

Approved Minutes
MAIDSTONE SPECIAL PLANNING COMMISSION MEETING
Thursday, December 15, 2022, at 4.00pm
Held by Zoom Video Conference

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

Other members of Town Government present (via Zoom): Town Clerk Amy Pear, Administrative Assistant to the Zoning Board and Planning Commission Mary von Alt

Also present via Zoom: Mike Otis

At 4.01pm, Chris von Alt called the meeting to order. He announced the purpose of the Special Meeting was to review the draft list of questions for an attorney, the Selectboard having approved the Planning Commission's request to consult with an attorney in the process of revising and updating the Zoning Bylaws.

Chris then used a PowerPoint to present each draft question below for discussion among all of those present:

1. Should all applications for subdivisions be referred to the PC?
Decided after review of Vermont Statutes that Maidstone Bylaw stating that minor subdivisions that meet the minimum area and dimension requirements of this bylaw shall be approved by the Zoning Administrator is in accordance with VT Statutes; consider clarifying the wording.
2. 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?
Decided after reviewing and discussing the relevant Maidstone Bylaws that the ZA has authority to approve or deny in accordance with Bylaw stipulations, within the ZA's responsibility to literally administer and strictly enforce the provisions of this bylaw, noting Bylaws regarding increasing the degree of nonconformity
3. If the Bylaws do not specifically assign authority to the ZA, does that authority rest with the Zoning Board?
Discussed and discarded.
4. Is a Zoning Permit needed for any and all modifications for any building? For example, is a permit needed to replace windows or to replace a roof, if nothing is being changed about either?
Discussed and ultimately discarded after finding information from Vermont Statutes and VLCT Manual of Procedures
5. What is the legal differentiation between demolition and rebuilding? What happens if you leave one wall or two walls, etc.? Does that make a difference with regard to the need for a Zoning Permit and with regard to being able to rebuild a nonconforming structure that has been partially demolished or taken apart in order to rebuild?
6. Is there an accepted legal practice with regard to changing/updating Town Zoning forms?
7. 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?

8. Does the Town have any liability associated with the issuance of Certificates of Occupancy that do not conform with State law?

9. If the ZA has a conflict of interest with a permit application, can the permit application in question be turned over to the Zoning Board for approval or denial?

10. If the ZA has a conflict of interest relating to a zoning permit application, can the Selectboard appoint a Temporary ZA to handle the application?

11. What are the Town's responsibilities with respect to State waste water disposal and water supply regulations?

12. What is the Town's role with respect to the Deed Covenant language on all properties on Maidstone Lake?

Discussion included:

- Review of related Town Bylaws and Vermont Statutes, what they mean, and how they should be applied;
- Past practices of Zoning Administrators in administering the Bylaws;
- Who has the legal standing, according to Vermont Statute, to appeal a Zoning Administrator decision;
- Town Bylaws that need clarification or revision;
- Town Zoning forms that need revision or creation, who has the authority to do that, and what the approval process should be;
- The need to clarify, revise, and/or create Town Policies and Procedures;
- Whether or not a lawyer's opinion is needed for each question;
- The overarching need to ensure that Town Bylaws, Policies, and Procedures are clearly communicated to the public.

At the conclusion of the discussion, it was agreed that the Administrative Assistant would write a letter to Attorney Low relating all of the questions that came out of this meeting, and would circulate that letter to Commission members for review and approval prior to sending it to the attorney.

The last issue addressed by the Commission was the method of gathering and recording Members' suggested bylaw revisions in a master document that tracks changes. It was decided that Mary would send both the Zoning Bylaws and the Town Plan in Word format to the Commission members, each of whom would send their suggested bylaw revisions to her for inclusion in a master Zoning Bylaw document, tracking all changes suggested, that Mary will maintain. At this point, bylaws that have been noted in discussions as needing correction or updating will be addressed, including those impacted by Attorney Low's advice. The intent is to revise/update the subset of bylaws that most obviously need attention and that have been at the center of recent zoning events. The next step will be to review and update the Town Plan, followed by a thorough review of the Bylaws to ensure that they reflect and implement the Town Plan and that they are in accordance with Vermont Statutes.

The business of the meeting concluded, Bruce made a motion to adjourn; Bob seconded the motion. The motion carried. The meeting was adjourned at 5.53pm.

Respectfully submitted,
Mary von Alt

Attached: Questions for Attorney Low, created from this meeting's discussion, for Planning Commission members' review and approval

Questions for Attorney Low

At the Selectboard meeting on Monday, December 5, 2022, the Selectboard authorized the Planning Commission "to contact Attorney Nick Low for assistance in the updating of the Bylaws." To that end, the Planning Commission has compiled the following list of questions, answers for which are important in the Bylaw updating process.

1. Re: Definition of Interested Person(s) who can appeal a Zoning Administrator's decision

According to 24 V.S.A. § 4465 (a) "An interested person may appeal any decision or act taken by the administrative officer in any municipality by filing a notice of appeal with the secretary of the board of adjustment or development review board of that municipality or with the clerk of that municipality if no such secretary has been elected. This notice of appeal must be filed within 15 days of the date of that decision or act, and a copy of the notice of appeal shall be filed with the administrative officer.

§ 4465 (3) says that an Interested Person includes:" A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under this chapter, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality."

QUESTION: Is this definition limited to physical abutters of the property in question? In the case of properties on Maidstone Lake, an environmental impact on the Lake affects all owners of lakeshore property. Does that mean that all owners of lakeshore property meet the definition of Interested Person that includes persons who "can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed"?

2. Re: When a zoning permit is needed

QUESTIONS:

- ***Is there a Vermont State legal definition of "structural alteration"?***
- ***Is there a Vermont State legal definition of "demolished"? If a person demolishes all but one wall of a structure, is that considered "demolished", or is it legally still a structure that can be altered, etc.?***

3. Re: How to change or update Town Zoning forms and policies

QUESTION: Is there an accepted legal practice to follow with regard to changing/updating Town Zoning forms and policies?

4. Re: When zoning permits or certificates of occupancy are issued erroneously by the Zoning Administrator

QUESTION:

If a permit has been issued erroneously by the Zoning Administrator, does the Town have any associated liability?

Does the Town have any liability associated with the issuance of Certificates of Occupancy that do not conform with State law?

5. Re: Designating a structure/lot/use as “nonconforming”

According to 24 V.S.A. § 4303. Definitions and according to our Bylaws, the definition of a nonconforming structure/lot/use includes structures/lots/uses improperly authorized as a result of error by the Zoning Administrator.

QUESTION: When a Zoning permit has been improperly authorized for a structure/lot/use that is not in accordance with the Bylaws, is there an established procedure for consequently labeling such a structure/lot/use as “nonconforming”? Who has the authority to do this?

1. Re: When the Zoning Administrator has a conflict of interest

QUESTION: If the Zoning Administrator has a conflict of interest related to a permit application, and the Town does not have an Assistant Zoning Administrator, what are the Town’s options? Can the permit application in question be turned over to the Zoning Board for approval or denial?

7. Re: if a nomination from the Planning Commission is always required for a Zoning Administrator, an Assistant Zoning Administrator, and/or a Temporary Zoning Administrator appointment by the Selectboard

24 V.S.A. § 4448 (b) states: “The planning commission may nominate and the legislative body may appoint an acting administrative officer who shall have the same duties and responsibilities as the administrative officer in the administrative officer’s absence.”

QUESTION: Can the Selectboard appoint a Temporary Zoning Administrator who has not been nominated by the Planning Commission?

8. The following questions are interrelated.

QUESTIONS:

- ***What is the Town’s responsibility with regard to ensuring that State waste water disposal and water supply regulations are followed?***
- When Champion Realty Corporation sold the 214 lots surrounding Maidstone Lake, all the deeds included a covenant “designed to insure that the sale of Champion lots will not result in a negative impact to water quality.... to provide for professional inspection, and, if necessary, the repair, replacement, relocation, or conversion of polluting systems to non-polluting systems, upon the sale or transfer of camp lots.” (See the attached letter from Charles J. Gallagher, District 7 Act 250 Coordinator, to John Marshall, Attorney Representing Champion Realty, Inc., and the associated paperwork.)

QUESTION: What is the Town’s responsibility for ensuring that sales and transfers of lots on Maidstone Lake adhere to the Deed Covenants and for gathering and recording data related to the implementation of the covenants, for example, dye tests?