



Whately Planning Board
Minutes of Remote Meeting, via Zoom
January 3, 2024

1. Attendees

- Members Present: Brant Cheikes (chair), Sara Cooper, Judy Markland, J.D. Ross
- Members Absent: None (one board vacancy).
- Guests:
 - Dan Hurwit
 - Ann Lomeli
 - Sylvia Jensen, Whately Community Development Coordinator

2. Call to Order

The meeting was called to order at 5:03 PM. The meeting was recorded.

3. ANR Application for 39 Laurel Mountain Road

Brant reported that an application for an Approval Not Required endorsement was received from Dan Hurwit, pertaining to parcel #10-0-05, corner of Webber/Laurel Mountain Road. The required fee and maps were received as well.

The applicant stated that the abutter to the parcel wished to purchase a portion of the parcel, and Mr. Hurwit was interested in doing so to help defray the cost of the original property acquisition.

The Board discussed the lot division and its implications, particularly concerning the conforming status of the lots involved. The conversation touched on issues such as lot size, frontage, and zoning regulations. Mr. Hurwit understood that by reducing the size of his parcel to below 60,000 sq ft, it would no longer be a buildable lot per current zoning bylaws. The Board noted that the application fully satisfies the requirements set forth in Whately's subdivision regulations for an Approval Not Required endorsement.

Judy moved that the ANR application be endorsed, and Sara seconded the motion.

Brant, Sara, Judy and J.D. all voted YES. The endorsement was approved.

4. Floodplain Bylaw Update

Sylvie Jensen informed the group that she has contacted Scott Jackson, Conservation Commission (ConCom) chair, to clarify his concerns and ensure the ConCom's involvement in administering the new floodplain bylaw. She acknowledged the need for ConCom's

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participation and anticipates a collaborative process involving herself, Brian Domina (Town Administrator), and the building inspector. Sylvie planned to seek clarification from state contacts once she understands Scott's concerns better.

Judy expressed reservations about relying on state guidance due to past difficulties with understanding agricultural exemptions. She highlighted Scott's discomfort with authority delegated to Concom via the bylaw and suggested that a small group meeting with him would be more effective. Sylvie agreed to schedule a meeting with Scott and Brian. Brant underscored that the Planning Board will have difficulty moving forward with the steps required to approve the new floodplain bylaw until these questions are sorted out.

5. Discussion of S.1319/H.2082

The Board discussed a letter drafted by Judy, to be sent to the Whately Select Board requesting that the Select Board write our state legislators in support of S.1319/H.2082, "An Act Regarding Municipal Zoning Powers." Judy explained that this legislation would restore the power that municipal governments believed they had over the siting of large-scale solar generating facilities and stand-alone battery storage facilities prior to the ruling on a court case in 2022. The bill would remove the sentence "No zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare" from MGL 40A Section 3.

Ann Lomeli spoke in support of Judy's letter. Ann expressed her concerns, drawing from her experience with a proposed solar field and battery storage near her property four years ago. She highlighted the potential water shortage for firefighting and the dangers associated with lithium-ion battery fires, including toxic gases and explosions. Lomeli emphasized the inadequacy of volunteer fire departments to handle such emergencies and the risk to the water supply and surrounding area. She cited instances of massive fires in other locations and stresses the need for town control over such projects, echoing support for Judy's letter.

Brant noted that Neil Abraham, Donna Wiley, and Margaret Christie all submitted emails to the Planning Board in support of the general issue of local control over large-scale solar projects as well as battery storage systems.

Judy moved that the Planning Board go on record as supporting S.1319/H.2082 pending before the legislature and urging the Whately Select Board to support them as well and communicate the same to our legislative representatives. Sara seconded the motion.

After some discussion, the Board agreed that, if the motion were to pass, Brant would send the letter in its current form to the Select Board, and also send a copy of the letter to the Agricultural Commission, the Zoning Board of Appeals, the Energy Commission, the Water Department, the Fire Department, the Police Department, and the Board of Health.

Brant, Sara, Judy, and J.D. all voted YES on the motion. The motion was approved unanimously.

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6. Discussion of Zoning Amendments Related to the Aquifer Overlay District

Brant discussed the current Zoning Map, last approved at Annual Town Meeting in 2023. At that time, the town approved changes to the Aquifer Protection District bylaw removing most references to the defunct Whately Water District. However, the Planning Board then lacked sufficient information to recommend removing the zoning districts protecting the Water District Wells from the map.

Since that time, this information has been obtained from the Water Department. A new zoning map has been drafted based on that information, with assistance from a Geographical Information System Specialist at the Franklin Regional Council of Governments. Brant shared a copy of the draft map and discussed the changes.

The ensuing discussion generated recommendations for improvement to the content and visual features of the map. J.D. Ross expressed concerns about the interaction between strict protections within the aquifer protection district and opportunities to foster more affordable housing development. Several members discussed how the boundaries are determined, and the costs associated with hydrological surveys were the town to seek to re-evaluate the boundaries.

After wrapping up the discussion of the draft zoning map, Brant reviewed proposed bylaw language amendments that would remove all remaining references to the defunct Water District. (See Appendix A.)

Judy moved that the Board approve the proposed amendments to the bylaw 171-28.4 part C and part D. Sara seconded the motion. Brant, Sara, Judy, and J.D. voted YES. The motion passed unanimously.

Because the map requires some additional revisions, a vote to approve the map was tabled.

7. Discussion of a Zoning Bylaw Amendments to Improve Access to Affordable Housing

Judy shared a bylaw amendment she drafted, titled *Community Housing*. She explained that the proposed bylaw is designed to relax many of the current zoning requirements where a permanent affordable housing restriction is placed on at least 25% of the units. The intent is to give much of the zoning relief provided by the state's chapter 40B, while providing local oversight. Developers should find the local approval process much less onerous than a 40B filing.

It also requires a special permit from the ZBA and site plan review by the Planning Board. It allows dimensional requirements like lot size, lot density, and unit size restrictions and permits more units per lot to be waived – but only for projects with affordable housing.

The discussion included debate about whether the lack of a sewer in Whately precluded

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housing developments of the size allowed in the proposed bylaw (12 units). There was discussion of how accessory dwelling units (ADU) could be built using this bylaw as long as the ADU was set aside for affordable housing and how the town could use this bylaw if it acquired an otherwise unbuildable parcel for a modest housing development, including affordable housing. It was noted that a member of the Zoning Board of Appeals sent a letter to the Planning Board endorsing the draft bylaw.

The discussion concluded with no decision or vote. Brant will be attending the next meeting of the Housing Committee and will discuss the proposed bylaw with them. There was consensus that the Housing Committee should be closely involved with and supportive of any housing-related bylaw amendments proposed by the Planning Board. The Planning Board will continue discussing this housing-related bylaw at the next regular meeting.

8. Approval of Minutes

Minutes of May 17, 2023 were reviewed. Draft minutes had been circulated and both Brant and Judy had made corrections.

Sara moved to approve the minutes of May 17, 2023, as amended. Judy seconded the motion. Brant, Sara and Judy all voted Yes. J.D. Ross did not vote because he was not a Board member at the time.

Minutes of May 31, 2023 were reviewed. Draft minutes had been circulated and both Brant and Judy had made corrections.

Sara moved to approve the minutes of May 31, 2023, as amended. Judy seconded the motion. Brant, Sara and Judy all voted Yes. J.D. Ross did not vote.

Minutes of June 14, 2023 were reviewed. Draft minutes had been circulated and both Brant and Judy had made corrections. Some small corrections were made in real time.

Sara moved to approve the minutes of June 14, 2023, as amended. Judy seconded the motion. Brant, Sara and Judy all voted Yes. J.D. Ross did not vote.

Minutes of November 29, 2023 were reviewed. Draft minutes had been circulated and Judy had made corrections.

Judy moved to approve the minutes of November 29, 2023, as amended. Sara seconded the motion. Brant, Sara, Judy and J.D. all voted Yes.

9. Additional Items Not Anticipated

The Town Administrator requested that the Planning Board designate a representative to the Center School Proposal Evaluation Committee. Brant asked for a volunteer and J.D. Ross agreed to serve in this role.

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10. Adjournment

At 7:18 PM, Judy moved to adjourn and Sara seconded the motion.

11. Documents Reviewed (In Planning Board files)

1. ANR application and supporting documents submitted by Dan Hurwit
2. Draft letter to the Whately Select Board, submitted by Judy Markland
3. Emails submitted by Neil Abraham, Donna Wiley, and Margaret Christie in support of local control of large-scale solar and battery storage projects
4. Draft Whately Zoning Map
5. Draft of proposed amendments to the Whately Zoning Bylaws, sections 171-28.4 part C and part D (cf. Appendix A)
6. Draft of a proposed Community Housing bylaw

Brant Cheikes
Chair, Whately Planning Board

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Appendix A – Changes to ~171-28.4

These changes were discussed (changes indicated with ~~strikeout~~ and highlighting):

171-28.4 (C) CRITERIA DEFINING THE AREAS WITHIN THE AQUIFER PROTECTION DISTRICT

For the purposes of this district, there are hereby established within the Town three (3) [Amended ATM 05.23.2023 Art. 25] Aquifer Protection District Areas, consisting of Zone I, Zone II, and [Amended ATM 05.23.2023 Art. 25] Zone III. The criteria used to delineate these areas are set forth in the Massachusetts Drinking Water Regulations, 310 CMR 22.02, and are described in the Source Water Assessment Program Reports prepared by the Massachusetts Department of Environmental Protection for the ~~Whately Water District (January 14, 2002) and the~~ Whately Water Department (November 27, 2002).

and

D. AQUIFER PROTECTION DISTRICT AREA BOUNDARIES

(1) Aquifer Map

The boundaries of the Aquifer Protection District are shown on the “Whately Zoning Map – Aquifer Protection District Areas” dated ~~<ATM DATE 2024>~~ as amended by Town Meeting. ~~This map includes the newly defined Zone II and expanding Zone III for the three (3) bedrock wells in the Whately Water District.~~ Said map is hereby made a part of this Zoning Bylaw.