

JOHNSON PLANNING COMMISSION MEETING MINUTES  
JOHNSON MUNICIPAL BUILDING  
TUESDAY, JUNE 14, 2016

**Present:**

Planning Commission Members: David Butler, Kim Dunkley, Charles Gallanter, Paul Warden, Ben Waterman, Rob Rodriguez

Others: Bob Hoag, Gordy Smith, Meredith Birkett, Scott Meyer, Walter Pomroy, Lea Kilvadyova, Rick Aupperlee, other members of the public

**Note: All votes taken are unanimous unless otherwise noted.**

**1. Call to Order**

David Butler called the meeting to order at 7:07.

**2. Minutes from Previous Meeting**

**Kim moved and Paul seconded to accept the minutes of May 10, 2016 and to approve the minutes of May 17, 2016 with one amendment (replacing XXX with Paul.) The motion was passed with some members abstaining.**

**3. Changes, Additions to the Agenda**

No changes were suggested.

**4. Public Hearing: Proposed Town and Village of Johnson Municipal Development Plan for 2016-2021.**

David Butler opened the public hearing at 7:12.

Bob Hoag said he has a problem with where the line is. It goes through his building so part of his building is in the plan and part isn't. He would like his property to be left out of the plan. He doesn't think the town is prepared to do a plan. He doesn't think it has been researched enough. It doesn't make sense for his garage to have as much glazing as would be required.

David Butler said he thinks Bob is confusing the Town and Village Municipal Development Plan with form based code. Kim said the plan being discussed tonight is the Town and Village Municipal Development Plan, which has nothing about form based code.

Bob Hoag said the Planning Commission has met with the owner of the service station where building is proposed, but the only one who has come to see him is Mike Dunham of the selectboard. Kim said it might be because if form-based code goes through it is going to affect people who are developing something, not people who are already there. David Butler said we are party to Act 250 and the new Maplefields will have to go through Act 250. The Planning Commission did not go to Skip Vallee; they invited him to come to them, which he did. If Bob wants to rip down his garage and build a hotel he would come under Act 250 and the Planning Commission would be happy to invite him to share his plans. They wouldn't come visit him until he files an Act 250 application.

Scott said he and Bob had talked about glazing requirements. Scott had a suggestion related to that. David said that is form based code. That is not being discussed tonight.

Kim said the selectboard and trustees will need to approve form based code, so people can contact them with input. David said the selectboard has to have at least 2 public hearings on form based code and the Planning Commission has to have one.

Walter asked if there should be anything in the plan to be in compliance with or take advantage of what is in the new energy siting bill. David said we said we do not want to see our ridges developed, period. No wind on Sterling Ridge or Butternut Ridge. As far as his knowledge of the new law, our plan would be perfectly fine because we support development of renewable energy and that is the whole purpose of that bill. He hasn't seen the whole law yet. Until it is publicly available and the Planning Commission can read it he is not sure there is any adjustment that needs to be made to the plan. Kim said this plan can be amended.

Bob Hoag said he doesn't understand why people are against buckets of air. Turbines don't bother him. David said the Planning Commission voted to reserve those ridges from wind development if at all possible.

David said he believes a motion to pass the plan as written is needed. Walter said the public hearing needs to be closed first. David closed the public hearing at 7:25. Board members said they think the Planning Commission already voted to approve the plan. David said the plan will go to the selectboard and trustees for approval next. He noted that any plan adopted after July 2015 will be an 8-year plan, not a 5-year plan. So if it is adopted it will be an 8-year plan for the town and village.

##### **5. *Form Based Code Next Steps***

David explained that the Commission was going to be working on the administrative part of form based code. Most members of the public left at this point.

Ben and Paul came up with a copy showing text they propose deleting and highlighting text that can't be deleted because it is required by statute.

David pointed out a place in Section 108 where it says Johnson FBC doesn't govern land uses with one exception. That should probably be changed to "a few exceptions."

Ben said he and Paul were tasked with editing the document to simplify it and make it easier to understand. Something that is important to understand is that having uses in our code at all grossly complicates administration of the code. There are many parts of the document that deal with uses – non-conforming uses and how to approach them and how permit applicants have to communicate what uses they have, etc. We should keep in the back of our minds that if we want to outlaw adult bookstores and make sure there is commercial use of first floors in the village district, that complicates the document and makes it a lot longer because we have to keep all the language addressing uses. He read an example that he feels is hard to understand without study: "A non-conforming use may not be changed to another non-conforming use. A non-conforming use that is changed to a conforming use may not revert back to any non-conforming use. Any non-conforming may be changed to a conforming use." Some others said it makes sense to them. David said he feels those sentences are totally wasted. We don't need that whole section. We say earlier that non-conforming existing uses are grandfathered and that if a substantial change in use or structure is made

you have to conform. We picked that wording because we want things to improve and not degrade.

Paul and Ben are suggesting removing the first 3 pages including the flowchart. Others recommended moving the flowchart to a later part of the document.

One person suggested referencing the map showing the 3 districts every time one of the districts is mentioned.

There was discussion about the flowchart and the text describing the flow. An inconsistency between the flowchart and the text was noted. David said the first step should be determining if you are in a district and what district it is. There was discussion about when the administrative officer would refer the application to the development review board. If the plan states that the applicant physically cannot meet the standards, then it would go to the development review board. There was discussion about the exact language that should be used to describe limitations that cannot be overcome and whether that should include economic limitations. It was suggested that the wording should be "limitations that cannot be overcome." That would mean that a person who cannot afford to meet the code could apply for an exception, which might be denied. There was discussion about whether, in cases where there is a special circumstance, there would be a review of the application by the development review board that would be free for the applicant and then the opportunity for the applicant to appeal to the development review board, or just the appeal. There was general agreement that the initial review by the DRB after the AO determines there are special circumstances should be free to the applicant. David said the first review by the DRB is free, and then if the applicant appeals the applicant would pay (but might get the payment back.)

David suggested that everyone review Paul and Ben's suggested revisions and write down questions. It was suggested that Paul and Ben spend 10 minutes reviewing the document.

Ben said it is important to determine what the flow should be. An important question is when DRB approval is required. Another important question is whether the 4 criteria in section 301(a) make sense. In the third one "upon the request of the applicant" might not make sense.

Ben said in Article III, Section 3.01, about when the AO kicks the application to the DRB, it says we will require the AO to know the public works requirements, the fire department requirements, and the requirements of any other city ordinance. That is a big job. There is another place where we say the DRB needs to consider the fire department/emergency services requirements, the department of public works requirements, the water and wastewater requirements, soil erosion, storm runoff management, etc. We are asking the AO and the DRB to have knowledge of these things.

Kim asked if we have talked to other DRB's to ask what they actually have to know. David said as the code was written we determined there was not anything in the code that would be restrictive because of the fire department, for example. He thinks the code takes those into account already.

Ben said knowledge of these requirements is an administrative responsibility he doesn't think we have thought about before. Another person commented that that is all right for the administrative officer, which is a paid position, but it is different to have that expectation for the volunteers on the DRB.

Scott said building projects have to be approved by the state public safety department and state fire marshal. He believes that is the case for every building. David said if it is a public use building it automatically requires Act 250 review. There was discussion about the relationship between Act 250 and our code.

Lea arrived. David asked all Planning Commission members to take time to review the document and note any questions. Scott Meyer was invited to participate in document review, not as a trustee but as a member of the form based code committee.

**6. *Johnson Local Hazard Mitigation Plan: Presentation and Discussion***

Lea said she was just at the annual meeting of the Lamoille County Planning Commission. They had elections for board directors. Howard Romero was elected as one of their county directors. The town and village have empty seats on the board. The town and village representatives are appointed by the selectboard and trustee board. Anyone who has names to consider should suggest them. Dave Bergh was representing the town. Scott asked what Howard will do as a director. Lea said he will be part of decisions the board makes on behalf of the county.

Lea suggested the Planning Commission might want to think about finding a secretary.

Lea said she would like to hear any feedback people may have about the Hazard Mitigation Plan. Her main purpose is to let the Planning Commission know what the plan is about and how it relates to the municipal plan. The plan talks about potential hazards the community may face, mostly natural, and how Johnson might mitigate so effects of the hazards will be less in the future. Traditionally the plan has been developed on the selectboard level. Each town has appointed an emergency management director. Johnson's is Eric Osgood. We also have an emergency management coordinator, Gordy Smith.

The reason towns are creating Hazard Mitigation Plans and why the plan has to have this lengthy format is because FEMA requires towns to have adopted a plan in order to access funds before and after a disaster. FEMA has a huge checklist of what the plan has to look like. There are FEMA funds attached to it but also state funds. The state Emergency Relief Assistance Fund provides a match to the FEMA post-disaster fund. The culvert replacement on Coddling Hollow Road is about a \$300K project. FEMA is funding 75% of it and the state through ERAF is funding a certain percentage. The state contributes different percentages to FEMA's payment, depending on whether a town meets certain requirements. Staci Pomeroy previously talked to the Planning Commission about those requirements. If all 4 requirements are met, one of which is the Hazard Mitigation Plan, then the state will give us 12.5% of total cost instead of the 7.5% we get now, which is the lowest percentage. One requirement is participating in the national flood insurance program. We do that. The one requirement we don't have in place yet is adoption of the 2013 road and bridge standards. The town has

adopted them but the state hasn't accepted them yet. We have a local emergency operations plan, which is another requirement. And we have a Hazard Mitigation Plan, but it will be expiring and we need to renew it. We could get another higher level of ERAF funding if we adopted a river corridor bylaw. Staci Pomeroy discussed that. The town needs to have this plan in place in order to qualify for ERAF funding. Ideally the town would be striving towards 12.5%.

Town road and bridge standards are what is missing for the 12.5%. David asked if the roads and bridges actually have to meet the standards. Lea said yes. She said the town adopted an altered version of the VTrans 2013 standards and they submitted it to VTrans for approval. They are waiting for approval. Until that they are in the 7.5% category. If a local Hazard Mitigation Plan is not approved, that will be missing as of 2017.

David asked who adopts the Hazard Mitigation Plan. Lea said it will be adopted by the selectboard. She wanted to talk the Planning Commission about it because there are some things in it that would be good to mention in the municipal development plan in the future.

The town is adopting the plan for practical financial reasons. Along with that process comes discussion about natural hazards and how the community wants to address them. She brought a handout with the meat of the document. The town has gone over a list of potential hazards and thought about the level of risk they pose to the community. There are 6 identified as major and 8 identified as low probability and low vulnerability.

Scott said he thinks the probability rating should be higher than it is for severe wind storms, ice storms, and failure of the Green River Reservoir dam and other dams upstream from us.

Kim said she thinks it would be helpful to know what consequences are predicted in Johnson if a dam were to fail. She thinks agriculture should be included under severe wind. Under hazmat spills she thinks water quality should have been included.

David Butler asked, if the plan has 3 pages of actions to mitigate flood problems why is the probability of floods medium? He would say it's pretty high. When it was pointed out that medium includes probability up to 80% he said that is probably acceptable.

There was discussion about whether the traffic figures were correct. The number going through the village of Johnson is shown as 9300 and the number traveling from Johnson to Cambridge is shown as 5000. Some people traveling through Johnson are going toward Morrisville or somewhere else, not toward Cambridge.

One person asked if there is any more detail about how the town can work with private landowners on flood proofing. A lot of hazard mitigation can happen through the efforts of private landowners. Lea said an example that came out of a flood proofing workshop in Johnson in May is that LCPC is helping the Johnson Public Library get an elevation certificate as part of relocating their electrical and heating systems from the basement.

There was a question about whether there is anything else to support private landowners. Lea said there may be FEMA funds. She believes property owners would work with the municipality on accessing them. It has been suggested that the village revolving loan funds could be opened to private owners who want to do flood proofing.

Kim asked about riprap that was placed on the sewage treatment plant side of the Gihon, resulting in water eroding lawn on the other side. She was asked who put up the riprap and what the thinking was when it was put there. Lea said LCPC is looking at the area of the Route 15 bridge over the Gihon, contemplating different scenarios. It will be interesting to see if this comes up as an issue with this particular area. Eric Osgood, LCPC and the town administrator are the people to talk to about flood hazard issues.

Rick Aupperlee said he has had increased flooding due to his neighbor's actions. David said if the neighbor has an unpermitted driveway that is an issue for the village trustees.

Kim asked if there a format for residents concerned about flood potential due to their circumstances to get help. Lea said maybe a format can be created.

#### **7. *River Corridors***

Lea said the Planning Commission has talked about getting additional on-the-ground data to verify the need for river corridor boundaries. LCPC has resources and staff to help with those on-the-ground measurements. Pam DeAndrea is the one who would do the work.

Scott said looking at the river corridor map and the flood zone areas, it seems like some land was moved out of the zone that should be in it and an area that was high and dry during the '95 and later flooding is included in the zone. He was told there is a permit process and you would have to hire an engineering firm to look at flow rates and confluences of the river, plus an elevation survey, which is quite pricy. He thinks it is unfair to the people who were moved into the zone.

Kim asked if Lea is saying someone from LCPC can do that for free.

Lea said she thinks Johnson needs to identify some areas where ground truthing should occur. The Planning Commission had talked more about Foote Brook and not so much about the Gihon or the Lamoille but maybe that should be looked at. Now the burden of proof is on communities to change river corridor boundaries. The work LCPC can do can help us build our case.

Kim asked if it would be ridiculous to put a notice in the paper and ask people who disagree with the boundaries to come to a gathering and say so. She feels people should have a say.

Lea said the river corridor layer the state developed is a consideration in the Act 250 process. If you want to develop within an area designated as river corridor the default is that you are prohibited from that.

David said after Irene, because of problems in most of the state south of us, ANR helped pass legislation that said ANR will identify any stream with a watershed of 200 acres or more and

will apply a buffer zone or river corridor where no development can occur, because of flooding and because of banks moving. Lea said the river corridor is an area where the stream might move over time. David said river corridors don't just affect private development, but also town roads. There are places where it would be physically impossible for a mountain stream to move and create a problem that are still part of a river corridor. There are a lot of streams where a corridor should be established but a lot where he feels it is essentially a taking of private property.

Lea said LCPC is available to help with getting on-the-ground information for certain areas of Johnson. Johnson needs to identify where those areas are. There are places along the Lamoille and Gihon where on-the-ground information has likely already been collected and is reflected in the model. The state might not budge in those cases. Where information has not been collected, such as along Foote Brook, is where we might be able to get them to adjust.

Lea said if you want to develop in a river corridor the state is happy to discuss a particular project. That is the best they can tell you, is that they will look at the situation.

8. ***Adjourn***

The meeting was adjourned at 9:27.

*Minutes submitted by Donna Griffiths*