

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

DATE: Thursday, June 2, 2016

AGENDA ITEM 1: Call to Order

Chair Clayton Wood called the meeting to order at 7:01 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),

Roland Carter (alternate),

Paul Nickerson (alternate), and

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

Planning board members absent: None.

Members of the public appearing before the planning board: Jim Allard, selectman, and Carole Richardson, selectman.

“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 ADDED: Agenda review

Clayton Wood said that the board would be hearing a lot line adjustment case (from James Donini Jr. on July 7, 2016).

Clayton Wood said that town administrator Cara Marston had sent him a letter asking the board to review three town-owned properties that the board of selectmen is considering to sell under RSA 41:14-a. The properties at issue are at 114 Main Street, 81 Main Street, and 31 Berry Avenue. Clayton Wood said that he planned to do the review on July 7, 2016. The board of selectmen wants the results of the review by July 14, 2016.

Clayton Wood said that the board of selectmen would likely request review of the town-owned properties at 33 Main Street and 37 Main Street under RSA 41:14-a. Clayton Wood said that the board of selectmen had already scheduled public hearings in July on the sale of these properties.

Pat Heffernan asked whether the board of selectmen would sell the two properties together or separately.

Clayton Wood said that the board of selectmen was considering both options.

AGENDA ITEM 3: Public Input

Roland Carter said that, on June 23, 2016, the City of Franklin would have a meeting to tour the city's revitalization work. The meeting will convene at 5:00 PM at the city hall. There will be a talk after the tour. People wanting to attend must register in advance. Roland Carter said that town administrator Cara Marston will be sending out more information.

AGENDA ITEM 4: Approval of the Minutes of the May 5, 2016 Meeting

Gerard LeDuc moved to approve the minutes of May 5, 2016, as written in draft.

Daren Nielsen seconded the motion.

Discussion:

Jim Pritchard asked for the following change:

Agenda item 8, page 11, paragraph 2: Add the following citation of *Vachon v. Concord*, 112 N.H. 107, 289 A.2d 646 (1972), after "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.”).)

Vote to approve the minutes of May 5, 2016, with the change that Jim Pritchard requested: 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: Sale of Town Owned Property Policy

Clayton Wood said that, on May 24, 2016, he had presented to the board of selectmen the planning board’s suggested policy, as approved by the planning board on April 7, 2016, for the sale of town-owned property under RSA 41:14-a. Clayton Wood said that the board of selectmen had said that the suggested policy is too restrictive. Clayton Wood said that the board of selectmen had agreed to list their objections and their suggestions for changes and to work with Gerard LeDuc as liaison between the board of selectmen and the planning board. Clayton Wood said that he did not know specifically what the board of selectmen did not like except that the board of selectmen thinks that the policy is too restrictive.

Gerard LeDuc agreed to ask the board of selectmen to list their specific objections and their suggestions for changes for the planning board’s consideration.

Jim Pritchard said that he had compared the planning board’s suggested policy with the Moultonborough policy. Jim Pritchard said that he had not realized before just how similar the two policies were. Jim Pritchard said that the Moultonborough policy specifies the mandatory three-year hold time, which, Jim Pritchard said, seemed to him to be the board of selectmen’s biggest objection. Jim Pritchard said that he did not know how putting a property on the market within three years could be a crisis and that Moultonborough’s policy had been in effect for 12 years (since July 29, 2004). Jim Pritchard said that he was open to understanding why the three-year hold time was a problem, but, Jim Pritchard said, he hoped that the board of selectmen would be specific.

Clayton Wood said that the board of selectmen thought that the Moultonborough policy was too restrictive. Clayton Wood said that he too had forgotten how similar the planning board's suggested policy was to the Moultonborough policy and that he had thought that the planning board's proposal had been even more restrictive. Clayton Wood said that whatever changes from Moultonborough's policy came from the planning board's hearing (on March 3, 2016) on the proposed sales of town-own properties on Tan Road.

Daren Nielsen said that the basis of the planning board's proposal was the Moultonborough policy and that any new restrictions came from the planning board's hearing (on March 3, 2016) on the then-proposed sales of town-owned properties on Tan Road. Daren Nielsen said that the additional restrictions were to notify abutters and to give them the first opportunity to intervene or otherwise absorb town properties to be sold.

Clayton Wood said that the board of selectmen had not seemed to have objected to abutter notification. Clayton Wood said that the big objection seemed to be the three-year hold time. Clayton Wood suggested that the planning board might be able to specify conditions to deviate from the three-year hold time. Clayton Wood said that the three-year hold time had come from the planning board's concerns with property rights and with doing things too fast.

Daren Nielsen said that taking someone's property is monumental. Daren Nielsen said that the property-tax system is outdated and comes from a time when a person's income derived from his land holdings. This original basis of the property-tax system no longer exists. Daren Nielsen said that doing things too fast had not factored in his thinking and that his support for the three-year hold time was to give the prior owner the maximum amount of time to recover his property.

Clayton Wood said that some of the town properties are "in pretty bad shape" and that the planning board should view them to improve the board's understanding of the problems involved.

Pat Heffernan said that losing one's property is a major matter but that waiting for three years is an additional expense for town taxpayers because the property may be deteriorating during the three years.

Clayton Wood said that he wanted to hear the board of selectmen's specific objections to the planning board's suggested policy.

Jim Allard said that he and selectman Carl Anderson both had keys to the properties at 114 Main Street, 81 Main Street, and 31 Berry Avenue and that the planning board could use these keys to view the interiors of the three properties.

Daren Nielsen said that he understood Pat Heffernan's concern and that perhaps the planning board could develop conditions to deviate from the three-year hold time.

Clayton Wood said that the planning board could focus on zoning conformance matters and that the board of selectmen could impose covenants. Clayton Wood cited the master plan as the basis to impose covenants.

Jim Allard referred to a comment of Stuart Arnett at the last meeting of the economic development committee (on May 25, 2016), where Stuart Arnett had said that Claremont, in its revitalization work, had imposed a deed covenant requiring the buyer to reach a certain property-improvement goal and giving the city the right to repurchase the property at its original sale price if the new property owner did not reach the property-improvement goal.

Clayton Wood said that retirement had given him a new respect for the burden of the property-tax system in New Hampshire. The high property taxes give property owners little reason not to abandon a property that needs work.

Jim Pritchard said that he liked the three-year hold time because, first, he had seen years of boards that wanted more flexibility and that rushed to decisions, and, Jim Pritchard said, the flexibility and rush always seemed to lead to bad decisions. Jim Pritchard said that he did not know why the town would ever need to rush to sell a property, but, Jim Pritchard said, he wanted to hear the board of selectmen's reasons. Jim Pritchard said he liked the three year-hold time because, second, he agreed with Daren Nielsen in that confiscating a person's property is monumental. Jim Pritchard said that Pat Heffernan's discussion indicated that how long to hold properties depends on balancing the property rights of the prior owners against the rights of the

taxpayers. Jim Pritchard said that this balance is subjective and that different people will probably evaluate the balance differently. Jim Pritchard said that he hoped that the board of selectmen would give specific reasons for their objections to the planning board's suggested policy so that the policy can have specific conditions for deviating from a three-year hold time and so that the board of selectmen will not be deviating from a three-year hold time *ad hoc*.

Clayton Wood said that the town needs a well-defined policy to establish consistency in what the town does over longer periods of time, when the composition of town boards will probably change. Clayton Wood said that, without a policy, town officials will forget and make mistakes. Clayton said that a policy might be somewhat burdensome at first but that the policy would become routine.

Daren Nielsen suggested that, in deciding whether to wait three years before selling a property, the board of selectmen could interview the prior owner to see whether the prior owner wants to repurchase his property and may be able to repurchase his property.

Jim Pritchard said that the policy could waive the three-year hold time if neither the prior owner nor any of the abutters is interested in trying to acquire the property.

Clayton Wood asked about the abutters' rights to repurchase property.

Jim Pritchard said that the prior owner has the right under RSA 80:89 to repurchase property and that abutters have the right to lend money and reach a purchase and sale agreement if the prior owner agrees. Jim Pritchard said that his family had financed such a repurchase and that a neighboring town had suggested it.

Clayton Wood said that no one knows more about a property than the abutters. Clayton Wood acknowledged that conditions in the more urban parts of town may differ from conditions in the more rural parts of town.

Jim Allard said that conditions in the urban parts of town do indeed differ from conditions in the rural parts of town and that owners in the urban parts of town are often out of state or may be in prison or even dead.

Clayton Wood said that his point was that the boards could make mistakes in either part of town if the boards are not careful. Clayton Wood said that the boards need to capture for future boards what today's boards learn from the now on-going process of selling town property.

Daren Nielsen asked Jim Allard how Claremont had assessed the values of town properties for sale to a designated buyer with covenants to improve.

Jim Allard said that Claremont took whatever it could get. Jim Allard said that Claremont sold five-story industrial buildings for \$20,000. Jim Allard said that Claremont had sold one property that happened to be very central to Claremont's revitalization plan and that the buyer had not made substantial improvements and that Claremont had repurchased the property under a buy-back covenant.

Daren Nielsen said that Jim Allard's example showed that offering properties at a very low price reduces a buyer's incentive to improve the property. Daren Nielsen said that getting an appropriate price is important.

Pat Heffernan said that a price that is too low may cause a problem but that a price that is too high may result in no sale.

Jim Pritchard discussed the buy-back covenant that Claremont had used. Jim Pritchard said that a buy-back covenant may be legally problematic because a person who invests money in a property may get investment-backed rights, otherwise known as grandfathered rights.

Jim Allard discussed the problem of the property at 31 Berry Avenue.

Paul Nickerson said that the three-year hold time is after three years of tax lien so that the three-year hold time is actually six years of tax arrearage. Paul Nickerson said that a person who had not paid his taxes in three years would not pay them in six years and that a tax-deeded building would deteriorate before the town could sell it.

AGENDA ITEM 6: Zoning Amendments

Clayton Wood suggested that the board consider proposing amendments to the zoning regulations of accessory apartments.

The town's current zoning regulations of accessory apartments are as follows:

Article 2, section 3, Definitions:

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.

Article 3, section 3, Use Regulations: Accessory apartments are permitted as special exceptions in the Urban District, the Suburban District, and the Rural District and are prohibited in the Commercial District and the Light Industrial/Commercial District.

Carole Richardson asked whether the new law on accessory dwelling units (RSA 674:71 through RSA 674:73) had been passed yet.

Clayton Wood said yes and that the new law takes effect in June 2017.

The board reviewed newly adopted RSA 674:71 through RSA 674:73 and concluded that the current zoning regulations conform to the new law except that the current regulations do not conform to RSA 674:71, III:

"An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit, but a municipality shall not require that it remain unlocked."

The board agreed to propose a zoning amendment requiring an interior door between the principal dwelling unit and the accessory apartment.

The board noted that RSA 674:71, VI, allows a municipality to require owner occupancy of either the principal dwelling unit or the accessory dwelling unit, but the municipality cannot specify which dwelling unit the owner must occupy. The board agreed to propose a zoning amendment requiring such owner occupancy.

The board discussed RSA 674:71, IV, “maximum occupancy per bedroom consistent with policy adopted by the United States Department of Housing and Urban Development.” The board agreed that it would not propose a regulation of the maximum occupancy per bedroom.

The board discussed how to enforce the rental prohibition. If a renting tenant complains, then the town will learn of the rental, so landlords run serious risks by renting unlawfully.

Jim Pritchard said that he wanted to propose one or two zoning amendments to article 4, Nonconforming Structures, Lots, and Uses. Jim Pritchard referred to zoning ordinance article 4, section 2, Nonconforming Lots (Contiguous):

Nonconforming Lots (Contiguous): Nonconforming CONTIGUOUS LOTS under the same ownership shall only be developed with such adjacent LOT.

Jim Pritchard said that the recent sales of town property had brought to his attention problems with this regulation. This regulation is the zoning ordinance’s requirement to merge nonconforming contiguous lots under common ownership, but the regulation does not even use the word “merge.” In addition, the regulation has a large loophole in that an owner of contiguous nonconforming lots can simply transfer one of them to a friendly buyer and circumvent the merger that way. Finally, the regulation does not consider whether both lots have principal structures, which would, by themselves, establish a subdivision and thus would preclude a merger.

The board agreed to propose an amendment to zoning ordinance article 4, section 2, Nonconforming Lots (Contiguous), to close its loophole.

Jim Pritchard referred to zoning ordinance article 4, section 3, Nonconforming Uses:

Nonconforming Uses: If a lawful use exists at the effective date of adoption or amendment of this ordinance, that would not be allowed in the district under the terms of this ordinance, said use may be continued, so long as it remains otherwise lawful and subject to other provisions of this section.

Jim Pritchard said that the use of the word “remains” indicated continuous lawfulness and that a break in continuous lawfulness of a nonconforming use would make continuing the use prohibited. Jim Pritchard said that his interpretation was consistent with case law. (*Hurley v. Hollis*, 143 N.H. 567, 729 A.2d 998 (1999); *Guy v. Temple*, 157 N.H. 642, 956 A.2d 272 (2008).) Jim Pritchard said that he wanted the board to consider an amendment to define abandonment for uses that expand or change deliberately and unlawfully and that do not correct the unlawful expansion or change within some reasonable time.

Paul Nickerson said that a person having a restaurant could intensify the use by putting more merchandize and counters inside the building but that the person could not expand the footprint. (*Hampton v. Brust*, 122 N.H. 463, 446 A.2d 458 (1982); *Hurley v. Hollis*, 143 N.H. 567, 729 A.2d 998 (1999).)

Clayton Wood and Daren Nielsen agreed that the board should consider an amendment to define abandonment for uses that expand or change deliberately and unlawfully and that do not correct the unlawful expansion or change within some reasonable time. Pat Heffernan and Gerard LeDuc did not express an opinion.

AGENDA ITEM 7: Subdivision Regulations Update

Jim Pritchard discussed his notes on his progress in revising the subdivision regulations. His notes verbatim are as follows:

1. The last draft that planning board members have is dated January 4, 2016.
2. On February 4, 2016, the board discussed the changes necessary to account for land affected by municipal boundaries.
3. Thanks to the town meeting vote on warrant article 27, [Jim Pritchard] was able to state properly the board’s authority to adopt subdivision regulations.

4. In the section on preliminary review, [Jim Pritchard] inserted a new section 1, Consultation with the Building Department.
5. [Jim Pritchard] also added a time limit to how long design review can last. Some time limit on design review is necessary because RSA 676:12, VI, gives one year of grandfathering to plans submitted to the planning board for design review and because the one-year grandfathering period begins when the design review process ends.
6. Work done on drainage since the board's discussion on February 4, 2016:

[Jim Pritchard has] finished the drainage regulations after [he] studied a number of sources:

Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire, 1992,

The NH Dept. of Transportation's *Manual on Drainage for Highways,*

Department of Environmental Services alteration of terrain regulations,

drainage regulations in other municipalities' subdivision regulations, and

the drainage regulations in Pittsfield's own current subdivision regulations.

There are two big changes in the storm water management regulations: First, better organization, so that the storm water management plan is stated in the completeness checklist and so that the standards for the storm water management plan are stated as standards for the plan. Second the statement of when a storm water management plan is required is much more specific than before. Having local regulations essentially copied from the *Stormwater Management Handbook* seems from [Jim Pritchard's] limited survey to be fairly common among smaller municipalities. For example, Epsom cites the *Stormwater Management Handbook*.

Unresolved matters as of June 2, 2016:

1. Developer's performance agreement. It appears that the standard form letter of credit taken from *New Hampshire Practice* may include a performance agreement, so understanding the performance agreement apart from the standard form letter of credit is important.
2. [Jim Pritchard is] currently working on regulations for stump disposal from construction projects. The current regulations appear plainly to violate state law. These regulations do not appear difficult other than the tedium of getting them done. [Jim Pritchard said that he had finished the stump-disposal regulations just before tonight's meeting began.]

From there, the big matters are standards for road construction and standards for utilities installation.

3. For example, the regulations refer to collector roads if the expected traffic exceeds certain stated levels, but the regulations do not define what a collector road is, much less say what the standards for a collector road are. Regulations from other municipalities may be useful in answering this question.
4. Similar problem with loop roads. The regulations refer to and regulate loop roads without saying what they are. Searching Google for "loop road" did not help much.
5. The regulations refer to "through circulation" and "secondary emergency vehicle access. [Jim Pritchard does] not know what these two terms mean.
6. When should street signs, signposts, and traffic lights be registered with the New Hampshire Department of Transportation? After they are installed or before?
7. A few other miscellaneous matters on road construction.
8. Many problems with regulations on utilities installation. These regulations appear to have been copied from other places, so people from the wastewater treatment plant will likely not know what they mean. Concord's regulations may be a helpful guide.

9. Some things, such as design drawings and inspection requirements, have accidentally dropped out of the subdivision regulations since Fred Welch's comprehensive revision in 1998. These things must be restored.

*****End of Jim Pritchard's notes on his progress on revising the subdivision regulations.

Clayton Wood said that he wanted to have a hearing on adopting what Jim Pritchard had done so far.

Jim Pritchard agreed to print a copy of his current draft within about a week.

The board agreed to meet on June 16, 2016, to consider the current draft.

AGENDA ITEM 8: Selectman's Report

Gerard LeDuc said that he had nothing important to report.

AGENDA ITEM 9: Members Concerns

Jim Pritchard referred to a notice called "Request for Project Review by the New Hampshire Division of Historical Resources". Jim Pritchard said that he did not know what this notice was.

Jim Allard and Gerard LeDuc said that the notice was for a demolition project (at 42 Chestnut Street) for which the town was getting a grant from the federal emergency management agency (FEMA).

Clayton Wood said that the notice did not require the planning board to do anything.

Roland Carter said that the subdivision regulations should regulate how water drains from highways on which repeated pavement has substantially increased the road-surface height.

Jim Pritchard said that the New Hampshire Department of Transportation has a manual on highway drainage (*Manual on Drainage Design for Highways*, published by the New Hampshire Department of Transportation, revision date 1998) and that he had to assume that the manual has appropriate regulation.

AGENDA ITEM 10: Public Input

No public input.

AGENDA ITEM 11: Adjournment

Pat Heffernan moved to adjourn the meeting.

Gerard LeDuc seconded the motion.

Vote to adjourn the planning board meeting of June 2, 2016: carried 5 - 0 - 0. Voting “yes”: Jim Pritchard, Daren Nielsen, Pat Heffernan, Clayton Wood, and Gerard LeDuc. Voting “no”: none. Abstaining: none. The planning board meeting of June 2, 2016, is adjourned at 8:43 P.M.

Minutes approved: July 21, 2016

Clayton Wood, Chairman

Date

I transcribed these minutes (not verbatim) on June 4, 2016, from notes that I made during the planning board meeting on June 2, 2016, and from a copy that Chairman Clayton Wood made on June 3, 2016, of the town’s digital recording of the meeting.

Jim Pritchard, planning board recorder and secretary