

WEST WINDSOR PLANNING COMMISSION

Draft Minutes
August 28, 2014

Present: Barbara Truex, Arthur Steinberg, Mark Isenberg, Josh Carvajal (VT Floodplain Manager), Martha Harrison

1. Call to Order - Planning Commission Chair Barbara Truex called the meeting to order at 10:05 AM.
2. Changes or Additions – None
3. Public Comment – None
4. Discuss Flood Hazard Area Regulations – Barbara welcomed Josh Carvajal. Martha encouraged the Planning Commission (PC) to keep Section II (A) of the Flood Regulations. Martha noted existing structures that are in the floodplain. Josh said there is a state general permit in the works which will cover structures and activities that are exempt under local floodplain regulations. Josh said the Agency of Natural Resources (ANR) is working with the Agency of Agriculture to update their Accepted Agricultural Practices (AAPs) to require the placement of hay bales away from the stream. The PC discussed whether or not to allow recreational vehicles (RVs) to be stored in the floodplain. Josh suggested sending a letter to people with property in the floodplain educating them about the risks. Regarding Section VI (B)(1), Josh agreed with the PC that it's a bad idea to allow people to increase the footprint of structures in the floodplain and ANR will support towns that want to exceed the minimum National Flood Insurance Program (NFIP) requirements. The PC discussed the implications of increasing the footprint, which would include an increase in the amount of impervious surface, the amount of water displaced, and the height of flood waters. Implications could also include an increase in the number of people at risk. The PC also talked about allowing vertical additions that don't increase the footprint, noting that if the addition amounts to a "substantial improvement" the entire building would have to meet minimum NFIP requirements and the requirements of the local floodplain regulations. Mark suggested highlighting the words that are defined in the "Definitions" section. Regarding accessory structures, Josh said if the PC is prohibiting fill and the expansion of footprints, it would be consistent to prohibit accessory structures in the floodplain. Martha said she doesn't think there are many properties where there is no place to put an accessory structure except in the floodplain. Martha said the model regulations allow accessory structures in the River Corridor but, without maps, we don't know how many properties will be affected. Josh said he can get a preliminary River Corridor map for West Windsor next week. The PC agreed to prohibit accessory structures in the floodplain and allow them in the river corridor, subject to conditional use review, until more information is available and it can be determined whether it makes sense to prohibit them in both hazard areas. Regarding commercial solar panels, Josh said they're not allowed in the river corridor and, in the floodplain, the bottom of the panel has to be 1' above the BFE and the base has to be secure even in saturated soils. Barbara suggested that residential panels should meet the same criteria as commercial panels, unless they are roof-mounted. Martha asked if at-grade parking can be exempt if it's not impervious. Josh said it can be exempt but it still has to be reviewed to determine that it's eligible for exemption. Josh said according to minimum NFIP requirements, all development in a Special Flood Hazard Area (SFHA) has to be reviewed and that review has to be documented. The PC agreed that parking should be exempt if there's no change to the grade and no impervious surfaces are created. The PC agreed that RVs should be parked outside the SFHA and the River Corridor. Regarding farm structures in the floodplain, Josh said farm structures are no different from fill or accessory structures but they are allowed under the AAPs. Josh agreed to talk to someone at the Agency of Agriculture. Martha asked if the "no adverse impact" approach would apply to agricultural structures. Josh said he's not aware of any communities in Vermont that have adopted that approach but the state is starting to look into a compensatory storage requirement. Regarding public utilities, Josh said ANR does not have a definition but if there is development in the floodplain, there has to be some kind of documented review, even if it's a written

determination that the project is exempt from local regulation. Martha mentioned the upcoming sewer construction project, which will be reviewed under Act 250. The PC agreed to exempt public utilities provided that one of the state or federal reviews includes a review of floodplain impacts. Regarding building utilities (e.g. well, septic, electricity) in a river corridor, Josh said they should be reviewed at a higher level than building utilities in a floodplain because the threat involves the movement of the river to a new location rather than temporary inundation by floodwaters. Martha asked if the rationale for requiring conditional use for a replacement fuel storage tank in a river corridor is so the town can suggest or require that the tank be located elsewhere. The PC agreed that, if the tank is leaking, it would not make sense to delay the replacement for several months by requiring conditional use review. Josh said he will look into this further. Regarding conditional use review for at-grade parking in the river corridor, Josh said the rationale is to keep infrastructure out of the river's future migration path so property owners don't try to protect their investment by stabilizing the stream bank and preventing it from pursuing its natural meander pattern. Josh agreed to inquire whether at-grade parking could be a permitted use. Martha said it would be important to make people aware that, if they are allowed to put parking in the river corridor, they are not going to be allowed to protect it with berms or bank stabilization projects. Josh said it could become an issue for a future owner. Martha suggested including some of the rationale in the regulations. Regarding road maintenance and improvements, the PC agreed that they should be exempt unless they involve filling in a floodplain. They also agreed to exempt recreational trails that don't involve fill in a floodplain. The PC agreed to require conditional use for new roads, bridges, culverts, etc. because such projects generally don't undergo flood hazard or fluvial erosion hazard review at the state level. Given the impact that some forestry practices can have on flood levels, Martha asked if the town can require notice of silvicultural activities as we do for agricultural structures. On the one hand, Martha said, Act 16 encourages towns to protect their upland forests but, on the other hand, towns are not allowed to regulate silvicultural activities. There was discussion about allowances for clear cutting through the current use program. Martha and Josh agreed to discuss forestry issues further. The PC reviewed the definition of fluvial geomorphic equilibrium and talked about how rivers migrate within their corridors over time. Josh explained that "bank-full events," which occur every 1.5 to 3 years, are the main cause of erosion and channel movement. Regarding the removal of abandoned structures, Josh said the town's Health Officer can condemn buildings but the town should also consult with the Town Attorney. The PC discussed the definition of "lowest floor" with Josh and agreed that VII(A)(4) should reference the lowest finished floor. Regarding VII(A)(5)(b), Josh clarified that "two feet above the BFE" means everything below two feet above the BFE. The PC agreed to remove VII(A)(9) since accessory structures are prohibited in the floodplain. The PC also agreed to continue reviewing the regulations at their next meeting, starting with River Corridors on page 10. Barbara said she would prefer to have the flood regulations and the River Corridor regulations as separate documents. Josh said the state is working on separate model regulations, which should be available later this year. Josh talked to the PC about ERAF – the emergency relief & assistance fund – and said towns can qualify for a higher state reimbursement rate if they adopt river corridor regulations. Barbara said the PC would like to review the new model regulations before finalizing our local regulations.

5. Minutes – June 26th: The minutes of June 26th were tabled until the next meeting.
6. Other Business – The PC will meet again on September 25th at 10:00 AM.
7. Adjourn – **The Planning Commission adjourned by consensus at 12:15 PM.**

Respectfully submitted,

Martha Harrison