

MONT VERNON PLANNING BOARD**Public Meeting Via Zoom****January 26, 2021****AGENDA**

Times are approximate and subject to change without notice.

- 7:00 pm 2021 Action Items
- 8:00 pm Proposed Wetlands Ordinance
- 8:45 pm Other Business
- Mail & Announcements
- Review Minutes from 1/12/21
- 9:00 pm Adjournment

Present: Bill McKinney, Bill Johnson, Steve Bennett, Tim Berry, Chip Spalding, Charles Baker, Dave Hall, Jim Bird

Absent: Rebecca Schwarz, Eric Will

7:05 PM - Proposed Wetlands Ordinance

Tom Carr of Meridian Land Services was present for discussion. He noted that Dave Hall has asked for his assistance with this proposed ordinance. He works in several towns with different zoning & wetland buffer regulations to deal with. He is here to offer up his opinions and/or answer questions we might have. The Board looked at Section I-408.5 Applicability. Carr noted that per RSA, an environmental buffer or setback is not exempt from pre-existing lots. If the rule is adopted by the Planning Board and there is no exemption for pre-existing lots, it is applied to all lots across the board whether created in 1930 or 2001. In towns like Goffstown, they have progressive buffers that are based on timelines of when lots were created. In Weare, they have a 50' setback to the wetlands and the first 25' is a wetland buffer. They exempted pre-existing lots from the 50' setback but not the 25' wetland buffer. He feels that if we are sticking with 100' buffer, the Board should consider some level of exemption from pre-existing lots. Otherwise, we will be dealing with a tremendous flood of applicants coming in for lots that are either developed or not developed, that need to impact that 100' buffer which is now being applied to their lot, which currently may be a lawn, garden or a developed area such as a driveway, etc. The Planning Board should be ready to handle an onslaught of applicants coming in to ask for relief from this. **McKinney** noted that Section I-408.6 Existing Approved Lots should cover that. Carr stated that it doesn't exempt them from coming in for a Conditional Use Permit. Also, we refer to coming to the Planning Board for a Conditional Use Permit most of the time, but in a couple of places we suggest it has to be a ZBA issue. He strongly encourages it not be a Zoning Board issue because the Zoning Board creates a do or die situation. Buffer impacts for lots that are pre-existing inflicts hardship onto those lots that didn't exist when people bought it. To put any taxpayer in a position where they are at a do or die situation with the Zoning Board is not a good idea. The Planning Board can work with the applicant back and forth for as many months as it takes to get it to a point where they meet the criteria of the Conditional Use Permit vs being faced with an appeal and then potentially waiting a year or going to Superior Court over it. Amherst keeps it all in the hands of the Planning Board and the Conservation Commission. Amherst adopted a progressive buffer situation where all wetlands had at least a 25' buffer. They chose 3 function value options from NH Method of Wetland Evaluation and applied certain value scores. Depending on the scores of those values you would apply a wetland buffer accordingly. **Baker** asked if it would be prudent to define any buffer by the wetland score or should it just be a flat number? Carr likes Amherst's score method, however, it is

subjective. All wetland scientists and septic system designers are not looking at this the same way. Carr feels that any town that is going to adopt a wetland buffer should have a setback to that buffer. Weare, Merrimack and Milford all do this. If you have a 50' setback to the wetland which is a zoning issue and then have the first 25' of that be a buffer, that's a better way to set up your ordinance. **Berry** asked for clarification between buffer and setback. Carr said if we had a 75' setback to a wetland and the first 50' of that is a buffer, the first 50' is off limits. The next 25' you can grade in, you can have lawn in, but not structures in it. The setback protects the intent of the buffer. You have to be 25' away from the buffer to put any structures which allows you room for construction and room for grading. **Spalding** stated that the Planning Board has been trying to get a better understanding on Conditional Uses. We currently don't have any Conditional Uses spelled out in our zoning. He asked if Carr has specific Conditional Use language for wetlands ordinances in towns he has worked in? Carr said Amherst has some good criteria for their Conditional Use permits. Carr feels that most importantly what we need to settle on is having a buffer with a setback. He feels a random across the board 100' buffer or setback is pretty heavy on pre-existing lots and can be considered a land taking. The values of these lots will be impacted; in some ways dramatically. If we want to do so on future development that's a different story. **Hall** asked in relation to the 75' well setback to the septic, how do towns reconcile the well setback as it relates to the buffers and setbacks? Carr answered that he thinks we consider a septic a structure. That would have to be outside of the wetland setback. The approach we are looking at right now suggests that we have to go out and measure the wetlands to determine if it is 3000 sq feet. Is that on the subject lot or is it the total wetland in general? How do you address streams that run up 5 miles away? Carr said that they have had legal seminars in his profession to warn them against flagging wetlands and locating wetlands that are off their client's property. To delineate or measure and identify a wetland on somebody else's property where a tip of it may come on to the subject property requires permission from the landowner to be protected legally. People are not always cooperative. Then you are required to go to the PB and say I can't determine; the abutter won't let me on to his property. Now you've got a different kind of a hardship where the consultant and the Planning Board cannot make a decision on what should be the buffer and the taxpayer is caught in the middle paying the consultant to try and work this out with the Planning Board. **McKinney** asked if Carr has ever had a situation where he was refused entry to a property but the community has allowed for the use of GIS data rather than physical measuring of a wetland. Carr said no because wetlands of this size, 3000 sq. ft., would not show up on any map as they are so small. These are site specific wetlands that they are mapping in the field. When this happens, you need to trust the opinion of the consultant as to the size. **Bird** asked if Carr had a list of towns that he feels is doing this the right way. Carr stated that he likes the way Weare, Merrimack and Milford are applying a 25' buffer with a 50' setback. This is reasonable and tangible if you want to globally apply something. It doesn't hurt pre-existing lots that hard and still achieves the goal of protecting the buffer and having a buffer that is reasonable of natural vegetation adjacent to a wetland. **Bird** feels that runoff within residential areas is the biggest threat we have; runoff from streets dumping into a wetland. Carr feels that when we are in a subdivision where there are road systems, the AOT regulations have been ramped up in past several years with DES. As a Planning Board member, he would not worry provided they achieved the AOT permit. Storm water management is at the forefront for everybody. **Hall** brought up our open space subdivision ordinance that takes out the wetlands, steep slopes and then 40% needs to be open space. If we move forward with the wetland setback, does this get tacked on as an overlay and the existing ordinance requirements stay as is, because this seems to be a double taxing. You're already taking out the wetland, the slopes and then you're going to impose a 75' buffer/setback. Carr feels that he would not expect the town to take that out of the net tract area; that would definitely be a double taking of land. He's certain that would be challenged in court. You have already taken out your steep slopes and wetlands; that should remain as your net tract area without any consideration of the wetland setback or buffer. **Hall** asked how do you address driveways where you have to go by a wetland, not necessarily through it? Carr said based on what we have here, you would have to do a conditional use permit and come before the Planning Board to show that you are not impacting the wetland; that you are protecting the wetland consistent with the ordinance as best as you can. There is no way around that with this ordinance. Carr agreed to come back for further discussion.

8:40 PM – 2021 Action Items

The Board discussed what our priorities should be for the coming year:

- 1..Wetlands Ordinance
2. Conditional Use Permit
3. Revised TCD Ordinance
4. Updating Accessory Dwelling Ordinance

5. Old Mill Estates – Road Compaction Testing
6. Development Agreement to Subdivision Regulations
7. Review Open Space Developments Discussion
8. Define Substantial Improvement

Bird suggested that we may want to consider looking at fixing I-304.5 Multiple Soils Districts Within Lots. He feels we should change it to go by site specific regulations instead of density.

8:50 PM - Other Business

Berry brought up a situation involving Accessory Dwelling Units. There is a recently purchased property in town with 2 buildings on one lot. There were two separate people living there which is in violation of our multi-family zoning ordinance. It was never grandfathered as an accessory dwelling unit which it could not be as they are detached. The new owners have bought this as an income property; they want to live in one building and rent the other. It is an unpermitted use; does it have to go to the ZBA if not in line with the adopted zoning when the property transfers ownership? **McKinney** asked how have they been taxed; has the community recognized that there have been two dwelling units on the property for several years or did it just show up a year or two ago. **Berry** also brought up another property on Beech Hill Road that had an authorized ADU. It has now sold and the new owners are under the impression that they have an apartment that they can rent out to someone not in the family. **McKinney** stated that our ADU Ordinance was amended to comply with state law back in 2017, which clearly states that you cannot restrict it to being family relations. When you're creating and allowing an ADU, you're technically allowing for an apartment. They can use that for people that are not part of the family. He went on to say that the Code Enforcer needs to do some research to see if the ADU was permitted, inspected and issued a CO by the Town; have health and safety issues been addressed? The Board reviewed the minutes from 1/26/21. **Bennett** motioned to approve the minutes as written seconded by **Berry**. All in favor, motion passed.

9:15 PM

As there was no further business before the Board, **Johnson** motioned to adjourn seconded by **Berry**. All in favor, motion passed.

Respectfully submitted,

Joan Cleary

Administrative Assistant