

Approved Minutes
MAIDSTONE PLANNING COMMISSION MEETING
Wednesday, November 30, 2022, 6.30pm
Held by Zoom Video Conference

Members present (via Zoom): Bruce Barker, Bob Champagne-Willis, Chris von Alt

Other members of Town Government present (via Zoom): Brad McVetty, Selectboard; Bruno McKenzie, Selectboard; Scott Lovell, Chair of Selectboard; Town Clerk Amy Pear; Mary von Alt, Administrative Assistant to the Zoning Board, Planning Commission, and Selectboard; Town Constable Ray Lovell

Also present: Laurie and Bob Snowman; Jim and Sharon Bennett; Chris Carazzo; Alexa Bernotavicz; Ed Tully; Burt and Carol Kline

At 6.31 pm, the meeting was called to order by Chris von Alt, Chairman.

APPROVE MINUTES:

Bob made a motion to approve the September 13, 2022 meeting minutes; Bruce seconded the motion. The motion passed unanimously. Bob then made a motion to approve the November 7, 2022 Special Meeting minutes; Chris seconded the motion. Bruce recused himself, as he had not attended that meeting. The motion passed unanimously.

DISCUSS DRAFT WORKFLOW CHART AND ROLES AND RESPONSIBILITIES CHART:

Chris explained that the Planning Commission (PC) is charged with updating and improving the Town Plan and the Town Zoning Bylaws, which are intended to implement that Plan. The PC is beginning that project by examining the land use review and approval process as stipulated in the Bylaws, including the assignment of roles and responsibilities. In order to see where improvements and updates are needed, it is important to look at recent review and approval actions to see where the Bylaws have not been followed, as well as to read and discuss the Bylaws to determine which are lacking in clarity or are confusing or in need of correction; in conjunction with this, zoning forms and instructions must be examined in order to decide which are in need of revision and what forms must be created. The Maidstone Zoning Bylaws must comply with Vermont law; to ensure that, the PC will need to seek legal counsel and review as necessary. The Northeastern Vermont Development Association (NVDA) will provide support to this entire project; NVDA has already agreed to conduct a technical review of the Bylaws.

Chris shared his screen to display the Draft Workflow Chart, created to depict each step of land use review and approval in Maidstone, including who has the responsibility for each step of that review and approval process. Throughout his narrative and the accompanying discussion amongst the Commission members and attendees, the following topics and issues arose:

- The Town needs a document that explains the permit application process;
- The Selectboard should consider establishing a policy regarding consequences for those who begin land development without a permit;
- Should all zoning permit applications go through the Town Clerk first, as the Clerk is responsible for maintaining all land records, and then be forwarded by the Clerk to the Zoning Administrator (ZA)?;
- Should all subdivisions be referred to the PC? Bruno and Bob both questioned this. Vermont Statutes and our Bylaws differ. This is a **QUESTION for a LAWYER.**
- Nonconforming structures, uses, and lots (*the Bylaws and Vermont Statutes define nonconforming structures, uses, and lots as those that existed prior to adoption of bylaws, or were permitted under an earlier set of less restrictive bylaws*): Who has the authority to approve zoning permit applications for these? How should this be depicted on the Workflow Chart? How are these addressed in our Bylaws? Approval authority may vary depending on whether the structure is being rebuilt after a fire or after demolition, or is being modified. Should the ZA deny a permit for a nonconforming structure, which would then be eligible for appeal to the Zoning

Board, or should the ZA receive the application, review it, and immediately refer it to the Zoning Board? The associated responses to a denial and a referral vary considerably. There are a significant number of nonconforming structures and lots on the lake. This is a **QUESTION for a LAWYER.**

- Bruno asked about land-locked properties, suggesting that this must be clearly addressed and might require amending a bylaw(s).
- If the Bylaws do not specifically assign authority to the ZA, does that authority rest with the Zoning Board? This is a **QUESTION for a LAWYER.**
- Bruno suggested that the Bylaws need clarification regarding when you need a permit, based on the type(s) of modifications being made - replacing windows or a roof for example, vs changing the pitch of a roof. This is a **QUESTION for a LAWYER.**
- Burt brought up the issue of definition of demolition and rebuilding - what happens if you leave one wall or two walls, etc. What is rebuilding and what is demolition? This is a **QUESTION for a LAWYER.**
- Vermont does not use the term “grandfathered”. What is the other term to use?
- Laurie asked if a building permit is needed for a foundation. Bob said that is structural alteration and needs a permit. Foundations, loading walls, septic as well, all need building permits, said Chris.
- Bob C-W pointed out that we had not addressed the Roles and Responsibilities Chart called out in the agenda; Chris said he kind of blew it by not including that in the Workflow Chart, but the only issue that has arisen with regard to what is specified in the Roles and Responsibilities Chart is with regard to who should have authority over conditional uses; the Bylaws assign that in some places to the Zoning Board and in some places to the PC. The PC can make a decision about whether conditional use is under the purview of the Zoning Board or the PC. Chris says this does not need legal review.

DISCUSS THE TOWN OF MAIDSTONE ZONING APPLICATION PROCESS POLICY:

Chris stressed that the approach is not to criticize, but to look with fresh eyes at existing policy. The question is if the policy addresses all related issues thoroughly, including making sure applications are administratively complete, what the options are if the application is denied, and whether permit applications should go through the Town Clerk before going to the ZA. Bob pointed out that the Selectboard will be reviewing all Town policies at the organizational meeting in April; the PC should make recommendations to the Selectboard if the Commission feels that the policy is inadequate.

- Amy said the new ZA has told her that she would like zoning permits to go to the Town Clerk, who will then notify the ZA that permit applications have been received, so that the ZA can collect them for review.

REVIEW AND DISCUSS HOW/IF THE ZONING PERMIT APPLICATION FORM REFLECTS THE BYLAWS AND THE ROLES AND RESPONSIBILITIES CHART:

All agreed that the Zoning Permit Application needs revision. That will be worked on and a draft revised form will be created and presented to the PC for review in the near future.

Mary asked the Town Clerk what exactly needs to be recorded. Amy said the Town of Maidstone currently records only the permit application if it is approved or denied; sketches, plans, and diagrams are not recorded;. A Shoreland Protection letter and a State permit are recorded at a cost of \$15/page to the landowner, separate from the Town application fee.

Bruce asked if we should consider a line such as “Is the use conditional? If yes, the date of referral to the Zoning Board of Adjustment is ___?” Bob suggested that it be a more general question: Was this application referred? Bruce said he was trying to make it clearer that conditional use must go to the Zoning Board, Bob said that a referral stops the 30 day window within which the ZA must take action; our application form does not currently show that clearly, but should. ***This needs to be fixed.***

Chris asked Brad what the process is for revising zoning forms. Brad said that he was not sure. There is a formal process for changing bylaws that involves public hearings of the Town. The Town can decide whether to have the Selectboard approve such amendments or to have voting be by Australian

ballot. The process for changing forms so they better reflect the Bylaws is not clear. Bob suggested that in the interests of transparency, forms should be discussed and decided upon publicly. Brad suggested checking with NVDA about how to change zoning forms. **THIS IS A QUESTION FOR A LAWYER.**

Bruce questioned whether the Certificate of Occupancy (CO) should be part of the Zoning Permit or should be a separate document. Chris pointed out that a CO requires State permits about which people should be informed ahead of time. Bruce suggested a separate sheet to hand out with the permit to explain everything. Mary said the current Guidelines do provide some information, including the need to check with the State rep about what State permits might be required. Bruce asked if those Guidelines are handed out with the Permit Application; Amy said people requesting a permit are asked if they would like a copy of the Guidelines. It was agreed that the current Guidelines are not consistent with the Zoning Permit Application. Amy says the costs currently delineated regarding the CO do not take the recording fee into consideration. Much about the CO is confusing and needs to be clarified for the benefit of the public and to guide Town Hall. Amy says, after researching the CO and learning about the Vermont RBES (Residential Building Energy Standards), she now has copies of the RBES at Town Hall to be handed out with Zoning Permit applications as required by State law. In conclusion, Chris said the permit process as delineated in the Permit Application Process Policy, the permit application form, and the Guidelines all need to be looked at and revised; the revisions will be put forth to the Selectboard at a later date.

APPROVED APPLICATIONS THAT DO NOT CONFORM TO BYLAWS:

The Town has in the past, with all good intentions, authorized permit applications that do not conform to the Bylaws. The two included here are just examples. In his research thus far, Chris has been told that if a permit application is approved by the ZA, it goes into effect if not appealed within 15 days. Remedies are few and very expensive. Bob said his concern is whether the Town is liable if something is approved that is in violation of the State law, for example, if the ZA approves a Certificate of Occupancy and does not look at compliance with State building energy codes. Bruno suggested that if the Town digs in to the energy codes compliance requirement, it may find that a building inspector must be hired. Chris pointed out that Lake property values, combined, equal somewhere between 60 - 90 million dollars of real estate; the Town must take that into consideration and must ensure that the Town is protected. There are two questions for a lawyer in all of this: when a permit application is approved by the ZA who does not have that authority, and/or, when the application does not comply with State law, and that approved permit is not appealed within the 15 day appeal period, is that permit legal or valid? If such a permit is legal or valid, does the Town have any associated liability? **These are QUESTIONS for a LAWYER.**

REVIEW AND DISCUSS DRAFT AMENDED CERTIFICATE OF OCCUPANCY PERMIT APPLICATION FORM; RECOMMEND ACTION IF NEEDED:

The current Certificate of Occupancy (CO) application form does not include the State law's requirements for a State septic permit and for a Certificate of Compliance with Residential or Commercial Building Energy Standards (RBES and CBES), cited in the Bylaws. Bob said the Town has not been requiring this compliance with State law with regard to Building Energy Standards and rarely has issued any Certificates of Occupancy. The Town Clerk is aware of only two homes in Maidstone that have COs; she pointed out that the previous ZA presented the CO as only being required for new buildings. Bruno said that a CO was not required until the 2016 Bylaws, which Mary confirmed by checking the 2002 Bylaws. Mary said that some other towns state that the CO is a Certificate of Completion, required for all zoning permits. Chris said that one option used by some Towns is a Temporary CO issued while awaiting the State permit, which is something Maidstone might want to consider. A CO may be of importance particularly when property is sold. A Draft CO application has been created that reflects the requirements stipulated in the Bylaws. The PC will review that draft application before deciding whether to recommend it to the Selectboard. Modifications to the fees associated with the CO application may be required. Information about the CO will need to be included in the updated Zoning Permit Application and the Guidelines for the zoning permit process. Bob raised the question of the Town's liability associated with the issuance of COs that do not

conform with State law. This is a **QUESTION for a LAWYER**, which Bob pointed out requires Selectboard approval.

REVIEW AND DISCUSS APPLICATIONS RECEIVED FOR THE POSITION OF ASSISTANT ZONING ADMINISTRATOR:

The Selectboard has posted a vacancy for the position of Assistant ZA (AZA) and requested that the PC, in accordance with the Bylaws, review applicants and nominate a candidate for appointment to that position. The job descriptions of the ZA and the AZA in the Bylaws were displayed on the screen:

- §501(1): The ZA shall literally administer and strictly enforce the provisions of this bylaw, and in doing so shall inspect development, maintain records, and perform other related tasks as is necessary and appropriate to carry out the provisions of this bylaw.
- §501(2): The Assistant Zoning Administrator will assist the ZA in the performance of his duties, with the approval of the Selectmen, at the request of the ZA and under the direction of the ZA, when the ZA is absent or unable to perform those duties due to sickness. The ZA will refrain from involvement in applications when he/she has a conflict of interest; such involvement in violation of this prohibition shall be grounds for disciplinary action, including dismissal. The Assistant Zoning Administrator will perform the duties of the ZA when the ZA has a conflict of interest.

Vermont Statutes' requirement for "clear policies regarding the authority of the administrative officer in relation to the acting or assistant officer" was discussed. The consensus of the members of the PC was that such clear policies were defined in §501(2).

The fact that the Bylaws say the AZA acts at the direction of the ZA and describe the scope of the AZA's responsibilities as filling in when the ZA is absent or ill or has a conflict of interest was discussed. Brad questioned the meaning of "with the approval of the Selectmen" - whether this means the Selectboard has to approve each instance of assistance or can issue a blanket approval was discussed. The consensus was that this Bylaw needs to be rewritten to clarify the meaning of this phrase.

Amy suggested that the Selectboard act to give a blanket authority to the ZA for a period of time until the Bylaws can be updated. For example, "The Selectboard approve the following manners through which the AZA can assist the ZA" and that this blanket authority be recorded in the minutes of the meeting at which it is decided.

Bruno said that when he talked Eileen Thietten into becoming the ZA, he mentioned to her that if she took the position, he would be willing to help her out, because he works at the Lake and would be able to keep her informed about what is going on up there. Now that there is another applicant for the position of AZA in addition to himself, Bruno said he did not know how Eileen would feel about that. He suggested that the PC proceed at this point to the nomination of a candidate and then talk to Eileen about that, so she could decide if she wants an AZA. Bob pointed out that the Bylaws' description of the AZA's job is not the same as Bruno's description of the AZA being a general assistant. Bruno said he did not realize until today what the Bylaws say about the AZA's job. Bob asked if we should table the nomination.

Chris said an issue that must be considered is that according to the Bylaws, the Selectboard is in charge of the ZA who is in charge of the AZA. If Bruno, who is a member of the Selectboard, took the job of AZA, he would be simultaneously the boss of and the subordinate of the ZA. In other words, the ZA could tell Bruno-the-AZA what to do, and Bruno-the-Selectman could tell the ZA what to do, a conflict of interest that is not usually looked upon favorably. Bruno said that the Bylaws say a ZA and an AZA can be part of the legislative part of Town government. Chris pointed out that even if not specifically excluded in the Bylaws, such a situation might not be the best answer for the Town.

The PC then discussed:

- Bruno's assertion that the ZA might not want any AZA other than Bruno;
- whether the nomination should be tabled;

- whether the Town needs an AZA in case of instances described in the Bylaws;
- the second applicant, Mike Otis, has 6 years of experience as the ZA in Maidstone and lives at the lake, all of which may be of help to the ZA;
- Chris's interview of Mike Otis;
- Whether this was a situation in which the PC should go into executive session to discuss the nomination;
- Bob's concern that the Selectboard might want to consider expanding the scope of the AZA.

Chris said a motion to nominate someone or a motion to table the nomination was needed. Bob suggested that the Selectboard could put the expansion of the scope of the AZA job on the agenda for the upcoming meeting. Bruno suggested that perhaps the AZA job was not really needed, that if the Town did not have an AZA, he himself would still have the right to explain/tell her what's going on at the Lake, and if she needs help, she can ask for assistance; he suggested that perhaps the Town should give Eileen some time to get into the ZA's job and decide over time if she needs an AZA. Bob Snowman asked if, in the instance of the ZA having a conflict of interest, the permit application in question could be turned over to the Zoning Board for decision. The answer to this is unknown and needs research. **THIS IS A QUESTION FOR A LAWYER.**

Bruce pointed out that the Bylaws say "may nominate", not "shall nominate", indicating that the Selectboard and PC do not *have* to nominate an AZA at all. He suggested that if there is time, the PC table the issue. Bob Champagne-Willis made a motion that we table the decision on nominating an AZA; Bruce seconded the motion. The motion passed unanimously.

Chris said that in consideration of the millions of dollars of real estate on the lake and having one person handle all of the work associated with that, which is usually concentrated into a 3 - 4 month period, it might be in the Town's best interests to have someone providing assistance to the ZA with all of that.

Mary asked what exactly the Selectboard wants on the agenda for the next meeting. Brad asked Bob what his suggested wording was. Bob said "to modify the scope of the AZA's responsibilities and to act upon it." In addition, the PC needs authorization to go to Attorney Low with a number of questions. How to handle a possible associated Bylaw amendment was then discussed, with all acknowledging that research was needed to answer that question properly. The question of how to deal with a situation in which the ZA had a conflict of interest relating to a zoning permit application was raised. Scott suggested that the Selectboard could appoint a Temporary ZA to handle the application. Chris said the Planning Commission would try to get an answer to that question. **THIS MAY BE A QUESTION FOR A LAWYER.**

Bob Snowman asked if the AZA was a paid position, to which Chris answered that it was. Where is that money coming from was Bob Snowman's next question. Bob Champagne-Willis said it would be part of the line item for ZA in the budget, and that there is some money remaining in that line item. Bruno raised questions about how the AZA would be paid and spoke about the history of ZA pay.

DISCUSS DEVELOPING A PLAN OF ACTION FOR REVIEWING THE TOWN PLAN AND ANY NECESSARY CHANGES TO THE MAIDSTONE ZONING BYLAWS:

The first question brought up under this topic was the method of approving the Town Plan and Bylaws. Brad said that in the past both the Town Plan and the Bylaws were reviewed by NVDA, after which the Selectboard held a public hearing to present the new Plan and Bylaws and to take comments. Shortly after that, the Selectboard voted to adopt it/them. Chris said that as he understands it, the Town has not voted to have an Australian ballot used to approve the Town Plan or Bylaws, but has left approval in the hands of the Selectboard. This is the process therefore depicted on the PC's presentation:

Recommended process:

- begin by amending errors and omissions in the existing Bylaws with a target of having these ready for the 2023 March Town Meeting
- Revise Town Plan in 2023 (*The Town Plan expires on February 1, 2024.*)

- Update By-laws in 2023-2024 to reflect the Town Plan

The question arose of whether or not the PC can hold work sessions that are not public meetings, just for the purpose of working on the amendments to the Bylaws. Amy suggested turning to VLCT for the answer. Mary will do this.

The PC decided to begin the work of reviewing and updating the Bylaws according to the recommended process shown above:

- Begin by amending errors and omissions in the existing Bylaws, with a target of having these ready for the 2023 March Town Meeting.

The timeframe may be ambitious, but it's a goal. The proposed Amended Bylaws will be sent to the Selectboard, which will then conduct the required process of properly warned public meetings/hearings, etc., before holding a vote on approval. The next step after that for the PC will be reviewing and updating the Town Plan as needed before it expires on February 1, 2024. Following that, the process of updating the Bylaws to reflect the Town Plan will commence.

SET DATE FOR NEXT MEETING:

The next meeting date has already been set in the Annual Report for the second Tuesday in March, which is March 14, 2023. If necessary, the PC may schedule an additional meeting before that date.

ADJOURN:

Bob made a motion to adjourn; Bruce seconded the motion. The motion passed unanimously. The meeting was adjourned at 8.25 pm.

Respectfully submitted,
Mary von Alt