

**NORWICH PLANNING COMMISSION
AGENDA
Thursday October 22, 2020
NOTE DATE & START TIME 6:30pm**

Join Zoom Meeting https://us02web.zoom.us/j/87406704359 Meeting ID: 874 0670 4359 One tap mobile +13126266799,,87406704359# US (Chicago) +19292056099,,87406704359# US (New York)
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1. Approve Agenda
2. Meeting Objectives:
 - o Appoint a member of the Planning Commission to the Norwich Child Care Committee
 - o 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
3. Comments from the Public
4. Review and approve Minutes September 10, 2020 and October 16, 2020
5. Announcements, Reports, Updates & Correspondence
 - o Correspondence: Stuart Richards
 - o Updates
6. Appoint a member of the Planning Commission to the Norwich Child Care Committee
7. 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
 - o It is expected that the Commission could enter into Executive Session with Town Counsel where it can be established under:
 - o 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
 - o 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.
8. Other Business
9. Future Meeting Schedule & Agendas
10. Comments from the Public

Future Meetings:

**Thursday, November 12, 6:30pm Regular Meeting
Thursday, December 10, 6:30pm Regular Meeting**

NORWICH PLANNING COMMISSION
Thursday, September 10, 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

Public Present: Stuart Richards, Doug Wilberding, Lisa Close, Pamela Smith, Claudette Brochu, Tom Candon

Staff: Rod Francis

Meeting Opened: 6:37pm

1. Approve Agenda
Loeb moved and Allen seconded a motion to approve the Agenda. Motion carried:5 – 0
2. Meeting Objectives:
 - Review Draft of Municipal Planning Grant
 - School Wastewater Update
 - Wastewater Next Steps
 - Report on Town Plan Action Items
3. Comments from the Public: Stuart Richards asked that the commission could stick to the facts, and maintain civility and avoid ad hominem attacks. He also asked for more detail in the minutes similar to the Selectboard minutes.
4. Review and approve Minutes: July 23, 2020
Horwitz read out proposed revisions to the minutes reflecting suggestions from Goodrich and Stuart Richards (provided via email).

Under Item 6 after the motion is recorded insert the following text:

Goodrich commented that looking forward recognition of appropriate OML process will be important. Especially in light of concerns he raised about OML while the commission worked on the Town Plan

Under Item 11 prior to the record of comments made by Roger Arnold insert the following text:

Stuart Richards commented that the commission appears to be contemplating doing its own 'sewer study'. In 2005 the Selectboard appointed a 10-member subcommittee to undertake a sewer study. The commission has many issues to deal with, and it is unlikely they can do a sewer study in a meaningful way. He questioned the need for another study, pointing to the conclusions of the 2005 study.

Lubell remarked that he didn't believe that members of the public tell the commission what should be included in the minutes, that the appropriate place for such comments is in correspondence.

Francis confirmed that the email correspondence dated September 9 from Richards arrived after the packet was posted, therefore it could not be included. It will appear in the next meeting packet.

Lubell moved and Allen seconded a motion to approved the minutes of August 27, 2020 as amended. Motion carried 5 – 0.

5. Announcements, Reports, Updates & Correspondence
 - Correspondence: See item 6 (below)
 - Updates; None
 - Reports: None
6. Review Draft of Municipal Grant: Francis led the commission through a discussion of the draft application submission. He also informed the commission that he has sought and received a letter of support from TRORC. Due to the guest for the meeting joining this item was paused.
7. Marion Cross School Wastewater Update. Tom Candon from the Marion Cross School Board spoke to the commission about recent work on resolving the wastewater issues at the Marion Cross School (MCS).
 - Pathways Consulting was retained to explore:
 - Replacement of existing wastewater system
 - Using the Piesch property for wastewater treatment
 - In collaboration with commercial property owners along Route 5 South connecting to the Hartford municipal wastewater system
 - Information received on each of these possible solutions include:
 - Town of Hartford requested an engineering study to establish the possible impact of the Norwich properties joining the Hartford wastewater system
 - A hydrology study has established that the existing wastewater site (the town green) cannot be made a viable location using conventional treatment designs
 - All options remain under active consideration including:
 - Eco-machines (such as the Sharon Rest Area on I89)
 - The Dresden School district property Route 5 South (either conventional or Eco-machine)
 - In response to a question from Lubell concerning timelines:
 - MCS board is working steadily towards a viable solution, but it is unlikely that a proposal will be ready for voters to consider before the warrant is prepared for Town Meeting in 2023

- Allen suggested that it is in the town's best interest to collaborate with MCS on finding a solution to the wastewater problem. She observed that wastewater is currently hauled from Tracy Hall. (Francis confirmed that it is trucked to the Hartford wastewater treatment plant). Allen asked if there was a possibility for cooperation between the town and MCS for hauling.
 - Loeb asked Candon about progress on the engineering study. Candon was unclear how advanced this study is given the interruption of COVID-19, but promised to follow up.
 - Doug Wilberding asked (via the Zoom chat function) whether in the future Goodrich will recuse himself from any votes or discussion given his conflict of interest (Pathways Consulting).
 - Stuart Richards thanked Tom Candon for presenting and suggested other possible town-owned land for solutions including Huntley Meadows or the area where the water wells are located.
6. (resumed) Francis resumed review of the draft MPG 2021 application. Lubell wanted to know what the specific proposal was seeking to achieve. Francis replied that this topic was selected by the commissioners at the last meeting, and explained the central role in applying the density factor calculator in producing the settlement pattern.

Lubell suggested including requiring the consultant to provide recommendations.

Stuart Richards referenced surveys (2005, 2018) indicating more intense development was not a broadly accepted objective in Norwich.

Lubell asked what was the purpose of doing a build-out analysis, which may be inflammatory if it showed total build out. Francis responded that it was a standard analytical tool and that it was important to undertake the exercise to establish the effectiveness of existing land use regulations.

Lubell suggested using scenarios as a way of presenting the findings. Loeb agreed with this suggestion.

Francis asked for the meeting to pause to respond to questions from Doug Wilberding asking:

- Who is the consultant?
- Is it Placesense.com?

Francis responded that the document before the commission was a draft of a grant application to be submitted by October 1 which will then be awarded some time in December or January. Assuming Norwich is successful the RFP or RFQ would go out in early spring be awarded some time later. Under no circumstances would a response be submitted or accepted by PlaceSense the consulting firm, operated by his partner Brandy Saxton, because this would be a conflict of interest.

Allen commented that the draft application references the Town Plan which seeks to protect rural character and protection of forest lands and natural resources.

Loeb moved and Allen seconded a motion that the sense of the commission is that this grant application is in furtherance of the objectives of the town plan and the commission is supportive of the application going forward. Motion carried 5 – 0 – 1

Stuart Richards referenced a 2016 study that suggested a density of eight units per acre for a 350-acre area which did scare people.

8. Discuss wastewater next steps. Allen responded that communication between the School Board and Selectboard will likely take place now, which will advance the issue.

Lubell posed undertaking a survey of people in the village district to find out their experiences and needs with regard to wastewater.

9. Report on Town Plan Action Items: Allen reported that since it had only been two weeks since the last meeting not much progress has been made.

Loeb reported that he has received communication from Mary Layton (Selectboard) on the topic of childcare and hoped to have more to report soon.

10. Other Business: None

11. Future Meeting Schedule & Agendas: Rather than meet the fourth Thursday of the month in November and December (because those dates conflict with holidays) the commission agreed to meet the second Thursday which would be November 12 and December 10, 2020. Agenda items will include:

- Town Plan Action Items for Planning Commission
- Village Designation Walk October 16 10:00am
- Selectboard Village Center Designation Presentation October 28, 6:30pm

Goodrich moved and Lubell seconded that the Planning Commission supports the (re)application for the Village Center Designation to the Downtown Board. Motion carried 5 – 0.

Doug Wilberding asked what the tax benefits of the village designation were. Francis explained the key features of the program were tax credits are used to restore, renovate or rebuild properties in the designated area.

Claudette Brochu pointed out that moving a motion to support the village center designation was problematic because the item was not on the agenda. Commissioners discussed the matter.

Lubell moved and Goodrich seconded a motion to adjourn the meeting. Motion carried 4 – 0 – 1.

Meeting Adjourned: 8:10pm

Future Meetings:

Thursday October 22, 6:30pm Special Meeting (review draft of MPG application)
November 12, 2020
December 10, 2020

Respectfully submitted,

Rod Francis

**NORWICH PLANNING COMMISSION
DRAFT MINUTES
Friday October 16, 2020
8:30 AM
SPECIAL MEETING**

Act 92 OML compliant meeting conducted via Town of Norwich Zoom account

Join Zoom Meeting <https://us02web.zoom.us/j/87926089454>
877 853 5257 US Toll-free
888 475 4499 US Toll-free
Meeting ID: 879 2608 9454

Present: Melissa Horwitz, Jaci Allen, Jeff Goodrich, Jeff Lubell, Brian Loeb, Leah Romano, Ernie Ciccotelli

Staff: Rod Francis

Public: Joseph McLean, Stuart Richards

Meeting called to Order: 8:36AM

1. Approve Agenda. Lubell moved and Goodrich seconded a motion to approve the agenda. Motion carried 7 – 0.
2. Meeting Objectives:
 - o Discuss possible 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
3. Public Comment: Stuart Richards wanted to ensure that the correspondence from Stuart Richards, Ernie Ciccotelli and Doug Wilberding (which included information from the Secretary of States Counsel) was received by Commissioners. Chair Horwitz confirmed that members had the correspondence.
4. Commissioners discussed the decision to enter into executive session with Town Counsel. Town counsel explained that the attorney-client privilege may be waived by disclosure to third parties, and that such waiver may extend to all other communications on the same subject matter. Ernie Ciccotelli a signatory to the complaint declined to recuse himself from executive session.

Stuart Richards commented that he agreed with Ernie Ciccotelli and Jeff Goodrich who questioned why Ernie Ciccotelli needed to recuse himself and the decision to enter into executive session to discuss a response to a complaint concerning the observance of Open Meeting Law (OML) provisions in the preparation of the 2020 Town Plan.

At approximately 9:10AM Horwitz moved and Lubell seconded a motion to enter into executive session with Town Counsel after it was established under 1 VSA §313(a) that such action was necessary to consider the following:

- (1) after making a specific finding 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
- (6) 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.

Motion carried 5-2.

5. At approximately 9:27AM the Commission exited executive session.

Lubell moved and Allen seconded a motion to delegate to Melissa Horwitz as Chair of the Planning Commission the discretion to respond, on behalf of the Planning Commission, to the complaint in light of pertinent legal advice received from town legal counsel and the decision by Commissioner Ciccotelli not to recuse. Motion carried 4—2—1.

6. Meeting Adjourned 9:30AM.

Respectfully submitted,
Rod Francis

**NORWICH PLANNING COMMISSION
SPECIAL MEETING**

VILLAGE DESIGNATION WALK

OCTOBER 16, 10:00AM

Present: Richard Amore (DHSD), Bob Haynes (GMEDC), Jaci Allen (PC), Ernie Ciccotelli (PC), Nancy Osgood (NHPC),
Linda Cook

Staff: Rod Francis

In part fulfillment of requirements for filing an application to the Vermont Downtown Board for the designation of Norwich Village Center the Norwich Planning Commission conducted a brief walk around the village.

The meeting observed covid-19 precautions consistent with Vermont Department of Health guidance:

Richard Amore gave a brief outline of the Village Center program.

Rod Francis led the group on a walk following the outline of the past designated village center (as established 2012). Participants discussed current interpretations for establishing the village center district and how the past boundary may be revised in the upcoming application.

The group completed the walk at approximately 11:10am.

Subject: Re: NORWICH TOWN PLAN IS ILLEGAL

From: Stuart Richards <stuartlrichards50@gmail.com>

Date: 10/6/2020, 1:11 PM

To: Claudette Brochu <cbrochu30@gmail.com>, Melissa Horwitz <horwitzmelissa@gmail.com>, Herb Durfee <HDurfee@norwich.vt.us>, Miranda Bergmeier <mbergmeier@norwich.vt.us>, Rod Francis <norwichvtplanner@gmail.com>

CC: Ernie Ciccotelli <ernieciccotelli@gmail.com>, Doug Wilberding <wilberding@me.com>

All,

Please disregard the previous email sent to you and use this one. The only difference between the two are the additional words “signed as a private citizen” next to the names of Ernie Ciccotelli and Doug Wilberding.

Thanks,

Stuart Richards

The Norwich Town Plan was adopted on March 7, 2020. In order to facilitate the work on the Town Plan the Planning Commission formed a number of “working groups” including Land Use, Affordable Housing, Transportation, Energy, Economic Development, Education and Resilience. It is unknown how many meetings each of these groups had, nor is it known what the work product of these groups is or was. Apparently there were no announcements of these meetings, no agendas and no minutes and the public was not invited or a part of the meetings that took place. These meetings appear to have been conducted in violation of Vermont’s Open Meeting Law. “Vermont’s open meeting law requires compliance from “public bodies,” which includes the committees and subcommittees of municipal boards. 1 V.S.A. § 310(3). There is no “work group” exception. If a quorum of a board--or a quorum of a committee or subcommittee of the board--gathers to discuss board business, that public body must comply with all aspects of the OML, even if no action is authorized or contemplated.” (This quote is from the General Counsel & Director of Municipal Assistance, Vermont Secretary of State’s Office). An affidavit by one member of the Planning Commission attesting to this apparent violation can be found at: <https://tinyurl.com/yxjomjkw> In addition, another PC member has acknowledged in a PC meeting the way these “working groups” operated.

In addition to the flawed process that was employed which violates the Open Meeting Law there are problems with the content of the Town Plan, see

<https://tinyurl.com/y6pr7yoe>

Page one of the Plan states “This plan includes input from an on-line survey conducted under the auspices of the Selectboard in 2018.”

- Even a cursory look at the 2018 Survey and the Town Plan shows that the PC did not follow the wishes expressed in the Survey which included close to 500 respondents. See 2018 Survey here: <https://tinyurl.com/yx8wxm9y>
- An earlier Survey done in 2005 with nearly 1,000 respondents further confirms the

results below. See 2005 Survey here: <https://tinyurl.com/y5kztlgr>

Page 21 of the Plan Recommends: “consideration of increasing density adjacent to the existing village district, and the creation of new zoning districts.

- The 2018 Survey contradicts that recommendation:
 - Survey Question 10 - “In the future, should development be more dense or less dense in the Village and Rural zones?”
 - a. Response: The majority answered that “Density should remain about the same.”
 - b. Why does the PC and the Plan ignore the wishes of the majority?
 - Survey Question 9: Regarding building height:
 - 78% of respondents wanted to keep maximum building height the same.
 - Why does the PC and the Plan ignore the will of the majority since in order to increase density it is also likely that height would be increased?
 - Survey Question 6 - “The population in Norwich is currently approximately 3,400 people. What would you like to see happen to the population of Norwich?”
 - 53 percent answered “Remain relatively stable” and an additional 2% responded they wanted to see the population “Reduced some” for a total of 55%.
 - Page 31 of the Plan contradicts the results of Survey by calling for substantial density bonuses for affordable housing ie- promoting larger projects on smaller lot sizes which would increase the population and change the historic character of the town.
 - Why does the PC and the Plan ignore the majority and recommend increasing the population of Norwich when the majority feel otherwise.

Page 32 of the Plan: Asserts that there is a “5,000 to 6,000 regional housing unit shortfall as identified by the market analysis commissioned by Vital Communities.”

- The “market analysis” was performed by a bank and realtors looking at four counties in Vermont and New Hampshire. See <https://vitalcommunities.org/wp-content/uploads/2018/05/Real-Estate-Market-Update-Spring-2018.pdf>

The fact that the largest employers in the region are located in Grafton County, New Hampshire, and that some people commute to those places of employment is not conclusive evidence that those commuters want to move closer to their employment. However, the identification of commuters seems to be the basis of the argument for dense building of ‘affordable’ housing and the assumption that people who commute will want to live in those ‘affordable’ housing subdivisions or developments. We know of no other basis for the assertion.

Page 4 of the Plan: One objective of the Plan is to “Increase the diversity and total stock of housing in Norwich by directing more intensive residential development to areas in, or adjacent to, the village while discouraging strip development along highways.”

- Notwithstanding that objective, future mixed-use is focused on Route 5 South, the only major road in the town, thus encouraging an 'urban' type of sprawl and strip development along that single Route.
- Moreover, Route 5 South is an area of significant wetland, where the Blood Brook watershed flows from the northwest portion of town to the Connecticut River through the southeast portion of town. Development in that area will not address the flooding issues in the parts of the town above Route 5 South.
- As a byproduct of "more intense development" municipal wastewater will be inevitably required.
 - Question 33, 2018 Survey, asked: "How do you prioritize investment in the following community resources as relates to increases in your taxes?"
 - Response: 58% (262 out of 455) said that connecting to Hartford or Hanover was no priority or low priority and 69% (309 out of 447) said that having a Norwich wastewater facility was no priority or low priority.
 - Given that strong majorities of respondents do not want to have a municipal wastewater connection to either Hartford or Hanover which would impact taxes and they do not want to pay for a Norwich wastewater system, why is the Planning Commission currently pushing this?

In short, the Norwich Town Plan was apparently formulated in violation of the Open Meeting Law and in disregard of a majority of Norwich citizens' publicly expressed opinions. To better understand what this Plan hopes to accomplish one needs to remember the Planning Commission's failed attempt to establish a new mixed use zoning district consisting of 350 acres with densities up to 8 units per acre including areas along Route 5 South and River Road. This plan also attempts to dramatically change a town of 3,400 people by growing it in ways that the citizenry don't believe is in their best interest. The undersigned believe that the Plan needs to be amended or invalidated to reflect what a majority of the citizenry have said they wanted in the 2005 and 2018 Surveys.

Stuart Richards

Doug Wilberding, signed as a private citizen

Ernie Ciccotelli, signed as a private citizen

Herb and Rod, Please take action on this letter and put it in correspondence for your next meeting

TOWN OF NORWICH
PLANNING COMMISSION

VIA EMAIL AND FIRST CLASS MAIL

Stuart Richards
PO Box 156
Norwich, Vermont 05055

October 16, 2020

Dear Mr. Richards:

Re: Planning Commission Response to Alleged Open Meeting Law Violations

By email dated October 6, 2020, directed to various Town representatives, you have alleged violations of the Vermont Open Meeting Law by the Norwich Planning Commission in connection with the use of “working groups” to facilitate the development of the 2020 Norwich Town Plan. Specifically, you contend that “to facilitate the work on the Town Plan[,] the Planning Commission formed a number of ‘working groups’ including Land Use, Affordable Housing, Transportation, Energy, Economic Development, Education and Resilience.” You further assert that:

[i]t is unknown how many meetings each of these groups had, nor is it known what the work product of these groups is or was. Apparently[,] there were no announcements of these meetings, no agendas and no minutes and the public was not invited or a part of the meetings that took place. These meetings appear to have been conducted in violation of Vermont’s Open Meeting Law.

This letter constitutes the response of the Norwich Planning Commission to these alleged Open Meeting Law violations.

By way of background, work on updates to the Norwich Town Plan began September 2018. In an effort to produce a thoughtful and well-researched document, Rod Francis, the Norwich Planning Director, enlisted the assistance of members of the Planning Commission to perform various information gathering functions on his behalf in furtherance of the plan updating/drafting process. More specifically, the Planning Director asked small “working groups” of Planning Commissioners, always less than a quorum of the full Planning Commission, to collaboratively interview members of the Norwich community or develop other information on discrete subjects (as referenced above), all with the goal of assisting and informing Mr. Francis’ preliminary drafting process for the plan update. In addition, Mr. Francis worked with the already established Enhanced Energy Working Group to review iterative drafts of the Energy Chapter, prior to review by the full Planning Commission and prior to inclusion in a draft of the Town Plan.

To be clear, this work was all done at the request of the Planning Director, and not as the result of any formal action of or by the Planning Commission itself. While the Planning Commission understood that the Planning Director sought to use working groups at the beginning of the drafting process to further information gathering and maximize opportunity for community input, these working groups were not *committees of the Planning Commission*.

At no time did the Planning Commission formally recognize the existence of any working groups, identify or assign working group members, discuss the scope of any charge to working group members, or give instructions or guidance to working groups. Instead, some, but not all, of the working groups assisted the Planning Director by providing him with information that he could, in

turn, incorporate into the preliminary text of Town Plan chapters. The full Planning Commission and members of the Norwich community then reviewed, discussed and vetted that information and those draft chapters during duly warned Planning Commission meetings and public hearings, before voting to approve the draft Town plan and pass it on to the Selectboard for consideration and review prior to adoption.

You have alleged that the use of working groups in connection with the Town Plan updating/drafting process violated various requirements of the Open Meeting Law. The definition of “public body,” as set forth in 1 V.S.A. § 310(4) includes “any board, council, or commission of the State or one or more of its political subdivisions ... or any committee of any of the foregoing boards, councils, or commissions.” A “meeting,” as defined in 1 V.S.A. § 310(3)(A), may include a gathering of a quorum of a committee of a board, council, or commission for the purpose of discussing the business of the public body, but the term “committee” is not defined in the Open Meeting Law. The statute suggests, however, that to be subject to the Open Meeting Law, a committee must be a subset of the board, council, or commission, delegated or committed to a particular duty by or on behalf of the body from which it arises. As noted above, the working groups at issue here were not created by or for the Planning Commission (or any other municipal body), and consequently they are unlikely to be committees of the Planning Commission, subject to the requirements of the Open Meeting Law.

Notwithstanding the foregoing, the Planning Commission understands the potential for committees of a public body to be employed in a manner that undermines the public participation goals of the Open Meeting Laws, including in the municipal plan development process. That was neither the intent nor the effect of the use of working groups in this instance. As noted above, information developed by the working groups was included by the Planning Director in the 2020 municipal plan and reviewed on multiple occasions by the Planning Commission in warned meetings during the plan development process. However, given the ambiguities in the Open Meeting Law — and in light of the risk that committees of a public body could be misused to avoid or limit the public’s right to attend public meetings — the Planning Commission acknowledges that the use of working groups, while helpful in facilitating the practical work of information gathering and community participation in the planning process, has the potential to violate the Open Meeting Law under certain circumstances.

Again, it is not entirely clear that a violation of the Open Meeting Law occurred in this instance. The working groups were not committees of the Planning Commission, but were instead organized at the direction of the Planning Director. Nonetheless, the Planning Commission will direct the Planning Director to immediately discontinue the use of working groups in connection with all Planning Commission activities unless Open Meeting Law requirements are met and will, within 14 days of the date of this letter, take such other steps as are reasonable and appropriate to “cure” any alleged Open Meeting Law violation that may have occurred.

I hope that this letter adequately addresses your concern. Please let me know if you have any questions.

Sincerely,



Melissa Horwitz,
Planning Commission Chair

cc: Norwich Selectboard
Herb Durfee, Town Manager
Rod Francis Director of Planning & Zoning