

**Pittsfield Planning Board
Town Hall, 85 Main Street
Pittsfield, NH 03263
Minutes of Public Meeting**

DATE: Thursday, May 5, 2016

AGENDA ITEM 1: Call to Order

Chair Clayton Wood called the meeting to order at 7:03 P.M.

AGENDA ITEM 2: Roll Call

Planning board members present:

Clayton Wood (chair),

Daren Nielsen (vice-chair),

Jim Pritchard (secretary),

Pat Heffernan,

Gerard LeDuc (selectmen's ex officio member), and

Paul Nickerson (alternate)

Planning board members absent:

Roland Carter (alternate) and

Carole Richardson (alternate for the selectmen's ex officio member)

Members of the public appearing before the planning board: None.

“Members of the public appearing before the planning board” includes only members of the public who spoke to the board. It does not include members of the public who were present but who did not speak to the board.

AGENDA ITEM 3: Public Input

No public input.

AGENDA ITEM ADDED: Agenda review

Clayton Wood said that he would have to leave at 8:10 PM.

Jim Pritchard said that the minutes of March 14, 2016, had an error in that the list of attachments did not include the planning board's letter of recommendation on the board of selectmen's proposed sale of tax map R-48, lot 6, (pest house lot) and tax map R-44, lots 7 and 8 (Blake Pond lot), even though the body of the minutes says that the letter is attached. Jim Pritchard asked for permission to correct the list of attachments in the approved minutes given that the minutes have not been posted on the town web site.

The board agreed to permit the correction on condition that the correction be noted in tonight's minutes.

(Comment of recording secretary Jim Pritchard: reexamination of the minutes of March 14, 2016, showed that the planning board's letter of recommendation was included in the list of attachments to the minutes, as attachment 1.)

AGENDA ITEM 4: Approval of the Minutes of the April 7, 2016 Meeting

Gerard LeDuc moved to approve the minutes of April 7, 2016, as written in draft.

Jim Pritchard seconded the motion.

Discussion:

No board member stated any problems in the draft minutes.

Vote to approve the minutes of April 7, 2016, as written in draft: carried 5 - 0 - 0. (Voting "yes": Jim Pritchard, Daren Nielsen, Pat Heffernan, Clayton Wood, and Gerard LeDuc. Voting "no": none. Abstaining: none.)

AGENDA ITEM 5: Nomination of Town Representative to CNHRPC

Clayton Wood said that he had written a letter to the board of selectmen stating the planning board's nomination of Jim Pritchard as the town's representative to the Central New Hampshire Regional Planning Commission. The nomination was for a reappointment. The board of selectmen declined the nomination and wants the planning board to advertise the position. Clayton Wood said that he thought that Jim Pritchard was the

right candidate, but Clayton Wood said that he wanted to work with the board of selectmen. Clayton Wood said that the board of selectmen's resistance to reappointing Jim Pritchard had surprised him, and Clayton Wood said that the board of selectmen did not seem to understand the position. Clayton Wood said that he had spoken to Ted Mitchell, the town's other representative to the Central New Hampshire Regional Planning Commission, and Ted Mitchell had said that he and Jim Pritchard are on other committees of the Central New Hampshire Regional Planning Commission and that having the same person for the various committees makes sense. Clayton Wood said that he had talked to Mike Tardiff, the executive director of the Central New Hampshire Regional Planning Commission, and Mike Tardiff is wholly satisfied with both Ted Mitchell and Jim Pritchard.

Clayton Wood and Jim Pritchard discussed that the representative can be any town resident. (RSA 36:46, III.)

Clayton Wood said that the board of selectmen wants the planning board to advertise the position, but, Clayton Wood said, he had not agreed to advertise the position; he had only agreed to bring the matter to the planning board for a decision.

Daren Nielsen asked what the representative does.

Clayton Wood and Jim Pritchard described the activities in which the representative would be involved. The commission holds quarterly meetings and has a speaker that the commission hopes will be relevant to the member municipalities. Representatives typically serve on the commission's transportation advisory committee and on the brownfields advisory committee.

Jim Pritchard said that the votes are typically a formality because the commission staff knows its business. The staff prepares regional plans that need the full commission's approval, and the staff presents its finances also for the full commission's approval. Jim Pritchard said that the speakers at the full commission meetings are the most important part of a representative's participation in the commission business. Jim Pritchard said that, because the commission's focus is on land use and economic development, having someone from the planning board and someone from the town economic development committee makes sense. In the immediate

past, Pittsfield representatives were from the planning board (Jim Pritchard) and from the economic development committee (Ted Mitchell). Jim Pritchard said that the commission writes minutes but not promptly and that Ted Mitchell writes his own minutes very promptly and provides his minutes to Pittsfield town officials. Jim Pritchard discussed matters of importance from the transportation advisory committee, such as a road surface management software system and the understanding that maintaining roads in a bad state of repair is more expensive than maintaining roads in a good state of repair. Pittsfield has the opportunity for free traffic counts. Jim Pritchard discussed the recent selection process for an environmental consultant for the brownfields advisory committee. Jim Pritchard explained that this selection was the result of a grant of about \$400,000 for brownfields assessment and remediation planning. Jim Pritchard explained that the brownfields project targets Pittsfield as one of three of the major municipalities.

Daren Nielsen asked whether the town had advertised the position of representative to the full commission in the past.

Clayton Wood said no. Clayton Wood said that Ted Mitchell had been the town's representative since 2011.

Jim Pritchard said that he had been an unofficial representative since 2012.

Daren Nielsen asked whether anyone had represented the town before Ted Mitchell in 2011.

Jim Pritchard said that there had been others, such as Gerard LeDuc, Tom Hitchcock, and Susan Muenzinger.

Clayton Wood said that the executive director, Mike Tardiff, had said that having a member of the planning board and a member of the economic development committee makes sense.

Pat Heffernan asked what brownfields had the environmental consultant remediated.

Jim Pritchard said that the environmental consultant had not started operations yet. Jim Pritchard said that the selection process had focused on the consultant's qualifications.

Clayton Wood said that the town could appoint alternates, and Clayton Wood said that the planning board should advertise for alternates if the board advertises for a representative.

Daren Nielsen asked what distinguished this position as needing advertising.

Clayton Wood said the position has no distinguishing features that make it need advertising. Clayton Wood said that the board of selectmen had reappointed all members of the Pittsfield Aqueduct acquisition committee and had not advertised any of these positions.

Jim Pritchard said that another interesting feature of this situation is that the board of selectmen had voted (2 to 1) to reappoint Jim Pritchard and then had later voted to rescind the vote and request advertising. Jim Pritchard said that the unusualness of the situation is even greater because the appointment was a reappointment, not an open appointment, and because reappointments are rarely advertised. Jim Pritchard said that board of selectmen chair Larry Konopka had asked Jim Pritchard whether he, Jim Pritchard, would object if the town advertised for other candidates, but, Jim Pritchard said, on further reflection, he thought that the planning board's having nominated someone already would prejudice or appear to prejudice the planning board against other candidates and would make being fair difficult.

The board discussed issues of getting the best person, encouraging new people to become active in town government, having consistent practices for appointments, and whether, in current circumstances, the board could nominate someone without prejudice.

Gerard LeDuc said that the planning board had not made a mistake in nominating Jim Pritchard. Gerard LeDuc said that he agreed with Jim Pritchard in that, after nominating someone, the board would be prejudiced or appear to be prejudiced against other candidates. Gerard LeDuc said that the board should not advertise for the regular representative but should advertise for alternates. Gerard LeDuc said that the board should advertise for alternates because the town needs to encourage people to get training. Gerard LeDuc said that he would support the planning board's decision when the matter returned to the board of selectmen.

Jim Pritchard said that Gerard LeDuc's point about alternates was important. Jim Pritchard said that he, Jim Pritchard, was the alternate for the transportation advisory committee and that he preferred to be the alternate because the alternate has less work than the regular member.

Clayton Wood moved to advertise for four weeks for two alternates to the Central New Hampshire Regional Planning Commission.

Gerard LeDuc seconded the motion.

Discussion:

No further discussion.

Vote to advertise for four weeks for two alternates to the Central New Hampshire Regional Planning Commission: carried 4 - 0 - 1. (Voting "yes": Daren Nielsen, Pat Heffernan, Clayton Wood, and Gerard LeDuc. Voting "no": none. Abstaining: Jim Pritchard.)

Clayton Wood moved to resubmit the planning board's nomination of Jim Pritchard as a regular representative to the Central New Hampshire Regional Planning Commission.

Gerard LeDuc seconded the motion.

Discussion:

No discussion.

Vote to resubmit the planning board's nomination of Jim Pritchard as a regular representative to the Central New Hampshire Regional Planning Commission: carried 4 - 0 - 1. (Voting "yes": Daren Nielsen, Pat Heffernan, Clayton Wood, and Gerard LeDuc. Voting "no": none. Abstaining: Jim Pritchard.)

AGENDA ITEM 6: Planning Board Administrative Secretary

Clayton Wood said that the planning board's now-former administrative secretary, Dee Fritz, had resigned and that the planning board's rules of procedure make the board's general secretary, Jim Pritchard, the acting

administrative secretary. (Planning board rules of procedure, section III, 11.) Clayton Wood said that Jim Pritchard had met with Dee Fritz before Dee Fritz left and that Jim Pritchard and Dee Fritz had reviewed Dee Fritz's functions, practices, and files. Clayton Wood said that Jim Pritchard had posted office hours in the town hall. (Mondays from 4:00 PM to 7:00 PM and Thursdays from 3:00 PM to 4:00 PM.)

Clayton Wood said that he had discussed the administrative secretary position with town administrator Cara Marston and that Cara Marston had said that defining and filling the position is the planning board's responsibility. (RSA 673:16, I.) Clayton Wood said that he had visited Northwood's planning office and had discussed their handling of applications before their planning board sees them. Northwood has a part-time planner from their regional planning commission. Northwood pays for this part-time planner to be in the town planning office on Monday of every week and to be at planning board meetings. Clayton Wood said that the Pittsfield Planning Board should not rush into recommending that someone be hired. Clayton Wood said that Northwood has an administrative secretary who is knowledgeable in land use and in reviewing applications to determine whether they should be submitted to the board.

Pat Heffernan asked whether Northwood's administrative secretary were full time.

Clayton Wood said that Northwood's administrative secretary administers all town boards but does not prepare any minutes. Clayton Wood did know whether the administrative secretary were full time. Clayton Wood said that the Northwood's administrative vetting process decides when an application is complete and that the vetting could take a long time, such as a month.

Jim Pritchard said that Concord's subdivision regulations have an optional design review process similar to the optional design review that Pittsfield is developing. Jim Pritchard said that this process is lawful and is better.

Clayton Wood said that he would talk to Mike Tardiff and Matt Monahan of the Central New Hampshire Regional Planning Commission to ask about what Pittsfield's procedures should do.

Jim Pritchard said that an administrative secretary typically does not have to consider the merits of an application. All that the administrative secretary

has to do is notify the building inspector and the circuit-rider planner from the Central New Hampshire Regional Planning Commission.

Clayton Wood said that the Pittsfield Planning Board's past practice has been to consider that the surveyors and engineers appearing before the board were experts who would help the board, but, Clayton Wood said, not all surveyors or engineers are the same. The board must make some of these surveyors or engineers do their jobs.

Jim Pritchard said that one of the environmental-consultant applicants to the brownfields advisory committee had said that he would do site plans with topography maps referred to the North American Vertical Datum of 1988, which is what the United State Geological Survey maps use. Jim Pritchard said that the New Hampshire Department of Environmental Services requires topography maps referred to the North American Vertical Datum of 1988. Nonetheless, Jim Pritchard said, applicants complain about measuring topography relative to the United State Geological Survey maps. Applicants complain about granite boundary markers, but some properties in Pittsfield have them. Jim Pritchard said that applicants think that Pittsfield Planning Board members are ignorant and naïve.

Clayton Wood said that a good process would solve some of these problems.

Pat Heffernan asked for clarification of the North American Vertical Datum of 1988.

Jim Pritchard said that the national flood insurance program requires that topographical maps of development in floodplains must be referred to the North American Vertical Datum of 1988. The national flood insurance program is federal. Jim Pritchard said that the New Hampshire Office of Energy and Planning's floodplain management expert, Jennifer Gilbert, had said that the United States Geological Survey maps are referred to the North American Vertical Datum of 1988. Jim Pritchard said that the Concord Subdivision Regulations and the New Hampshire Department of Environmental Services both require topography maps referred to the North American Vertical Datum of 1988.

Pat Heffernan said that research that he had done indicated that referring topography maps to the North American Vertical Datum of 1988 was not difficult because the surveyor could use global positioning satellites.

Jim Pritchard said that he did not know all of the details for matters such as topography relative to the North American Vertical Datum of 1988, and that board members should understand these matters, but that gaining this understanding is a reason not to rush into hiring an administrative secretary. Jim Pritchard said that the delay would give him an opportunity to learn all aspects of the administrative secretary's functions. Jim Pritchard said that the new subdivision regulations had made much progress and that the remaining details are for construction, which happens in applications only infrequently. Good subdivision regulations will allow the board to make much more effective use of the circuit-rider planner's time.

Clayton Wood agreed.

Daren Nielsen said that Jim Pritchard must be sure to document what he learns so that the board does not lose the information.

Jim Pritchard said that he was documenting what he learned. He gave as an example the board's decision to notify the New Hampshire Department of Transportation (NH DOT) for applications on or near state highways. (Planning board minutes of June 16, 2011, agenda item added, Exemption from Site Plan Review for the Family Dollar store, page 2, and planning board minutes of October 20, 2011, agenda item 8, Members' Concerns, Members' Concern 5, page 15.) Notice to the New Hampshire Department of Transportation is not in RSA 676:4, I, (d), and thus was not originally put in the new draft subdivision regulations, but, Jim Pritchard said, he had since added this notice requirement to the new draft subdivision regulations.

Clayton Wood left the meeting at 8:11 PM.

Daren Nielsen replaced Clayton Wood as acting chair.

Paul Nickerson sat for Clayton Wood.

Jim Pritchard said that having one person serving as the administrative secretary for both the planning board, the zoning board of adjustment, and the conservation commission would make sense. Going slowly would allow such inter-board cooperation.

Daren Nielsen asked where Jim Pritchard would document what he learned as acting administrative secretary.

Jim Pritchard said that some matters would go into the subdivision regulations and that probably all would go into the rules of procedure. The rules of procedure should tell the administrative secretary what his duties would be.

Daren Nielsen said that Jim Pritchard's documentation would allow the board to require less expertise from the administrative secretary.

Jim Pritchard said that the knowledgeable people should be spending their time using their knowledge, not acting as receptionists.

The board asked Jim Pritchard to write a letter to the *Suncook Valley Sun* stating his office hours as his notice is currently posted.

Pat Heffernan asked Jim Pritchard what arrangements he would make for times not included in his office hours.

Jim Pritchard said that people could ask for his cell telephone number. Jim Pritchard said that people have a right to predictable opportunities to communicate with the board.

AGENDA ITEM 7: Selectman's Report

Gerard LeDuc said that he had little to report because he had had to miss the last selectmen's meeting to attend to his wife's medical needs and because the minutes of the selectmen's meeting are not yet available.

Daren Nielsen asked whether the selectmen had reviewed the planning board's proposed policy on the sale of town property.

Jim Pritchard said that he had been at the last selectmen's meeting and that the board of selectmen had not reviewed the planning board's proposed policy on the sale of town property.

AGENDA ITEM 8: Members' Concerns

Paul Nickerson stated his concern that the definition of “accessory apartment” in the newly revised zoning ordinance may not have been in the zoning proposal that the voters approved at the March town meeting.

Jim Pritchard presented the ballot questions that were on the warrant, and the proposal that the board had approved on December 3, 2015, and had filed with the town clerk. The ballot questions say that the proposal is a “comprehensive revision” including prior zoning ordinance article 2, Zoning Districts, and article 3, Definitions. (See *Vachon v. Concord*, 112 N.H. 107, 289 A.2d 646 (1972) (“Though notice requirements are mandatory, constructive notice sufficient to apprise those interested in the proposed changes satisfies these requirements. The published notice here given of a ‘comprehensive revision’ was adequate.”).) The proposed amendment itself says that prior articles 2 and 3 are to be replaced with new articles 2 and 3 as presented in the amendment. New article 2, Interpretation Rules and Definitions, includes the new definition of “accessory apartment.”

Paul Nickerson stated his concern that the term “accessory apartment,” which replaced “in-law apartment,” might have a meaning different from “in-law apartment” because the term “in-law” in “in-law apartment” might restrict the use of in-law apartments to in-laws of people inhabiting the principal dwelling unit.

Jim Pritchard compared the prior definition of “in-law apartment” and the newly adopted definition of “accessory apartment”:

IN-LAW APARTMENTS: A dwelling unit which meets all of the following:

- a. Is contained within an existing or proposed single family dwelling unit.
- b. Is clearly incidental and subordinate in extent, use and purpose to the principal dwelling.
- c. Is not used for rental purposes.

ACCESSORY APARTMENT:

- (a) In this definition of “ACCESSORY APARTMENT,” “house” means a DETACHED DWELLING.
- (b) “ACCESSORY APARTMENT” means the ACCESSORY DWELLING UNIT in a house that contains one PRINCIPAL DWELLING UNIT, one ACCESSORY DWELLING UNIT, and no other DWELLING UNITS.

- (c) Except as provided in article 4, section 3, Nonconforming Uses, every permissible ACCESSORY APARTMENT shall satisfy the following conditions and all other applicable conditions in the zoning ordinance:
- (1) The ACCESSORY APARTMENT shall share a common wall with or be under the same roof with the PRINCIPAL DWELLING UNIT.
 - (2) The ACCESSORY APARTMENT shall not be rented.

Jim Pritchard said that “incidental and subordinate” means accessory, that the two definitions have the same meaning, and that the state law is that the definition of a defined term controls over the otherwise common meaning of the defined term. (*Cormier v. Danville*, 142 N.H. 775, 710 A.2d 401 (1998) (“the words and phrases of an ordinance should always be construed according to the common and approved usage of the language, but where the ordinance defines the term in issue, that definition will govern.”).)

Pat Heffernan and Jim Pritchard said that the key provision of both definitions is the prohibition against renting. The prohibition against renting does not guarantee an in-law inhabitant, but it does encourage an in-law inhabitant and the maintenance of the apartment’s accessory nature.

Jim Pritchard said that Pittsfield’s accessory apartment regulations conform to the new state law on accessory dwelling units (RSA 674:71 through RSA 674:73) except that Pittsfield must require an interior door, which need not remain unlocked, between the two dwelling units. (RSA 674:72, III.)

Paul Nickerson said that the new state law allows municipalities to permit accessory dwelling units as detached from the principal dwelling unit but that the law does not require municipalities to permit such detached accessory dwelling units. (RSA 674:73.) Paul Nickerson said that the newly amended zoning ordinance prohibits detached accessory dwelling units and that this prohibition is good. (Pittsfield Zoning Ordinance article 3, section 3, (b), (6), Table of Uses and Districts, entry for “DETACHED ACCESSORY DWELLING UNIT.”)

Paul Nickerson said that the new state law allows municipalities to restrict lots with an accessory dwelling unit to owner-occupancy of not more than one of the dwelling units. (RSA 674:72, VI.) Paul Nickerson asked the board to consider whether to propose such an owner-occupancy restriction on houses that have accessory apartments.

Jim Pritchard, planning board recorder and secretary