

# TOWN OF CHESTER PLANNING COMMISSION

## July 5, 2016 Minutes

**Board Members Present:** Tom Bock, Naomi Johnson, Tom Hildreth, Randy Wiggin, and Claudio Veliz.

**Staff Present:** Michael Normyle, Zoning Administrator, Cathy Hasbrouck, Recording Secretary

**Visitors:** Doug Somerville Marilyn Mahusky, Brian Mosher, Phil Perlah, Bill Lindsay, Carla Westine, Alice Harwood, Amy O'Neil, Julie Hance, Russell Monier, Palmer Goodrich, Laurie Goodrich and many others. The secretary apologizes for not getting all the names.

Tom Bock opened the meeting at 7:00 PM. Michael Normyle distributed copies of the proposed Unified Development Bylaws under discussion. The minutes from the June 20<sup>th</sup> meeting were not available for approval. The principal item on the agenda was to review the proposed changes to permitted and conditional uses in the R-40 and R120 districts. Zoning Administrator Michael Normyle had compiled notes on the changes which he offered throughout the meeting.

### **R-40 Permitted Use changes**

FAMILY CHILD CARE – HOME. This was not listed as a use and was added. A home cares for fewer than 10 children altogether, fewer than 7 of whom may be full time.

GROUP HOME. This also was added as a use. It has a limit of 8 residents.

PRIVATE BROADCAST FACILITY. Michael Normyle said that he received a letter suggesting that Private Broadcast Facility be a conditional, not permitted, use so it would be reviewed by the DRB.

Doug Somerville asked if this was a commercial broadcast facility and Michael Normyle replied that it was not.

Tom Hildreth said he searched the Federal Communications Commission website and could not find a definition for Private Broadcast Facility, certainly not one that included shortwave or ham radio. A ham radio operator was defined on the FCC website as an amateur radio operator, not a Private Broadcast Facility. He did see Private Broadcast Facility associated with religious broadcasting, among other types.

It was also noted that there is no definition in the Chester Unified Development Bylaws for private or commercial broadcast facility. After some discussion it was proposed that both Private Broadcast Facility and Public Broadcast Facility uses be called Wireless Communication Facility, which had a definition in the bylaws and that Wireless Communication Facility be a conditional use. Tom Hildreth cited Putney VT as having a well-defined broadcasting section of their bylaws.

### **R-40 Conditional Use changes**

BUILDING AND CONSTRUCTION TRADES Tom Bock asked Michael Normyle for his notes on Building and Construction Trades. Michael Normyle said they had been inadvertently left out of the 2014 uses and were being added back.

Claudio Veliz asked if having a use in 2007 was a good enough reason to restore it now. Does the use benefit the community at large?

Randy Wiggin moved to keep the use on the basis that the community needs carpenters, plumbers and electricians. Naomi Johnson seconded the motion.

Discussion followed. Naomi Johnson read the definition of building trades:” Includes but not limited to, plumbing, electrical, carpentry, painting, masonry, roofing and building foundations.” She felt these conditional uses were appropriate for a one-acre lot in the R-40 district.

Marilyn Mahusky asked if defining a use as a trade was sufficient to define the activity being permitted.

Doug Somerville asked if the definition could limit the size of activity.

Michael Normyle said that the mechanical details of trades are changing so quickly that putting specific size limits may not be helpful. Counting the number of wrenches a plumber has will not be useful if the use of computers makes wrenches obsolete. He felt that the performance standards were more likely to protect neighbors from noise, light, vibration, smells, fumes, traffic, etc.

Marilyn Mahusky asked where the standards were in the bylaws document and was directed to Section 4.7.

Carla Westine spoke. She said that Chester has a very long history of tradesmen, dating from the 1700's. This is how blue collar people make a living. Tradesmen need to house their tools and materials. They need to fetch tools and materials to job sites, either themselves or send employees if they have them. She felt that Section 4.7 of the standards will address concerns neighbors might have about traffic, lighting, material storage or hours of operation. If a tradesman has employees, the state will become involved in regulating.

Tom Bock called for a vote on the motion to keep Building and Construction Trades as a conditional use in the R-40 district. There were 4 votes in favor and 1 against. The motion passed.

CAMPGROUNDS. Michael Normyle said this is a new use for R-40. The state has statutes about campgrounds that have facilities.

Several people joined the discussion. This is a summary: Doug Somerville said he felt a campground was acceptable as long as it wasn't like Horseshoe Acres. He objected to the many vacant trailers that were stored in the campground. Michael Normyle said Chester's Performance Standards would regulate parking, noise, lights, signs, screening and the town's water and sewer capacity. An applicant would have to go to the state for a septic permit. The state has requirements about square feet per site. Phil Perlah asked if there were any standards for sanitary waste, how the Chester Police felt about an influx of transient campers and whether the town should regulate it at all, given the small impact it would have. Tom Bock said that the state had standards about sanitation and potable water and there was very little growth statewide in the campground industry. Amy O'Neil said that there were some very large parcels in the R-40 and without regulation a business could start on its own and it would take time to resolve those problems. Claudio Veliz asked what would happen if the use was removed. Would that stop someone from starting a campground? Michael Normyle said the fact that state permits refer to town permits and town permits refer to state permits makes enforcement unclear and

difficult. If the state grants a permit, it is not bound by zoning regulations. There needs to be local regulation to give the town a say in that land use.

A vote was taken and the motion passed, 4 for, 1 against. Claudio Veliz said he voted against the campground use because he felt the board was bypassing a fundamental responsibility by not asking if it benefits the community at large.

**BROADCAST FACILITY** This use had been changed earlier in the evening to be Wireless Communication Facility.

**FAMILY CHILD CARE FACILITY.** This use was included to accommodate the state's distinction between a home, which is for 10 or fewer children, fewer than 7 of whom are full time, and a facility which is for more than 6 full time and more than 4 part time children.

**ENCLOSED STORAGE AND STORAGE BUILDING.** Michael Normyle noted Phil Perlah's comment that the proposed definition focused on rented facilities and did not address other storage facilities. Michael felt that the board should expand the definition to include storage in general, not just storage for rent.

At this point a complex discussion with many participants followed. It was generally agreed that storage should be permitted in the R-40 district both for personal and rental purposes, in existing, non-commercial buildings. Commercial buildings built for rental unit storage would not be allowed. It was also agreed that nothing proposed for the R-40 district should change uses and definitions in other districts.

Tom Hildreth moved and Naomi Johnson seconded a motion to define storage as a non-commercial building. Ultimately, 2 definitions were proposed for enclosed storage unit. The first would add the words PRIVATELY OWNED to ENCLOSED STORAGE UNIT and make the definition of ENCLOSED STORAGE UNIT a building used as storage. A definition for COMMERCIAL STORAGE UNIT would be added. That definition would read: a commercial building or buildings, or parts thereof, used for rent as storage units. The first definition was moved, seconded and accepted. The second definition was moved, seconded and accepted after additional discussion.

**HEAVY CONSTRUCTION TRADES.** Michael Normyle stated that the old version of the bylaws included building and construction trades, extraction of stone and bedrock, processing construction aggregate, extracting soil and gravel. Extraction of these products requires heavy machinery, thus Heavy Construction trades use was part of the old bylaws.

Phil Perlah stated that he felt this was not an appropriate use in a residential zone. It is unsightly, and heavy vehicle traffic is dangerous in a residential area. There is noise, vibration and dust. He felt that more commercial zones should be set up along the Route 103, 11, 10 and Elm Street corridors where there are existing commercial uses. Phil noted that the proposed town plan is moving in that direction.

Amy O'Neil pointed out that heavy construction equipment is generally at a job site and is only stored on the owner's property between jobs. A small company with only one or two pieces of equipment should be allowed. Screening, garages, limits on hours of use would minimize the impact on the neighbors.

Phil Perlah approved of Amy's argument that an individual with one piece of equipment was appropriate in the R-40 zone, but he said the definition of heavy equipment did not support that

concept.

Kelly Arrison asked if, like campgrounds, a failure to include Heavy Construction as a conditional use would increase the difficulty of regulating them. He also asked if the Zoning Administrator had the time to deal with the additional load of zoning violations if this was included as a conditional use.

Michael Normyle replied that having Heavy Construction included as a conditional use made it easier for him to confront people who were violating the bylaws as it made the violations clearer.

Marilyn Mahusky stated that Heavy Construction was not in the 2008 version of the bylaws and that she also considered Heavy Construction an inappropriate use in a residential zone. She also asked if two letters she had written were received by the board.

Tom Bock said he had received them very late and he had not had time to read them second letter.

Alice Harwood asked if there was confusion around zoning, shouldn't the zoning be resolved before uses for zoning districts are considered?

Michael Normyle stated that the 2007 version of the bylaws did not include Heavy Construction Trades, per se, but it did include extraction of soil, sand, gravel, stone bedrock and construction of aggregate as uses, all of which require heavy equipment.

Ms. Mahusky felt that was a poor justification for including Heavy Construction in the R-40 zone and asked why the board was examining the uses.

Naomi Johnson answered the question, saying that the board decided to revisit the uses after listening to what was said in the previous four meetings.

Russell Monier said that most people are thankful for heavy construction trades when they have to clear away the debris of their home after a flood or fire.

Claudio said that the question was not whether the trades should exist, but where they should be located and how they integrate with the rest of the community.

Russ Monier said that he felt the Bed and Breakfast up the street did him no service.

Claudio replied that he felt the purpose of the process was to evaluate every use and be sure it was justified and served the community. He said uses have impacts that cannot be anticipated and cited his opinion that the allowance of automotive uses on Main Street which allowed Jiffy Mart to relocate also resulted in a property owner on Main Street offering cars for sale on his front lawn.

Michael Normyle said the property owner in question had been selling cars that way for years before the Jiffy Mart relocation and had been cited for violations during that time, well before Jiffy Mart filed its application.

Claudio moved to remove Heavy Constructions from the R-40 zone. No one seconded the motion.

Naomi moved to add Heavy Construction Trades as a conditional use to the R-40 district. Randy Wiggin seconded the motion. The motion carried 4 votes for, one abstention.

WOOD PROCESSING. Michael Normyle said this use was added to satisfy local demand for firewood.

Phil Perlah said it was not an appropriate use in a residential zone. Firewood processors are likely to be too noisy. If this is allowed, more people will do it. It would be more appropriate to change the layout of the zones, creating more corridors for this type of activity.

Carla Westine cited Section 3.22 of the bylaws which addresses noise and would prevent noise from a firewood processor from disturbing neighbors. She said a recent applicant withdrew their application because their equipment exceeded the noise limits.

Palmer Goodrich stated that there were many existing parcels in the zone which could handle wood processing.

Brian Mosher said he hoped the DRB can take into account scale. More business creates more money and also has more impact on the town infrastructure and neighbors, he would like scale added to the standards for the DRB to use. He would also like more enforcement on businesses that have outgrown their property.

Randy Wiggin moved to keep wood processing as a conditional use in the R-40 district. Naomi Johnson seconded the motion. Tom Hildreth said he felt he lacked the expertise to make a decision on this. He has never seen a wood processing operation. Claudio said he still considers wood processing as inappropriate for a residential zone. Three members voted for the measure, one member opposed it and one member abstained. The measure passed.

#### **Changes to permitted uses in the R-120 district.**

FAMILY CHILDCARE HOME, and GROUP HOME Naomi Johnson moved to keep Family Childcare Home and Group Home as permitted uses in the R-120 district. Randy Wiggin seconded the motion. The motion passed.

BROADCAST FACILITY Tom Hildreth moved to call Broadcast Facility Wireless Communication Facility and make it a conditional use. Claudio Veliz seconded the motion. The motion passed.

#### **Changes to conditional uses in the R-120 district**

BUILDING AND CONSTRUCTION TRADES Randy Wiggin moved to keep Building and Construction Trades as a conditional use in the R-120 district. Tom Hildreth seconded the motion.

Marilyn Mahusky made a blanket objection to include Building Trades and Heavy Construction Trades in a residential district.

A vote was taken. The motion passed.

CAMPGROUNDS Tom Hildreth moved to approve Campgrounds in the R-120 district. Naomi Johnson seconded the motion. The motion passed.

CIVIC/INSTITUTIONAL In considering Civic/Institutional use, Michael Normyle and Phil Perlah were invited to speak and declined.

Naomi Johnson read the definition of Civic/Institutional use as follows: A non-profit religious or public use, such as a religious building, library, cemetery, public or private school, hospital or government-owned or -operated structure, or land used for public purpose.

Tom Hildreth moved to keep Civic/Institutional as a conditional use in the R-120 district. Randy Wiggin seconded the motion.

Randy Wiggin asked if we have any civic or institutional use in the R120 presently. Julie Hance said that there were cemeteries in every district and that Brookside Cemetery was being expanded. The motion passed.

COMMERCIAL BROADCAST FACILITY Naomi Johnson moved to replace Commercial Broadcast Facility with Wireless Communication Facility as a conditional use in the R-120 district. Tom Hildreth seconded the motion. The motion passed.

ENCLOSED STORAGE AND STORAGE BUILDINGS The board voted to include Enclosed Storage and Storage Buildings as a conditional use in the R-120 district.

FAMILY CHILD CARE FACILITY The board voted to include Family Child Care Facility in the R-120 district.

HEAVY CONSTRUCTION TRADES Randy Wiggin moved to include Heavy Construction Trades in the R-120 district. Tom Hildreth seconded the motion.

Phil Perlah said these uses do not align with the stated purpose of the R-120 district.

Michael Normyle urged the board to include the supplemental standard 2.5.E.1 as a requirement of the R-120 district. He read the standard as follows: New development and modifications to existing buildings and uses shall be consistent with the existing character of the area and compatible with adjacent land uses with respect to traffic, noise, vibrations and other impacts in conflict with residential and commercial uses. Michael said adding the supplemental standard would help the DRB when it works on a permit application.

A vote was taken and the motion passed.

SAWMILL Naomi Johnson moved to keep Sawmill as a conditional use in the R-120 district. Tom Hildreth seconded the motion.

Tom Hildreth asked if temporary sawmills should be added to the definition so that the DRB would review a situation where a sawmill is set up during a logging operation on a piece of property for a few months.

Naomi Johnson suggested that Agricultural/Forestry, a permitted use in the R-120 district, covered this type of sawmill. The definition of Agricultural/Forestry allows portable sawmills and excludes permanent sawmills.

Palmer Goodrich stated it was not common to use a portable sawmill. In his experience, landowners have only occasionally asked that logs be sawed where they were harvested.

Amy O'Neil said agricultural practices have to do with your own land and your own use. When a

person sells a product it becomes something else. If the board wants commercial sawmill as a conditional use in the R-120 district it has to be added. Generally, Forestry is defined as using your own land for your own purposes.

Michael Normyle read the definition of Sawmill from the bylaws as follows:” Facility where logs are cut into lumber.”

Tom Hildreth read the definition of Forestry from the bylaws: “The use and management of woodlands for purposes of timber production and harvesting for commercial, wild life and/or conservation purposes. This definition specifically excludes permanent sawmills, lumber yards and other similar facilities use for the processing and/or manufacturing of wood and wood products, but may include, as accessory uses, portable sawmills and equipment used on-site in association with timber harvesting operations.”

Randy Wiggin suggested that “for resale or commercial purposes” be added to the definition of sawmill. The motion was amended to include changing the definition of sawmill to include resale or commercial purposes.

The motion was re-seconded. The motion passed.

Wood Processing Randy Wiggin moved to include wood processing as a conditional use in the R-120 district. Naomi Johnson seconded the motion. The motion passed with 4 votes in favor and one abstention.

### **Including Supplemental Standard 2.5.E.1 in the R-120 district.**

Tom Bock read the standard from the bylaws as follows: “New development and modification to existing buildings shall be consistent with the existing character of the area and compatible with adjacent land uses with respect to traffic, noise, vibrations or other impacts in conflict with residential uses. “

Naomi Johnson said the board had intended to add this supplemental standard to the R-40 as well.

Amy O'Neil pointed out that there were actually 3 supplemental standards in article 2.5.E, the second being landscaping and screening. She said the adoption of 2.5.E.1 and 2 would help the DRB in its work.

Phil Perlah asked if the verbatim language in 2.5.E was being discussed. The standard was re-read into the record as follows: “New development and modifications to existing buildings and uses shall be consistent with the existing character of the area and compatible with adjacent land uses with respect to traffic, noise, vibrations or other impacts in conflict with residential and commercial uses.”

Amy O'Neil said that the word commercial at the end of the definition should be removed as the goal of the R-40 and R-120 districts is primarily to support residential development.

Tom Bock noted that 2.5.E.2 is screening and asked if that should be added as a specific standard for R-40 and R-120.

Michael Normyle said that landscaping is in the general standards now and an additional mention of it would be redundant.

Tom Bock read 2.5.E.3 “No setbacks shall be required for railroad-related uses from any lot line that abuts the railroad.” Discussion of the need for the standard followed. Amy O’Neil said that properties which abut the railroad generally own the land under the tracks and the state has an easement that allows the tracks to run over their land.

Naomi Johnson moved to add sections 2.5.E.1 and 2 to R-40 and R-120 Supplemental Standards with the exception of the last 3 words of 2.5.E.1., “and commercial uses”. Claudio Veliz seconded the motion. The motion passed.

Letters sent to the Planning Commission were discussed. Letters from Phil Perlah will be attached to the minutes. A letter from Marilyn Mahusky was read into the record. (The physical document is attached to the physical copy of the minutes filed at the Town Hall. The text of the letter is included at the end of the minutes document posted on the internet.)

Tom Bock invited comment on the letter.

Amy O’Neil said letters sent to the Planning Commission have not been part of the record and therefore not readily available to meeting attendees. She responded to the contents of the July 4<sup>th</sup> above and the June 20<sup>th</sup> letter included below as follows:

In response to the suggestion that heavy construction trades be added specifically to a parcel near the corner of Elm Street and Route 11, I offer the following: The parcel in question is the Gold River Industrial Park and I am one of two members (the other being my husband) of the Gold River Limited Liability Company which currently owns all 3 lots in the industrial park. This parcel is subject to many Chester Conditional Use permits and VT ACT 250 land permits. Conditional Use Application #345 was signed by all members of the Zoning Board of Adjustment on December 9, 1999 and authorizes the change of use of the US Talc Company property to heavy equipment/truck storage/maintenance and log transfer.

That permit is conditioned for use of only that portion of the total property currently enclosed by a chain-link fence. That is the area that M&M Excavating uses for its offices, shop, equipment storage and aggregate stockpiles. Aggregate has been brought in by rail since 2012 and is subject to the Transportation Act which prohibits state and municipal agencies from imposing conditions that interfere in the use of rail or rail yards. Subsequently, Lot 4, which is a 2-acre lot outside of the chain-link fence, was permitted by others for heavy construction trades. I believe that was in 2004.

The fact is Heavy Construction Trades have been coming in and out of the Industrial Park since 1999. There has not been “considerable noise, congestion and significant traffic” associated with the Industrial Park. The Park is ideally located near the intersection of two major highways and a railroad. It is located less than 10 miles from a federal highway. It is currently heavily screened from Route 11 and traffic is limited by the conditions of the land use permits. The Park has the potential to bring additional business to the Town of Chester. In fact, if Vermont was more business friendly we would sell and get completely out of Chester where portions of the community are and have always been downright hostile to blue collar workers.

In environmental land use it is common for opponents of projects to create stall tactics in order to cause applicants to become so frustrated they withdraw their application or become so mired in “red tape” that the project stalls. Given the erroneous and inflammatory nature of the letters, I believe this is the tactic the writers have adopted and I urge the Planning Commission to listen but not be swayed from



your path by their accusations. Which is really bullying.

Additionally, I believe I am the unnamed "DRB representative" described in the letter dated June 20. I am accused of urging the Planning Commission of swift adoption of the proposed bylaws. I will reiterate from the June 6 hearing; I said I was there for two reasons. First as a landowner that was specifically unhappy with Article 3.21 of the current bylaws, Parcels in Two or More Districts. I made the point that I own 3 lots which are primarily located in the Commercial/Industrial District but because all three have very small portions located in the Residential Commercial District, under the current regulations, Industrial Use would not be a conditional use. These lots are a covenanted industrial park dating back to 2003. How much sense does it make to restrict industrial use from an Industrial Park? Secondly, I am a DRB member who feels the current regulations are overly restrictive and an invitation for zoning violations. What is the point of zoning regulations if so little can be regulated that violations are common place and difficult to enforce?

As a landowner I urged the planning commission to pass the proposed regulations on to the Select Board. By law the Select Board must hold 2 additional hearings and then decide to adopt, deny or send to the town for a vote.

In conclusion I would say landowners have the right to use their property. The purpose of zoning regulations is to allow property owners their rights while protecting the community from unsafe and unsightly conditions.

(Secretary's note: Amy O'Neil forwarded an electronic copy of her remarks which I used here, after verifying that it corresponded to the words spoken at the meeting).

Tom Bock asked for more comments. Michael Normyle pointed out that Julie Hance had prepared a report called the Planning Commission Reporting Form for Municipal Bylaw Amendment and had written an introduction to the report with a cover letter dated April 24, 2016. The cover letter provided quite a bit of explanation and was included in the Board packet. This report was sent to the Planning Commissions of Ludlow, Cavendish, Baltimore, Rockingham, Springfield, Grafton, Windham, and Andover, the Windsor Regional Planning Commission, and the state Commissioner of Housing and Community Affairs. He said that if any of those recipients had seen a problem with the report they would have come back to the Chester Planning Commission and said that something was amiss. Notice of the report was posted on both the inside and outside bulletin boards at the Chester town office.

Marilyn Mahusky said that the notice was not likely to conform to statutory requirements. She said both the bylaws themselves and the report explaining changes were required to be distributed. She was unaware that the report existed until after the meeting. She was then given a copy of the report Michael Normyle described. She could possibly accept that the notice part of the statute was complied with, but not the report requirement. She says the report does not tell the homeowner, the resident, the land owner, the business owner, the resident, the commercial owner, the industrial owner what the changes are or why they are being made. It would be imprudent for the board to proceed with the process to change the bylaws given an apparent lack of a report that meets statutory requirements. She requested that her letter of June 20, 2016 be read into the record.

Tom Bock proposed that the letter be attached to the minutes and Marilyn agreed to that. Tom said he believed the Planning Commission reporting to be appropriate. He asked Michael Normyle what other reports needed to be written. Michael said he did not feel qualified to answer that. Tom agreed to discuss the issue outside the meeting. He would like the proposed changes to go to the select board in

the next 3 or 4 meetings. He said the door is not closed on any other changes. The select board can also take testimony, change the bylaws or send them back to the Planning Commission requesting changes. A week after the two boards agree on the bylaws more public testimony will be taken. The Planning Commission's goal for the next few meetings is to get the proposed changes to the Select Board and to determine and write the necessary reports.

Randy Wiggin moved to adjourn the meeting. Tom Hildreth seconded the motion. The motion passed.

## **Attachments to the July 5, 2016 Planning Commission minutes in order of receipt**

Letter from Philip Perlah to Town of Chester Planning Commission April 18, 2016

Dear Sirs and Madame:

I am writing in connection with the revised Chester United Development Bylaws (draft dated March 9, 2016). I am not able to attend the Planning Commission meeting to be held on April 18, 2016, but I am planning to attend the May 2<sup>nd</sup> meeting.

I am writing in my capacity as a property owner, not as a member of the Development Review Board. I am focusing my comments on the "Residential 120,000 (R120) District, although they may be relevant to other districts.

First, several of the new Permitted Uses and Conditional Uses are not defined or are inadequately defined. Building and Construction Trades: Enclosed Storage/Storage Building; Heavy Construction Trades; Sawmill. Those terms that are defined do not define the use that would be allowed. For example, the definition of Building and Construction Trades lists those occupations included within the use. How those trades would be exercised is not mentioned. Painting is included in the definition of Building and Construction Trades. However, after one has painted their structure (which I would submit any property owner has an absolute right to do) what happens? Similarly, the definition of Heavy Construction Trades list included subtrades, but does not provide guidance regarding the actual activities.

More importantly, most of these added uses are incompatible with a residential district. Green Mountain Turnpike is a bucolic, unpaved road with residences well-spaced. There are legacy agricultural/farming activities on the road, reinforcing its rural nature.

Heavy Construction Trades – this has been the subject of zoning enforcement action involving Carrera on Marc's Drive. The hearing before the DRB clearly demonstrated the incompatibility of Heavy Construction Trades in a residential district – large, noisy, smelly diesel tractors coming and going at all hours of the night, idling for long periods of time, air wrenches; oil spill polluting the ground water. Allowing Heavy Construction Trades will reward Mr. Carrera for the blatant disregard of the Development By-Laws.

Saw Mill – While a Saw Mill (however it is defined) is noisy and unsightly, it also involves heavy trucks coming and going, and heavy machinery unloading logs. Incompatible in a residential district.  
Private and Public Broadcast Facility – These uses, one permitted and one conditional seem to have a basis in the same definition of "Broadcast Facility". So, what is the difference between "public" and "private" in the Bylaws? It has been suggested that "Public" is a response to a vague US Government requirement. However the proposed Bylaw is not so limited and anyone could build a "private" Facility, or apply for a permit to build a "public". If this is somehow required by the US Government, the Bylaw is unnecessary, as the US Government could totally ignore our Bylaws (including any set back requirements). If so required, the town of Chester Bylaws and the US Government have apparently peacefully co-existed without this conditional use. "Private Broadcast Facility" should be a conditional use so the DRB can be sure that the structure complies with the overall Bylaws.

Civic/Institutional - Any of the uses in the definition of Civic/Institutional would generate traffic loads incompatible with a Residential District.

Best regards,  
Philip M. Perlah

Letter from Philip Perlah to Town of Chester Planning Commission May 5, 2016

Dear Sirs and Madame:

I am writing in connection with the revised Chester Unified Development Bylaws (draft dated April 6, 2016). I am not able to attend the Planning Commission meeting to be held on May 16, 2016.

I am writing in my capacity as a property owner, not as a member of the Development Review Board. I am focusing my comments on the "Residential 120,000 (R120) District, although they may be relevant to other districts.

The draft of the Chester Unified Development Bylaws (the "Bylaws) dated 04.26.2016 contains several additional permitted and conditional uses. Many of these added uses are incompatible with a residential district. Green Mountain Turnpike is a bucolic, unpaved road with residences well-spaced. There are legacy agricultural/farming activities on the road, reinforcing its rural nature. These additional uses involve heavy equipment traffic, diesel fumes, noise and are unsightly.

Equally significant, they are inconsistent with the proposed Chapter 10 of the Town Plan for Chester.

"Present Economic Conditions

"Chester is a quintessential Vermont town with a charming village center that is surrounded by a picturesque rural landscape." There is nothing picturesque about heavy excavation equipment, a sawmill or a wood processing facility.

"the remainder of the town is primarily rural in character, and current economic activities in these rural areal involve such things as farming, forestry, home occupations, inns and small-scale antique stores." Each of these activities are defined by the Bylaws and allowed in various districts.

Agricultural/Forestry, Tourist Lodging, Home Occupation and Home Office are current permitted or conditional uses in an R-120 district. The proposed changes in the Bylaws would greatly expand the economic activities in R-120.

"Rural Working Landscape

"the remainder of Chester is generally rural in character where farming and sustainable forestry activities are desired." These activities are currently permitted uses.

The additional uses contained in the 4.26.2016 draft of the Bylaws would alter the essential nature of the R-120 district. They would introduce commercial uses in a residential district.

Heavy Construction Trades -Heavy construction Trades is incompatible with a residential district and incompatible with a "picturesque rural landscape". Heavy construction equipment is large, noisy and smelly. It involves diesel tractors coming and going at all hours of the day and night: idling for long

periods of time; noisy air wrenches; oil spills polluting the ground water. Unpaved roads would be unduly stressed. I have attached three photographs (Exhibits I, II and III) showing an existing Heavy Construction Trades site in Chester. In addition, the definition of Heavy Construction Trades does not provide any inkling of what specific activities would be allowed – storage? maintenance? Washing? Is there any limit on the number of vehicles? Could the property owner store other people's vehicles for hire?

Saw Mill – while a Saw Mill is noisy and unsightly: it also involves heavy Trucks coming and going, and heavy machinery unloading logs. It is incompatible in a residential district.

Wood Processing – Wood processing is not substantially different than a Saw Mill in degree of noise, emissions, heavy equipment transporting and unloading logs. It is incompatible in a residential district and involves too many performance standards, general standards and specific standards to be allowed without DRB review and public input. The equipment utilized in sawmills and wood processing would unduly stress unpaved roads.

I have attached a photograph of either a Saw Mill or a Wood Processing Facility. It could be both, as Exhibit IV to demonstrate the scale, unsightliness and incompatibility with a “picturesque rural landscape.”

Civic/Institutional – Any of the uses in the definition of Civic/Institutional would generate traffic loads incompatible with a Residential District. These uses are better limited to the center of Town, to be easily accessible to the most people and convenient to other activities. Siting Civic/Institutional properties in an R-120 district will generate extra, unnecessary automobile trips, creating pollution and wasting non-renewable energy sources. Additionally, there are no municipal water or sanitary services in R-120 zone. A high use facility such as Civic/Institution would place an unreasonable environmental burden on the area and unduly stress the unpaved roads.

Enclosed Storage/Storage Building – The suggested definition is “A building used for *rent* as a storage unit.” (emphasis added). In other words, a commercial warehouse. First, where is the need for such a facility? Second, a blatantly commercial use has no place in a residential district. Third, there is not even a pretext of trying to help a self-employed tradesman. This is allowing an absentee landowner to build and rent a warehouse as an investment. Not inappropriate in a commercial/industrial district, but totally inappropriate in a residential district. Finally, “storage units” (warehouses) need to be proximate to major roads, which would not be the case in an R-120. Traffic generated by a warehouse would unduly stress unpaved roads.

Campground – A Campground would introduce high-density residence in an area that is not served by municipal water or sanitation. Traffic generated by such a high density use would unduly stress unpaved roads.

Merely because lots are larger in an R-120 district should not give license for a hodgepodge of assorted commercial, high density, traffic generating uses that are inconsistent with the proposed Town Plan. The R-120 is the essence of the “picturesque rural landscape” that is important to Chester.

Perhaps, the problem is that the existing districts have not been properly delineated and that the Planning Commission should re-examine them. For example, should a significant portion of the west

side of route 103 (on the east side there is a very narrow strip of land between 103 and the Williams River), from the American Legion building south to the Rockingham town line continue to be an R-40 district. Future development in this area will surely not be residential. Perhaps a combination of residential, commercial and maybe light industrial would be more appropriate.

The R-120 district is the most obvious part of town for new residential construction. Rather than despoil this district, an effort should be made to find appropriate locations for the industrial/commercial uses now being contemplated.

While the proposed Town Plan expresses concern about the visual impact on travelers along Route 103, it should be noted that a significant portion of Route 103 north of I-91 Exit 5 is in the Town of Rockingham. The Rockingham portion of Route 103 already contains unsightly motor vehicle facilities. The tourist traveling north on Route 103 doesn't readily distinguish between Rockingham and Chester. Perhaps we should relocate the "Welcome to Chester" sign further north to the American Legion area.

Conclusion:

Wood Processing;  
Campground;  
Civic Institutional;  
Heavy Construction Trades; and  
Sawmill should not be permitted or conditional uses in an R-120 district.

Wood Processing should certainly NOT be a permitted use.

Best regards,  
Philip M. Perlah





Exhibit I Route 103 south of Chester





Exhibit II Route 103 south of Chester



Exhibit III Route 103 south of Chester





Exhibit IV, presumably a sawmill or firewood processor.

Letter from Marilyn Mahusky, Kelly Arrison, Amy Mosher and Suzy Forlie to the Town of Chester Planning Commission June 20, 2016

Dear Planning Commission Members:

We write to express our concerns with respect to the proposed Unified Development Bylaws as posted on the Town's website <http://chestervt.gov/wp-content/uploads/2014/01/Unified-Development-Bylaws-1.pdf> (last visited June 15, 2016).

First we wish to thank the Planning Commission for its efforts, commitment and dedication. We appreciate the magnitude of the task. We question, however why the Town is considering changing the zoning requirement at this time when they were last changed less than two years ago. The current regulations were adopted on September 17, 2014 with an effective day of October 8, 2014. <http://chestervt.gov/wp-content/uploads/2013/07/Unifield-Development-Bylaws-effective-10.08.14.pdf> last visited June 15, 2016.

In the minutes of the May 16, 2016 Planning Commission Meeting, a Commission member reportedly stated: "that building and construction trades have been allowed in the R40 District for many years, as far back as 1993." An explanation offered for why the propose changes are being considered at this time is that "when the regulations were unified in 2014, there were some uses that had been allowed for many years that were inadvertently left out. These have been added back." <http://chestervt.gov/wp-content/uploads/2016/05/PC-Meeting-Minutes.pdf> . This rationale is insufficient to justify the proposed change, and as explained below does not comport with the statutory requirements of Title 24.

Moreover, while the Commissioner's statement may be technically correct with respect to this particular district, the 2007 Zoning Regulations (Footnote in the letter reads: "The 2007 zoning regulations appear to be the last iteration of the zoning regulations prior to the 2014 changes. They were, however, unable to be found on the Town website") do not include many of the uses being proposed. For example, in the 2007 regulations, "heavy construction trades and wood processing were not included among the conditional uses in the R40 district. "Private broadcast facilities" were not a permitted use in any of the districts. In the proposed regulations, they are added as a permitted use in all of the districts: "commercial broadcast facilities," "enclosed storage, storage building," "family child care facility, " "heavy construction trades" and "open air markets" were also not included in the list of conditional uses in the RC District, although building and construction trades and light industry were; "dog kennels" were not conditional uses in the commercial district in 2007; "wood processing" was not a conditional use in the C-R, R40, R120 or F districts and there was no A3 district.

The point in raising these concerns, which are not limited to the examples noted above is to ensure the Planning Commission is not adding uses in Article 2 that were previously removed for a reason. In other words, many changes to the bylaws must be thoughtful, considered, and defensible. Additionally, the Planning Commission, as noted above, must provide a written statement explaining its rationale for making any changes to the bylaws. Given the extent of the proposed uses in the proposed bylaws, both permitted and conditional, it is hard to believe the additional uses are merely technical, or were simply, inadvertently left out.

Another explanation offered by a DRB representative who was in attendance at the June 1, 2016 Planning Commission Meeting, who urged the swift adoption of these proposed bylaws, was that the proposed changes would provide the DRB with more guidance. A review of the proposed changes, in Article 2 belie this statement, with perhaps the exception of the change made to section 2.4.E.4, that reduces the size of a “building element” to 5000 square feet. Clearly the proposed changes to Article 2 focus almost exclusively on the addition of permitted and conditional uses. We specifically object to these proposed changes. The proposed changes to Article 3, however, may provide the DRB with guidance as they are substantially more specific, especially with respect to the “sign” requirements in Article 3.26.

With respect to Article 4, we agree with the amendment to Article 4.1 and 4.2 relative to “substantial completion.” this, too, gives the DRB more guidance. With respect to Conditional Uses, Article 4.8, assuming this article is properly changed in the future, we would request that under 4.8.C.1., a requirement be added that the DRB not approve any conditional uses that are inconsistent with the weight limits on bridges and roads.

Under the statute, “when considering an amendment to a bylaw, the planning commission shall prepare and approve a written report on the proposal.” 24 V.S.A §4441(c). The report must provide a brief explanation of the proposed bylaw, amendment, or repeal, shall include a statement of purpose, and include findings regarding how the proposal complies with a number of statutory requirements, including, that the proposal conforms with or furthers the goals and policies in the town plan, is compatible with the proposed future land uses and densities of the municipal plan, and carries out, if any specific proposals for planned community facilities. Section 4441(c). This means the Planning Commission was required to prepare a written report to accompany these proposed changes, and should have on file, a report from 2007 describing the changes proposed then. Without examination of the reports, and an explanation of why the changes are being made, it is difficult for residents to understand why the proposals are being made, what effect they will have on the town plan, and whether they are in the best interests of all Chester residents. These reports are required to be made available for public review, and a statement of the rationale behind the changes is required. Section 4441(g). the current Planning Commission, and the Commissions in existence in 2007 and 2014 do not appear to have complied with these provisions.

As the Commission is aware, the purpose of the bylaws, in part, is to implement the town plan. Section §4441(a). The Town website indicates that “[I]n 2016, the Chester Planning Commission is updating Chester Town Plan with a particular focus on economic development and flood resiliency.” <http://swcrpc.org/chester-town-plan-update-2016/> (last visited June 17, 2016). The current Town Plan expired on July 21, 2015. Instead of making changes to the proposed bylaws at this time, we belief the Planning Commission should focus its efforts on updating the Town Plan, and only then, update the Unified Development Bylaws to make them consistent with the Town Plan, as required by statute. Assuming a report is then prepared, with explanations for the proposed changes, the Planning Commission is likely to have more buy-in from the Towns residents, and can defend, in good faith, its decision making.

Finally, we question whether the proposed changes to the current bylaws are in fact minimal. It appears the proposed changes to the bylaws are in fact substantial, and make changes in the concept, meaning, or extent of the existing bylaws. As such, further consideration of the bylaws, especially with respect to any changes in Article 2, should be deferred until after the Planning Commission has

completed its work on the Chester Town Plan. The bylaws will need to be changed at that time in any event, to comply with and conform to the new Town Plan. Deferring further action on the proposed bylaws will not affect existing uses as they will be grand fathered, and development that is inconsistent with the revise Town Plan will be avoided.

For the above reasons, we respectfully request that the Planning Commission defer further consideration of the proposed Unified Development Bylaws, especially with respect to Article 2, and endeavor to focus its efforts, energy and time on developing a Town Plan that maintains the charm and rural character of Chester, encourages economic development that capitalizes on the beauty that surrounds us, provides meaningful work at livable wages and is consistent with responsible stewardship of our forests and land.

Sincerely,  
Marilyn Mahusky  
Kelly Arrison  
Amy Mosher  
Suzy Forlie

Letter from Marilyn Mahusky and Amy Mosher to Town of Chester Planning Commission July 4, 2016 read at the July 5, 2016 meeting.

July 4, 2016

Dear Chairman Bock and Planning Commission Members:

We are writing to renew our request (See letter dated June 20, 2016) (Attached) that the Planning Commission defer further consideration of the proposed Unified Development Bylaws (UDB) until and after completion of the new Town Plan. We believe, contrary to the assertions of the Zoning Administrator and others, that the proposed changes are in fact significant and will, if adopted, dramatically alter the nature and character of our town.

For example, the proposed bylaws will:

1. Eliminate the requirement in Article 3.21 that when a parcel is located in two or more districts the proposed use or structure must meet the more restrictive district standard. Eliminating this provision would permit a change in the boundary line between what is currently a Residential Commercial district to an Industrial District. Instead of complying with the more restrictive requirement of the RC district the landowners of the property near the corner of Elm Street and Route 11 would be permitted to develop heavy construction along a major corridor for travelers, commuters, walkers and cyclists. Heavy construction trades coming in and out of Route 11 at that location will result in considerable noise, congestion and significant traffic in all directions. The fact that this boundary line change is made for the benefit of a single landowner is highly troubling. (See June 15, 2015 meeting minutes) and raises the question of whether the change could be characterized as “spot zoning.”
2. Permit uses not previously allowed in all districts, or that were removed by changes to the 2014 UDBs. For example:
  - a) HEAVY CONSTRUCTION TRADES defined to include “earth moving, excavation, trucking and paving” would be an allowable conditional use in each of the following districts: RC, CI, R40, A3 and R120. In the 2007 Zoning Regulations, heavy construction trades was a permissible conditional use in only two districts, the Commercial Districts (there was no Industrial District in 2007) and the R80. Under the 2014 UDBs, heavy construction trades is not a permitted conditional use in any district. As noted by Mr. Perlah in his April 18 and May 5, 2016 letters to the Planning Commission, most of the proposed added uses, including the heavy construction trades are incompatible uses within any of the residential districts. Before proceeding further, the Commission should: 1) define this use so that it is understood what actual activities are permitted within the use, and, 2) if it is permitted in any district, it should be limited to the existing CI District. We would argue, however, that the impact of heavy construction trades in the CI district would have an undue adverse impact on the surrounding districts, including along the R20 (Green Mountain Turnpike between Flamstead Road and Route 11), the R40 (along Route 11 between the railroad tracks and Green Mountain Turnpike), and the R20 districts (along Route 11 between the railroad tracks and the intersection of Route 103).
  - b) WOOD PROCESSING defined as “commercial processing of firewood for sale” is being

added as a conditional use in each of the R40, A3, R120, Conservation Residential (DCR) and Forest(F) districts. SAWMILL is proposed as a conditional use in the R120 and CR. Again, as noted by Mr. Perlah in his May 5, 2016 letter, "Wood Processing is not substantially different than a saw mill in degree of noise, emissions, heavy equipment transporting and unloading logs. It is incompatible in a residential district." We agree with Mr. Perlah, that wood processing and sawmill (defined as: facility where logs are cut into lumber) should not be permitted or conditional uses in or near any residential district.

- c) BUILDING AND CONSTRUCTION TRADES – defined by trade or occupation, *e.g.*, "includes, but not limited to, plumbing, electrical, carpentry, painting, masonry, roofing and building foundations, are being added in almost every district: VC, RC, CI, SV, R20, R40, A3, R120, CR and F. Since building and construction trades was not included in the 2014 revision to the UDBs, we question why they are being added in each of these districts at this time without specific findings as to their compatibility in each of the districts. Just because BCT was a conditional use in some districts in 2007 doesn't necessarily mean it should be considered a permitted or conditional use in those districts now.

Additionally, we believe that adoption of the proposed bylaws, at this time, would be premature. As noted in our June 20, 2016 letter, Title 24 requires that the municipality, in this instance, the Planning Commission, shall prepare a report, and "the report shall provide a brief explanation of the proposed bylaw... and shall include a statement of purpose... and shall include findings regarding how the proposal .. (2) is compatible with the proposed future land uses and densities of the municipal plan." 24 V.S.A. s.4441(c)(2). It appears the undated "report" sent to neighboring communities fails to comply with these statutory requirements, and consequently, that a reviewing body would require a more detailed and specific explanation of the proposed changes than has been provided. For this reason, we believe it would be inappropriate for the Planning Commission to proceed with adoption of the proposed bylaws.

Again, we urge the Planning Commission to defer further consideration of the proposed bylaws until after it has completed its work on the Town Plan. Once the Town Plan is revised, the Planning Commission should reevaluate each use within each district and make a specific finding as to why it, or any other use, should be added (or removed) from any district. Given the impact these changes have on our community, a specific determination should be made in each instance to ensure it is compatible with the Town Plan. For examples of reports prepared and disseminated by other towns, that appear to be compliant with the statutory requirements, the Planning Commission might wish to review reports from the towns of Shelburne and Burke. (Attached).

Thank you for your consideration.  
Marilyn Mahusky  
Amy Mosher.

E-mail from Randy Miles to Michael Normyle received Tuesday July 5, 2016

Dear Members of the Planning Commission,

Please accept this letter in my absence as I am on vacation with my family, but feel it is important that



I express my concerns at tonight's meeting.

My name is Randy Miles. I am the owner of Front to Back Landscaping Supply Co. I have been in business in Chester for 7 years now. I am writing this letter in regards to the ongoing zoning discussion. I have read a letter in the Chester Telegraph, written today. It is against wood processing in our town. I feel this would be a big step backwards for our town and businesses that are left. As a business owner, family man and resident of Chester, I feel we need to have a good balance between support for local businesses to open and grow and the effort of keeping the village intact. I would like to make the following points in support of that goal:

- 1) Allow more area outside the village for businesses to come and grow, such as the areas of Routes 10, 11 and 103.
- 2) More business translates to local jobs and local revenue for our town and not surrounding ones. We have the traffic no matter the outcome.
- 3) Allow existing businesses to grow in hopes of keeping families in our town and state.
- 4) It's wrong to pick and choose by discrimination, which businesses are not allowed in our town. (Conditional use permitting regulates which businesses are appropriate or not in their requested locations).
- 5) Times have changed and so should Chester. Chester used to have a work force based in Springfield, but this is no longer the case. Now our work force is spread out of state and so has the buying of goods. We need to do more to support our businesses in town.
- 6) Finally, it is imperative to recognize that the discussion of these zoning changes has been going on for 2 years now. I feel the board has done due diligence publicly and should continue to move forward for the benefit of all its citizens and business owners.

Thank you for your time,

Randy Miles

Fellow citizen and business owner of Front to Back Landscaping Supply Co.