

Town of Cavendish Public Hearing
Meeting Minutes July 5, 2023
Cavendish Town Office, 37 High Street, Cavendish, VT and Zoom

The Town of Cavendish Planning Commission will hold a public hearing on Wednesday, July 5, 2023 at 6:30 p.m. at the Cavendish Town Office, 37 High Street, Cavendish, Vermont to receive comment on an amendment to the Cavendish Town Plan. The proposed amendment incorporates an Enhanced Energy Chapter into the plan based on Act 174 Regional and Municipal Energy Planning Standards.

Members Present: Tim Calabrese, Shirley Clark, Bruce McEnaney, Noah Schmidt, Miguel Seville, and Jeffrey Strange

Members Absent: N/A

Members of Public: Margo, Kem Phillips, Svetlana Phillips, Jason Rasmussen (Mount Ascutney Regional Commission), Brendan McNamara

Tim Calabrese called the hearing to order at 6:30pm. Tim explained that this amendment comes out of act174 which was passed in 2016 and establishes a new set of municipal and regional energy planning standards which if met will allow town plans to carry greater weight, or substantial deference. There are two major categories, substantial deference and due consideration. He goes on to say that the chapter was developed by the planning commission along with assistance from the regional planning commission. They felt that it was very important to have substantial deference. There have yet to be any projects that fall under act 174 but this amendment will provide Cavendish more local control.

There are 4 sections. The first is to encourage the efficient use of energy along with the goal of being 90% renewable by 2050. The plan doesn't force people to do anything but does provide suggestions in terms of transportation, weatherization, etc. There are energy targets to help meet the 90% goal such as the town making citizens aware of certain programs. There are also maps paired with this amendment. The maps outline Solar potential, Hydro potential, wind potential, and constraints.

Margo wanted to comment on the negative side of the renewable goal. She is in favor of the outcome but wanted to mention the negative impacts of the mining of the precious materials needed in many renewable energy projects and solutions. She mentioned that Canada is doing good work in acknowledging the impacts. She mentioned the state has nothing in their plan including hydrogen fuel cells, etc. She wants the town of Cavendish to recognize the entire system and all aspects of our work toward this energy goal. She thinks that we need to acknowledge what truly is going on in the countries that lithium is being mined along with other precious metals. She thinks that we need to add a qualifier before this section recognizing the negative impacts of precious metal mining.

Tim asked if she had any language that she would recommended we use. Margo provided Tim with language that she thinks should preclude the energy chapter “Cavendish recognizes the significant impact of climate change and the need to be proactive in reducing our environmental footprint at that end while we include the state of Vermont's comprehensive energy plan as part of the Cavendish Vermont Town Plan we qualify this inclusion as follows: Cavendish is a small town with limited resources and will adhere as it can to the goals and objectives of the state document. As we believe in environmental responsibility products should be sourced from companies where working conditions are safe and secure, workers are paid a living wage, and the environment in which the workers operate is not being destroyed by mining and extraction. See in addition to the renewable forms of energy from solar wind and hydro we wish Vermont to consider other alternative sources such as nuclear energy and hydrogen fuel cells.”

Tim asked Jason if he thought the Public Service Board would look poorly on something like Nuclear.

Jason said that any project needs to follow the states plans, the plan does say 90% renewable but doesn't specify what the other 10% would be. He doesn't think that this language is out of place in the town plan.

Kem wanted to comment that the concern that Margo brought up. He does want to acknowledge that it does exist but didn't want the negative side of mining precious metals should be exaggerated. He stated figures that suggested that there are a very small number of bad actors in this space and shouldn't be overly exaggerated. He agrees it should be mentioned but not exaggerated.

Tim said he doesn't have an issue with using the language, but doesn't want to dwell on it.

Shirley wanted to add that all energy sources have negative impacts, from petroleum to nuclear to solar and it is up to us to piece together our options.

Margo added that in conversations with Efficiency Vermont, heat pumps are not the perfect solution and are used as supplemental heat when temperatures get too low for them to run. The big thing that Efficiency Vermont is pushing weatherization.

Tim didn't want to have a new hearing for this change and Jason recommended keeping the hearing open until next meeting which could help keep the process moving. Tim agreed with this plan.

Jeff wanted to clarify margo's proposal as ensuring the town does it's due diligence when considering any energy solutions and will consider the host of factors that Margo mentioned.

Margo added that we are also a small town with small resources and we will do what we can do but not to expect what comes out of Burlington.

Jeff said he would be happy to vote now or vote later.

Tim asked Brendan if he had any comments to add. He did not have anything to add and thought the direction the commission was heading was good.

Bruce asked Jason if there were any towns that were not adopting the enhanced energy chapter into their town plans.

Jason said there are two in his area, one that is unlikely to have any energy projects and one that just doesn't like it.

Tim asked for a motion to accept the addition of the preamble outlined by Margo. Miguel made a motion, Jeff seconded. The motion passed unanimously.

Jeff made a motion to suspend the hearing until the next meeting, Miguel seconded. The motion was passed unanimously.

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Members Present: Tim Calabrese, Shirley Clark, Bruce McEnaney, Noah Schmidt, Miguel Seville, and Jeffrey Strange

Members Absent: N/A

Select Board Liaison Present: Stephen Plunkard

Members of Public Present: Margo, Kem Phillips, Svetlana Phillips, Jason Rasmussen (Mount Ascutney Regional Commission), Brendan McNamara

1. Call to Order

Tim Calabrese called the meeting to order at 6:50 p.m.

2. Adjust Agenda

There were no adjustments to the agenda.

3. Approve Meeting Minutes

Miguel made a motion to approve the meeting minutes from June 7, 2023. Shirley seconded. Bruce abstained. The motion was passed unanimously.

4. New Business

a. Representatives from Mt Ascutney Regional Commission present to discuss Subdivision Regulations.

Jason Rasmussen is here to discuss subdivision regulations and how the planning commission can start this process. He shared several samples from nearby towns to give the commission an idea of what they can look like. Some are more involved than others and it is the planning commission's job to craft regulations that fit Cavendish. He suggested to start simple and grow from there if necessary. He said that subdivision regulations is a process to review how land is divided and new lots are created. It can delve into access, utility placement, the basics. Statute does require some administrative requirements which involves spelling out who is doing what, who reviews it, you need to have some details addressing size and shape of lots, natural resources, etc. usually the focus is on roads, driveways, utilities, and where the lots are. It can be a useful tool in preventing forest fragmentation, or at least minimizing it. Jason asked if anyone has any questions.

Noah asked if there was a main reason of public pushback when towns like Cavendish are proposing subdivision regulations.

Jason said there are always people who don't like regulations. There can be costs to property owners looking to subdivide associated with these regulations in terms of surveyors, etc. It is a valuable tool to understand where new lots are being created and ensuring that there is access. This is a process that helps protect future buyers ensuring any development is viable. There are other benefits as well.

Tim added that it can protect neighbors as well. Tim asked if you can control density with subdivision regulations.

Jason said typically not, you can have hybrids with zoning but density is a zoning issue, not subdivision.

Bruce asked how long the process might be to enact subdivision regulations.

Jason said the bigger question is how long does it take to craft something that everyone agrees upon. Bruce asked if a year was realistic. Jason said 1 year to 18 months, maybe sooner. Bruce asked if in lieu of subdivision regulations, a driveway permit. Jason said that is much more simple and the selectboard usually takes care of that.

Bruce said that there is a project on Heald Road that has a driveway that is very steep and is a cause for concern. Jason said that driveway permits typically just involve the connection to the town road, they can get into some drainage but subdivision regulations would be a better way to address emergency vehicle access and allow for more oversight. Jason said that it depends on the issues and maybe in this case a driveway permit could work in concert with subdivision regulations. Jason said that the selectboard could enact a driveway ordinance quickly and then they would need to oversee that process.

Noah asked if there was anyway to dictate how development occurs on private property with a driveway ordinance. Jason said that existing development may need to come into compliance when they add or change anything on the property. Maybe they can be required to address storm water. Jason said typically driveways are too steep, storm water is an issue, emergency vehicle access can be hard but once those driveways are in place it is hard to deal with them.

Miguel asked if we have broached this subject to the selectboard.

Tim said yes, they are in favor of us developing subdivision regulations.

Miguel said he is concerned with doing a year of work and then the town pushing back because it is too close to zoning.

Bruce said that the town will vote on this, not just the selectboard. The Selectboard will approve it and then a special vote can be held.

Shurley said she liked the Weathersfield and Ludlow plans and could be a good start for our draft.

Jason said there are some decisions we can make, each town can choose how the process is run.

Tim said maybe small 2-3 subdivisions can go through a smaller review than larger developments.

Tim wanted to circle back to Miguel's concern and reemphasize that the selectboard is in favor of us working on this and we can't get any public feedback until we start working on a draft.

Miguel understands but just didn't want to get set up to fail.

Bruce said that the language we used in the past that scared people and made them feel they were losing control of their land.

Jeff and Shirley agreed that that might be solved with educating the public about the proposed regulations. Shirley wants to focus on safety for the public at large.

Jason wanted to bring up other considerations. Typically subdivision regulations deal with lot line adjustments and are not creating new lots but simply shifting lines between two properties. That is something that could be exempt from these regulations. Cavendish could just focus on new lot creations. The town could also create similar, less onerous requirements to make the application process more reasonable.

Tim liked Jason's thoughts and emphasized that these regulations are more focused on larger projects, not 1-2 lot subdivisions. Tim said the planning commission can help guide land owners through the process.

Tim asked if he has seen any lawsuits against towns that lack subdivision regulations. Jason said he has not. Tim asked if the town should be concerned. Jason said it is always a possibility. Tim asked what our next steps should be. Jason would like to help out and if the planning commission had a town with regulations they liked he could plug Cavendish into it.

Shirley said she liked Weathersfield, they were very detailed. Tim said we want the language detailed but the restrictions don't have to be.

Bruce asked about Andover's, Jason said they are old and any would require updates, specifically to state requirements. Springfield does have a much more limited subdivision regulation that could be a good counter to Weatherfield. Jason will take a look at Weatehsfield and Springfield and how Cavendish would look with similar subdivision regulations.

Tim said the board can look at these sample subdivision and come back to the next meeting with notes to discuss.

5. Hear Citizens

Kem Philips addressed the board, acknowledged that many members of the board were not around for his issue of the Savage Quarry, he is looking for clarification of a comment Bruce made in the April Meeting. Kem outlined the current standing of Act 250 and is questioning whether the town has any oversight of a project less than one acre. Bruce suggested that the town can have a say in commercial projects less than 1 acre in size that don't fall under Act 250. This was contradictory of the way Kem understood Act 250 and he is asking the Planning Commission to explain why, if they did have this power, did not do anything about the Tierney Road Quarry.

Bruce believes he was talking about water and the conservation of water. If it is under Act 250 or not if you are contaminating water you would fall under the State Natural Resources Regulations.

Kem quoted the taped meeting from April 5, 2023. He doesn't believe it was referencing water. He is questioning why the town did nothing when they theoretically were able to.

Bruce clarified by saying that the town can make a project that is under one acre subject to Act 250 Review. He didn't mean to imply that they were going to but that they could, the selectboard could make that decision.

Kem said that the Selectboard at the time was saying that there was nothing they could do.

Bruce asked Jason if he was correct in saying that towns can ask for Act 250 review. Jason didn't know if that was true but did know that they can ask for Jurisdictional Opinion and Act 250 will say yes or no they need to go through the permit.

Kem and Svetlana went over more history of the project explaining that the project did receive a Jurisdictional Opinion which stated that Act 250 would be required.

Svetlana then asked if the planning commission ever reviewed the project submitted back in 2017.

Tim said no they hadn't as they never received an application to review. He explained that they only review Act 250 Permit Application.

Svetlana quoted the town plan stating the town could review Act 250 permits. She agreed they did not review the permit, as one was never submitted. She said that the developer has 30 days to appeal the Jurisdictional Opinion and asked if Tim and the planning commission knew about that at the time.

Tim said it was a long time ago but believes he did know that at the time. Svetlana asked to confirm that Tim knew that the developers were going to appeal to the Environmental Court.

Tim said he probably knew.

Svetlana asked if during the 30 days between the Jurisdictional Opinion and the appeal date, did the Planning commission or Selectboard talk to the developers or lawyers and try to stop them from appealing the ruling.

Bruce and Tim both said no and their goal is to stay neutral.

Svetlana and her neighbors are trying to understand why the Town, Selectboard and Planning Commission, failed to protect the taxpayers on Tierney road. She also wanted to know what she can do to protect other taxpayers in Cavendish.

Shirley asked if anything has started yet, she wonders if the sale of the property for the proposed quarry has gone through yet.

Svetlana said no it hasn't.

Bruce outlined a past project that the town shot down but that case saw an Act 250 Permit which was submitted to the town to review. Tim highlighted that that case had a permit to review, the Quarry permit is yet to file a permit for the town to review.

Shirley asked why the project is still in the process when the town plan contradicts it.

Tim said it is because there was never a permit to review. The town was never presented with a permit outlining the details which they could comment on. If the project did submit an application then the town would be able to address those elements. Tim said the board shouldn't say it is against the project simply because the neighbors are, the boards job is to review the formal application.

Noah asked if the town had any jurisdiction before ACT 250.

Tim said that the town can't do anything until it goes through ACT 250.

Svetlana said that is a loophole that people are taking advantage of, like the quarry developers.

Shirley asked what the next steps would be for the residents opposing the quarry.

Tim outlined the current process by which the planning commission reviews projects and reiterated that without being having a formal ACT 250 permit submitted the planning commission can't do anything.

Bruce mentioned that you can become an interested party to the case by contacting the district environmental court.

Kem and Svetlana thanked the planning commission for their time.

Tim mentioned that there must be a rule about subdividing after a failed application.

Jason mentioned that subdivision regulations would allow the town to have some insights to projects like this trying to bypass ACT 250.

Jeff asked where the town's jurisdiction comes into play specifically with enforcement of the town plans restrictions, specifically with noise levels.

Tim believes that it all comes from the State.

Noah asked what kind of jurisdiction the town has if a project doesn't need Act 250.

Tim said the town wouldn't have much but most commercial operations like a quarry would still need state permits to operate but the town wouldn't have any jurisdiction because there is no Zoning. If the project was under an ACT 250 permit and they don't meet their standards we can file a complaint with the state.

Jason said it really comes down to who has jurisdiction. He said the Cavendish Town Plan has teeth because there is no Zoning. It has power really lies in ACT 250 permits and the Public Utility Board, other than that it's power is persuasion unless the town adopts a noise ordinance or something like that that gives it authority to regulate.

Kem said he hopes at some point the town would take an interest in this.

Bruce wanted to mention or the record that cavendish has a long and fruitful history of quarrying, they are not automatically bad.

6. Old Business:

- a. Continue discussion on affordable housing and the recent enactment known as the Housing Opportunities Made for Everyone or HOME Act – which is intended to enable more significant progress addressing Vermont's housing shortage.**

Bruce asked Jason if there was money available.

Jason said there is, there is a lot of money. There are a lot of zoning related changes that are used to force density. There is also some stuff on subdivision regulations. Minor subdivisions are much easier.

Tim said we are kind of on hold until the study is complete but the commission has done some work identifying potential housing sites.

Jason said they do have a consultant that has started working and if Cavendish is interested in identifying specific sites that they want to take a look at they can take a look at.

Jason said that 20-30 unit projects would make the most sense.

Miguel asked what 20-30 units look like.

Jason said that they are typically larger apartment buildings with a mix of studio, 1 BR, 2 BR units.

Noah asked Jason if there were any programs that would help people looking to add a single unit. There might be 20-30 buildings in town that could add a unit.

Jason said Vermont Housing Improvement Program is a good option. They offer up to 50K per apartment unit.

Jeff asked if there were any programs to help incentivise property owners to convert from short term rentals to long term rentals. Specifically what is stopping someone from taking the VHIP money and using it for a short term rental.

Jason said there are strings attached to that money requiring owners to rent long term and at a specific rent rate.

7. Review Correspondence

None

8. Adjourn

Jeff made a motion to Adjourn at 8:02 Shirley seconded. The motion passed unanimously.

Respectfully submitted
Noah Schmidt