

NORWICH PLANNING COMMISSION
Thursday October 22, 2020 6:30pm

DRAFT MINUTES

Zoom Meeting

<https://us02web.zoom.us/j/86340389705>

Meeting ID: 863 4038 9705

Members Present: Melissa Horwitz (C), Brian Loeb, Jaci Allen, Jeff Goodrich, Jeff Lubell, Leah Romano, Ernie Ciccotelli
Public Present: Stuart Richards, Linda Cook, Claudette Brochu
Staff: Rod Francis

Meeting Opened: 6:32pm

1. Approve Agenda:

Allen moved and Romano seconded a motion to approve the Agenda.

Commissioners discussed the need to ratify, adopt and confirm the letter written on behalf of the commission by Chair Horwitz to Commissioner Ciccotelli and Messrs. Richards and Wilberding dated October 16, 2020.

Goodrich asked that there are several items that need to be addressed in future agendas, including the after-action review on the 2020 town plan, comments from Doug Wilberding with regard to conflict of interest involving him [Goodrich] and Brandy Saxton. And lastly, how the commission makes appointments given the agenda item for appointing a commissioner to the childcare committee.

Chair Horwitz acknowledged that this agenda changed greatly due to the circumstances the commission finds itself in and that it is hoped that these important agenda items will get picked up at the next regular meeting.

After discussion Francis suggested that the motion to ratify, adopt and confirm the letter could be discussed under item 7.

Loeb asked that items six and seven be reversed.

Allen, who moved and Romano, who seconded the motion, were agreeable to amending the motion such that items six and seven be reversed. Motion carried 6 – 1.

2. Meeting Objectives:

- Follow up on response to allegations that the 2020 Town Plan is based on actions that violated the Open Meeting Law (OML) made by Commissioner Ciccotelli and Messrs Richards and Wilberding
- Appoint a member of the Planning Commission to the Norwich Child Care Committee

3. Comments from the Public: Stuart Richards commented that the revised July minutes are better than the earlier draft and then requested that when a member of the public makes comments that are germane to items on the agenda that they be recorded, and further, each motion record the individual votes of commissioners.

4. Review and approve Minutes September 10, 2020 and October 16, 2020.

Allen moved and Lubell seconded a motion to approve the minutes of September 10, 2020. Motion carried 5–2.

Allen moved and Goodrich seconded a motion to approve the minutes as amended of October 16, 2020.

Goodrich asked that a sentence be inserted between the first and second paragraph of item four to read “Goodrich asked that if Ernie needs to recuse himself then why don’t I?”

Motion carried 7–0.

5. Announcements, Reports, Updates & Correspondence
 - Correspondence: Stuart Richards
 - Updates: Francis introduced the meeting notes from the Village Center Designation walk which hosted Richard Amore that took place on October 16, 2020
6. Follow up on response to allegations that the 2020 Town Plan is based on actions that violated the Open Meeting Law (OML) made by Commissioner Ciccotelli and Messrs Richards and Wilberding.

Chair Horwitz signaled that entering executive session was again necessary and asked if commissioner Ciccotelli would recuse himself. Ciccotelli declined.

Chair Horwitz moved and Allen seconded a motion to enter into executive session where it can be established under:

- 1 VSA §313:
 - (1) that premature public knowledge would clearly place the public body or a person involved at a substantial disadvantage:
 - (F) confidential attorney-client communications for the purpose of providing professional legal services to the body
- And
- 1 V.S.A. § 313:
 - (6) [to consider] records exempt from access to public records provisions of section 316 of ...[Title 1]; provided, however, that discussion of the exempt record shall not itself permit an extension of the executive session to the general subject to which the record pertains.

Commissioners discussed the purpose and need for entering into executive session.

Motion carried 5–2.

At approximately 7:04PM the commission entered executive session.

At approximately 7:30PM the commission exited executive session.

Lubell commented that he was uncomfortable granting authority to Chair Horwitz to sign a letter because it will likely contain corrective action(s). He would prefer to discuss the possible corrective action(s) first, and then possibly authorize Chair Horwitz to sign a letter.

Lubell moved and Allen seconded a motion to ratify the letter of October 16, 2020 signed by Chair Horwitz. Discussion ensued.

Goodrich objected that this letter did not reflect his notes, his emails, or his knowledge of what occurred.

Lubell noted that the situation was made more difficult by being unable to receive the benefit of reviewing town legal counsel's work product because commissioner Ciccotelli would not recuse himself from executive session. He considered use of the term "working group" did not magically transform something into a series of actions that required application of the Open Meeting Law.

Ciccotelli commented that the letter suggests that the commission was subordinate to the Planning Director. This is inaccurate. No-one has ever discussed that this process would involve a lawsuit. This letter makes it almost certain that we are headed down the path of litigation. This letter does not conform to his recollection of events.

Allen commented on the apparent irony that the 2018 plan suffered withering criticism for a lack of public input. The commission conducted 28 interviews 13 public outreach sessions and posted all of this on our website, the commission included details of this in the plan. There was nothing that the commission was trying to hide. The commission was working with the rules as understood at the time. The commission are now working with a new understanding of OML and have committed to doing more training.

Romano said her reaction to the letter was that possible edits to the letter could have improved it, could the letter have been shorter?

Goodrich sought clarification that Horwitz wrote the letter versus signing it. Horwitz responded that she conferred with town legal counsel in the preparation of the letter.

Motion carried 4–2.

Stuart Richards commented that commissioners were acting without the benefit of reading the letter transmitted at 3:30pm today.

Horwitz confirmed that the letter was transmitted too late to be considered. Richards again urged commissioners to reconsider the direction of the response to the complaint of October 6, 2020 because it did not contain an acknowledgement that violations of the OML took place.

Goodrich repeated the suggestion that Stuart Richards could enter the concerns expressed in today's emailed letter into the record by reading it.

Lubell suggested two corrective actions i) in the future the commission should not use working groups or subcommittees without adhering to OML notice and minute-taking requirements and ii) commissioners should participate in the forthcoming town OML training.

Allen and Romano expressed agreement.

Stuart Richards commented that undertaking to do things differently in the future is different from correcting violations in the past. These two things are different. He encouraged commissioners to think again and contemplate amending the town plan to include findings from the 2005 and 2018 survey.

Lubell moved and Goodrich seconded a motion that the Norwich Planning Commission take a corrective action to discontinue the use of working groups and subcommittees unless they are prepared to warn their meetings in compliance with OML. Motion carried 6–0.

Lubell moved and Allen seconded a motion to encourage commissioners to participate in the upcoming OML training. Motion carried 4–0–2.

Lubell asked if the draft letter could be circulated among commissioners for comment.

Goodrich offered the view that this would contravene OML, but that circulating the letter (that Horwitz did not write) in the packet for the next meeting and then having a public discussion about its content and revision would be acceptable.

Horwitz repeated that this would make her uncomfortable because it would be a breach of attorney client privilege.

Goodrich stated that he wanted time to reflect on any letter we are asking the Chair to sign.

Lubell asked Ciccotelli if he would withdraw his formal complaint. This would then possibly allow him to participate in privileged communication with legal counsel moving forward.

Horwitz again expressed her concern, suggesting that if Ciccotelli were to withdraw this would not prevent potential litigation on the complaint, and that this suggestion did not avoid a breach of attorney client privilege.

Ciccotelli responded to Lubell that the whole goal for him was to make the planning commission a real planning commission again, make it better, more responsive to the actual majority of people in the town. Removing his name from the complaint would not change that. His goal is to make things better, not litigation. He didn't think it was a good idea to take his name off the complaint.

Lubell asked that Chair Horwitz and Francis seek clarification from town legal counsel on his point with regard to protecting attorney client privilege by considering Ciccotelli no longer a party to the complaint.

Horwitz brought commissioners back to consideration of the next steps, noting an apparent impasse.

Lubell stated that he was not comfortable authorizing a letter that promised actions without reviewing it first.

Francis reminded commissioners that the original complaint received on October 6, 2020 included allegations that OML was violated through the use of 'working groups' and that therefore the 2020 town plan was invalid. The commission had complied with OML by responding within 10 days on October 16, including the suggestion that in the future the commission would only use working groups or subcommittees where they complied with the provisions of OML. However, the second point, that the plan was invalid is awaiting a response in the second letter (not able to be reviewed tonight) and that this matter was also subject to attorney client privilege.

Goodrich stated that he thought that the town plan is valid, that it was duly adopted by the selectboard and approved by the TRORC. But that he could not comment on the questions raised by Francis concerning a response from the commission on the claim that the plan was invalid.

Ciccotelli asked for confirmation that the October 16 letter was ratified. Commissioners affirmed that it was.

Lubell moved and Goodrich seconded a motion that considering the allegations contained in the complaint of October 6, 2020 the planning commission nevertheless affirms the validity of 2020 town plan. Motion carried 5—1.

Commissioners discussed the date for setting a Special Meeting 6:30pm Thursday October 29.

7. Appoint a member of the Planning Commission to the Norwich Child Care Committee: Allen moved and Ciccotelli seconded a motion to appoint Loeb to the Norwich Childcare Committee. Motion carried 6—0.
8. Other Business: None
9. Future Meeting Schedule & Agendas

Special Meeting October 29, 2020 6:30PM

Ciccotelli raised again the need to discuss the need for debriefing on the town plan and making the commission a deliberative body.

Goodrich repeated his earlier request that agenda setting be discussed and that conflict of interest following comments from the public concerning his firm, him and Brandy Saxton.

Horwitz encouraged commissioners to email her and Ciccotelli suggested agenda items

10. Comments from the Public: Stuart Richards asked for confirmation (again) that commissioners had received communication dated October 22, at 3:30pm via email. He then asked commissioners to remember that they needed to look back as well as forward

Meeting adjourned 8:34pm

Future Meetings:

Thursday, November 12, 6:30pm Regular Meeting

Thursday, December 10, 6:30pm Regular Meeting

Respectfully submitted,
Rod Francis