

Minutes of the Special Selectboard Meeting of Sunday, June 28, 2018 at 7:00 pm

Members present: John Pepper, Chair (remotely); Claudette Brochu, Vice-Chair; Linda Cook; John Langhus; and, Mary Layton.

Others present: Herb Durfee, Town Manager; Stuart Richards; Frank Manasek; Colin Calloway; Marcia Calloway; Jaci Allen; Christopher Ashley; John Farrell; Anne Focey; Jeff Lubell; Melissa Horwitz; Susan Brink; and, Peter Brink.

1. **Call to Order.** At 7:02 pm, Vice-Chair Claudette Brochu called the meeting to order and presided over the meeting (since John Pepper was attending remotely). Brochu introduced members.
2. **Public Comment** (for items not on the agenda). Stuart Richards asked for an update on the Town Plan Survey and asked for clarity on the Affordable Housing Designated Fund and the fund's use. Pepper replied that, to date, the survey was not yet complete and that he couldn't provide additional information at this time. Herb Durfee provided a general summary of the Affordable Housing Designated Fund and its use, based on an e-mail he sent to the Board. Richards asked if the funds could be used as "seed" money, including feasibility studies, for issues leading to purchase of land or securing options on land. Durfee stated he would have to further research that question.
3. **Town Plan Public Hearing #3.** Mary Layton **moved to open the 3rd public hearing on the draft Town Plan. Seconded** by John Langhus. **Motion passed 5-0-0.** Brochu asked the Board how they preferred to proceed procedurally but indicated her desire to generally follow the same procedure as the 2nd public hearing. Langhus asked if it made sense to first take on the comments already received from some members of the public, since some level of response had been prepared for the meeting. After some discussion, there was general consensus to proceed matching the method used for the 2nd public hearing.

Marci Calloway explained her understanding is that the May 23rd plan of record based on the June 10 public hearing and with the changes acted on by the Selectboard would generate a revised plan of record (dated June 12). Calloway said there are some differences between the May 23rd and June 12th plans of record that are not consistent with the Board's action on June 10. She stated her real question is whether the changes are more than *de minimis*.

Stuart Richards followed up on Calloway's concern by adding his belief that the additions to the draft plan are substantive. He stated he felt the Rte 5 South concerns were re-enabled. He noted the Board has his comments. Richards reiterated his feeling that the changes are taking the Town backward, and that he feels blindsided.

Frank Manasek indicated that there is a general overriding problem in that nobody here seems to know what's going on. He observed that people seem to be disenfranchised, and, he too, feels blindsided. He indicated that the meaning of the plan has changed whereby the plan has reverted to something that the Town dislikes.

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Jaci Allen noted her representation as a Planning Commission member. She noted her concern with today's earlier comments. Allen stated that repetitive statements mentioned repeatedly don't make them true. She explained the process she went through in helping the Selectboard prepare its revisions to the draft plan. Allen noted that the Town cannot afford to not have a plan. She reiterated that those persons involved with helping the Selectboard were acting in good faith to carry out actions of the Selectboard; and, putting the plan on hold makes no sense. She stated there is nothing in the plan that furthers the Rte. 5 South concern of previous comments.

Langhus thanked all persons involved for their participation. He further clarified the process undertaken from June 10 through June 12. He noted his appreciation for the public's comments but he doesn't appreciate indications that there was bad faith made in the work that was accomplished to create the revised draft of record.

The Board next reviewed the written comments submitted earlier in the day by Marcia Calloway (as also submitted by Stuart Richards). To aid in the Board's review, the Board used Jaci Allen's prepared responses to the concerns raised. [A copy of the Calloway's concerns with Allen's response is attached herein.] Allen was at the microphone to help with the explanation that follows:

Page 1-3 – The added text, "The plan may be used in state regulatory proceedings including Act 250, Section 248, VTrans access permits, etc.", was added, according to Allen, specific to input from the TRORC as to typical venues in which the plan is used.

Page 5-11 – omitted language where "[Explain]" appeared in the margin. Langhus replied there was at least one area in the plan that the Board sought additional explanation (in this case, related to inclusionary zoning). Due to the time constraints of getting the plan revised and ready for adoption, the Board opted not to add additional text in the draft plan, at this time. However, Langhus noted that future amendment/update to the plan should add explanatory text where this bracketed text appeared in the previous draft of the plan.

Page 9-11 – Action G.3.a from the May 23 draft is omitted. Langhus, from his perspective, indicated that this action item could return to the plan draft without affecting the plan's content.

Page 10-8 – Action H.8.h from the May 23 draft is omitted. Langhus, also, indicated that this action item could return to the plan draft without affecting the plan's content.

Page 12-6 (...scale, size, density...); 12-8 (Rte 5 South); 12-9 (Rte 5 South/River Rd); 12-9 (Hamlets); and, 12-12 (Action K.3.d), at the Board's request, Durfee, since he prepared the changes to the Land Use section, offered insight into the rationale for the changes – predominately, changes were made to recognize changes made to the Future Land Use Map and the related text, to be consistent with changes made in other section (e.g., size, scale, density, etc.), to acknowledge concern about public participation, and to emphasize best of intentions in a short period of time in which to make the necessary changes but to still meet statutory public notice requirements.

Richards encouraged that at least part of the new text on page 12-6 could be removed from the draft plan. He further encouraged removal of the new text on page 12-8 in its entirety. Finally, he indicated that the new text on page 12-9 required amendment.

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Christopher Ashley offered insight that, yes, some persons are opposed to the draft plan. He agreed that there is additional support, especially related to workforce housing, that could be added to improve the plan. He reminded the Board that the plan is visionary and that the plan, by itself, doesn't address changes to bylaws that would further the Town's housing needs (i.e., one of the key documents that carry out the plan's vision). He stated that effort is down the road, but what is important now is to get the plan adopted so those efforts can start. He also encouraged adopting the plan so amendments can be made to the bylaws so the Town can obtain a greater share of reimbursement funds related to FEMA and the state emergency management fund. Lastly, he offered to the Board, of those persons he's speaking with, those persons are supportive of adopting the plan. Thus, he offered his vote of support for the plan.

Susan Brink indicated her support for the plan.

Jeff Lubell commended the efforts by all involved with developing the plan, especially since its receipt by the Selectboard. He encouraged passage of the plan, and suggested that the issues raised today are not problems that affect the plan's meaning. Lubell noted the host of changes that had been made with relation to all the concerns raised to date. In that light, he said it is time to move forward.

Stuart Richards said if you remove the red flags then you are "home free", and there's no reason not to remove them. He encouraged the Board to not be stubborn.

John Pepper asked, given the schedule and notice requirements, etc., what changes could be made without comprising moving forward with the plan. Durfee responded by offering insight on "substantive" changes versus "technical deficiencies". He noted the planning statute really only defines technical deficiency, so a substantive change would be defined as not being a technical deficiency. He further indicated that it's really in the hands of the Board as to what they define as substantive. Lastly, Durfee indicated that if you make any other change that is not a technical deficiency the plan is "dead". Langhus offered additional information to help with clarifying the difference between such changes.

Christopher Ashley, again, encouraged passage of the revised plan of record. He expressed concern that if the Town doesn't move forward with a plan the discussion will devolve into a constant discussion of changes where there is never an endpoint.

At 8:10 pm, there being no further public comment, Layton **moved to close the public hearing. Seconded** by Langhus. There was general discussion about the procedure moving forward, including substantive changes versus technical deficiencies, and the schedule the Board agreed to (i.e., the action to adopt the plan on July 11 not during tonight's meeting). Calloway asked how the public will get to know what the Board may act on later in the meeting. Lubell offered clarity on the definition of substantial. The **motion passed 5-0-0**.

4. Town Plan – Board Discussion and Action on Revised Plan of Record, (June 12, 2017).

Brochu asked Board members to offer their individual insight on the revised plan of record.

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Mary Layton said it's not a great plan, but we need to get it up and going.

John Langhus yielded his time to other members, since he already offered his insight.

Linda Cook indicated concern that the camaraderie of the process is lost. She stated the big change was the Land Use section (e.g., use of the term "cluster").

John Pepper said he received an alarming number of e-mails prior to the meeting. He believes there is a lack of trust among some people. He stated it's wrong to think of the Board this way. He explained the Board has bent over backward to address public comment. He's very comfortable with the plan as drafted. It's not a piece of "art". Two people had the challenge to put it all together in a very short period of time. We need to adopt the plan but we, also, have to take the red flags and continue the discussion. He believed the Board agrees with most of the feedback.

Claudette Brochu said she would like to see a couple of the deleted sections put back into the draft (i.e., the ones considered technical deficiencies). She noted those were the ones on pages 9-11, 10-8, and 12-12.

Regarding Page 9-11, Brochu **moved to re-add Action G.3.a. into the plan**. Langhus **seconded** the motion. Langhus suggested amendment to Brochu's motion such that the motion instead would read, Brochu **moved to correct the following drafting error (on page 9-11) to re-instate Action G.3.a.** Brochu **accepted the change as her motion**. The **motion passed 5-0-0**.

Brochu **moved to correct the following drafting error (on page 10-8) to re-instate Action H.8.h.** Langhus **seconded** the motion. The **motion passed 5-0-0**.

Brochu **moved to correct the following drafting error (on page 12-12) such that Action K.3.d. needs to be deleted from the plan**. Langhus **seconded** the motion. The **motion passed 5-0-0**.

There was general Board discussion on the clarity of comments and whether or not they constituted substantive change. Also, there was general discussion concerning whether or not the public requires time to see/comment on the comments offered today, including the written ones along with the responses provided, including the above motions. The issue of the plan's status was asked based on Richards' question related to if he submitted his petition for Town vote. Calloway clarified her concern related to the changes she noted in her comments based on a side by side comparison of the various draft plans. Also, Cook asked about some of the changes requested and the comments made, and what additional changes could be made that wouldn't jeopardize the plan's adoption. She indicated her hope to find some compromise between members of the public, the Board, and the comments/concerns identified. Allen offered that much compromise already has been carried out, but that it's time to get the plan done and adopted.

Cook **moved as a form of correcting drafting errors that the new text (on page 12-6) be deleted, the new text (on page 12-8) be deleted, and the new text (on page 12-9) be deleted from the draft plan**. The **motion died for lack of a second**.

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5. **Adjournment.** At 8:51 pm, Langhus **moved to adjourn. Seconded** by Layton. **Motion passed 5-0-0.**
Meeting adjourned.

Respectfully submitted,

Herbert A. Durfee, III, Town Manager

APPROVED on July 11, 2018:

John Pepper, Chair

Date

[Marcia] Calloway [with Jaci Allen's response in **red**]

June 27, 2018

Comparison of May 23, 2018 Draft Town Plan to June 12, 2018 Draft Town Plan

The following page references are from the June 12, 2018 Draft Town Plan.

Page 1-3

ADDED LANGUAGE

“The plan may be used in state regulatory proceedings including Act 250, Section 248, VTrans access permits, etc.” **There was Selectboard agreement on 6-10-18 that ‘smaller side’ TRORC comments would be addressed. This statement was added in response to one of these comments. It is a statement of fact about how any town plan may be used. It mentions three of the most common applications, and is not inclusive of all the possibilities. There is no hidden agenda.**

CONCERN: Section 248 is for public service hearings etc.
VTrans access permits is to apply for permits to access roads such as Route 5.
Why add these particular regulatory processes instead of all the other things that might be of concern to a town? The suggestion is that we are more particularly concerned with development (Act 250), energy initiatives (Section 248), and putting more access roads on to Route 5 from to-be developed areas on to Route 5 e.g. Dyke property.

Page 5-11

OMITTED LANGUAGE **There is no comment that says ‘explain’ in the May 23 2018 Selectboard Draft Town Plan that was posted. This was a stray comment leftover in a Word draft from iterations of feedback that took place between Nov ’18 and May 23rd, 2017. Not every comment was prioritized for follow up by the Selectboard. In this case, ‘Inclusionary zoning’ is listed as one of 7 possible ideas to ‘Explore and evaluate multiple strategies for encouraging the creation of affordable housing, including, but not limited to....’ There’s no action on ‘inclusionary zoning’ that is implied by the Town Plan, except ‘possibly explore.’**

For reference, ‘inclusionary zoning’ from a conceptual standpoint means that if you’re going to build a ‘to be determined’ number of housing units at a time, a ‘to be determined’ number must be affordable.

Action 8.5.1.3. Inclusionary zoning.

May 23, 2018 Draft says “explain” but there is nothing explained in the June 12, 2018 Draft.

CONCERN: Why leave a term like “Inclusionary zoning” unexplained? This is vague and could lead to unintended consequences.

Page 9-11

OMITTED LANGUAGE There is no omitted language or inconsistency between the May 23 2018 and June 10 2018 Draft Town Plans published by the Selectboard. G.3.a was omitted from the Nov 2017 version of the Town Plan in response to concerns expressed about development. It’s important to note that traffic is always considered by the Development Review Board as part of any new development, and is a key component of current regulations.

Action G.3.a in the May 23, 2018 Draft is gone. It said

“Proposed major changes in land use, either new development or changes in zoning districts, should be evaluated based on the available or planned capacity of transportation facilities serving the area.”

CONCERN: The plan has references to saving fuel, using public transit, etc. in other places. Is there a particular agenda or reason for this issue not to be considered for zoning changes/new development?

Page 10-8

OMITTED LANGUAGE Action H.8.h in both the May 23rd and June 12th versions of the Town Plan states, “Include bicycle paths, pedestrian walkways, and mass transportation access in review of all proposals for development. There is no inconsistency or omitted language.

Action H.8.h. in the May 23, 2018 Draft is gone. It said

“Include bicycle paths as a component of the town’s Capital Improvement Program and pursue federal and state funding for their construction.”

CONCERN: I do not recall this coming up at the Board meeting following the last public hearing. Why remove it?

Regarding added language on Pages 12-8 through 12-9, at the Special Meeting on June 10, 2018, the Selectboard authorized the Town Manager to make appropriate edits in the Town Plan that would support the approved Map 11. These changes were made in good faith.

Page 12-6

ADDED LANGUAGE

First paragraph under “Village Business, Village Residential I and Village Residential II Districts: New language is

“The scale, size, density, etc. of these planning districts are intended to match those of current zoning regulations. However, given additional

analysis by the Planning Commission as part of this plan's update or update to the zoning regulations, to further the goals and objectives of this plan (e.g., provision for affordable housing), it is understood that the scale, size, density, etc. of these established planning districts may require amendment. Note, however, that the planning district boundaries are well established. Any change to these boundaries or the creation of any new district needs to be accomplished through a plan amendment or re-write process." (Emphasis added.)

- CONCERN: 1. This plan should NOT be just about affordable housing.
2. The plan NEVER talks about keeping existing housing affordable.
3. There has never been community agreement and it is NOT understood by the people of Norwich that "the scale, size, density, etc. of these established planning districts may require amendment."
THIS IS A MATERIAL AND UNACCEPTABLE CHANGE IN THE LANGUAGE AND SHOULD BE DELETED. It shows bad faith to insert it.

Page 12-8

ADDED LANGUAGE

Route 5 South/River Road. New language is

"While not a planning area defined by this plan, several parcels on the west side of Route 5 South and along River Road are served by state highways and easily accessible to Interstate 91, schools, municipal services, and public transportation. Due to this area's accessibility, some discussion already has occurred to change the planning and zoning for this area."

- CONCERN: Why add this? The suggestion is that the people agree this is important and true. There are no NORWICH municipal services e.g. water and septic in those areas and they are exactly the areas of contention. THIS IS AN INAPPROPRIATE CHANGE AND SHOULD BE DELETED. It shows bad faith to insert it.

Page 12-9

ADDED LANGUAGE

Last paragraph of Route 5 South/River Road section. New language is

"Because such a zoning district is not presently authorized under this town plan, its creation would require a future change to the town plan, including additional public participation beyond minimum statutory requirements (i.e., the singular public hearing required of the Planning Commission.)"

- CONCERN: This was not discussed at the Board meeting following the last public hearing. Notwithstanding, the added language mixes up the

regulatory process for new/amended town plans – a process the Planning Commission did not follow for this plan – and the regulations concerning proposal and approval of zoning regulations. It is a confusing sentence, and one reading of it could be interpreted to mean that zoning can be changed with a single public hearing, which is not the case. THIS IS AN INAPPROPRIATE AND INCORRECT CHANGE OF LANGUAGE AND SHOULD BE DELETED.

Page 12-9

CHANGED LANGUAGE

“Hamlets” have been replaced with “Historic “Cluster” Areas”

NEW LANGUAGE

Second paragraph under Historic Cluster Areas. New language is
“There may be other areas in the Rural Residential District that could represent new locations for such type of clustering.”

CONCERN: The people have NOT decided that there are other areas for “clustering” and have NOT decided where there should be any development. THIS IS NOT CORRECT, AND SHOWS BAD FAITH BY TRYING TO SUGGEST THAT THIS IS TRUE. THIS LANGUAGE SHOULD BE DELETED.

Page 12-12

SELECT BOARD VOTED TO DELETE AN ACTION BUT IT IS STILL IN THE JUNE 12 DRAFT **There was some confusion on whether K.3.d or K.3.e was to be deleted, which was unable to be resolved by the June 12th posting date. K.3.e reads “Create criteria and performance standards for commercial uses in the rural residential areas to allow low-impact uses that will not adversely affect residential and agricultural uses.”**

It’s important to note the context for each of these Action items. Both come under Objective K.3, “Limit commercial development through performance standards to a type, scale and design that is compatible with the character of the town and the neighborhood. “ There are also numerous regulations in place today regarding commercial uses and development.

In this context, the Selectboard will make a decision on whether these two actions should be retained.

Action K.3.d “Allow for appropriate business/services needed in the community.”

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CONCERN: This was voted by the Board to be deleted and should have been deleted. THIS LANGUAGE SHOULD BE DELETED.