

TOWN OF CHESTER
DEVELOPMENT REVIEW BOARD
DRAFT MINUTES

July 25, 2016

BOARD MEMBERS PRESENT: Phil Perlah, Carla Westine, Harry Goodell and Amy O'Neil

STAFF PRESENT: Michael Normyle, Zoning Administrator, Cathy Hasbrouck, Recording Secretary

OTHERS PRESENT: Tom Bock, Kelly Spaulding, Roy Spaulding, Bill Lindsay, Suzy Forlie, Jerry Stewart, Gail Stewart, Kelly Arrison

CALL TO ORDER

The meeting was called to order at 6:00 P.M. by Chair Carla Westine, followed by reciting the Pledge of Allegiance and an introduction of board members present.

AGENDA ITEM 1

Re-organizational Meeting

Michael Normyle announced that Frank Bidwell has been approved as an alternate member of the Development Review Board. Carla Westine announced that Harry Goodell and Phil Perlah have been reappointed to new terms on the board. She also said the Select Board has possibly found a candidate for the fifth regular member position which is open. Michael Normyle said there was nothing official about the fifth board member yet.

Carla then asked the board if it would like to go ahead with the re-organizational meeting or table it until the new members are on board. Harry suggested tabling the re-organization, Amy was willing to table it as well. Phil Perlah suggested that the re-organization be added to the next meeting's agenda. It could be tabled then if the new members were not yet appointed.

AGENDA ITEM 2

Request from the Planning Commission to review the definition of “undue adverse effect”

Tom Bock, Planning Commission Chair, addressed the board. The Planning Commission had asked the town lawyer, Jim Carroll, for a legal opinion on whether the term “undue adverse effect” should be specifically defined in the Chester Unified Development Bylaws. Attorney Carroll had responded with a letter dated June 30, 2016 which had been distributed to the DRB members in their meeting packet. The discussion was complex. The issues discussed by DRB Board members, Zoning Administrator Michael Normyle and visitors Tom Bock and Alice (Suzy) Forlie are outlined here:

The Chester Unified Development Bylaws currently have the words “undue adverse effect” in section 4.7.C.1 General Standards as follows:

These general (standards ed.) shall require that any conditional use proposed for any district created under these Bylaws shall not result in an **undue adverse effect**: (editor's bold typeface)

- a) The capacity of existing or planned community facilities;
- b) The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the *Chester Town Plan*;

- c) Traffic on roads and highways in the vicinity;
- d) Bylaws and ordinances then in effect; and,
- e) Utilization of renewable energy resources.

In the proposed bylaws under discussion, General Standards are found in section is 4.8.C.1. This section is nearly identical to the current Bylaws section, with the addition of the words “standards” after general, the addition of the word “to” at the end of the first sentence, and the deletion of the words, “and specifically stated policies and standards of the *Chester Town Plan* “ from letter b. as shown below:

These general standards shall require that any conditional use proposed for any district created under these Bylaws shall not result in an **undue adverse effect** (editor's bold typeface) to:

- a) The capacity of existing or planned community facilities;
- b) The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located;
- c) Traffic on roads and highways in the vicinity;
- d) Bylaws and ordinances then in effect; and,
- e) Utilization of renewable energy resources.

The phrase “undue adverse effect” is part of Act 250 Criterion 8, which addresses the aesthetic impact of a proposed project. The most prominent case in the discussion of Criterion 8 is the Quechee Lakes case from 1984. A widely quoted definition was adopted by the Vermont Environmental Board as a result of the case and is known as the *Quechee* test.

The letter from Town Attorney Jim Carroll is included in its entirety at the end of the minutes.

DRB members discussed the difference between the Act 250 use of “undue adverse effect” in Criterion 8 which addresses aesthetics and in the Chester Unified Development Bylaws General Standards, which does not directly refer to aesthetics. Amy O'Neil read a paragraph from page 2 of Jim Carroll's letter (“Recently the Vermont Supreme Court. . .”) which confirms that the Vermont courts allow the use of the *Quechee* test as guidance in conditional use reviews and does not limit its use to aesthetic issues.

Jim Carroll's letter points out that the *Quechee* test is a judicially created test, which has evolved since 1985 and will continue to evolve in the courts. If Chester does add a definition of “undue adverse effect” to its Bylaws, it severs the definition from the judicial evolution of the *Quechee* test and the Chester Development Review Board will be obliged to adhere to the definition in the Bylaws until the Planning Commission chooses to change it.

Two definitions were read out at the meeting. The original *Quechee* test definition in Jim Carroll's letter is :

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 scenic beauty of the area?
- b. Have the applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings? Amended Petition of Deerfield Wind, LLC, Docket No 7250 (Vt. Pub. Serv. Bd. Apr. 16, 2009) (“Deerfield Order”) at 61.

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?

Jim Carroll suggested the following definition as more appropriate for Chester Bylaws in his letter:

Undue adverse effect shall be found by the DRB if: First, the Chester DRB determines that the proposed project will have an adverse impact based on any of the general standards specified in 4.8.(C)(1)a-e and; Second, if an adverse impact is found to exist, it will be considered undue if it substantially and materially (1) violates a clear, written community standard, (2) offends the sensibilities of the average person, or (3) fails to take generally available mitigating steps that a reasonable person would take to meet any of the general standards specified in Section 4.8(C)(1)a-e.

After considerable discussion it was the consensus of the DRB members that they wanted a definition included in the Bylaws, and that Attorney Carroll's definition was the one they preferred. Tom Bock was advised of their preference.

During the discussion of “undue adverse effect”, issues about the Town Plan and its relationship to the Bylaws were discussed by the Board members, Zoning Administrator Michael Normyle and Tom Bock, the Planning Commission Chair. The issues are summarized here:

- It was noted by several people that the Town Plan and the Bylaws are not always synchronized with each other. For example the current Town Plan does not have the same list of zoning districts as the Bylaws. This occurs when one document is updated and the second document has updates in progress as is the case currently.
- Citizen Alice (Suzy) Forlie asked whether the Town Plan should be updated first and the Bylaws then changed to coordinate with the Town Plan. Her question was acknowledged and Amy O'Neil explained that the DRB is tasked with enforcing, not creating the Bylaws.
- The Town Plan has aspirational language, which may be appropriate for a town plan, but is not appropriate for regulations.
- Citizens confuse the purpose of the Town Plan and believe that it is regulatory in nature. In fact, it is not a regulation.
- The Town Plan is intended to offer guidance to the Development Review Board, among other functions.
- The Town Plan is inconsistently referenced in the proposed version of the Bylaws. Some zoning districts refer to the Town Plan and some do not.
- The DRB asked Tom Bock of the Planning Commission to find out if the inconsistent reference to the Town Plan was intentional or not. The board said they would like each zoning district to refer to the Town Plan.

Carla Westine noted during the discussion that Chester has no clear, written community standards in the Bylaws or the Town Plan that directly address protecting scenic or natural beauty. She and others noted that this is a complex issue. The language for such regulation can easily tend to be aspirational, yet without clear, written community standards, the DRB has little support for any decision they may make. The current zoning does not identify specific areas whose natural beauty merits protection. Michael Normyle said that Section 1.2 of the proposed Bylaws does mention protecting scenic assets, but does not specify any particular area.

AGENDA ITEM 3

Comments from citizens

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Tom Bock said he felt the Act 250 criterion that asks if the project is consistent with the town plan was an error. He felt that projects should be consistent with a town's bylaws.

As citizens continued to arrive it was learned that citizens thought the meeting began at 7:00 PM and not 6:00 PM. In order to accommodate as many people as possible the Comments from citizens agenda item was recessed until after 7:00 PM, when it would be re-opened.

AGENDA ITEM 4
Review minutes from June 27, 2016

Format and spacing corrections on page 2 were noted. Phil Perlah moved to accept the minutes with the specified correction. Harry Goodell seconded the motion. The motion passed.

RECONVENE AGENDA ITEM 3
Comments from citizens

Kelly Savage asked what the board had chosen as a definition for “undue adverse effect”. Amy O'Neil explained the two options Attorney Carroll presented. The first was to include a definition he offered in the bylaws. The second was to have no definition and to rely on case law precedents for guidance. The Chester bylaws refer to “undue adverse effect” not in regard to scenic or natural beauty as the courts have done, but in evaluating the impact of a project on things like traffic and the town's infrastructure. For that reason the DRB favored adding Attorney Carroll's definition to the bylaws, but the final decision rested with the Planning Commission.

No other comments were offered and the agenda item was closed.

AGENDA ITEM 4
Deliberative session to review previous matters

At this point, the meeting went into deliberative session. The meeting closed after the deliberative session.