

**TOWN OF CHESTER
PLANNING COMMISSION**

July 16, 2018 Minutes

Commission Members Present: Naomi Johnson, Claudio Veliz, Tim Roper, Barre Pinske, Cheryl Joy Lipton.

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

Citizens Present: Jim Carroll, Carla Westine, Arne Jonynas.

Call to Order

Chair Naomi Johnson called the meeting to order at 6:00 PM. The unusual hour confused some members and phone calls were placed to collect the full Commission.

Agenda Item 1 Review the minutes from the July 2, 2018 meeting

Tim Roper moved to accept the July 2, 2018 minutes. Barre Pinske seconded the motion. Tim Roper had 2 corrections on page 2. In the third paragraph the sentence that read, in part, “David Pisha also spoken” should have read, “David Pisha had also spoken.” The sentence that read, “The Planning Commission is needed because the current bylaws do not allow a fuel station anywhere in town and the bylaw need to be changed” was changed to “The Planning Commission is needed because the current bylaws do not allow a fuel station anywhere in town and the bylaws need to be changed.” Michael Normyle pointed out that fuel stations were actually allowed in the Commercial Industrial and Residential Commercial districts. The minutes were amended to say so at the bottom page 1, describing the Planning Commission meeting where Sheldon Ghetler brought up the subject, and in the sentence on page 2 mentioned above. No other corrections were requested. A vote was taken and the minutes were accepted as amended.

The minutes for June 21 were not discussed as the amended version had not been distributed with the packet,

Agenda Item 2 Citizen Comments

There were no citizen comments.

Agenda Item 3 Orientation and continuing education from Attorney Jim Carroll

Chair Naomi Johnson introduced the Town of Chester’s Attorney Jim Carroll. Jim discussed the present structure of Land Use regulation in Chester, the history of the structure, the powers and duties of the Planning Commission, how Open Meeting Laws affect the Planning Commission’s work process and meeting schedules, and how the Conflict of Interest policy adopted by the Chester Selectboard applies to the Planning Commission. The points he made are summarized here.

The current structure of Land Use regulation is a result of the 2007 Municipal Administrative Procedures Act (MAPA). This act recognized that the burden of property subdivision hearings which were the responsibility of the Planning Commission was preventing the Planning Commission from focusing on their primary job, which was the planning process. MAPA

offered a few different options for reorganizing the work of Land Use regulation. Chester chose to create a Development Review Board to hear both subdivision and conditional use applications, relieving the Planning Commission of that quasi-judicial function. The details of Chester's choices are laid out in a resolution from the Chester Selectboard dated June 7, 2007. Jim Carroll had distributed copies of the resolution and discussed the details with the Commission. The resolution specified that the Chester DRB will hear subdivision and conditional use applications "on the record", meaning that an applicant may only appeal a decision based on a procedural error on the part of the DRB or an error in interpreting the bylaws. An appeal of a decision to the Environmental Court from an "on the record" hearing in front of the Chester DRB will not result in a fresh hearing of the case where the original and possibly new evidence and arguments may be presented to the Environmental Court. The choice of an "on the record" hearing puts pressure on the Chester Development Review Board and the Zoning Administrator to keep good records of the application and hearing process and to craft Findings and Conclusions documents that are detailed and complete enough to meet the Environmental Court standards. Jim Carroll said he knew of only 12 towns which chose the "on the record" format for their Development Review Board hearings.

Jim Carroll described the three functions of Land Use regulation as they are structured in Chester after the implementation of MAPA.

The legislative function belongs to the Planning Commission. The Planning Commission's job is to gather input from citizens and write the Town Plan based on citizen input. The Town Plan should describe the town the citizens want to have. The bylaws should flow from the Town Plan. The bylaws are the structure that will shape the town the citizens told the Planning Commission they wanted.

The state has defined a procedure for public hearings that must be followed before changes to the Town Plan or bylaws can be accepted as law. In answer to a question from Michael Normyle, Jim Carroll said the procedure must be followed, no matter how minor the change may be. The Selectboard must approve every change, and in that respect, they are ex-officio members of the Planning Commission.

The administrative function belongs to the Zoning Administrator. That person accepts building permit and change of use applications, decides which applications must have a hearing before the Development Review Board, issues building permits when the bylaws allow it, notes violations of the bylaws and conditional use permit conditions, takes the enforcement actions allowed to the zoning administrator position and initiates further enforcement actions as needed.

The quasi-judicial functions of hearing subdivision and conditional use applications and zoning violations are performed by the Development Review Board. Their hearings are more complex than the meetings held by the Planning Commission. The hearings must address the statutory rights of the applicant, the abutters and other interested parties. Jim Carroll pointed out that the present members of the Development Review Board are doing a good job with the hearing process and are producing decisions that meet the standards of the Environmental Court. He also said that the members of the DRB will change over time and new members could possibly cause a lapse in quality. This has not happened in Chester.

After the overview of the Land Use regulation process, Jim Carroll discussed Title 24, §4325, the powers and duties of the planning commission in detail. He noted that the Planning Commission has a duty to collect input from citizens. Claudio Veliz asked for the definition of "actively seek"

which is mentioned as a task for the Planning Commission in the power point presentation Jim Carroll distributed. Jim Carroll said the statutes require that the public be informed of Planning Commission meetings and of each citizen's right to participate.

Jim Carroll explained that the Planning Commission may spend money allocated to them by the Selectboard. They may hire staff or experts to assist them with planning. Barre Pinske said he appreciated the work that Brandy Saxton had done in analyzing the gap between the bylaws and the goals and objectives set forth in the Town Plan. He asked Jim Carroll how the Planning Commission should view her work. Should it simply rubber stamp her output? Jim Carroll said the Planning Commission had a responsibility to review the work with the interests of the citizens of Chester in mind. The Planning Commission was not obliged to simply accept her work. Michael Normyle said in past years he saw the Planning Commission turn down work done by prior consultants.

The Planning Commission is also in charge of writing the Town Plan and bylaws. Jim Carroll offered three pieces of advice on writing. He said that a town cannot regulate something without clearly defining what it is. He said Vermont statute had to define robbery clearly before it could arrest someone for committing robbery. He said a bylaw provision could be found "void for vagueness" if it was not specific enough. He said the same is true for laudatory language in the Town Plan. The DRB cannot use laudatory language in the Town Plan to justify its interpretation of the bylaws when making a decision on a conditional use application. Finally, in response to a question from Barre Pinske about looking at both sides of an issue, Jim Carroll said it would serve the Planning Commission well to look at both sides of a proposed bylaw and see what objections might be raised. The Planning Commission should consider whether the objections could be addressed in the bylaw as they are writing it.

The Commission members discussed the Conflict of Interest policy at length. The Planning Commission is covered by the Conflict of Interest policy adopted by the Selectboard in November 2016. The Development Review Board has had its own Conflict of Interest policy since the MAPA reorganization in 2007. Jim Carroll had distributed a copy of the Chester Selectboard's Conflict of Interest policy. The Planning Commission's work would be covered by the document under Article 4.A.1's definition of conflict of interest, "A direct or indirect personal or financial interest of a public officer, his or her spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother- or sister-in law, business associate, or employer or employee in the outcome of a cause, proceeding, application, or any other matter pending before the officer or before the public body in which he or she holds office or is employed."

Tim Roper, who works in the solar energy industry, and Cheryl Joy Lipton, who is a landscape architect and ecologist, were particularly concerned about whether their professions represent a conflict of interest when the Commission is discussing energy policy or land use issues. Jim Carroll explained that whenever any member has a concern about a conflict of interest, the best action to take is to share their concern with the rest of the Commission. However, the simple fact that a Commission member is employed in an industry being discussed by the Commission does not represent a conflict of interest. No conflict could exist until something concrete, such as the firm owned by a Commissioner, or employing a Commissioner, competing for a contract to install solar equipment in Chester, occurred. There would be a conflict of interest if the Planning Commission had to amend the bylaws before the installation could go forward.

Another example cited was spot zoning, where a specific piece of property was allowed to have a specific conditional use not allowed anywhere else in the district. If a Planning Commission member or anyone related to the member as listed above had a financial interest in the conditional use being allowed, it would be a conflict of interest. The simple fact that a member's taxes may rise, like everyone else's taxes, as a result of a Planning Commission action, does not represent a conflict of interest. Cheryl Joy Lipton asked what the word "personal" in the phrase, "direct or indirect personal or financial interest" meant. Jim Carroll explained that it referred to a financial interest belonging to any of the relationships listed in the definition quoted above.

The Commission discussed what would happen when a member recused himself or herself on a specific topic. Jim Carroll said that member would not vote on any specific motions connected with that topic. However, if the Commission is voting on the entire Town Plan or bylaws, or a group of changes of which the recused item is only one of several changes, the recused member may vote on those motions.

Jim Carroll noted that no one may force a Commission member to recuse himself or herself. The Commission may recommend that a member recuse himself or herself, but the decision to recuse is left to the Commission member. He also noted that the Selectboard may remove a Commissioner with or without cause. This is different from the Development Review Board members, who only may be removed for cause. There are also no alternates for the Planning Commission. If more than two members recuse themselves, the Commission would lack a quorum on the topic. There was no discussion of how that issue would be resolved.

The Commission discussed how the open meeting laws would affect their work process. Claudio Veliz and Cheryl Joy Lipton were working together on solid waste recycling information to present to the Commission. They wanted to know if they needed to put out a notice of their meetings. Jim Carroll said that, since two people did not represent a quorum, the meeting did not need to have a notice posted. Meetings that happen outside of the scheduled time of the first and third Mondays of the month at 7:00 PM are called "special" meetings and the notice of those meetings must identify them as "special". Any newspaper or other entity who has asked for notification of Planning Commission meetings must be notified of "special" meetings. Setting up a subcommittee to work on a specific project when the Commission only has five members, can entail a lot of extra work to be sure notices are sent out properly. Jim Carroll included a copy of Chapter 5 §312, the open meeting law, in the materials.

The relationship between the Town Plan and the bylaws was another topic of discussion. Claudio asked if one document had legal precedence over the other. Jim Carroll explained that in a quasi-judicial context, the bylaws have precedence. The Town Plan can guide interpretation of the bylaws. The Town Plan has many objectives listed and Jim Carroll said those objectives are often in conflict with each other. One objective having to do with energy use can conflict with historic preservation objectives of not changing an historic building. It is hoped that a DRB decision can reflect the spirit of the Town Plan, which, in turn, reflects the will of the community. Claudio also asked about interactions between the Town Plan, the bylaws and Act 250. Jim Carroll said the DRB is allowed to review three local criteria for Act 250 hearings. The DRB would hold a hearing and produce a Findings and Conclusions document based on what was presented at the hearing. Carla Westine and Michael Normyle agreed that no local criteria hearings had been held for any Act 250 applications in Chester.

Jim Carroll also reviewed the enforcement process with the Commission members. Land use offenses are the only offenses covered in the bylaws. Jim Carroll note that Chester had recently passed a junkyard ordinance, but the ordinance was not part of the bylaws, it was not based on land use rules. The junkyard ordinance was more like a speed limit that the town enforced. For Land Use enforcement Jim Carroll referred to a diagram drawn by the Vermont League of Cities and Towns. It was a flow chart of three different enforcement proceedings which can take place. The first proceeding on the left side of the chart showed the process for a notice of violation issued by the Zoning Administrator or a refusal to act by the Zoning Administrator. In each case, the action may be appealed by an interested party within 15 days to an appropriate municipal panel. In Chester, the appropriate panel is the Development Review Board. The decision from the DRB may be appealed to the Environmental Court, and that decision may be appealed to the Vermont Supreme Court. On the right side of the chart is the Judicial Bureau Enforcement leg where the Zoning Administrator writes the equivalent of a traffic ticket for a zoning offense. Chester can utilize this option. The action may be appealed to the superior court criminal division and that decision may be appealed to the Supreme Court. The Zoning Administrator may issue the ticket without consulting a lawyer, which saves the town money and time.

Barre Pinsky asked how civil rights for citizens are affected by the bylaws the Planning Commission writes. Jim Carroll said that the Supreme Court had decided that zoning bylaws could be written and enforced without infringing on the rights of citizens. The Zoning Administrator and the Development Review Board have procedures for notification that they must follow in order to honor the rights of the applicant, the abutters and other interested parties.

Agenda Item 5 Set the date for the next meeting

The next meeting of the Planning Commission will be August 6, 2018 at 7:00 PM.

Tim Roper moved to adjourn the meeting. Claudio Veliz seconded the motion. A vote was taken and the motion passed.