

TOWN OF Chester
PLANNING COMMISSION
March 15, 2021 Minutes

Commission Members Present: Cheryl Joy Lipton, Tim Roper, Naomi Johnson and Barre Pinske via Zoom Teleconference. Peter Hudkins at the Town Hall.

Staff Present: Cathy Hasbrouck, Recording Secretary, at the Town Hall. Jill Barger, Zoning Administrator, via Zoom Teleconference.

Citizens Present: Bill Lindsay and Steve Copping at the Town Hall. Derek Suursoo, Linda Diak, Lee Gustafson, Jeff Holden, Scott MacDonald, Steve Mancuso, Arne Jonynas, Shawn Cunningham and Ken via Zoom Teleconference.

Call to Order

Naomi Johnson was able to call the meeting to order around 6:31 PM.

Agenda Item 1, Citizen Comments

Steve Mancuso said a group called the Chester Business Coalition had formed and would like to play a more active role with the Planning Commission and possibly ask for some workshops on the new bylaws. Naomi Johnson welcomed the news and thanked Steve.

Agenda Item 2, Review responses to issues listed on front page of Version 3.4 of proposed bylaws.

Naomi Johnson outlined the items to be covered at the meeting. The first was a table of issues on the first page of Version 3.4 of the proposed bylaws. The second item was a memo Naomi had prepared listing other specific items in the bylaws to be addressed. The third item was a press release. Tim Roper suggested that the press release discussion be moved up in the agenda because it was time sensitive. Naomi Johnson said she agreed the press release was important and proposed reserving 15 or 20 minutes at the end of the meeting for that discussion. Tim Roper, Barre Pinske and Peter Hudkins agreed to that schedule.

Naomi Johnson began discussing the items listed on the first page of Version 3.4 of the proposed bylaws. Lee Gustafson asked if the documents were available online anywhere. Naomi Johnson said Version 3.4 of the bylaws with the first page list was found on the Planning Commission page of the Chester website.

Naomi Johnson said the issues on the list were primarily resolving cross-references in the document. The first item taken up was a cross reference in the Civic and Community uses. The note from Cathy Hasbrouck stated, "Clinic or outpatient care services in the Civic and Community section of 2112 Use table says see Section*. I can't find anything that addresses outpatient care. 1103 addresses hospitals and in-patient care."

Naomi Johnson proposed that section 1104, Government and Community Facilities was the intended reference. Tim Roper asked whether section 1104.A(4) Government and Community Facilities which states, "The provisions of this section apply to the following government and community facilities: Public and private hospitals certified by the state;" should be changed to include outpatient care services. No one objected to the proposed change.

The next issue to be addressed was “2112 Use table defines a multi-family house as 3 or more units. Section 3202 Multi-family dwellings applies to 5-unit buildings or 10-unit clusters of buildings. This may be confusing. Perhaps a note in 2112 saying over 4 units see 3202”. Naomi Johnson suggested that putting a number of units in the note referring to section 3202 could be a problem if the number of units cited in section 3202 changes. She thought it might be better to say see Section 3202, Multifamily dwellings, which may apply. Tim Roper verified that the cross reference being addressed is in Section 2112 Use Table. Naomi Johnson confirmed that. Tim Roper asked if the confusion is in the definition of multi-family dwelling, which could be 3 units or 5 units. Peter Hudkins, Tim Roper and Naomi Johnson parsed the applicability paragraph for Section 3202. It was clear the standards laid out in Section 3202 for open space, bulk storage, bicycle parking and pedestrian access were intended to apply to larger developments only, not to 3- or 4-unit buildings. Cheryl Joy Lipton asked whether the bylaw needed to be so complicated. Steve Mancuso said the State of Vermont had clearly defined what a multi-unit building was and what standards applied to it. He wondered why the Chester bylaws needed to do the same thing. Naomi Johnson said she believed the issue was not the definition of multi-family, but whether Chester wanted local regulations for multi-family buildings. Tim Roper said a 5-unit building was materially different from a 3-unit building and he questioned whether a 3-unit building needed a playground. The conclusion was to add the word “also” to the note in the Use table.

The next item on the list was another cross reference:” 3105.H has a cross reference with an error that probably refers to screening, but I can’t find what it should be.” Naomi Johnson explained that the section is Performance Standards and addressed junk and junk vehicles. She read part of the section aloud:

Junk and Junk Vehicles. Except as specifically authorized as part of an approved use under this bylaw, accumulation of junk or storage of more than 3 junk motor vehicles (see Paragraph 2202.I and 5003.J) outside an enclosed structure is prohibited. Applicants must show the location of any proposed junk or junk motor vehicle storage areas on the site plan and must screen such facilities in accordance with Subsection 3106.F. Also see Section **Error! Reference source not found.**

Naomi thought the sentence should be deleted. She believes the correct cross reference was already noted in the preceding sentence. Peter Hudkins and Tim Roper thought that Chester’s junk yard ordinance should be referenced here. Naomi Johnson said the ordinance is called Salvage Yard Ordinance. Tim Roper suggested the phrase, “also must be in compliance with the Town of Chester’s Salvage Yard Ordinance.” No one objected to the change.

The next item was a reference to a list of noxious weeds in subsection 3101.D **Plant Materials**. Plant materials must meet the specifications in Figure 3-02. Chester strongly encourages use of native species and prohibits use of invasive or potentially invasive species as identified in. . .”. Naomi Johnson said this issue had been discussed in the past and Cheryl Joy Lipton had offered to create a list. Cheryl Joy said she has worked on the list but it still had duplicates.

Tim Roper said either the list will need to be added to the bylaws or simply referenced by the bylaws. Cheryl Joy Lipton said the list will need to be updated regularly. Naomi Johnson suggested referencing a list outside of the bylaws or require that the applicant not use plant material that was considered a noxious weed in the state of Vermont. Barre Pinske said putting the burden on the applicant would be easier to manage than maintaining a list. Cheryl Joy Lipton

said the phrase, “noxious weed list” had an accepted meaning. She said there were still invasive plants which were not on the noxious weed list and said she would create a list.

Tim Roper asked Cheryl Joy if the list she drew up was significantly different from the Vermont Agency of Agriculture list. Cheryl Joy said her list had more plants and included plants listed in surrounding states. Tim Roper said it would be difficult to keep the list current and the problem of invasive species was getting worse in Vermont. He asked if the list could be kept at Town Hall and referenced by the bylaws instead of having to re-adopt the bylaws each time the list needed to be changed.

Barre Pinske asked why Chester would need a separate list if there is a state list and a federal list. He pointed out that the list was about which plants could be bought and used in landscaping. Cheryl Joy Lipton said the state and federal lists were incomplete. It could take years for a harmful plant to get on one of those lists. Barre Pinske said he was concerned that someone would buy a plant at a garden center and Chester’s Zoning Administrator would then have to tell the person the plant could not be used. Barre asked if there were plants being sold in Vermont now that were invasive. Cheryl Joy said there were.

Naomi Johnson said Cheryl Joy had offered to create a list and the Planning Commission could decide once they have the list how to implement it in the bylaws. Cheryl Joy suggested the bylaw require that the applicant check the updated list kept at Chester Town Hall. Naomi Johnson reiterated her suggestion that the Planning Commission figure out how to implement the list once the list is complete. There was general agreement for that action.

The next issue has to do with a notation that probably indicates the business or village districts as a group. An example is in 3104.C(6) Parking. Naomi Johnson proposed removing asterisk or list out individual districts.

Cheryl Joy Lipton asked why bicycle parking was not a standard in every district. Naomi Johnson said the issue of where bicycle parking is required may be discussed separately. It had been discussed in some detail during the first Saturday sessions in the fall of 2018. The issue of how to specify a group of districts was what was before the Commission at present. Tim Roper said he thought the asterisk may have been employed because the names of the districts had not been settled on when that part of the bylaw was written. Naomi Johnson suggested removing the asterisks. Tim Roper suggested the wording “all non-residential uses in any village or business district.” The Commission accepted the wording Tim proposed.

Barre Pinske also questioned requiring bicycle parking in so many districts. Naomi Johnson said the issue would remain on the list of issues to be settled and could be discussed at a later time.

The next issue was found in section 5003.D(3). It refers to a setback issue illustration that is missing from the document. Naomi Johnson suggested deleting the reference. Tim Roper said he thought the definition of Degree of non-conformity was clear and understandable. He did not see a need for an illustration and suggested striking the reference to the illustration. Cheryl Joy Lipton agreed.

Cathy Hasbrouck said this issue is currently before the Zoning Administrator. There was language which very specifically addressed the meaning of increasing the degree of non-conformance in section 3.19.C.5. Naomi Johnson read the section aloud:

The phrase ‘shall not increase the degree of non-conformance’ shall be interpreted to mean that the portion of the structure which is nonconforming shall not increase in size (or

decrease in the event of failing to meet minimum standards such as parking and lighting). Therefore, portions of a structure within a setback area cannot be enlarged, portions above the maximum height cannot be expanded where parking is deficient the number or size of spaces cannot be reduced, etc. This phrase is not intended to prevent existing unfinished space from being finished or other similar scenarios provided there is no increase in size.

She also read the definition of degree of non-conformity in the new bylaw aloud:

DEGREE OF NONCONFORMITY means the extent to which a structure or portion of a structure encroaches over a minimum setback or above a maximum height, exceeds a maximum footprint, or otherwise does not conform to a dimensional requirement of this bylaw.

She noted that the discussion of increasing the degree of non-conformance was in the body of the adopted bylaw document while the degree of non-conformity is discussed in the definitions section of the proposed bylaws. She suggested looking at Section 130 Nonconformities in the proposed bylaws and considering whether the language in the adopted bylaws is woven in to Section 130. She suggested waiting to do this until another issue to be covered in the evening's agenda. In the meantime, the sentence about the illustration may be deleted. The rest of the Commission Members agreed.

The next item on the list addresses language in the V12 Zoning District section 2101.D which discusses when a site plan review is needed. The V12 district is the village green and the immediate surrounding area. New single- and two-family homes are not allowed in the district. The paragraph that regulates Site Plan review said:

An applicant must obtain site plan approval before the Zoning Administrator may issue a permit for all uses other than single- and two-family dwellings, and accessory uses including home occupation, family child care home, bed-and-breakfast, short term rental and farming or forestry (see Section 4304).

Naomi proposed removing the mention of single- and two-family dwellings since they are not allowed uses in the district, qualifying accessory uses by adding the words existing single- and two-family dwellings. The new paragraph would read:

An applicant must obtain site plan approval before the Zoning Administrator may issue a permit for all uses other than accessory uses to existing single- and two-family dwellings including home occupation, family child care home, bed-and-breakfast, and short-term rental, farming or forestry (see Section 4304).

Cheryl Joy Lipton said it was odd not to allow new single- and two-family dwellings in the V12 district and allow farming and forestry. Naomi Johnson and Tim Roper explained that farming and forestry may not be excluded under state statute. Naomi asked the Commission members if they had been able to read the paragraph about this change with the recommendation and the reasoning for it. Peter Hudkins asked about home occupation as an accessory use to a pre-existing dwelling. He didn't think it was legal to confine it to a pre-existing dwelling. Tim Roper pointed out that home occupation was a permitted use in any case. Cheryl Joy Lipton said she didn't agree with not allowing new single- and two- family homes in the district.

Cathy Hasbrouck said, just to be clear, the uses listed in the statement were allowed and did not require site plan review. Peter Hudkins asked if it was a zoning administrator's prerogative to require site plan approval or not. Naomi Johnson repeated the text she wanted changed, which was not actually addressing which uses a zoning administrator may issue a permit for. Rather

she wanted her change to clarify when site plan approval was not necessary in order to obtain a zoning permit. Barre Pinske asked if this applied to rebuilding a building which was destroyed. Naomi said that wasn't the point either. Tim Roper said he agreed with the change and wanted to move on. Cheryl Joy Lipton concurred.

Naomi Johnson then turned to section 4304.A. She read the original text of the section aloud:

Applicability. All proposed development other than a single-family or two-family dwelling, and any accessory uses or structures to such a dwelling, requires site plan approval before the Zoning Administrator may issue a zoning permit.

She then read the proposed change:

Applicability. The uses requiring site plan approval before the Zoning Administrator may issue a zoning permit are listed on each zoning district page.

She said that several weeks ago she had noted the change and was concerned about it, but the more she looked at it now the more she thought it was acceptable given the change made to each zoning page where the permitted and conditional uses are listed. Tim Roper and Cheryl Joy Lipton agreed that the change was succinct and simple and it should stay.

The next change to be considered was in section 4307.D. She read the old version:

Sketch Plan Review

The applicant must file a complete application and sketch plan for review by the Zoning Administrator.

She then read the new version:

Sketch Plan Review

The applicant must file a complete application and a .pdf of the initial survey for review by the Zoning Administrator.

Naomi Johnson said the applicant may come in with just a sketch of the proposal and should not be required to work with a surveyor to get a drawing before discussing the proposal with the Zoning Administrator. Cheryl Joy Lipton asked if the sketch should be to scale. Cathy Hasbrouck reminded the Commission that the sketch plan review was for a subdivision, not a conditional use application. Naomi Johnson thought that a sketch would be appropriate because less effort would be wasted if the subdivision is not possible as proposed. Cheryl Joy Lipton said if the sketch did not show enough information, the Zoning Administrator could ask for more detail. Naomi Johnson said the applicant could get a print out of the parcel map from the Chester website and use that as a basis for a sketch. Peter Hudkins said that when the Planning Commission handled subdivision, it had an informal, off the record session with the applicant to go over the proposal and a sketch was sufficient. He said the judicial nature of the DRB made an informal review impossible. The Commission agreed to restore the original language.

Naomi Johnson then turned to the last 3 items on the document. She read through them quickly and wanted the minutes to note that those items were not covered during the meeting due to a lack of time.

Agenda Item 3 Discuss various provisions of the proposed bylaws including:

a. Requirement for locating utilities underground

b. Requirement for Erosion Prevention Sediment Control Plan

c. Requirement for site visits

d. Non-conforming lots language

Naomi Johnson turned to a memo dated March 9, 2021. The first item to be considered was underground utilities:

3305.M Public and Private Utilities. The applicant must design the subdivision to provide utility service to each lot (this will not be interpreted to include lots with no development rights intended for agriculture, forestry or open space use) in accordance with the following:

- (1) All utilities must be located underground unless prevented by ledge or other physical conditions that make burying lines impractical;
- (2) Utilities must be located within road rights-of-way to the maximum extent feasible; and
- (3) The applicant must provide the town with a maintenance and access easement for any utilities not located within a public right-of-way.

In the memo Naomi Johnson explained:

The issue is the requirement for locating power, phone/internet/cable TV lines underground. The cost of underground utilities is much higher than overhead. The item for discussion is the suggestion to eliminate item (1).

Naomi Johnson said any developer was going to prefer to put utilities overhead because it is so much more expensive to put them underground. Cheryl Joy Lipton asked if burying utilities was or is currently a requirement. One of her neighbors told her their utilities had to be underground. Naomi Johnson said this was not currently a requirement. Naomi Johnson said she had run into an issue with running 3-phase power about 1,500 feet for the city of Lebanon. The cost of upgrading the 3-phase service was \$250,000. The cost of running the power underground was \$1,000,000. The city saved about 60% on the project by running the power above ground. Steve Mancuso said the town of Chester has service partly underground and partly overhead around the green. It has been difficult to resolve because there is no organization with the authority to require a resolution. Bill Lindsay said increasing the cost of building would further discourage young people from settling in Vermont. He said it was important to consider the cost of non-state sponsored housing and its impact on people who are thinking of building a house.

Tim Roper said the DRB had said they did not want gray areas in the bylaws. He thought a rural subdivision would be benefitted by burying utilities and burying utilities should be an aspirational goal, not a requirement. Peter Hudkins suggested that the DRB could make it a condition of a subdivision permit in a rural area. Cheryl Joy Lipton agreed that burying utilities should not be required. Tim Roper said he did not know how to express the aspirational goal of underground utilities. Barre Pinske suggested that a list of aspirational goals such as underground utilities and bicycle racks be added to the end of the bylaws. Peter Hudkins said language allowing the requirement to be waived would work. Jill Barger suggested that the bylaw state underground utilities must be considered. The Commission accepted that suggestion.

The next issue to be considered was the requirement for an Erosion Prevention Sediment Control Plan in Section 3012.F

3012.F Erosion Control Plan Required. Applicants for major site plan approval proposing construction or demolition activities that will disturb more than 10,000 square feet of soil must submit and implement a professionally prepared erosion control plan in accordance with the *Vermont Standards and Specifications for Erosion Prevention and Sediment Control*.

Naomi Johnson said the issue is that this proposed language is a requirement that is more stringent than the State requirements under the Construction General Permit (CGP), which generally requires permit coverage for disturbance of 1 acre or more. The Construction General Permit does not require a site-specific Erosion Prevention and Sediment Control Plan for Low-Risk projects.

Naomi said section 3012.C requires proof of compliance with State permit regulations and 3012.E requires compliance with fourteen listed practices for Erosion Prevention and Sediment Control. Naomi suggested deleting 3012.F. She doubted whether there was a need for the town to be more restrictive and require more precautions than the state. She estimated the cost of a professionally prepared plan to be \$2,000.

Cheryl Joy Lipton said the location of the disturbance should be considered. Precautions should be more stringent along a stream bank or near a wetland, where there would be very little space to buffer sediment. Tim Roper asked if the DRB could determine where the compliance should be more stringent. He said he remembered discussing the issue and deciding on the 10,000 square feet (approximately one-quarter of an acre) number with some reluctance. Naomi Johnson recalled the conversation as well.

Tim Roper said he didn't think a plan would be necessary if other safeguards were in place. Peter Hudkins said the State of Vermont is vigilant and has shown up at horse-logging landings he has had which were much smaller than 10,000 square feet. He asked whether the town would have to hire someone to evaluate the plan or if the Zoning Administrator would be expected to evaluate it. Steve Mancuso agreed that the state was stringent and there was no need for Chester to increase the requirements.

Barre Pinske asked whether the town would get in trouble because an applicant had not obtained a permit from the state and if the bylaw was trying to prevent that from happening. Cathy Hasbrouck said part of the Zoning Administrator's job was to inform an applicant of state requirements and put them in touch with a state permit specialist. Barre Pinske asked if the DRB would verify that a state permit specialist had been consulted. Cathy Hasbrouck said it was the Zoning Administrator's job to work with the applicant. Naomi Johnson said the applicant will describe the project to the specialist and the specialist will check the box for a permit unless the area disturbed is under an acre.

Tim Roper clarified this, asking if the permit specialist would tell the applicant he or she does not need to do anything if the project is under one acre. Peter Hudkins said the applicant would still need to follow the best management practices. Cheryl Joy Lipton asked whether the list in 3012 was the Vermont best management practices. Naomi Johnson said the list was from the Low-Risk Erosion Control manual. She said logging operations are subject to best management practices. A home owner, looking for a permit from Chester would be referred to the state permit specialist who would determine whether the home owner needed a state stormwater construction general permit. If a permit is not required, the home owner would still have to meet the 14 requirements listed in the bylaws and the Low-Risk Erosion Control manual. Cheryl Joy

asked if there was a copy of the storm water best management practices at the town hall and asked if the bylaws should refer to that.

Tim Roper said that, given these safeguards, he was in favor of dropping 3012.F. The other members agreed. Cheryl Joy Lipton said she still thought there should be a copy of the best management practices at the town hall. Steve Mancuso agreed with Cheryl Joy's points.

Naomi Johnson moved on to site visits in Section 4502. She noted that the proposed bylaws do not mandate site visits. The adopted bylaws do mandate site visits and require that the property owner allow access. Peter Hudkins said he was in favor of site visits. He felt they had been very useful in the years he was on the Development Review Board and the Planning Commission. Tim Roper asked if there had ever been a site visit that did not seem necessary. Peter Hudkins said there had been some in his time. Tim suggested the bylaw say that the DRB may waive a site visit if it thinks it is unnecessary. Peter Hudkins said no one could be sure the site visit was unnecessary until it had been made. Barre Pinske thought the Zoning Administrator could make a determination if the site visit was necessary. Tim said he thought the Zoning Administrator should visit the site and make a recommendation, but the DRB would make the decision.

Peter Hudkins said the site visit takes place before the hearing. Tim said the application is received by the Zoning Administrator and the Zoning Administrator should take the application to the DRB who would then determine whether a site visit is needed. Barre Pinske said there was no reason for a site visit on small issues such as a shed. Cathy Hasbrouck said the DRB would not be involved in something very small such as a shed or fence. She said the only time in her five years' experience with the DRB that a site visit was not needed was on the second hearing for a subdivision when there were very few problems with the initial plat. Noting the lack of consensus, Naomi Johnson suggested that the issue be flagged. She referred people to paragraph 4.6 in the adopted bylaws for comparison purposes.

The last issue discussed in the memo was non-conforming lots. Naomi noted there was considerable text from the minutes of meetings where the issue was discussed. There was not time to discuss this further. Naomi noted that the proposed bylaws matched the adopted bylaws on this issue.

Agenda Item 4 Discuss a press release prepared by Tim Roper about proposed rural districts

Tim Roper explained that, based upon the press the Chester Planning Commission had received recently there was some concern about misperceptions about what the Planning Commission does, how it does it, when it is being done and who has a say in it. He said the press release might be a little long. He was trying to make the point that what the Planning Commission does is above board and encourage citizens to attend meetings and participate. He hoped it would put people's minds at ease.

Naomi Johnson said she liked the message and the bullet points are concise. Barre Pinske said the document created clarity. He asked if the press release had links to the map of the R-18. Barre was anxious to get the maps in front of the public. He thought a lot of useful information was available on the maps. Tim Roper said he did not include maps for two reasons. First, he found it too difficult to explain the R-18 in a few words. Second, he realized nothing has been finalized and he didn't want people thinking that this was the final plan. In the end he decided that trust needed to be rebuilt and open communication reestablished.

Cheryl Joy Lipton said she thought the press release was good. She said people knew there were maps available on the town website and that maps were hanging on the wall in the Town Hall.

Tim Roper asked for 3 small corrections before the press release was sent out. Naomi Johnson asked if it was the consensus of the Planning Commission to send this out. All members agreed and thanked Tim for his efforts. It was agreed that Cathy Hasbrouck would submit the release to the Chester Telegraph, the Vermont Journal and the Eagle-Times.

Naomi Johnson said the next two possible dates for the meetings are March 29 and April 5. Tim Roper said he was feeling pressure as a Planning Commission member to bring the proposed bylaws to public hearings and the June target date was coming up fast. Naomi Johnson reminded the Commission that two appointments to the Commission were due to be made in two days and the new members would need time to receive materials and get oriented. She also reminded them that the next meeting will start with a reorganization when a chair and vice chair will be elected. Given all those factors, the Commission decided it would meet next on April 5 at 6:30 PM.

Barre Pinsky thanked Naomi Johnson for her long service to the town. Peter Hudkins said he wanted to allow new members to have a say in decisions that have been made. Steve Mancuso thanked the Commission for their service. Scott MacDonald said he was concerned that the Commission did not understand how many people were very upset about the new bylaws. He felt that, given the pandemic, the Planning Commission should put as much information as possible online so that people who are not yet vaccinated can access it without going into a public space. He said he had not been able to find the maps online. He also felt public hearings in June were a little early. Tim Roper was able to offer Scott advice about finding the maps.

Naomi Johnson said she was available to help with projects if asked. The Commissioner thanked her for her efforts. A vote was taken and the meeting was adjourned.