

TOWN OF CHESTER
PLANNING COMMISSION
December 21, 2020 Minutes

Commission Members Present: Naomi Johnson, Cheryl Joy Lipton, Tim Roper, Peter Hudkins and Barre Pinsky all via Zoom Teleconference.

Staff Present: Cathy Hasbrouck, Recording Secretary, Jill Barger Zoning Administrator.

Citizens Present: None.

Call to Order

Peter Hudkins called the meeting to order at 6:30 PM.

Agenda Item 1 Review minutes from December 7, 2020.

Tim Roper moved to accept the minutes from December 7, 2020. Cheryl Joy Lipton seconded the motion. Naomi Johnson had a correction for line 14 on page 2. There was a duplicate word in the line. Tim Roper had a correction for line 29 on page 3. The first word "to" should be deleted. Cheryl Joy Lipton had a correction on line 1 of page 3 the words "be added" were needed. On line 24 of page 4, the word nest should be changed to next. A vote was taken and the minutes were accepted as amended.

Agenda Item 2 Citizen Comments

As there were no citizens in attendance, there were no citizen comments.

Agenda Item 3, Old Business - Action Item List

Chair Peter Hudkins decided to move on to Agenda Item 4 instead of going over old business.

Agenda Item 4 Build list of standards for a subdivision using Section 330 of proposed bylaws, Article 5 of adopted bylaws and Table 4-01 of proposed bylaws.

Peter Hudkins turned to the copy of Article 5 of the adopted bylaws included in the packet. He said there were some standards in the adopted bylaw that were more strict than the proposed bylaw, and a couple of items that are not readily enforced, which he struggled with. He read paragraph 5.1.A aloud

All land to be subdivided shall be, in the judgment of the Development Review Board, of such a character that it can be used for building purposes without danger to public health or safety, or to the environment. Subdivisions proposed for lands characterized by periodic flooding, poor drainage, incapability to support structures, roads, and utilities; or other hazardous conditions, shall incorporate special design provisions which reflect these limitations.

He also read Section 7.16

7.16 WAIVERS

A. Waivers for Subdivision Requirements. In accordance with §4418(2)(A) of the Act, where the Development Review Board finds extraordinary and unnecessary hardship may result from strict compliance with these Bylaws and/or where there are special circumstances of a particular Plat, it may waive portions of these Bylaws so that substantial justice may be done and the public

interest secured; provided that such waiver will not have the effect of nullifying the intent and purpose of the Chester Town Plan, or the municipal bylaws in effect.

In granting waivers, the Development Review Board may require such conditions as will, in its judgment, secure the objectives of the requirements so waived. Such action shall pertain to that particular subdivision and shall not set a precedent for similar action relative to any other subdivision.

From those paragraphs, Peter concluded the adopted bylaws did not make it easy to create a parcel that could not support a wastewater system by simply asking the DRB to waive the development rights to it. The proposed bylaws allow development rights to be waived more routinely.

Cheryl Joy Lipton said she didn't think Peter was using the word waive in the proper context. She thought a waiver would only act against a rule, not against a right to develop. Tim Roper and Naomi Johnson agreed. Naomi began to cite the waiver definition in the proposed bylaws. Naomi and Peter agreed that the proposed bylaws allow sub-divisions where a wastewater system and potable water supply permit are not required. The land could be intended solely for agricultural use or forest, or to act as a common area in a planned unit development. Peter was concerned that under the proposed bylaws, someone would subdivide off land they have no use for and stop paying taxes on the parcel, forcing the town to take it in lieu of taxes owed and reducing the town's tax base. He cited an example of this in Smokeshire. Cheryl Joy Lipton asked for a clearer explanation of the process. Once Peter explained it a bit more clearly, she recognized this could be a problem.

Naomi Johnson suggested that 3302.B in the proposed bylaws might be a poorly phrased paragraph:

Land subject to periodic flooding, poor drainage, erosion, landslide, slope instability, inadequate capability to support development or other hazardous conditions must not be subdivided unless the applicant can demonstrate that appropriate measures will be taken to overcome the physical limitations.

She said the Commission had been discussing the state waiver of development rights over the past couple of meetings, meaning that the subdivider has put a waiver of development rights on the lot and is not getting a wastewater system and potable water supply permit from the state. A discussion of the market value of a lot versus the intrinsic value of land ensued. Peter Hudkins was concerned about making sure taxes continue to be paid and the parcel is not abandoned to the town if the land cannot be developed and thus has a lower market value. Cheryl Joy Lipton and Tim Roper felt that land had value as a support to wildlife or a place for flood waters to spread out, even if it was not being used for commerce or housing.

Naomi Johnson said paragraph 3302.B in the proposed bylaws needed some additional text to show how land with undesirable qualities could be subdivided by specifying that the new parcel will not have a wastewater design.

Barre Pinske asked Peter Hudkins where he was going with the discussion. He wondered what agenda Peter had. Peter Hudkins said he was comparing the adopted bylaws to the proposed bylaws to notice where changes are being made to the subdivision process and to be sure that the impact of those changes are understood. After some discussion, Barre concluded that Peter was trying to defend the value of the Grand List properties using the bylaws. Peter agreed. Barre

suggested that people not be allowed to satisfy their tax debt by giving ownership of their property to the town.

Cheryl Joy Lipton suggested a conservation or agricultural easement where taxes are reduced on land being used for conservation or agriculture. Barre Pinske said Vermont already has a program for that called Current Use. Cheryl Joy Lipton said she thought the Current Use program required landowner to be actively using the land. Peter Hudkins and Naomi Johnson agreed. Cheryl Joy Lipton suggested that a conservation easement did not require actively using the land. Peter Hudkins said the state of Vermont doesn't do conservation easements. Land in a conservation easement would have to be sold to a third party. Naomi Johnson did not entirely agree. She said the land around the water tank south of town is in a conservation easement with the Vermont Fish and Wildlife Department.

Cheryl Joy Lipton asked Peter if he was concerned about subdivision being done only as a way to reduce their taxes. Peter said he was. Cheryl Joy Lipton suggested that the Commission be asked if this happened frequently enough to warrant addressing it in the bylaws. Naomi Johnson asked Peter if he was concerned about paragraph 3302.B in the proposed bylaws allowing this type of subdivision. Peter said he was focusing on section 5.1.A of the adopted bylaws. He felt the proposed bylaw is becoming more lenient and asked if the Commission wanted to go in that direction.

Responding to a question from Naomi, Peter said he believed Section 5.1.A (quoted above) of the adopted bylaws required a wastewater system and potable water supply in order to subdivide land. Naomi Johnson began to say she had seen lots subdivided without wastewater permits before. Peter Hudkins said he was more concerned about what the bylaw said than how it was applied. Cheryl Joy Lipton asked that people allow each other to finish their thoughts instead of cutting each other off. Tim Roper agreed. Naomi Johnson said she had nothing more to say.

Naomi Johnson suggested that paragraph 3302.B be clarified to require a statement about development rights being waived if the parcel doesn't have the capacity for water and sewer. She thought that would address Peter's concern about the tax base eroding. She said she did not see anything in the bylaws that stated preservation of the tax base was an intention of the bylaws. She didn't see anything in the bylaws that said a subdivision is not allowed if the sub-divided lot cannot support water and sewer.

Peter Hudkins said his goal was to make the Commission aware of the adopted bylaws and then discuss with them how the proposed bylaws differ from the adopted.

He cited Section 3305.I, Water and Wastewater and 3304.D, Waiver of Building Envelope Requirement as differing substantially from the adopted bylaws. Cheryl Joy Lipton said she thought 5.1.A in the adopted bylaws was very similar to 3302.B. She said both documents state that a parcel may be subdivided if the limitations of the parcel can be overcome and the method used to overcome the problem is demonstrated.

Barre Pinske asked whether someone can be punished in some way when a subdivided parcel is subsequently taken for tax sale, perhaps by taking an equal amount of acreage from the person who failed to pay taxes. He asked if the Planning Commission could make rules like that. Peter Hudkins said he didn't think that would be possible. Usually, financial hardship is involved when someone does not pay taxes.

Cheryl Joy Lipton noted the process Peter Hudkins was employing is more or less the opposite from the method used by Naomi Johnson when she was chair. Peter Hudkins said he was also concerned about the layout ratio for new lots. He wanted the Commissioners to look at 3304.A and consider this. Naomi Johnson recapped Peter's approach by saying he wanted to be sure the Commissioners understood the standards for subdivision in Article 5 of the adopted bylaws before he discussed the differences he saw between Article 5 and the proposed Section 330 in the new bylaws. Peter agreed that was what he wanted to do. Naomi suggested that the Commissioners hold their feedback until the proposed bylaws were under discussion.

Peter mentioned the lot ratio difference between 5.1.C, which is 1:3, frontage to lot depth in the adopted bylaws and 3304.B(5), which is 1:4, in the proposed bylaws. He also noted that 5.2.E, Sidewalks in the adopted bylaws requires sidewalks based on density, or residential units per acre is different from Section 3305.E(1) in the proposed bylaws, which requires sidewalks based on zoning districts.

Peter read part of Section 5.6.C Protection of Wetlands, Floodplains and Surface Waters aloud

Subdivision boundaries, lot layout and development envelopes shall be located and configured to avoid any adverse impact to wetlands, floodplains, streams and rivers. Methods for avoiding such impacts include but may not be limited to the following:

He noted that Section 5.6.B Establishment of Development Envelopes in the adopted bylaws discusses development envelopes, which he saw as the predecessor to building envelopes discussed in the proposed bylaws. He said that building envelopes in the proposed bylaws allow encroachment on riparian buffers and floodplains, which is not allowed in the adopted bylaws. He said the text regulating building envelopes was found in several places in the proposed bylaws which made it difficult to fully evaluate it.

Having discussed the adopted bylaws, Peter Hudkins turned to Section 330 Subdivision of the proposed bylaws. Peter said his goal in looking at section 330 was to develop a checklist for subdivisions similar to Figure 4-01 in the proposed bylaws. It would also be a checklist for the Development Review Board to use when evaluating a subdivision in a meeting. He read Section 3301.A aloud, which states, "All Subdivision of land must conform to the standards of this chapter." He felt that the statement was misleading because there were many other standards that applied to subdivisions that were not part of 330, chief among those being flood hazard standards.

The next paragraphs considered, 3302 had been discussed earlier. Peter said the proposed bylaws look at subdivision as a form of development, not as a method to preserve open space or an ecologically sensitive area. If land development is not planned, there is no need to subdivide. Peter and Cheryl Joy discussed the idea of not allowing subdivisions if no development is planned. Peter Hudkins said he could understand subdividing a piece of land without determining its development potential to act as a common space in a Planned Unit Development.

Peter Hudkins said waivers listed in the proposed bylaws are very specific. Peter Hudkins said he brought these issues to the Planning Commission in order for them to be discussed. Cheryl Joy Lipton asked Zoning Administrator Jill Barger what she thought of the differences between section 3302.B and 5.1.A. Jill said they were similar, and the older bylaws allow for a waiver of development rights in a different section. It looked to her like the proposed bylaws said land should not be subdivided unless it could be developed. She asked how a waiver for

undevelopable land would be beneficial to the town. Cheryl Joy Lipton said she thought it would be beneficial to the landowner but not the town. Jill wondered who would buy undevelopable land. She did not think anyone's right to sell was being restricted. Tim Roper asked what the assessment of undevelopable property would do to Grand List? If the value of one parcel declines, does the value of another parcel increase?

Cheryl Joy Lipton asked why the town would allow a subdivision of 6 acres from a 25-acre parcel for a building lot, leaving 19 acres that may not be developed. Barre Pinske returned to his suggestion of penalizing people who subdivide undevelopable land and stop paying taxes on it. He suggested that if the taxes were not paid and the land is subject to tax sale, that the land be re-joined to the original parcel and the unpaid taxes be added to the bill for the original parcel. Peter Hudkins said he wasn't sure Barre's proposal could work.

Peter Hudkins thought Cheryl Joy now understood his concerns about allowing subdivisions of undevelopable land and thanked her for explaining it more clearly than he could. He turned to waivers in the proposed bylaws (Section 4404). He said the new bylaws were more specific about waivers.

Cheryl Joy Lipton suggested that the Zoning Administrator steer applicants toward a conservation easement instead of a subdivision of undevelopable land. Peter Hudkins said conservation easements are best done with an organization such as a land trust.

Naomi Johnson said on reconsideration, she wondered whether the proposed bylaws were trying to prevent subdivision of a parcel that was completely undevelopable. She gave the example of a parcel of land that was meadow and cliff. She thought the bylaw would allow the meadow to be split off from the cliff. If the parcel was entirely cliff, she thought the bylaw would not allow the parcel to be split into several smaller parcels of cliff. Peter Hudkins wondered how that could be written. Cheryl Joy Lipton said it looks like the proposed bylaws accomplish that goal. Naomi Johnson and Tim Roper agreed. Barre Pinske said he knew of someone in Colorado who combined several undevelopable mining claims and built several houses by re-dividing the parcels giving each a small portion of developable land and a much larger portion of steep mountainside.

Cheryl Joy Lipton said it was important to remember that development was not the only reason land could be valuable to some people. She gave the example of a rock-climbing group who may want to purchase a parcel of cliffs. She asked how they could do it. Naomi Johnson said the bylaw would require that the group buy the entire parcel of cliffs. It would not be allowed to subdivide the cliff into smaller parcels of cliff.

Barre Pinske said a parcel of cliff in the Grand list could not cost very much, implying that its Grand List value would be low. Peter Hudkins said there was a ratio applied to the tax value of a property in the Grand List which reflected issues such as wetlands or steep slopes. Tim Roper said in the previous meeting the Commission had discussed whether a parcel had to have a wastewater permit in order to be subdividable. He said this discussion did not address that issue. He considered wastewater a separate issue that needed to be addressed. Requiring a wastewater permit was a way to limit development. Peter Hudkins said the Commission had discussed the process of filling out the Agency of Natural Resources worksheet at the last meeting. Tim Roper said it ought to be possible to subdivide a piece of land and not apply for a wastewater permit immediately if there is no impediment to getting a wastewater permit based on the ANR worksheet.

Peter Hudkins said the proposed bylaws referred to wastewater permits in a few different places. Jill Barger pointed out Section 3305.I Water and Wastewater requires subdividers to plan for water and wastewater service to each lot unless the lot is intended for agriculture, forestry or open space and has no development rights. The Commission also looked at section 3024, which stated simply, "All proposed development requiring a zoning permit under this bylaw must conform to the applicable state regulations regarding the provision of potable water and disposal of wastewater." Tim Roper said these sections probably cover the issues being discussed well. A parcel may be subdivided without a wastewater system and potable water supply permit, but a permit must be obtained before any development is undertaken.

Cheryl Joy Lipton asked why it was so important for the Planning Commission to figure out all the possible angles and produce a checklist of issues for subdivisions to be used by citizens and the Development Review Board during Subdivision hearings. She considered that work to be the responsibility of the surveyor or other professional who was hired to create the subdivision.

Peter Hudkins said building a checklist is one way to be sure the bylaw document is complete and functional. It also supports the work of the DRB.

Tim Roper said he didn't consider writing a checklist to be the Planning Commission's responsibility, but he felt that cross-checking the bylaw document for contradictory language was important. He thought it would be reasonable to make the checklist with the Zoning Administrator in mind, but it should not be done for the DRB. Peter Hudkins said a checklist of sorts was already in Figure 4-01.

Peter Hudkins asked what change should be made to Section 3302.B. Cheryl Joy Lipton suggested text be added to that section saying the parcel must not be subdivided unless the applicant can take action to overcome the parcel's geography or it will conform to the section that allows forestry and agriculture. Peter looked for definitions of forestry and agriculture in the proposed bylaws. The only definition was found in the Use Table, "An establishment that grows crops, raises animals, harvests timber or harvests plants or animals from their natural habitat." Naomi Johnson said there is specific language written on a plat that indicates the waiver of development rights of a specific parcel. Jill Barger warned the Commissioners to be careful to reference each occurrence of subdivision standards in the document if they make a change.

Peter Hudkins moved on to Section 3303.A, Capability of Community Facilities and Utilities. Cathy Hasbrouck said subdividing property does not guarantee a specific use for the subdivided property and cannot predict demand on municipal resources. She suggested the effect on all the municipal departments listed in 3303.A (schools, fire, police, ambulance, roads, water and sewer, recreation) depended on what use the land was being put to. Review of community facilities and capacities is part of a conditional use hearing. Peter Hudkins looked for traffic in the list of demands on municipal services and didn't find it. He said the worst burden put on roads and bridges in Chester is by overweight vehicles. Town roads are rated at 24,000 pounds. Any vehicle over 24,000 pounds needs a waiver from the Selectboard. He felt that somehow the amount of wear and tear on town roads from overweight vehicles ought to be addressed in the bylaws. No changes were proposed in this section.

Section 3304, Lot Design and Configuration was discussed. Peter Hudkins noted that 3304.A(3) appeared to allow a conservation lot without road frontage. "That there will be no foreseeable difficulties in obtaining zoning permits to build on all lots in accordance with the standards of this bylaw (this will not apply to lots intended for conservation purposes)." Cheryl Joy said she

imagined a lot under conservation easement would not need road frontage. She thought every place in the bylaws that required road frontage should have the phrase, “this will not apply to lots intended for conservation purposes.” Naomi Johnson said she understood this to say that a subdivision cannot be laid out in a manner such that a building permit cannot be obtained. The exception to that would be a lot designated for conservation.

Cathy Hasbrouck asked how a lot would be designated for conservation. She didn’t see anything in the bylaws that was a procedure for putting it into conservation. Cheryl Joy Lipton said it was done through the state or another organization. The owner would promise not to develop the parcel.

There was confusion about conservation land, conservation rights which can be bought or sold, who owned conserved land and other details of ownership. Cheryl Joy Lipton located a definition of conservation easement on the Vermont Natural Resources Defense Council website and read it aloud to the group, which was very helpful:

A conservation easement is a voluntary agreement between a landowner and a land trust or government agency that limits the type or amount of development on one or more parcels of land. The easement is drafted specifically for the property in question, and identifies both the restrictions placed on the conserved property as well as the activities that are allowed. Landowners continue to own, manage, and pay taxes on the land and can sell their land; however, the conservation easement remains on the property permanently (a temporary easement, that expires after a fixed number of years, is also an option but this approach is very uncommon in Vermont).

Naomi Johnson said in her version of the bylaws she found section 3404, Conservation Subdivision. This section applied to rural districts and had paragraphs that exempted some dimensional standards in the subdivision. Naomi speculated that these exemptions could affect road frontage and lot layout, and lot access and are addressed in section 3304 Lot Design and Configuration. Peter Hudkins asserted that a conserved area was not a lot, which started another discussion about lots. Barre Pinske felt that the discussion was not particularly productive and moved to adjourn the meeting. Cheryl Joy Lipton seconded the motion. Amid wishes for a Merry Christmas and Happy Hannukah, the meeting was adjourned.