

**Thetford Planning Commission**  
**August 2, 2011 – APPROVED Minutes**

Present: Kevin O'Hara, Patrick Kearney, Michael Schunk, Terry Longo, Liora Alschuler, Rick Howard (arr. 8:10), Dean Whitlock (Recording Clerk)

Absent:

Guests: Wayne Parks (7:17-9:00), Stuart Blood (7:17-9:00), Lori Howard (7:17-9:00), Sally Hull (8:10-10:00)

(Numbers below refer to agenda items)

1. Meeting called to order by Kevin O'Hara at 7:17 PM

2. Public Comment: None.

3. Review of the Minutes:

June 5 - Accepted as amended.

June 19 - Liora voiced concerns about the level of detail in the minutes, whereby some statements appeared out of full context and, she thought, could be misconstrued. There was some discussion of this. At Kevin's suggestion, the issue was postponed to a later meeting. The minutes were approved as amended.

4. Selectboard Report: None.

5. Review of Selectboard Proposed Changes to Draft Zoning Bylaw

Kevin invited Wayne Parks, Stuart Blood, and Lori Howard to the table, and the former and current members were introduced to each other. Kevin then gave some background to the current status of the draft zoning bylaw, referencing in particular the results of the combined selectboard/planning commission workgroup. He referred to the revised bylaw draft that had been provided via email. Of the issues brought to the planning commission by the workgroup members, one remained to be discussed in detail: the proposed change to the driveway standards regarding slope. Stuart had emailed on August 1 several documents that provided background to the former planning commission's discussion and decisions regarding the driveway standards. His email also included a link to an analysis by the Vermont League of Cities and Towns of a 2008 VT Supreme Court decision that essentially requires zoning regulations to be based on clear and specific standards.

Wayne described the meeting about driveway standards that he and Rick Howard had had with firechief Don Fifield. Wayne presented Rick's report on the meeting, which had been discussed by the former planning commission before drafting the new standards. The chief had stated his concerns over the need to access houses easily with fire equipment and gave recommendations in the areas of driveway width, curves, overhead clearance, passing places on

long driveways, year-round maintenance of full width, and slope. For slope, the firechief said he preferred 15% or less, but a short steeper stretch would be all right if there was a good, straight run up to it. Regarding bridges in driveways, the firechief stated he was not an engineer and did not want to make any recommendations in this area. He suggested the DRB should be involved in these cases. Wayne noted that the planning commission had added language referred to recommended bridge engineering standards.

Stuart then described how the planning commission had learned from road foreman Doug Stone that the town already had driveway standards, which were attached to the driveway permit form, which had been adopted in 2002. These standards specified a 12% maximum slope. The planning commission decided to keep the current 12% slope standard and add standards relating to the firechief's other concerns. Stuart noted that the planning commission had always looked in the town plan or other town ordinances for a rationale for any change to the current zoning bylaw, and did not find one in this case. Wayne noted that the new driveway standards had been put into the draft zoning ordinance, but that the planning commission had asked the selectboard if they would prefer to keep the standards as a separate document attached to the driveway permit. The selectboard did not reply.

Stuart read the proposed standard: "Driveways with a grade of greater than 12% over their length will require conditional use approval. The Development Review Board may take into account in such consideration the opinion of local emergency responders." Stuart expressed the concern that measuring slope over the entire length was technically not correct. For example, a driveway could start at one level, go up over and back down a steep hill, returning to the original level. Measured over its length, this driveway would have a slope of 0%. Stuart then referred to section 6.06(D) - Conditional Use, General Standards. This section has five subsections that describe what categories of standards are allowed by state law to be considered under Conditional Use review (CU). It was his opinion that driveway slope did not fit into any of the five categories. Stuart pointed out that case law required clear and specific standards on which a CU decision can be based, but that the wording proposed by the selectboard removed the standards. He said he thought that more careful wording of how slope would be measured (over what distance) could resolve the issue, if that were the only problem.

Kevin and Wayne asked Liora to describe the discussion in the working group. She reported that the selectboard members indicated they wanted to remove the 12% limit because it was arbitrary. They thought they could open up the decision to the DRB, which would then hand it over to the firechief for a decision based on his safety concerns. Wayne said he and Rick had gotten the sense from the firechief that this was the opposite of what he wanted, which was a specific standard that would not require him to make a judgement.

Terry Longo said he felt that handling slope questions through CU was an apples-to-oranges situation that dilutes the clarity of the standard. Michael said that the language regarding driveways could be very specific, since a builder/contractor would need to involve an engineer in building a driveway, and the engineer would be able to calculate the slope. Patrick said he thought the both versions of the standard were vague and proposed language similar to: "... 12% over the length of the driveway and no slope greater than 15% over any 100-foot section of the driveway." Terry pointed out that you also had to have a good run up to the slope; you could start

a driveway at 12%. Liora said she would rather see slope measured "over a reasonable distance" rather than "over the length of the driveway."

Kevin said that he thought the selectboard had not established a rationale for making a change in the way in which slope is specified. He said that, rather than draft alternative technical language, the commission needed to draft a response to the selectboard's proposed language. The current standard with the driveway permit is enforceable. The proposed standard represents a policy change, which the planning commission has suggested should not be done without direction from the town plan, state law, or some other directive. Michael pointed out that insurance companies were requiring slopes not greater than 10%.

Rick Howard joined the meeting and was brought up to date on the discussion. Rick said it seemed that what the selectboard wanted was a site visit, but that he felt CU wasn't the right way to require one. Stuart said a site visit implied Site Plan Review (SPR), which has many forms and higher fees and puts an onerous burden on the applicant. Wayne asked how a site visit would measure the correct slope? Over what distance? He felt that an engineer's opinion would be needed. There was a brief discussion of what happened now: apparently the firechief will look at the driveway and the road foreman will approve the road cuts. Michael said the onus was on the landowner to get the slope certified in order to meet the needs of the service of fire protection provided by the town.

There was a general consensus that the responsibility for approving a driveway slope should not rest on one individual or the DRB, and also that any policy changes should be directed by the town plan. The members then drafted a response, which Liora composed on her computer and then read:

The Planning Commission recommends that the Select Board leave the driveway standard as drafted by the Planning Commission for the following reasons:

- The proposed language represents a change in policy compared to the policy in the existing driveway standards.
- The proposed language would not be enforceable. It lacks objective standards as required by recent case law.
- The Conditional Use section of the Zoning Bylaw is not the appropriate place to accommodate a policy on driveway standards.
- We have not heard a rationale to support such a policy change and do not find one in the current Town Plan.

More generally, we feel that such policy changes would be more appropriately addressed during the process of revising the Town Plan.

Terry Longo moved that the response be accepted; Patrick Kearny seconded. The motion passed unanimously. Liora will email the file to Dean to include in the minutes, and to Kevin to forward to the selectboard.

Stuart referred the members to section of the statutes (sect. 4041, p. 91) which sets a deadline by which local zoning ordinance must conform to new state zoning laws or be superseded by the state law. That date is this coming September 1, 2011. He said there is some urgency to get the bylaw adopted and wondered if the selectboard was planning to hold a second hearing. Kevin reported that they were, because they felt that some of the changes they were making were substantive enough. Dean said that, at the last selectboard meeting, they told the

zoning administrator that they did not expect to be able to adopt the new zoning bylaw until some time in October.

Kevin suggested that commissioners might want to attend the upcoming selectboard meeting in case there was further discussion of the driveway slope standard. He will check with the selectboard to see if the commissioners will be invited.

Wayne, Lori, and Stuart left the meeting at 9:00 PM

#### 6. Town Plan Rewrite (9:00)

Kevin invited Sally Hull to join the commission at the table.

c. Readoption of current town plan - Sally reported that this was her 7th meeting and reminded the members about the schedule specified by the Municipal Planning Grant (MPG) and the budget. She said she would do what she could to move things along. The readoption process was underway.

a. Working Group Reports: 1. Future Land Use - Liora reported that the members had read the land-use sections of the town plans Sally had provided from Norwich (Michael), Chelsea (Michael and Rick), Newbury (Rick), and Bradford (Liora) and reported back to each other. They now feel that they understand the guidelines Sally had presented. She said they thought that the district descriptions in the current town plan are not that dissimilar, and that they would know how to write the current and future land use descriptions. The other town plans vary in terms of the number of gradations within districts. The working group had discussed how to make distinctions with land use areas using planning tools illustrated in the town plans. These are minimum lot size, coverage (% of lot), height of building, restrictions on formula development (where the buildings would look the same in any location; e.g. chains, which wouldn't match the character of a neighborhood), design-control districts (e.g., Thetford Hill's historical overlay), boundary lengths, frontage, subdivision regulations, allowed uses, driveway length and slope, and setbacks. She reported that Bradford uses an overlay concept to specify two areas of Rural Residential (RR), a low-density area within the normal RR area.

Rick reported that Chelsea's land use areas were similar to ours and relatively simple. Newbury was more involved, with 3 areas in RR: lots of 1-acre, 2-acre, and 5 acre allowed based on the situation. Newbury also has a more involved Village Area, with Wells River being very commercial and other villages not.

Michael said Norwich was kind of unique in that it allowed a lot, but that lot sizes and land prices tended to control development. The minimum lot size in RR is 10 acres. Their problem is to interweave moderate and low income housing. They encourage cluster dwelling in RR to maintain open space. The village development is constrained by the water supply and septic issues due to the brook and river. There is growth potential out Route 5. Their statements are very simple and leave things open, encouraging types of growth through policies and guidelines. Sally added that they have "bulls-eye zoning": dense in the center, less dense in a ring outside the center, and least dense outside of that. Michael said that most parcels were between 1 and 10 acres.

Liora said the working group had no clear recommendations for a next step. Michael suggested creating a questionnaire to send to all residents, as Norwich did, followed by meetings to discuss the results. Norwich formed 7 committees of citizen volunteers. 300 people

participated and they got 500 completed surveys back. Chelsea had also used a questionnaire and collected 300. He suggested we could use their questionnaires as starting points, with input from the other Thetford town committees to refine them.

There followed a discussion of how a questionnaire would fit into the implementation schedule for the Municipal Planning Grant. Kevin asked how easy it would be to stray from the schedule in order to get more public input. Sally replied that public input was very important and that perhaps the questionnaire or a question-asking session could be worked into the scheduled meetings. Liora pointed out that we had a big issue with adding more areas within RR, but that wasn't in the schedule. Sally suggested it would be appropriate to add that topic to the Village Center Designation meetings. There was further discussion on how to design a questionnaire within our time frame, and also how to collect and process results within the schedule. Sally will provide a cost breakdown for these steps. Michael will analyze the pros and cons of using a questionnaire and effort required and report back at the next meeting. The other commissioners will each come up with suggestions of topics to ask questions about.

Working Groups 2. Reclassify "objectives" etc. - Kevin presented a document the working group had created from the current town plan, but Sally pointed out a misunderstanding of the terms "goal" and "objective", rendering the document unusable. There was a discussion of the definitions of the terms. Terry referred to a glossary and presented examples. The end result is that we need to list goals, and for each goal, objectives, and for each objective, policies, programs, and actions that encourage or advance the objective. By next meeting, Terry will develop a new format for listing the descriptions of and linkages among these items. He will be able to use the new document as a starting point.

Kevin expressed concern about doing too much to define policies and programs before getting input from the townspeople. Terry suggested taking his new format and working on one chapter in the town plan to test the format and gain fluency with the terms.

Sally suggested that there be time at the next meeting to discuss setting up the meetings required by the schedule. Kevin said he would put it on the agenda. Sally left the meeting at 10 PM.

C. Vision of Town - this topic was deferred due to the late hour.

#### 7. Old Business (10:00)

Kevin reported that he had tested the public access to the Planning Commission listserv archive and that it was working.

Kevin reported that he had invited Matt Fiskin to attend the 8/16 meeting to continue the discussion of communications towers but had not yet received a reply.

#### 9. New Business (9:15)

None

The meeting was adjourned at 10:02 PM.

Respectfully submitted,  
Dean Whitlock, Clerk, Thetford Planning Commission