

# TOWN OF CHESTER PLANNING COMMISSION

## June 20, 2016 Minutes

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

**Staff Present:** Michael Normyle, Zoning Administrator.

**Visitors: Secretary's note:** There was no sign in sheet from this meeting to complete the Visitor's list. The recording secretary is using the audio recording of the meeting to create the minutes. Whenever possible, the speaker has been identified by name, but without a video recording to help identify the speakers, some speakers are not named.

### Agenda Item 1, minutes of the last meeting

The meeting opened with a review of the June 6, 2016 meeting minutes. Randy Wiggin moved to accept the minutes. Tom Hildreth seconded the motion. Claudio Veliz asked to change one word in the second paragraph of Item 2 Public Hearing UDB Amendments. The motion to accept the minutes with one amendment passed.

### Agenda Item 2, definition of Forestry

A letter from Peter Hudkins regarding the definition of Forestry was received. The letter was read into the record. (In the physical copy of the minutes the letter is attached at the end of the documents. In the minutes posted on the internet, the text of the letter can be found at the end of the document.)

Discussion of the proposed change to the definition of Forestry was opened.

Tom Bock said that the Police Department has a responsibility to protect town roads from vehicles exceeding the weight limit and they constantly cite violations. Tom did not object to adding the words suggested by Peter Hudkins to the definition of Forestry.

A citizen stated that the words to be included would add the equipment Peter Hudkins currently uses to the list of legal equipment.

Tom Bock pointed out that the change would help protect town roads in general.

A citizen said the change did not mention chippers.

Tom Bock said that the letter did mention chippers in regards to loads of 60,000 pounds of chipped wood.

Claudio Veliz asked if there were situations toward the center of town where limiting or allowing small scale wood processing would have an impact on existing businesses. No one could think of one. Tom Bock said there was a large chipping operation being conducted on Smokeshire Road. The police had been monitoring the the size of trucks servicing the operation.

Amy Mosher asked how the town has been enforcing the weight limits on town roads and bridges. She has not observed any enforcement.

Tom Bock said he knows town agencies have been monitoring loads of stone and gravel and that there has been severe damage to bridges from over-heavy loads, which violators have paid to repair. Naomi Johnson said the discussion had merit, but the Planning Commission did not have the power to enforce regulations. After a short discussion of whether load limits were posted on bridges, Naomi said she saw Peter Hudkin's letter as asking that small firewood processing operations be included in the definition of Forestry.

Claudio Veliz said he had no problem with small to moderate scale firewood operations at some distance from town.

Amy Mosher (?) felt there should be a distinction between a small scale firewood operation using small trucks and selling to a few people and large scale operations using tractor trailers to haul logs and cherry pickers to unload them.

Some people requested a clearer definition of a firewood processor. Naomi and others described a typical firewood processor as a machine that cuts and splits logs into firewood. Such machines are being manufactured in Ludlow.

Michael Normyle urged a change to the definition and letting the Development Review Board distinguish between an operation processing tractor trailers full of logs and a portable firewood processor operating at a log landing.

Marilyn Mahusky suggested that it was premature to change a definition if the Planning Commission itself could not define wood processing. She did not think the DRB could make decisions about proposed uses if they don't have clear definitions to work with.

Claudio Veliz asked if the length of the wood leaving the site would be a way to define acceptable uses. Tom Bock responded that he thought the number of cords of firewood processed would be a good way to to define an acceptable use.

Michael Normyle told the board that the DRB has handled 2 applications to process firewood recently. One had to be turned down based on the list of permitted uses, despite the board's feeling that this would be an appropriate use of the land. The second application did not proceed, even though firewood processing was a permitted use in the district. In that case there were several factors which caused the application to be withdrawn, including the size of the lot and noise standards.

Shawn Cunningham commented that the definition of Forestry was more concerned with managing woodlands and not producing wood products from the timber.

Naomi Johnson said she felt cutting up firewood was part of Forestry and firewood processing belonged in the definition.

Naomi moved to accept the change suggested by Peter Hudkins. Randy Wiggin seconded the motion. The motion passed unanimously.

### **Agenda item 3, definition of undue adverse effects**

The Development Review Board had suggested that a definition of undue adverse effects would help them in their work. Tom Bock read a proposed definition of undue adverse effects which Michael Normyle said had been used in several court cases.

Under the Quechee test, an adverse effect is considered “undue” when a positive finding is reached regarding any one of the following factors

- a) Does the project violate a clear, written community standard intended to preserve the aesthetics or the scenic beauty of the area?
- b) Has the applicant failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings?
- c) Does the project offend the sensibilities of the average person? Is it offensive or shocking, because it is out of character with its surroundings, or significantly diminishes the scenic qualities of the area.

Discussion of the proposed definition followed. Tom Hildreth checked to be sure that this addressed undue adverse effects only, not adverse effects in general. Michael Normyle confirmed that it did only pertain to undue adverse effects.

Claudio Veliz said that this topic was a very important item, aspirational in nature, and needed more specificity.

Naomi Johnson asked if Claudio felt the definition wording needed more clarity. Claudio replied that the concept of undue adverse effects was aspirational and could not be quantified the way square footage in a building could.

It was suggested that the bylaws could refer to the state statute that addresses this, thus keeping the bylaws a shorter document.

Other people suggested that the statute could be changed for several reasons and wasn't a fixed point and that a concept such as undue adverse effect would be defined by case law. Tom Brock said the definition he read was part of an Act 250 decision.

Naomi Johnson moved to accept the definition given in order to give the DRB the ability to quote from the town's regulations instead of saying that it is case law. Tom Hildreth seconded the motion.

Shawn Cunningham asked when in a DRB hearing does adverse effect come up. Tom Bock replied that it is part of a conditional use hearing. Naomi Johnson read Article 4.8.C.1 of the proposed bylaws: “These general standards shall require that any conditional use proposed for any district created under these Bylaws shall not result in any undue adverse effect to:” a list of 5 standards follows. Naomi said this article explains the importance of defining undue adverse effects.

Shawn Cunningham suggested that the town attorney be consulted before adding language to the bylaws from the Quechee Lakes case. He said the test can be very restrictive and may not serve the needs of local zoning law.

Claudio said that the Quechee Lakes test was a core element of Act 250 and that by including that language in the zoning bylaws, Chester would be imposing Act 250 on projects applying for a permit in Chester. Tom pointed out that there are several other criteria in Act 250. Claudio replied that this criteria is one of the narrowest in Act 250 and by putting it in the Bylaws, the Bylaws become as restrictive as Act 250.

Tom Hildreth (?) asked if this isn't what the Development Review Board does now. Tom Bock said yes it was. Marilyn Mahusky suggested that no one was sure that this was the current Act 250 definition and that an attorney should be consulted before the language was added to the Bylaws.

Naomi Johnson and Michael Normyle said that the DRB had been using these concepts for years. Michael cited Bruce McEnaney using the average person's sensibilities standard while working on the Dollar General hearing. Doug Somerville (?) said that this was only one item of ten criteria in Act 250 and that any clarification or definition that can be given to the DRB should be given. Claudio asked if the town attorney's response would be posted on the bulletin boards. Naomi Johnson said the response would be included in the board packet and the board packet is subject to public review.

Naomi Johnson amended the motion to say pending the approval of the town's attorney. The amendment was seconded. The motion passed.

A discussion about sending the amended bylaws to the select board for approval and implementation was opened. Tom Bock said that there were citizens who were waiting for the new bylaws before they put up signage, or proceeded with a project. In addition, a grant to fund work on the Town Plan was going to expire in November. The current town plan is an extension of one that expired in 2015. The commission needs to begin work on the new town plan.

Naomi Johnson acknowledged that some people are concerned that the Planning Commission is moving rapidly. She went over the timeline of the current group of bylaw changes. In the summer of 2015 the DRB gave the Planning Commission a list of issues they saw with the bylaws. The Planning Commission discussed the list and decided they wanted to address the sign regulations of the bylaws first.

In September 2015 the commission started going through the list from the DRB item by item. They also began looking at the Town Plan. Once they had considered all the items on the list and items Michael Normyle brought to them, as well as issues they saw in their own review, they created a document to bring to the Select Board and scheduled public meetings to review the changes. There have been 2 meetings of public comments. The commission would like to review the changes to the R-40 and R-120 districts in a public meeting.

Marilyn Mahusky said that she has significant concerns about the proposed bylaw changes. She feels the Commission did not prepare a proper written report with sufficient explanation for the proposed changes before the public meetings were held. She believes this report to be a statutory requirement and that the Commission should not proceed with the process of adopting the changes to the bylaws until the requirement is met. Tom Bock summarized a response he had from Julie Hance that disagreed with Marilyn's assertion that the required reports were not provided. Naomi Johnson stated that the required reports have been completed and copies were mailed to Marilyn. Sections of the report and statute in question were read aloud.

Claudio Veliz expressed concern about a number of uses that were added in the last 4 months with only "it was there before" as a justification. He would like to review those added uses or vacate them. Michael Normyle asked to clarify that Julie Hance had been given the task of gathering the all the reports involved in the bylaw amendment process, posting them on the town hall bulletin board, mailing them to concerned parties and having copies on hand for anyone who wants them.

Phil Perlah suggested that the added uses be postponed, the town plan issues be addressed and then the additional uses be considered. Tom Bock said the uses were added because he had had a request from the DRB for more specific uses, but he said it was possible that he misunderstood the request. Naomi Johnson cited several sources of requests to amend the bylaws including the DRB and private citizens. There were also omissions in the October 2014 version. She felt it was appropriate to review the changes of use proposed for the R-40 and R-120 district. Claudio Veliz reiterated his concern that the last group of uses added was not fully justified.

An effort to review the R-40 use changes began. It was discovered that members of the board and the audience had different versions of the Bylaws. Some had a March 9<sup>th</sup> version, others an April 26<sup>th</sup> version. The suggestion that there were insignificant differences between the two versions was not accepted by Phil Perlah and Marilyn Mahusky. Ms Mahusky proposed that only Article 3 and 4 changes be sent to the Select Board. Randy Wiggins reminded the audience that Commission approval did not mean that the changes would automatically become law. Naomi Johnson suggested that, as the board goes through the proposed changes to uses in the R-40 and R-120 districts, Ms Mahusky may hear answers to some of the questions she brought forward in her June 20, 2016 letter.

Phil Perlah reiterated that there were two versions of the proposed bylaw changes in circulation at the meeting, which would make discussing changes very difficult. He asked if a letter he submitted to the board after the May 2<sup>nd</sup> meeting had been received by the members. More discussion about who had what version of both Phil's letter and the proposed bylaw changes continued.

It was finally agreed that the board would meet on July 5, 2016 to discuss the use changes to the R-40 and R-120 districts. In the interim, minutes, letters from the DRB and citizens to the Commission would be made available at the Town Hall.

Huzon Stewart asked if the changes to the Bylaws concerning his property could be sent to the Select Board. Tom Bock said the changes had to go to the Board as a package. Gail Stewart said that animal kennels were allowed in several zoning districts, it was not completely forbidden in Chester as had been stated earlier..

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

Text of a letter from Peter Hudkins to the Chester Planning Commission

Dear Board,

Cutting firewood on a log landing has been going on for hundreds of years and is not a new concept. The forestry definition in the Unified Development Bylaws of the town of Chester was written in 1974 when the zone regulations were first added. The changes and mechanization of the timber industry could hardly be imagined 50 years ago.

First, I do log with horses or a tractor. I do process firewood with a diesel processor on the landing of the parcel that I am working on. I have previously looked on this activity as part of the Forestry zoning definition and therefore an allowable use as it is part of the harvest. This has been my practice since 2004. Is creating a value added product commensal the answer is yes, but all forestry is commensal. I am generating a value added product from a cull tree that I am removing as part of a timber stand improvement (TSI) that is part of many forest plans. The firewood is then hauled two cords of firewood in a trailer behind a pickup truck that is less than 16,000 pounds. The combined load is under any bridge capacity in any of the areas that I work in and well under the 24,000 pound weight limit of any town road.

I do not bring loaded log trucks on to my property to process into firewood. The 22% grade and 9 foot width of the town road makes this impractical. Bringing a loaded log truck would also overload the road.

If the same tree could be pout into a 150 horse power chipper and hauled out in a truck weighing in excess of 90,000 pounds, it would overload any town bridge or road. The massive chipping operations with millions of dollars worth of equipment is not going to be regulated by the revised bylaws. This is a great deal more commercial and has a much larger impact than a firewood processor on a log landing.

During the course of a year, I have customers who fulfill their state land use forest plans by having a TST performed in their forest. The trees are harvested and the logs are then processed on site into firewood for their own use. There is no impact on any road.

I strongly believe that Firewood Processing where logs are trucked in needs to be strongly regulated because of weight of trucks bringing logs in for processing. There are no town roads that are designed for the weight of these loaded trucks.

I would propose the following change to the Forestry Definition:

**FORESTRY:** The use and management of woodlands for purposes of timber production and harvesting for commercial, wildlife and/or conservation purposes. This definition specifically excludes permanent sawmills, lumber yards and other similar facilities used for the processing and/or manufacturing of wood and wood products; but may include as accessory uses,

portable sawmills, (Firewood Processors) and equipment used on-site in association with Timber harvesting operations.

This would encourage the use of small trucks delivering wood and have smaller impact on roads.

Thank you for your time and consideration. As a past member of the Chester Board of Adjustment and of the Development Review Board I understand the revising of the zoning regulations is a tedious and arduous task at best and will always be controversial.

Peter Hudkins