

**Town of Fitzwilliam
Planning Board
Meeting Minutes
April 16, 2019**

Member's Present: Suzanne Gray, Chairman; Paul Haynes, Vice Chairman; A Robin Peard Blais, Secretary; Terry Silverman, Karen Craig, and Barbara Young, Members; Mike Methe, Alternate; and Charley Kenison, Selectman's Rep.

Member's Not Present:

Others Present: Benny Warnke, Applicant, and Russ Huntley, surveyor and wetlands scientist; Dan Baker, Board of Selectmen; Dana Pinney, interested party; and Laurie Hayward, Land Use Administrative Assistant (LUA).

Call to Order: The Chair called the meeting to order at: 7:01 PM.

Minutes and Election of Officers: Gray consulted with members and it was agreed to take up the Preliminary Consultation first.

Preliminary Consultation: Warnke on a three-lot subdivision with hammerhead access to Fullam Hill Road. Huntley explained the survey work he has done to determine whether a subdivision could be created that meets all of the dimensional requirements outlined in the Zoning Ordinance. Gray asked Warnke to provide members with a description of what Warnke is trying to accomplish. Warnke showed members the Cheshire County Certified Copy that of the 1976 Boundary Plan that is the one noted in his deed and which shows three lots. He explained that they are now seeking a three-lot subdivision with hammerhead access to the back lot.

Huntley showed members a new map which shows the dimensional requirements all met. Young pointed out that there is a difference in the new drawing of the three lots. She asked Huntley to explain the difference. Young stated that the town map shows that there is not adequate frontage. Huntley's plan shows more frontage than the town map does. Members agreed that there are times when a portion or portions of the town maps are not accurate. Huntley explained the method that he used to get to the dimensions and that, for the application, he would be completing a formal survey that would be considerably more accurate than the town maps. Silverman stated that Warnke couldn't apply for a boundary adjustment. Silverman stated that it appears that the proposal does meet the ordinance requirements. Silverman suggested that to get to the subdivision they might need to first merge the lots. It was noted that the merger and re-subdivision could be done in the same hearing. Silverman suggested the Applicant probably should check with an attorney whether they should first merge and then re-subdivide.

This ended the Preliminary Consultation and Warnke and Huntley left the meeting.

Mission of the Planning Board: Gray took up the subject the Planning Board Mission. She explained that there are three broad areas that encompass the Mission of a Planning Board.

1 Master Plan. Both Gray and Craig spoke about the importance of the Master Plan.

2 Regulatory. Subdivisions and Site Plan Reviews.

3 Legislative. Zoning Ordinances and Regulations.

Legislative, State Statutes to Town Zoning Ordinance: Gray spoke about the issues that have been a problem that the ZBA in particular has pointed out, including that the Ordinances are out of date. Gray explained a bit of the process. Blais spoke about the five issues that the ZBA referenced in their letter to the Planning Board, stating that five is not too many. Gray clarified that the five noted were just examples and the letter states there are many more than that.

Craig suggested picking issues and working on language maybe taking a couple sections at a time. Haynes asked whether Carol Ogilvie would be of use in revising the Ordinances. Gray expressed concern regarding the amount of work and the costs to hire Ogilvie. She suggested the Board could take up a review, recognizing that if we get to some complicated things, we may need some help. Silverman suggested that they could include the Land Use Administrative Assistant's hours and use the money saved to hire Ogilvie.

There was additional conversation regarding examples of problems with the Ordinances and the ZBA letter expressing ZBA members' concerns. Gray said that she does understand Silverman's suggestion about bring Ogilvie in regarding the work on the Ordinances. Blais added that they would have to have Ogilvie look at it afterwards, anyway. Gray stated that the Board will have to have someone look at any revisions, Carol or someone with that sort of expertise: perhaps an attorney with Land Use expertise.

Baker explained to Board Members that this concern about the Ordinances was brought to the Select Board. And, one of the things that Board is considering is to establish a process for updates to the Ordinances. He said that this should have been done some time ago. He feels that it is important to get a handle on how big the problem is and how much time is required to fix the problem.

Gray stated that there are funds in the Land Use Budget for "consulting"; however, it would be good to know what Ogilvie thinks the costs would be ahead of time. Baker asked what the process is to make corrections to the Ordinances. Silverman replied that Land Use isn't cut-and-dried and you come across the problems as you use it. Silverman stated that the town gets a certain amount of leeway in terms of having Ordinances. If it needs to be corrected, fine. He added that if the Planning Board is reasonable based on Fitzwilliam ordinances, we usually prevail.

Baker clarified that what he was looking for is what process was used to go through the Ordinance for revisions in the past, was it just done case-by-case? Silverman stated that it done as state law changed. Young asked if Ogilvie is familiar with our Ordinance currently. Silverman stated Ogilvie does know the Fitzwilliam Ordinance. Young asked how long-ago Ogilvie looked at the whole ordinance. Silverman replied that two years ago Ogilvie looked at the entire Ordinance.

Regarding the issue of whether local ordinances must be consistent with state statutes, Gray pointed out that New Hampshire is not a "home rule state" which means that this board is bound to consider state law in its work on cases or otherwise risk litigation. **Blais made a motion to have Carol Ogilvie look at the entire**

Fitzwilliam Zoning Ordinance to make sure it is in line with the state". Silverman seconded the motion.

There was additional discussion. Gray stated that she would like to reach out to Ogilvie for some idea of the cost. Silverman did not feel the cost should matter. He stated that a town is not a business and that Ogilvie knows the town; she knows our budget; she knows our constraints. He thinks this should simply be done. There was additional discussion about costs and limiting the initial work to just having Ogilvie make a list of sections that might require revision. Craig stated that she thinks the Planning Board opens itself to litigation if they do not align themselves with the RSAs. She added that it should be at the top of their list because of its importance to making good decisions. **The motion was amended to ask Ogilvie to review the Ordinance and make a list of items that should be considered for revision. The motion as amended was approved unanimously.** Silverman also asked that Ogilvie be consulted regarding changes from seasonal to year-round and how it applies to the RSA that the ZBA letter points out, RSA 674:19.

ZBA Letter regarding Preliminary Consultation regarding expansion of the dwelling at 12 Spicer Point. Gray went back to the letter from ZBA which included corrections to information that was provided at the February 5, 2019 Planning Board meeting. Gray explained that she feels the ZBA letter from Gretchen Wittenborg, the Vice Chairman of the Zoning Board of Adjustment, and dated April 15, 2019 should be attached to the minutes of that meeting as a correction. Craig pointed out that the corrections are not corrections to what the Planning Board did or said. The corrections were entirely about statements made by Trevor Fletcher and Jon Le Claire. Fletcher and Le Claire were at the February 5th meeting in place of Paul Grasewicz who is the Applicant for David Spicer. Craig asked if that could be made clear by saying that the minutes of February 5, 2019 were wrong due to the facts given by Fletcher and Le Claire. Craig asked that the minutes for tonight make that clear. The LUA agreed to do that in the minutes of this meeting.

Craig spoke about the Davini draft of a letter. She pointed out that it is not clear what the letter should say. She still doesn't feel clear enough on the issue. She handed out two sets of documents, history, including minutes from meetings with content related to this issue, and Matt Buonomano's draft letters. Craig pointed out that, from her research, it was not clear that the Planning Board placed any conditions on the approval. It was agreed that the LUA should forward the Application for Davini to Members. Baker spoke about being at the meeting and that Davini did make promises, for example about fencing a "compound" for the cars in bad condition. Baker expressed that it really is too bad that the commitments made by Davini are not in the minutes. Baker further stated that when conditions are logged, then it is easier for the town to enforce them. There was a comment that the minutes about the Xtreme Auto Site Plan Review did not seem to fully detail what was agreed to by Davini. Gray stated that this is made difficult because there was more discussion than is shown in the minutes. Blais asked who took the minutes. The Chair explained that Sandra took the earliest minutes and Danica took the last set of minutes.

Craig stated the minutes do note that Danica, in September 2017, was directed by Nancy Carney and the Members of the Planning Board to send a request to Debbie Favreau, Town Administrator, asking that a letter from the Board of Selectmen be sent to Davini regarding the Xtreme Auto property. Gray read from a letter that the LUA drafted dated October 3, 2018 and asked if they should reconsider sending it. Craig pointed out that the LUA draft was rejected by the Board. Craig pointed out that Buonomano objected to the original draft letter because he felt it lacked detail. Kenison suggested that they ask for the letter that Favreau was to send. The LUA was directed to ask Favreau for a copy of that letter and forward it to members.

Minutes: Meeting of March 19, 2019. After a discussion of amendments, **Gray moved and Craig seconded, Haynes abstained; and it was unanimously voted to approve the minutes as amended.**

Correspondence/Announcements: Gray brought up Kevin Rule's Application for a Vendor Permit for his kayak business. **Silverman moved that the Kevin Rule Application for a Vendor Permit be approved; Gray seconded and it was approved unanimously.**

Regional Impact Notices and other correspondence. Gray pointed out that there were a number of notices from other towns and a state department. She asked if Board Members wanted to continue to receive these notices. There was a brief discussion about what members wanted in their folders. Blais asked whether the blue folders provided at each meeting are really needed. The LUA clarified that she uses the blue folders to cover items that come in after the packets are mailed or relate to items added to the agenda after the packets are mailed. She also includes the most up-to-date version of the Agenda for that meeting. Gray asked about items in the blue folders that duplicate what was sent. Members agreed that only new or added because of agenda changes items should be in the blue folders.

OSI Spring Conference sign up. Gray asked if members had all signed up on-line or with the LUA. The LUA stated that she knows that Craig and Young have signed up and wonders if there is anyone else who would like the LUA to get them signed up and take care of the payment. There was no one else. Blais asked about the Open Spaces conference and when the LUA actually signed her up. The LUA explained that she had just done that and at the time there was only the waiting list.

Blais asked that they discuss the Victoria White Quarry letter from Natural and Cultural Resources. Gray noted that they have asked that they be updated on these quarry visits. There was a brief discussion. Blais shared about a quarry in Amherst, NH and how that one has become a wonderful property with waterfall and a newly constructed home. Silverman did question whether only five acres of material was removed and that he thinks it was more.

Old Business: NextEra Silverman asked about Select Board and getting legal assistance. Baker says they have written a letter to NextEra, approaching them about sharing costs. Silverman noted that there might be reason to consider the PILOT (Payment In Lieu of Taxes) program in connection to recovering costs. Baker and Silverman briefly listed other points to include in items that legal advice should be sought that include Memorandum of Understanding; Intervening Status; PILOT; and a couple of other possible considerations. Blais shared information that she had regarding the NextEra information that she had in connection to the smaller, 20 Mega Watt, Ludlow solar project. Both Gray, for the Planning Board, and Baker, for the Select Board, noted that they have not had recent contact initiated by NextEra. It was noted that NextEra never did respond to the Planning Board letter requesting Site Plan Review.

Work Session: Shoreland Protection Overlay District Draft Ordinance. Gray suggested that, as discussed in connection to other sections of the Ordinance, the Board Members break the work on this into chunks and see what they can get through. Gray asked if Young still had questions from the last work session. Young did not. Gray gave a bit of history, telling members that the draft wording was worked on by Danica with assistance from Carol Ogilvie. She explained that Danica took the language mostly from the state Shoreland Protection statutory language. Gray added that she did review it herself and the language is similar.

Silverman suggested sending the draft Shoreland Protection Overlay District (SPOD) language to Conservation Commission for their review. Silverman also suggested that send the language to Rick Van de Poll. Silverman's example was that Van de Poll would know to remove the definition of "Tidal" as it does not apply to Fitzwilliam waters. Gray did offer one correction to the current draft version, on line 60 "listen" should be corrected to read "listed".

Gray opened a discussion of what is "stricter" by noting two places where the current zoning Ordinance language is stricter than state requirements. Gray asked members whether they should ask the LUA to review the RSA references to make sure they are correct. Young asked whether the LUA should also check to make sure they had the most recent update of RSAs. Gray agreed. Young asked the Gray to confirm that the process is that they develop language for final approval at the next March Town Meeting. Gray said that is correct.

Silverman also stated that DES did not change their Wetlands Rules and that was what was stated at the Conservation Commission Meeting the previous evening. Gray clarified that this was in relation to Rules changes that would make it easier to do some things in wetlands and which would provide less protection for wetlands.

Gray pointed out that section 7 of the draft does address non-conforming uses which is important. Haynes pointed out a typing error on page 11. He suggested at least this be corrected before sending the Draft SPOD language out. Young pointed out an error in a definition on page 4 "a volume a water" should be changed to "a volume of water". Craig asked about Work Sessions and whether they can work separately on different sections breaking into small groups. Gray explained that they do need to have minutes kept of work sessions and therefore it is generally done as the entire Board working on the same language.

There was additional discussion regarding how to make progress on changes to the Ordinances which is a very large undertaking. After a brief discussion it was agreed that it might be better to work as a Board on small chunks of the Ordinance, taking one or two sections for each meeting, thereby making steady progress. Board members took up what actions that could be taken to move the work on Ordinance language forward, Young summarized action items for the Draft Ordinance language as: 1. Send a corrected copy to the Conservation Commission and 2. Have the LUA research the RSA numbers and the last change date to identify language that has been changed since Fitzwilliam's last update in the Ordinance.

Gray asked for additional suggestions for action items to move the work on the SPOD language forward. Haynes stated getting the Ordinance to Rick Van de Poll for his review. Gray asked what the Board would be asking Van de Poll to do. Haynes stated that he could remove portions of the language that do not relate to Fitzwilliam. Silverman pointed out that Van de Poll could remove things like "tidal pools". Gray asked if we really need to have Van de Poll review for things like "tidal pools". Silverman stated that Van de Poll can review for things that are more restrictive than the state. He added that the town can't be more restrictive than the state. Questioned on that, Silverman added that they passed legislation that removed language that allowed towns to be stricter than the state. Craig read the RSA that allows town to be stricter; but not less strict than the state. **Silverman made a motion that Van de Poll review the draft Shoreland Ordinance and in terms of how it relates to town and state language.** Gray express concern regarding cost of having Van de poll undertake a review of the entire Ordinances and stated that she though they were discussing having him look at the definitions and also look at the wording and provide any clarification around 1st order streams etc. Blais asked about adding Shoreland buffers to the list. Blais stated if it would make Gray more comfortable, perhaps they could request a price before the work is done. Gray agreed that she does want to understand the costs before they move

forward. Craig spoke in favor of not asking for the cost in advance. Craig said that she will second Silverman's motion. Gray asked Silverman to state his motion again. **Silverman stated the motion again that Van de Poll review the draft Shoreland Ordinance and in terms of how it relates to town and state language with special interest in on 1st through 4th order streams and shoreland buffers make recommendations and clarifications. Craig seconded the motion.** Gray called for any additional discussion. **Young asked whether the Conservation Commission should review the draft before it is sent to Van de Poll. Silverman stated that he thought it was not necessary and they should send them out simultaneously. The motion was voted unanimously.**

Election of Officers:

Blais asked that Gray first read the Duties of the Chairman. Craig read from the Rules of Procedure. "The Chairman shall preside over all meetings and hearings, appoint such committees as directed by the Board and shall affix his signature in the name of the Board."

The first vote was for Chairman. Kenison nominated Gray. SG spoke about her desire to see the Board through this difficult period. Young seconded and the vote was taken by paper ballot, handed to the LUA to count. The first vote for Chair resulted in a tie with 1 abstention. There was a discussion about the process. Baker suggested that an abstention just shouldn't happen and that they try again. He suggested having them put forth another name.

Blais then nominated Craig for Chairman. Craig declined the nomination, stating that she was too new to the Board. A second vote for Gray was taken which resulted in a 4 to 3 no vote.

The members discussed how to proceed and decided to vote next for Vice Chairman. **Blais nominated Silverman for Vice Chairman. Haynes seconded. The vote was 4 to 3 in favor of Silverman for Vice Chairman.**

Silverman nominated Blais and Gray seconded the motion that Blais continue as Secretary. The vote was unanimous.

Taking up the Office of Chairman again, **Young nominated Gray; Craig seconded the nomination, and it was voted unanimously that Gray continue as Chairman of the Planning Board.**

There being no additional business to conduct, Blais moved, Gray seconded and the meeting was adjourned at 9:25 PM. The next meeting is scheduled for Tuesday, May 7, 2019 at 7:00 PM.

Respectfully Submitted,

Laurie Hayward
Land Use Administrative Assistant