



TOWN OF WEARE
PLANNING BOARD
ZONING BOARD OF ADJUSTMENT
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Naomi L. Bolton
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Office Hours:
Monday
thru
Friday
8 AM – 4:30 PM

**PLANNING BOARD
MINUTES
JUNE 11, 2009
(Approved as written 6/25/09)**

PRESENT: Craig Francisco, Chairman; Frank Bolton, Vice Chairman; George Malette, Secretary; Neal Kurk; Dani-Jean Stuart, Alternate; Naomi L. Bolton, Land Use Coordinator

GUESTS: Pat Myers

I. CALL TO ORDER:

Chairman Francisco called the meeting to order at 7:00 PM at the Weare Town Office Building.

II. PUBLIC HEARING:

PLANNING BOARD BY-LAW CHANGES: TO RECEIVE INPUT AND COMMENTS: Chairman Francisco opened this public hearing at 7:01 PM. The board went through the proposed changes that were put together at the May work session. There was no public input. Chairman Francisco closed the public portion of the hearing at 7:10 PM. Frank Bolton moved to accept the planning board by-law changes in the document we are using tonight, June 11, 2009; Neal Kurk seconded the motion, all in favor.

III. WORK SESSION

REPORT FROM CONSERVATION EASEMENT SUBCOMMITTEE: Frank Bolton, Chairman of the Conservation Easement Subcommittee asked Pat Myers who was present that graciously has taken the lead for the last 2 meetings to go through the following report.

Conservation Easement Subcommittee
Report to the Planning Board
June 11, 2009

The Weare Planning Board charged The Conservation Easement Subcommittee (C.E.S.) ([see email from P. Morin February 13, 2009](#)) with researching land protection methods and determining which are most applicable and useful in protecting the open space areas created by Weare's cluster subdivision process (cluster open space land or C.O.S.L). The subcommittee was to consider which methods are appropriate under different circumstances. The subcommittee was to

consist of 2 members from the Planning Board, Frank Bolton and Craig Francisco, 2 from the Conservation Commission, Andy Fulton and Pat Myers, and 1 member from the newly enacted Agriculture Commission, Paul Gannon. The first meeting was held on 3/24/09 during which Frank was elected to serve as committee chair and Craig as vice-chair. To date 10 meetings have been held.

We initially requested and reviewed information and examples provided by Ian McSweeney, of the Russell Foundation; Chuck Knox, of the Five Rivers Conservation Trust; Susan Hoey of the Southern New Hampshire Resource Conservation & Development Area; Dijit Taylor of the Center for Land Conservation; Lorraine Merrill, Commissioner of the NH Department of Agriculture and Emily Hague from the Monadnock Conservancy. Five of the meetings were spent interviewing knowledgeable individuals with expertise in land protection. This list includes Ian McSweeney, Jack Munn of Southern New Hampshire Regional Planning Commission, Paul Doscher of the Society for the Protection of New Hampshire Forests (AKA the Forest Society), Terry Knowles, of the Charitable Trusts division of the NH Attorney General's Office and, David Nieman, Goffstown Conservation Commission member and chair of Open Space Committee.

After a period of information gathering, the Subcommittee identified several specific problem areas that have complicated and slowed Weare's efforts to date to protect C.O.S.L.:

- There are a limited number of land trusts that operate in or around Weare.
- Land Trusts may be unwilling to hold conservation easements (CEs) on cluster open space areas, finding many of them to be high risk commitments with low conservation value, i.e. greater numbers of abutters and configuration of the open space that is not conducive to wildlife and natural ecosystems.
- Protective covenants and deed restrictions, alternatives to CEs as protection methods, cannot be considered permanent. In legal terms they must expire or come to an end at some point.
- The town has no functional stewardship program in place to monitor and defend conservation lands.
- Town Zoning regulations may need to be amended.

The subcommittee looked at the following standard land protection methods:

- Conservation Easement (CE)
- Deed Restriction
- Conservation Restrictive covenants
- Town ownership
- Restrictive easements

Each protection method was evaluated in terms of its usefulness under the following ownership scenarios:

- Open Space Land remains in private ownership by
 - a) A single land owner, or
 - b) A homeowners association
- Open Space Land is deeded to the town or other government agency
- Open Space Land is deeded to a qualified land trust such as the PLC or SPNHF.

After much discussion, the subcommittee ranked the protection methods according to their usefulness in protecting cosl. There was consensus among members that option A whenever it is possible, would be the most desirable situation for the cosl and for the town.

- A Conservation Easement held by a qualified land trust or an agency of state or federal government.
- B Town ownership – see further possibilities below.
- C Conservation Easement held by the town.
- D The remaining options exist but were not ranked by the subcommittee.
 - Covenants or deed restrictions with cosl in private ownership
 - Covenants or deed restrictions with the town as a fall back enforcer of the restrictions on the cosl.
 - Various combinations of the previous two bullets.
 - Town ownership with no restriction of (town) use.
 - Town ownership with deed restrictions or possibly designation as town forest.
 - Restrictive easements

There were special circumstances that were discussed by the subcommittee. One of these was farmland as part or all of the C.O.S.L. Weare has relatively little remaining farmland and the subcommittee saw value to the town in protecting what remains for continued or future agricultural use. Private ownership, when agriculture is a permitted use on the C.O.S.L., may be the most workable arrangement. The topic of farmland protection is truly a cutting edge issue for land trusts, agricultural organizations, and government agencies and we must watch for their progress and put it to use in Weare. Meanwhile, if such situations arise in town, the protection of the C.O.S.L. will require careful consideration by the Planning Board in conjunction with the Conservation Commission, and the Agriculture Commission.

Other related topics discussed during meetings were:

- ◆ Density bonuses could be tied to a developer's willingness to put areas of higher conservation value into the open space portion of the subdivision.
- ◆ Another means of encouraging the developer to set aside land of greater conservation value would be to suggest setting aside land in addition to the required percentage, with the deed or CE given as a charitable gift to the town of Weare. This charitable gift could potentially result in a valuable tax deduction for the developer or landowner.
- ◆ Originally the subcommittee held the idea that the town would benefit from continued property taxes if C.O.S.L's remained in private ownership. Upon consulting with Avitar, the committee learned that new legislation has excluded these protected lands from local property taxation.
- ◆ **Subdivision regulations need to address lot boundary markings that leave nothing to the imagination of the various impacted parties.**
- ◆ Some means of funding a stewardship and a legal defense program is needed. The possibility of requiring a fee from developers applying for cluster subdivisions should be further explored. There might be advantages in requiring that all subdivisions be cluster, such as Goffstown does. The practice of annual monitoring the C.O.S.L's. needs to be established in Weare. Currently this falls to the Conservation Commission members and is typically beyond the capabilities of their existing membership. One possible approach would be to form a permanent subcommittee for monitoring and stewardship. There could be existing private organizations that would have a vested interest in this chore, the Goffstown Fish & Game membership is one such possibility.

After researching the topic and interviewing the experts, the Subcommittee came to understand that Weare is not the only community struggling to develop sound policy and regulations regarding the creation and protection of cluster open space lands. Currently no comprehensive solutions exist. Experts are still coming to grips with the issues and cannot provide all of the answers. Weare and other New Hampshire communities must carefully create our own. David Nieman, chair of the Goffstown Open Space Committee expressed interest in some sort of information sharing or other collaboration with Weare since both towns are working to develop effective policy and regulations regarding open space land protection.

A final thought, The SNHRPC should be asked to provide member towns, including Weare, with more and better up to date information and advice on the protection options for open space lands from cluster subdivision.

Thank you,

The Conservation Easement Subcommittee

The board felt that this discussion needs to be continued and put on future work sessions. Chairman Francisco suggested that the subcommittee should meet again to start some sort of boiler plate template.

DISCUSSION ON ROAD STANDARDS: Chairman Francisco handed around copies of a memo from SNHPC dated February 21, 2008 regarding alternative roadway design standards. Attached to the memo was a document called "Alternative Geometric Roadway Design Standards Low Volume Residential Streets". Neal Kurk stated that he will try to get some other Towns regulations regarding these types of roads. Seeing that the board will be gathering information, the board would like it to be kept on future agendas.

REPORT FROM WETLANDS SUBCOMMITTEE: Chairman Francisco got an email from Mike Dahlberg, Chairman of the wetlands subcommittee, which was an update of the subcommittee. The following was the update:

As a subcommittee we voted to submit this initial report to the Weare Planning Board and Weare Conservation Commission for their consideration.

As a subcommittee we feel that following items need to be addressed prior to further work:

- A comprehensive Wetland & Wetland Buffer Ordinance needs to be written that incorporates a unified approach to wetlands and their associated buffers.
- An outside consultant needs to be hired in order to assist the Joint Subcommittee in their effort to execute due diligence in writing an ordinance that addresses gradational setbacks and buffers to different types of wetlands.
- Funding for an outside consultant by either grants or the Conservation Fund.
- Invite interested agencies in the region such as PLC, PRLAC, Russell Foundation and the SNHRPC etc. to give input regarding wetlands and wetlands buffers.
- Input from both the Planning Board and Conservation Commission.

Dani-Jean Stuart went over the information in the email, as a member of the subcommittee. There was a lot of research done but the subcommittee felt that there was more professional help. George Malette pointed out that there is a model wetlands ordinance in the "Innovative Land Techniques book". Chairman

Francisco stated that he was going to reply back to Mike Dahlberg. Naomi will check to see what SNHPC can do for this subcommittee as part of our annual fee. PLC would be a good resource as they expressed their interest in protecting and possibly increasing it.

IV. OTHER BUSINESS:

MAY 28, 2009 MINUTES: George Malette moved to approve the May 28, 2009 minutes as written; Neal Kurk seconded the motion, all in favor, except for Frank Bolton who abstained.

IV. ADJOURNMENT:

As there was no further business to come before the board, Frank Bolton moved to adjourn at 9:20 PM; George Malette seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator