

Richmond Planning Commission  
REGULAR MEETING MINUTES FOR February 2, 2022

Members Present:	Virginia Clarke, Mark Fausel, Lisa Miller, Chris Granda, Alison Anand, Dan Mullen, Chris Cole,
Members Absent:	Joy Reap,
Others Present:	Ravi Venkataraman (Town Planner/Staff), MMCTV, David Rugh, Tom Frawley, Huseyin Sevincgil,

**1. Welcome and troubleshooting**

Virginia Clarke called the meeting to order at 7:02 pm.

**2. Public Comment for non-agenda items**

None

**3. Adjustments to the Agenda**

Clarke said that item 5 will include any comments and questions related to the Town Attorney's comments in general, and not limited to his comments regarding wetlands.

**4. Approval of Minutes**

No comments. The minutes are accepted into the record as written.

**5. Discussion regarding proposed wetlands regulations**

Clarke said that the discussion topic is related to the amendments under consideration for the public hearing and that the focus of the topic is to review the draft amendments with Town Attorney David Rugh of Stitzel, Page, and Fletcher, P.C. Clarke said that the commission may not be ready to forward the draft amendments to the Selectboard during this meeting, and that the commission may need to warn another public hearing based on the comments it receives and the revisions it needs to make.

David Rugh introduced himself to the commission, and overviewed the topic of wetlands regulations in Vermont. Rugh said that with wetlands, when local regulations conflict with state rules and the determinations the state and the municipality for permit applications differ, it can become fodder for litigation. Rugh said that the State Wetlands Rules have been revised twice in the last three to four years and that it will be revised again this year. Rugh recommend that the commission keep in mind the updated regulations when it prepares the town's wetlands regulations.

Clarke suggested that Ravi Venkataraman present the draft regulations Rugh had annotated, added that the commission will need to decide on which districts the vehicle fueling station use and powered machinery/repair use will be allow, and said that Venkataraman had included suggested districts to include the aforementioned uses in his submittal to Rugh for review.

Clarke pointed to Rugh's comment on discontinuing nonconforming structures, and said that his suggestion to remove the subsection seemed reasonable. Rugh said that his suggestion is based on what statute allows for the discontinuance of nonconforming structures versus nonconforming uses.

Clarke moved to Rugh's comment about the town's inability to require DC fast chargers with vehicle fueling station uses, and pointed to his suggestion of incentivizing the installation of DC fast chargers. Clarke said that in her interpretation the town is allowed to require the installation of DC fast chargers with the vehicle fueling station use per statute. Chris Granda asked if Rugh's comment regarding takings is specific to Vermont. Rugh said that the comment is Vermont-specific and that incentivizing electric vehicle chargers would be safer from legal challenge compared to a requirement. Rugh added that in response to Clarke's reference to statute, he does not find an electric vehicle charger to be a renewable energy resource. Granda said that he agrees with Clarke that the EV charger should be a requirement, adding that the commission shouldn't do something just because it would get legally challenged. Rugh said that he would like to see in statute the authority in municipalities to require the development of EV charging stations and that that authority currently does not exist in statute. Granda suggested to Venkataraman that the town may want to reach out to Curt McCormick, who Granda believes is still the chair of the house committee on transportation, on the EV charging station requirement issue. Chris Cole asked for clarification on Rugh's point regarding takings. Rugh referred to a recent supreme court case from California in which the U.S. Supreme Court found that requiring union representatives access to farmworkers constitutes a physical taking under the fifth amendment. Rugh said that takings traditionally meant a government's encroachment onto private property and that the town's requirement for an EV charging station could be read as a taking. Cole said that the proposed requirement wouldn't be a taking because it would only apply to gas stations that are looking to redevelop. Rugh said that this requirement would apply to all gas stations and any proposed new gas stations. Granda asked if the takings rule would apply to health and safety equipment. Rugh said that it would not apply to traditional government entry onto private property, including health and safety.

Mark Fausel asked about the possible language for the incentive and suggested requiring an EV charging station for vehicle fueling station uses with more than two pumping islands. Rugh said that Fausel's suggested language differs from an incentive and that it would be less likely to be challenged. Granda proposed a limit to a single gas pump at a vehicle fueling station and the incentive to build additional gas pumps for every EV charging station built. Rugh recommended more flexibility in the incentive language as more flexibility would reduce the likelihood of a legal challenge. Granda asked if there was an issue on limiting the number of liquid fueling pumps. Rugh said that he is unsure about that aspect, citing the case law surrounding gas stations from the early to mid-2000s, and adding that he could look into the subject matter. Clarke asked for Rugh to look into this subject.

Clarke suggested that the commission discuss on its own the limits on the number of seats for the vehicle fueling station use.

Clarke overviewed the wetlands regulations topic, and the town's current wetlands regulations. Clarke asked if the town could request an applicant's state wetlands permit when an applicant applies for a permit for development within a wetland or wetland buffer. Rugh suggested replacing the term "feasible" with "practicable" as "practicable" is used in the State Wetlands Rules. Rugh said that even though statute does not specify the town's authority to request a Conditional Use Determination from the state, there is little chance that the requirement to provide a Conditional Use Determination would be

challenged because an applicant would have to obtain a Conditional Use Determination for developing within wetlands or wetland buffers anyways.

Alison Anand asked Rugh to point out aspects in the draft regulations that are susceptible to a challenge. Rugh said that he is concerned about DRBs making decisions that are not consistent with the state's rules and that this difference may lead to legal challenges because the state wetlands division is staffed with scientists compared to DRBs, which means that DRBs are more likely to base a decision on a personal belief compared to the scientific basis of the decisions the state wetlands staff would apply. Anand asked if specific aspects of the draft regulations are inconsistent with the state wetlands rules. Rugh said he is more concerned about the possible outcomes rather than the specific rules in the draft regulations, citing an example in which a town faced a legal challenge for regulating Class III wetlands and decided to settle by deferring to the state's determinations.

Cole said he supports keeping the term "feasibility" in the draft regulations. Rugh said that there is case law stating that using "feasible" alone is not a clear enough regulatory standard in zoning regulations, and that the term "feasible" has to be further qualified.

Clarke thanked Rugh for his time and said that the commission may submit revised draft zoning documents for his review at a later date.

## **6. Public Hearing – Proposed zoning amendments to wetlands, vehicle fueling station, and nonconforming structures and uses**

Motion by Cole, seconded by Granda, to open the public hearing. Voting: unanimous. Motion carried.

Clarke asked the public for comments. Tom Frawley praised the commission's efforts so far on the draft zoning regulations, and said that the commission should consider the impacts of requiring EV charging to the businesses because the rate of return of the EV charger compared to the cost of installation is low. Granda asked if Frawley is proposing any changes to his plans to install a DC fast charger. Frawley said that he is not and that he is concerned about the smaller gas station businesses.

Clarke asked Frawley about the limits on seating and whether a maximum seating of eight would fit his needs. Frawley suggested linking the number of seating to the square footage of the site or building space.

Fausel said he was concerned about opening up the possibility of sit-down dining. Clarke said that further discussions about sit-down dining and the Gateway are needed.

Frawley asked about allowances to replace existing septic systems located within wetlands and wetland buffers. Clarke affirmed that replacing existing septic systems within wetlands and wetland buffers would be allowed, and cited the reference to allowances for nonconforming structures in the draft zoning document. Huseyin Sevincgil suggested adding a clarification for the allowance to replace existing septic systems and clearing up a typo in the draft zoning regulations.

Clarke asked Frawley about the proposed limitation to four pumping islands. Frawley said that they will move forward with their plans with respect to this limitation, and that he has concerns about the traffic impacts the limitation will have for his site.

Lisa Miller said she had concerns about the regulations force fitting EV chargers in locations that would not have as much usage as a home would. Granda said that most users would not need an EV fast charger on a regular basis, that EV fast chargers would be used by users on long-distance travel, that he cannot provide comment on the business of EV fast chargers, and that he expects EV fast charging equipment to become cheaper over time. Clarke said that additional funding opportunities for creating EV chargers may come up in the near future.

Dan Mullen said he would like to discuss with the commission Rugh's comments regarding takings. Clarke overviewed Rugh's recommendations for incentives, and the Town Plan's energy goals. Mullen said that he doesn't buy into the argument regarding takings based on his understanding of constitutional law. Venkataraman said that he has heard of other municipalities and regional planning push for requiring EV charging stations for multifamily dwellings and that he needs to research whether EV charging stations could be required. Venkataraman also said that based on the statutory definition of renewable energy resources, he does not find an EV charger to qualify under the statute Clarke referenced. Granda supported Rugh's suggestion of an incentive-based system, and placing the limit for fuel-dispensing islands so low that a developer would be strongly encouraged to install an EV charging station. Cole said that he would prefer to have the EV charging station as a requirement, and recommended reaching out to the house transportation committee to include the EV charging station requirement into statute. Clarke asked if Granda had an objection to requiring the EV charging station. Granda said that he did not.

Clarke asked the commission about the seating limitation, clarifying that the seating limitation would not apply to the Gateway District because the commission intends to rezone the Mobil gas station. Clarke added that she would be in support of allowing for some seating in the convenience store portion of vehicle fueling station uses, as she understood that the accessory use is for people on the road and would not detract from businesses within the village. Cole concurred, adding that "fast charging" takes 20 minutes and that he appreciated the convenience of buying food when on the road. Fausel noted the strong pushback against allowing restaurants and fast food in discussions in past years regarding zoning regulations for the Gateway District, and supported allowing limited seating for vehicle fueling station uses. Clarke said that the allowance for restaurants in the Gateway District will be discussed at a later time. Anand said she appreciated being able to buy food while fueling her vehicle when traveling. Mullen said that based on his understanding the draft language does not forbid seating. Clarke said that currently the draft language may be read as too ambiguous. Cole suggested adding language that would allow for on-premise and off-premise consumption. Clarke said that the suggestion doesn't address whether or not tables and chairs would be allowed to enable on-premise dining. Venkataraman said that the issue at hand was that the commission had to define to what extent was seating "customary" in the context of a vehicle fueling station use. Cole said that it was up to the DRB to determine the limit of "customary". Clarke said that she will work on a revision and present it to the commission at a later date.

Clarke added that the commission will need to discuss where the vehicle fueling station and powered vehicle/machinery repair uses will be allowed, as well as the zoning map itself.

Motion by Cole, seconded by Granda, to close the hearing.

Venkataraman asked if the commission would like to continue the public hearing. Cole asked if the commission could accept public comments after the public hearing. Venkataraman said that it depends whether there will be additional comments that will need to be part of the record. Cole said that in this

case and context, he does not anticipate the need to keep the public hearing open for additional comments into the record. Fausel said that from his recollection, the commission will need to decide on whether it should forward the proposed zoning amendments to the Selectboard, and that if the commission will make changes to the proposal, it would need to warn a public hearing. Venkataraman said that the commission can close the hearing, make changes to the draft zoning amendments, and vote to forward the draft zoning amendments to the Selectboard at any time after the public hearing is closed. Venkataraman added that the general rule of thumb is that if the commission plans to make changes outside of the section headers it initially warned, the commission should warn another public hearing, and that the commission has a certain degree of flexibility in making changes to the draft zoning amendments at this point.

Cole suggested warning a public hearing to move the process forward. Venkataraman asked if the commission wants to make any changes outside of what was initially warned or discussed during the meeting. Clarke said no.

Voting: unanimous. Motion carried.

## **7. Other Business, Correspondence, and Adjournment**

Clarke overviewed the Town of Hinesburg's proposed zoning amendments, and the Gateway District public input session during the next Planning Commission meeting.

Venkataraman said that the bicycle/pedestrian master plan public meeting is next Wednesday at 5:30 pm, and that people can provide comments via the Wikimap tool and physical maps at the library and Town Offices.

Motion by Granda, seconded by Miller to adjourn the meeting. Voting: unanimous. Motion carried. The meeting adjourned at 9:09 pm.

Respectfully submitted by Ravi Venkataraman, Town Planner