

DRAFT
Town of Fitzwilliam
Planning Board Meeting
December 6, 2016

Members Present: Terry Silverman, Suzanne Gray, Tom Parker, Robin Blais, Paul Haynes, Matt Buonomano and Nancy Carney, Selectmen's Representative.

Others Present: Susan Silverman, Marion & Mike Wheeler, Jeanne Sable, Paul Kotila, Dana Pinney, Wes Whittam, Eric Durmer, Rick Van de Poll, wetlands scientist/Prime Wetlands Project.

Dana Pinney reported that the sound wall at the Eversource substation has made a huge improvement, adding "the sound wall works!" He expressed his concern that Eversource may try to use the noise study to avoid future issues that may arise. He said he appreciated the work the Planning Board put toward solving the noise problem. He also offered to give a voice recorder to the town for recording minutes.

Call to Order: 7:00 PM

7:00 PM Public hearing to discuss amendments to the Wetlands Protection Overlay District Ordinance, stemming from the Prime Wetlands Study conducted by the Board of Selectmen in 2016.

Silverman asked Mr. Van de Poll, the state certified wetlands scientist engaged by the Town to conduct a survey of wetlands to ascertain which of the Town's extensive wetlands qualify as prime wetlands, a state designation, to explain why wetlands should be protected. Van de Poll said he has been a wetlands scientist for 30 years. He said wetlands function to protect water quality, provide for water storage in flooding situations and when the water table is high, and protect waterfowl. He said the New Hampshire legislature passed legislation in 1969 to protect water quality and the water supply. He said Fitzwilliam is one of 33 municipalities to go a step further by protecting wetland values through a wetlands designation as prime wetlands. He described how different communities have reacted to this action.

In Fitzwilliam, a prime wetlands committee was formed, including the Select Board, Planning Board member and Conservation Commission member, to guide the project in determining which wetlands qualify as prime wetlands. In 2015 the Town voted to finance the research. Mr. Van de Poll reported that of the 16 prime wetlands he found, the Committee selected six for designation. Three are the biggest wetlands and three are high value wetlands. He added this is an incremental step for the Town.

Silverman said it is development which impacts wetland that the town wants to control. A member of the public asked if he would be reimbursed for "taking" the buffer land, since it would mean he couldn't use his property. Silverman said this designation is not onerous on the property or on residential development. He said this is not about taking property; the intent is to protect natural resources in perpetuity.

Buonomano asked about the acreage involved. Mr. Van de Poll said increasing the buffer to 100 feet just adds 25 feet to the existing 75 foot buffer. He said the total acreage involved, in wetlands and buffer is about 1,073.9 acres, about 6.4% of the town acreage.

Parker asked about the status of the remaining 10 proposed wetlands. Mr. Van de Poll said he did not think Laurel Lake was a candidate at all, and the remaining 8 or 9 could be candidates in the future.

Parker said it could be detrimental to land owners if the Town continues to add additional prime wetlands. He

DRAFT
Town of Fitzwilliam
Planning Board Meeting
December 6, 2016

said there is not much buildable land in Fitzwilliam. He also said there should be some compensation for loss of use of the land in the extended buffer.

Mr. Van de Poll said usually wetlands/buffers are classified as current use, thus reducing a property owner's tax burden. He added that the State does not have wetlands buffers yet, except for Great Pond, and the Comprehensive Shoreland Protection buffers.

Gray asked how many landowners would be affected, noting that some are in rural areas and others are in more developed areas.

All lakes in town are subject to the State Comprehensive Shoreland Protection Act. Mr. Van de Poll said Sip Pond is particularly susceptible to contamination because it is very shallow, just 6-8 feet deep, he added that once it becomes eutrophic it will be hard to get back.

Buonomano said adding 25 additional feet to the buffer increases the burden on small properties. Mr. Van de Poll said he looks at function and value of wetlands. He referred to a paper he'd written on the science of protection of wetlands against contamination from phosphates and nitrates. He said that a 75 foot buffer keeps out 66% of phosphates. He added that decreased water clarity due to chlorophyll (algae) contamination results in lower property values. He cited an instance where milfoil contamination resulted in a \$25,000 decrease in assessed value.

Timber management is not restricted in Prime Wetlands buffer.

Buonomano asked about the recent Volunteer Lakes Assessment Program Report, which indicated that the clarity of Monadnock area lakes has not significantly deteriorated. He wondered why, if the Lakes were stable, a larger buffer was needed.

Blais, a member of the Prime Wetlands sub-committee, said that is why areas with lots of houses up close to the wetlands were not chosen. She said they chose to protect areas that were less developed. Buonomano said it doesn't appear that development made much change, based on the Lakes report. He suggested that different areas might need different buffer widths. Mr. Van de Poll said this was the bane of his existence, that there is no standard for buffering, adding that science can provide the data but the State wants a number. Buonomano said soil does come into the equation. Mr. Van de Poll said case law is based on soil setbacks.

Silverman said that a three acre buildable lot allows flexibility in building. Mr. Van de Poll said adding 25 more feet to the existing buffer zone, means the loss of about ¼ of an acre. Silverman said a conditional use permit can resolve that issue if it impacts building decisions, and that the ZBA's hardship requirement for a variance can resolve this issue.

Buonomano raised the issue of people clearing tress to provide a better view of the lakeshore. Mr. Van de Poll noted that isn't a problem since the State Shoreland Protection Act dictates how trees can be cut within the 250 foot buffer on lakes, and wetlands are not subject to that law.

Gray asked Mr. Van de Poll how many cases of takings have there been in the 33 towns in NH that have Prime

DRAFT
Town of Fitzwilliam
Planning Board Meeting
December 6, 2016

Wetlands legislation in place. Mr. Van de Poll said Belmont designated 14 wetlands as Prime, and that legislation passed. After passage, there were problems. He noted that any ordinance is only as good as protections afforded by enforcement. He added that 90% of the time issues can be resolved through land owner education.

Gray asked if there was any case law on the books and Mr. Van de Poll said there is, but it was not about the buffer, but that abutters complained that the water quality was diminished by a landowner's negligence within the buffer.

He added that designation as Prime Wetlands reflects the will of the people, since the Town will vote on it.

Buonomano worries that the message being sent by a buffer is that any actions taken outside the buffer are OK. He asked if population density and existing aquifers were considered. Mr. Van de Poll said yes, noting that designating the proposed prime wetlands in southwest Fitzwilliam is an investment in the long term protection of water quality since they are connected systems of high value.

Silverman said that for residential uses the regulations and setbacks are discussed in the design review phase. He said all our ordinances are developed to protect from faulty design.

Mr. Van de Poll said studies by Sweeny and Niebold indicate that a 100 foot buffer results in an 89% removal of pollutants. At 75 feet, 59-77% of contaminants are removed.

Carney noted that the construction permit has a wetlands component that allows the Selectmen to do site visits and find problems. Susan Silverman added that sometimes a fully built out space is discovered with no permit being issued, making enforcement difficult.

Mr. Van de Poll said Sip Pond wetlands provides the best flood storage functions in Fitzwilliam, noting a 25 or more year flood event will result in only a 1 ½ inch raise rise in water level. Sportsman Pond and Scott Pond also have huge flood storage capacity as well. The other 3 wetlands do not have as much retention capability.

Marion Wheeler asked if this action on Prime Wetlands will effect FEMA floodplains and the requirement to have flood insurance. Mr. Van de Poll said most of Fitzwilliam is upland of floods.

Gray said we are seeing more and more seasonal conversions to year around homes, and wondered how many residents might be affected. Susan Silverman said existing properties are not affected since they are grandfathered.

There was a question about well water quality. Paul Kotila, Chairman of the Conservation Commission said the water quality of lakes may not have any relation to well water. Mr. Van de Poll said wetlands recharge bedrock that provides water for most wells. This is a reason to protect wetlands.

Blais noted that Rindge designated prime wetlands in 1990 to protect wetlands in areas of commercial development, and this designation helped Rindge negotiate site plan review and subdivision plans because they had the hard data from the wetlands survey.

DRAFT
Town of Fitzwilliam
Planning Board Meeting
December 6, 2016

There was some discussion about getting a list of landowners who may be affected by the designation of Prime Wetlands to invite them to the public hearing. Such a list exists, since the landowners were contacted following the vote of the Town to fund a survey of wetlands that qualified as Prime wetlands. One hundred and fourteen landowners were contacted when the survey work began this year, letting them know a wetlands scientist would be working in the area.

Mr. Wheeler again noted the loss of use of the land within the buffer, adding that he lives across the road from the wetlands. Van de Poll clarified that buffers do not extend across streets.

Silverman moved, Gray seconded and the Board voted to continue the public hearing to December 20, 2016. Silverman said the Board would review the proposed changes to the existing wetlands overlay district ordinance at that time. There will be two more meetings in January to discuss this and other proposals for ordinance changes on the ballot in March 2017. Buonomano asked if Mr. Van de Poll could send the science of water flux article to the office for distribution to the Board.

The Board reviewed minutes of the November 15, 2016 meeting. Blais moved, Gray seconded and the Board approved the minutes as written.

Eric Durmer asked if the Board was going to discuss the letter the Town received from DRED regarding a boundary change they certified for the KMO Associates, LLC quarry on Webb Hill Road. This approval is to remove quarry stone from another 5 acre lot which was not disturbed in the original permit from DRED. Silverman said it seems to be an expansion. The Town has not yet received maps from DRED that may clarify the situation.

Mr. Durmer suggested a letter from the Planning Board reminding DRED that since the agreement between DRED and KMO Associates was made, the law, RSA 12-E, has changed authorizing local authorities to review the proposed operation if they have site plan review authority. Since Fitzwilliam does have that authority, a site application is appropriate.

Mr. Durmer also suggested that, in fact, no change can be approved by DRED until the local authorities have reviewed the proposed change. A letter will be drafted for the Vice Chairman's signature.

The meeting adjourned at 9:15 PM.