

8.5.26 meeting minutes Planning Commission

This meeting was held remotely via Zoom.

Members present: Chelsye Brooks, Virginia Clarke, Mark Fausel

Members absent: Alison Anand, (*one vacancy*)

Others present: Keith Osborne (Director of Planning and Zoning), Erin Wagg (MMCTV), Trevor Brooks

1. Welcome

Clarke welcomed members and guests and opened the meeting at 7:03 PM.

2. Review agenda and public comment on non-agenda items

There were no changes to the posted agenda and no public comment.

3. Review minutes of 7.15.26 meeting

There were no additions or corrections to the minutes, so they were accepted into the record as written.

4. Continue stormwater discussion with review of permitting framework

Clarke began the discussion by reviewing the points in her memo that she is proposing as the principles of new EPSC and stormwater regulations:

1. Stormwater regs will be administrated through our existing permitting regulations, i.e. Section 5 of the RZR and the RSR;

2&3. the Brooks' matrix could be simplified into an up or down on the cut-off points; and Fausel's 4-step strategy (from our last meeting) could be used as criteria for requiring professionally-designed erosion/stormwater plans, including the point that any application going to the DRB will need a professionally-designed plan;

4. Section 6.17 would become mainly an educational and reference tool to get everyone focusing on the stormwater issue;

5. this framework allows the DRB and P&Z to understand how these new regulations fit into their decision-making process. Discussion and training on these regulations will be needed.

There was further discussion about how, with these changes, the administrators could see easily what they are to do with these new regulations as they work through their permitting process, and that much of the language would remain familiar to them. Clarke mentioned that Osborne and DeNault already had internal policies about some of the suggested requirements but that these needed to be spelled out and authorized in the RZR. She also reminded the PC that what is called a "site plan" in the RZR is called a "plat" in the RSR, but that they consist of essentially the same information. For the CO (Certificate of Occupancy) the Zoning Administrator would have to check to see if the stormwater measures proposed in the application had been put in place, and the erosion prevention structures had been removed.

The next part of the discussion introduced the concept of “major” and “minor” subdivisions, which Clarke said Osborne favored. Osborne explained that a minor subdivision would be a lot divided into 2 or 3 lots, and would be permitted by going directly to a DRB Final hearing. This would usually be a small landowner, who would be saved the time and expense of a Preliminary DRB hearing. The Final hearing could be continued if questions arose, so the procedure wouldn’t be restricted to a single DRB meeting, but the process would only involve one fee. If the project was more complex, for instance involving rural road standards, then the ZAO would call it a major subdivision and a Preliminary hearing in front of the DRB would also be required.

Clarke added that other towns have this strategy so as not to overburden the DRB with smaller projects or applicants with more fees or paperwork than is necessary. It is expected that minor subdivisions would not have a lot of conditions placed on them, whereas major subdivisions might have more conditions placed, for which the Preliminary hearing is the appropriate stage of the process. Even for a minor subdivision, a professionally-designed plan is required under this proposal, as anything going in front of the DRB requires the professional plan. Clarke said that the current draft proposes to remove the language that gives the DRB ability to “waive any conditions” (including site plan) “for good cause” as it is unclear what would qualify as a “good cause.”

Fausel said that meant that “Administratively-created Lots” (Section 2.6) would no longer be eligible for a ZAO approval, which Osborne confirmed, agreeing that while it might be more burdensome for some applicants, it might be less arbitrary and less problematic. Fausel questioned the lack of specificity as to what information a “site plan” must contain. Osborne pointed to the description of what is needed for a subdivision plat, which is basically a site plan, in the RSR, and said this would be covered when we got to reviewing the RSR. Osborne continued that Section 2.6 applications were very challenging in part because the ZAO has no ability (which the DRB does have) to require conditions, grant waivers or require a public hearing. Fausel agreed that this might be problematic.

C. Brooks wondered if some “minors” might actually need a Preliminary hearing to discuss potential waivers or other findings, and that in these cases, just having a Final hearing might be inadequate. She confirmed her and Fausel’s understanding that a professional plan would still be required. Clarke confirmed the understanding that a Final hearing could be continued to one or more future DRB meetings. Osborne reported that there is currently a separate charge, and a separate application to be filled out, for Preliminary and Final hearings, but no extra charge for continuing a hearing. Clarke said the PC will have to decide whether to have this major/minor strategy, or just remove Section 2.6 and send all subdivisions to the DRB.

Clarke continued with Section 5’s Site Plan Review subsection, reminding the PC that we will have to decide if we agree with removing the ability of the DRB to waive Site Plan Review. Discussion followed about the cost of a professionally-designed site plan. Clarke

said she would try to find out this cost information. C. Brooks asked about the difference between a waiver and a variance, understanding that a variance is strictly controlled by statute. Osborne said the only mention of waivers that he could think of was Section 704 of the RSR, and that overall the DRB doesn't grant many waivers. Clarke added that Section 704 necessitated that the DRB "secure substantially the objectives of the requirements so waived," and that "no such waiver would be granted if it would have the effect of nullifying the intent and purpose of state law, the RSR, the RZR or any other Town regulations." Osborne pointed out that the good thing about requiring erosion and stormwater regulations in a zoning permit, is that waivers cannot be granted by the ZAO. Several waivers that have been granted by the DRB recently were brought up, indicating some ambiguity about the policy, and what constitutes extenuating circumstances.

The discussion moved on to "conditions of approval for site plan review," and Clarke said the proposed draft added language about erosion and stormwater management, which the DRB would then have to consider, informed by the new Section 6.17. C. Brooks pointed out that the DRB already fails to consider fairly specific requirements in the current regs, so giving them any more discretion to address particular situations would just continue or worsen the problem that we already have. She suggested that some "shalls" i.e. straight-up requirements would be preferable. T. Brooks added that he also feels the rules should clearly state what people need to do. In response to Clarke's comment that she thinks the DRB would feel like they couldn't require a lot of "shalls" in stormwater management from developers, C. Brooks said that she thinks the DRB is actually asking for more clarity. Osborne pointed out that most zoning permits do not even go to the DRB, so requirements should be directed more towards the P&Z staff.

T. Brooks suggested that many low impact development projects wouldn't be that hard for applicants to do themselves, which would save them the expense of having a professionally-designed plan, and which could be described and illustrated fairly easily in a regulation. Osborne suggested that the average small-project developer might find it difficult to select and carry out a strategy, but he also added that he thought the P&Z staff could assess an LID strategy if it was selected and decide if it was adequate to meet the requirement for stormwater management that has been promulgated in Section 5. Clarke summarized this approach as: regulation says no stormwater running on neighbors' property; ZAO looks at applicant-selected strategy and approves it as likely to be effective; ZAO assesses the strategy at CO and surmises its appropriateness – Osborne agrees with this and says P&Z will be helping to show what is needed, as they do now for erosion control during construction.

T. Brooks provided his thoughts: it makes sense to follow the Low Risk Handbook for pre-construction and construction, but it shouldn't have to be shown on a plan for small projects. An engineer should be involved for 20,000sf of disturbance, and for some slope scenarios. For post-construction, worksheets could be provided similar to what other towns (not in Vermont) have that describe best practices for specific conditions, which could be developed by applicants and then provided to contractors. This would save

having to have a professionally-designed plan, and applicants could be helped by the P&Z staff to develop such a plan. Osborne felt this would be confusing for applicants and would take up a huge amount of administrative time, as staff would end up essentially designing systems. Fausel said that applicants would always have the option of hiring an engineer or a contractor to design the plan if it seemed too confusing. Clarke asked Brooks if he could provide some examples of simple forms or illustrations for designs of stormwater systems for particular situations that applicants could do themselves. Osborne continued to feel that putting in size requirements, tables and formulas into the requirements would make applicants' eyes glaze over.

C. Brooks suggested that 6.17 should contain more specific requirements ("shalls") for applicants to follow rather than just saying that the Low Risk Handbook should be followed. Clarke said that this was the way the original version of 6.17 had been written, and that selected "shalls" could be returned to the document. Fausel said he was okay having the "4-steps" just at standardized levels rather than a matrix. For compliance, Osborne agreed with Fausel that this would only be complaint-related, as P&Z's ability to do actual post-storm compliance work is limited, and the DRB doesn't do any field work or inspections.

Clarke summarized where she thought we had got to this evening: Section 5, the Permitting Section, and the Subdivision Regs are the places where we state the requirements. If they are complicated, like choices for preventing runoff, then applicants are referred to Section 6.17 where we have some basic "shalls", and some guidance "shoulds". There will be the 4-steps for professionally-designed site plans, and T. Brooks will bring in some possibilities for simple applicant-designed plans that we can consider. The ZAO will have the authority to accept or reject stormwater strategies and thus will need to be knowledgeable.

5 and 6. Updates, other business and adjourn

As there were no updates or other business, Fausel motioned to adjourn with Brooks seconding. As there was no objection, Clarke closed the meeting at 9:12. PM. Next meeting: August 19th.

Minutes submitted by Virginia Clarke