; and in fact if you want t build a house 600 feet back, for example, you will need to have two reviews by the DRB as your driveway might go through a wildlife crossing. Is this really not going to create a have/have-not situation here? And does it also have an effect on property values? – there is no mechanism in the State to provide tax abatement. This is just an additional restriction and creates a system so people who can afford it can make it work.

Gail MacArthur said that she agreed with the concept, understand the goal of preventing forest fragmentation and protecting wildlife, but feels that this goes too far. The Conservation Commission (CC) or State Fish and Wildlife has to review this. Does Fish and Wildlife have the time? In addition, she has a

real problem with the CC review. Currently, there are people on it with some knowledge of wildlife, but this might not always be the case. Speaking as a member of the DRB, it will add to the burden of its work.

Staley commented that in a review of house permits approved for the past 10 years, the PC found very few were given for houses beyond 500 feet, so not that many would be coming for a DRB review.

Michael Bills then spoke. He has lived for more than 35 years on North Pond Road, and has found that animals adapt very well to humans. They have found a turtle nesting area after they put in their gravel driveway. In fact, wildlife use the whole road.

Peter Robb said he echoes this comment. He has lived 22 years on Piney Brook Way and runs a wildlife camp 100 feet from the house. He obviously supports efforts to protect wildlife but does not feel that a structure prevents wildlife in an area. He is also concerned about property values if these overlays are approved. The resale value will go down.

Staley disagreed, saying that he felt that he felt his property would be worth more with the overlays in place, and in fact has voluntarily placed his property in the Conservation District which means that no further houses can be built on it.

Peter continued that he feels that the risk of a lawsuit would be high as the values will go down, that we need to study this impact. He does not see that a problem has been established to warrant these restrictions. For example, a meadow increases wildlife. If we were really loosing wildlife he would support it, but he doesn't see this. Also, there are issues with zoning laws if they are vague like these. This will make it hard for potential buyers as they are too vague.

Staley commented that the PC had had the ordinances reviewed legally, and the reviewer said they were ok. In answer to the question, "who reviewed them?", Matt answered "VNRC" (Vermont Natural Resources Council). Patti said that the PC was interested in protecting people's property values.

Tim Whitney asked whether the need for these overlays has been identified?

Staley answered that it was thought that it was needed. The PC tries to plan ahead, and the concept was already in the existing Town Plan. The State has identified fragmentation as a problem state-wide, and this is a step to address this issue.

Tim asked whether Marlboro has had any specific cases. Staley answered no, that nothing has happened. Tim asked whether there were any other towns who have implemented similar overlays?

Ashley Bies answered that Hartford has done this; Salisbury and Williston are in the process.

Susan Burt went over her issues around their house on Lower Dover Road, that there was still a contradiction between the map and what she understood had been agreed to at the last meeting. She feels that the proposed regulations do impact the resale value and her enjoyment on the land, the freedom to do what you want to do – in her case to build a small accessible house on the lot next to her house that she owns, so she can move there when she gets older. She stated she does not want to have these restrictions on her land, does not welcome having to go through the DRB.

T. asked, if the DRB is conducting a hearing relevant to Conditional Use, he is unclear what the "conditions" are that can be imposed? The proposed ByLaw says, just talk to the CC – but the DRB can't require their advise, as the CC doesn't have the authority to require anything.

Staley said that the DRB can impose any conditions if it decides to.

T. answered that that is not correct. Condition Use comes in when something not usually allowed is being asked for. The DRB will allow it only if “certain conditions” can be imposed, which is unclear here.

Staley gave the example of lighting that might not conform to what is stated in the overlay.

Sonny Tappan asked, how are these conditions going to be imposed? Staley answered, as in all cases, through the Zoning Administrator.

Jim then asked,

(1) What was the red flag created to have the PC decide to move in this direction? Did it first look at other concepts that protect the rural environment, or was this the only one? He went into a proposal he had given the Town, suggesting that individuals could restrict their own land, lock it in from future development, beyond what Current Use would require. He also gave the example of the difference between the rural Center-North part of town, which currently has no protections, and South-Center, with much higher development. They are both treated the same.

(2) If there is a wave of development that comes to Town, you are looking at having created a 500-foot band in the wildlife crossings, that would not cut off the development, just would create lots of houses on each side., and interior land that would be isolated. Jim mentioned that as it stands with the overlays, all development is encouraged in the road corridors, not in wildlife crossings, which he does not feel is advisable.

(3) In working with the State’s environmental office, ANR (Agency for Natural Resources, not to be confused with VNRC, a voluntary non-profit), and the Army Corps of Engineers concerning wetlands, he has observed that in the end, the regulations do not stop development, and the results are not equitable. He feels that these overlays are not going to achieve anything.

Edie mentioned here, in answer to former questions, that the PC had met with VNRC a couple of years ago, and they had suggested a number of choices the PC and the Town could undertake; however, these were not considered because the CC had brought the overlays to the PC, and they eventually were adopted.

Ashley talked from the perspective of the CC. They recognized that the interior areas of Marlboro needed to be protected. And if the connections are broken, wildlife cannot move between protected interior areas. What is needed is continuous movement all times of the year. He also pointed out that, although they encourage certain wildlife, edge effects are detrimental to interior species (eg bear, moose, fisher, bobcat, coyote). The ranges of these animals is very large, so more than one town needs to be involved. Also, climate change will affect habitat, so there is an ecological rationale to proposing all of this. He also feels that there are thresholds looming here. CC is willing to look at an opt-in provision.

Michael then mentioned he is very familiar with a lot of game all over; this is more an imposition on land owners than the wildlife.

Bill agrees with this. He can now see many more animals than when he moved here, even with all the houses.

Judy (again) suggested putting signs out , that the Town can do this, telling drivers what animals are out there, and to drive slowly. Many people who pass too fast through the Town on roads are not from the Town, and need to be informed.

T. urged the Select Board consider separating these overlays from the other zoning regulation revisions so they can be voted on separately.

Marcia Hamilton said that she is very glad to have come to this meeting, and the CC meeting before. She is the owner of a 25 acre parcel that is in overlay districts. Based on what she has heard, she is not in favor of the overlays.

Sonny also said she was not in favor.

Nat Waring said that he felt the meetings have not been adequately advertised. PC members offered the places in town where the ByLaws and hearings have been advertised, including Front Porch Forum, the Mixer, and Marlboro's website, and by mail to the property-owners affected by the wildlife crossings. Also, he is asking for evidence of the science behind the wildlife crossing areas. He has learned that the computer crashed that held the evidence, so right now, there is none – no evidence for the selection of the crossings. He is aware that the CC is currently collecting new data, but, right now, there is no evidence on crossings the Town could fall back on if it is sued.

Ashley answered that the Town can enact these overlays without any science.

Susan agreed with Nat as to the lack of confidence in the maps, and the crossings. She still finds the maps are different, and lines have been moved in the opposite direction from what she had thought from the last hearing. She is not buying the science as she sees wildlife crossings on a different area on her land.

Staley reminded everyone that development should not be confused from a house on the property. The Bylaws are not going to dictate what happens, as, for example, that septic can only be placed in certain areas.

Piet van Loon asked whether the PC could imagine the DRB not allowing a building on property? Staley said he couldn't imagine it.

Jim said, so it is an illusion, it's not real.

John said that he was glad he came, there were a lot of good comments. People in Marlboro have done a good job of protecting the environment. He feels if we need more guidance, let's get it - guidance – to see if that works. And if it doesn't, the Town can impose overlays later if they have to. He said that his sense is that most people have protected wildlife. He really can't understand why these overlays don't restrict land, and have an affect on the value of property.

Dick Hamilton said that he has lived in Marlboro for 70 years, and doesn't understand why the PC is getting involved in this issue. He sees many crossings that aren't marked on the map. It is an exercise in futility, and he is against it.

Jim mentioned at this point that he wanted to thank the PC for its effort and time. Everyone is working as a volunteer. Applause. Edie also thanked everyone for taking the time to come to the hearing and give their comments; they are always important, the PC does listen and they are helpful as they decide the next steps.

Meeting ended at 7:00 pm

Respectfully submitted by Edie Mas