

**Town of Charlotte
Board of Selectmen
Minutes**

**Monday, January 10, 2005
7:00 PM, Charlotte Town Hall**

MEMBERS PRESENT: Charles Russell, Chair
Jennifer Cole
Ellie Russell
Ed Stone
Frank Thornton

OTHERS PRESENT: Dean Bloch (Selectboard Assistant)
Shirley Allen
John Hammer
Clark Hinsdale, Jr.
Marty Illick
Allan Jordan
Jeff McDonald
David Miskell
John Owen
Martha Perkins
Robin Reid
Peter Richardson
Spin Richardson
Nancy Sabin
Brian Shupe
Frank Tenney
Gordon Troy

The purpose of this meeting was to hold a public hearing on the proposed Land Use Regulations for the Town of Charlotte.

Chair Charles Russell called the meeting to order at 7:05 p.m.

Mr. Russell explained that Brian Shupe from Burnt Rock, the Town's consultant, was present to answer questions. Mr. Russell asked for questions, stating that the Selectboard had also received comments in writing.

Shirley Allen noted her appreciation for the Planning Commission's work on this project that that a lot was improved, but there were still many things in the document that people aren't going to worry about and have nothing to do with the wellbeing of the Town. She said the only way that violations to these new regulations can be proved is by a ruler or a tattletale.

She specifically noted her issues with problems on: page 11, left side, line 26, a financial institution is allowed in the west village but with no drive-through. On page 148, a drive-through bank is allowed, but only west of the railroad tracks. She suggested that such a drive-through bank should be in the village where the rest of the services are. She said that on Page 16 conditional uses are noted, e.g. kennel, outdoor market and when you turn to Page 17, there is a new section just added that says that those activities can only be participated in in connection with a working farm or a home occupation. She said she knows of three large barns between her house and Greenbush Road that are empty and doing nothing and she feels that if somebody wants to come along and put something in one of them, and use them and keep them up, that would prevent a slow deterioration of those barns. So each use should be considered on a case-by-case basis and not be excluded from everything except home occupation and agriculture, she said. Mr. Russell asked Dean Bloch about this. Mr. Bloch said that in responses to the public at the Planning Commission meeting, a person from the public felt that unrestricted commercial uses in the rural district was inappropriate. Shirley Allen explained that she doesn't want it all outlawed. Mr. Bloch said that some of the uses may be allowed under "adaptive use".

Shirley noted page 26, permitted uses – overlay on Route 7, scenic overlay. She said most of the areas on that scenic overlay have been through the process of being conserved, but still there are a few there that are not and asked if they would insist in people going on conditional use for putting back a porch on their house if they had not gone through the process of conserving? There is no answer.

Pages 31 and 33 there are 3 pages on signs. Is that necessary, Shirley asked. If so, she thought that it would be hard to police compliance of that issue. On page 51 in the box, it says "occupied by someone 62 years or older" and she said in the section for elderly housing, it says "occupied ONLY by 62 years or older" and that would mean someone couldn't have a live-in caretaker who happened to be younger or spouse that's younger. ONLY should be taken out of definition, she suggested.

Page 56 – starting at lines 46 and 47, mining and quarrying is prohibited. In line 44, it says the Town permits extraction and removal of _____. On page 152, the definition of quarrying is the extraction or removal of rock, etc. She said that to her the definition of mining needs to be stated. She asked why it was necessary to define "quarry" and why does it have to say "mining and quarrying is specifically prohibited." She asked how could anyone enforce this when it is hard to measure.

Martha Perkins said that the professionals in the mining and quarrying business (e.g. gravel people), know exactly how much.

Frank Tenney commented. He said that under "Abandoned Structures" on page 27, line 24, there is a definition of "substantially complete" but there is no definition for "substantially incomplete," he noted.

On page 33, line 40-41, on line 43, it talks about the antennas for a residential or public use stating that a person can only have the antenna 5 feet above his/her roof which can go 5 feet over the maximum height of the building, but if the house is only 15 feet high, you're not going to get near the 40 foot height that you could get, so he suggested having it the same whether it is mounted on the building or, if not mounted on the building, it could go up to a maximum height of the district and if mounted on the building, it could go 5 feet above the maximum height in the district.

On page 34, line 27-28, he noted that the document says that a person can't use a right-of-way to calculate the minimum lot size requirement for the district. On page 37, under "Outdoor Storage," line 45, it states "dumping and outdoor storage of garbage, trash, including all automobile junk" – Mr. Tenney asked if people were going to consider his snow tires by his garage "automobile junk"? If he happens to be an artist, and happens to make things out of automobile junk, would he get a violation, he asked.

On the same page, on lines 5-7, it talks about 75 watts. Mr. Tenney asked if it would going to be held as a permanent, regulated number? Mr. Russell answered saying that that was just an example. They both agreed that that could be made clearer.

Page 38, line 6, talks about 550 gallon gas tank. Mr. Tenney noted that most people do not buy retaining tanks of 1,000 gallon for their propane, but some may.

Page 38, line 25 talks about multi-family public and commercial buildings. Mr. Tenney asked what it is a necessity that there be a bike rack.

Page 42, line 37, talks about signs. It states that if a sign was damaged over 50% of the appraised value, it cannot be changed/replaced. He cited an example: if Spear's Store sign for her gas pumps was knocked over by a plow, she cannot put it back and if the gas company changes to Mobil, she cannot change it. Even though in the state laws, the sign is considered a structure, if it has been destroyed, it cannot be replaced according to this document. He went on to say that the same is true on page 43, line 19.

On page 55, line 31, it says that no more than 2 campers or other temporary shelter may be stored on a single lot. Mr. Tenney asked then if his camper can't be parked on his lot. He said according to this section, because his driveway is in the setback, he would need a variance to park his camper and that also would include an RV.

One page 63, line 19, "mobile home", the land has to be 5 acres and it talks about the allowed site not less than 8,000 square feet. Mr. Tenney said usually the State requires the lot size to be the footprint of the mobile home plus any additions or porches. The 8,000 ft. can't be within the setback or clearing around it, so it would be difficult for mobile home parks. One line 30, a minimum of 20% of the total area is to be set aside for common land, or open space and that can't be within the setbacks, so that takes out more land and in the PRD or a PUD, only 15% of open land is required, but they require 20% in a mobile home park.

On line 48-49, it talks about a screened place area for collection of trash and recyclables. Mr. Tenney said that there is nothing in the State laws that says someone has to have a single area for all of that; it is not a bad idea, but he suggested not making it a requirement. Line 64, line 2 talks about collection of trash and garbage and what a landlord or owner should do and then again it talks about how the landlord should provide for the regular collection and that is usually up to the tenant itself unless you plan on all that being included in the lot rent.

Page 122, lines 30-31 talks about sheds. If a person has a small piece of property, they are not going to meet minimum setbacks if they try to put a shed on it. On page 125, line 39-42, it talks about Certificate of Occupancy and how the applicant must also provide a Certificate of Wastewater Compliance with the sewer control officer certifying that any wastewater has been tested and approved. If construction that was done was not going to change the daily flows, that should not be a requirement for a Certificate of Occupancy, Mr. Tenney said.

In the "Definitions" section, on page 139, under "campers", Mr. Tenney said it included on line 16-17 that campers include motor homes and travel trailers, but it doesn't say anything about tents. On page 142, line 2 "density", it says that you can't use your right-of-way as part of your lot size calculations. Mr. Russell asked if density calculations had always been that way. Gordon Troy said that this just makes it clearer, but in practice it has always been that way. Allan Jordan said that the right-of-way issue was brought up in Planning Commission hearings/meetings and there was an agreement that the right-of-way goes to the center of the road. Allan Jordan said he understands that the landowner owns to the center of the road and if that applies to all the roads in town, why would it be different in a subdivision: the lot should go to the center of the road. Mr. Bloch clarified by saying that this ONLY applies to new roads and does not apply to existing town roads. He further went on to explain that in new subdivisions, lots are designed to go to the end of the right-of-way and the roads are owned in common; each individual lot owner doesn't own the road and that is why it is written "edge of the right-of-way." Mr. Troy said there are roads around town that the landowner does not own to the center of the road, e.g. Ferry Road. Frank Thornton said the State owns portions of Route 7.

Shirley Allen said that if someone is already conserving something with some kind of mechanism with the town that has taken the development rights from conserved acreage and therefore it could not be used to count for density with another house somewhere.

Page 142, line 37 – single family dwelling – the question was raised "doesn't that mean a 2-family house?" Mr. Troy said no; an accessory dwelling is different than a single-family house. Mr. Russell asked about a detached building to which Mr. Troy said that it can be stand-alone.

Page 51, under "definitions" regarding affordable housing, Spin Richardson asked how the mechanism worked, how it was enforced and what happens with family income? He brought up the scenario of a family qualifying for an affordable housing subsidy or location and then three years later having their income quadruple. He is concerned that the Town is making a contribution and changing the financial aspect of development by saying that we're going to let you take land and sell more lots out of it for a specific purpose. How do we make this thing work in perpetuity? Mr. Russell said there are legal documents that have to get worked out here that would cover it. Allan Jordan answered it by saying the protection for affordability is primarily in the deed restriction – lawyers have been doing it all over Vermont. The deed says "permanently affordable" house and the lawyer searches the title for the party buying the house so certain things like income apply to the buyer and certain things apply to the sale price and the lawyer who is searching the title is not going to jeopardize his license by ignoring that. Mr. Richardson says his concern isn't that; it's that income could fluctuate and if so, can the person stay in the house?

Mr. Bloch asked Brian Shupe to explain. Mr. Shupe said that on page 55, there is an attempt to get to that. It requires that the legal mechanism be put in place and agreed upon by the town as part of permitting and the review process. It doesn't specify the mechanism, but does say what the mechanism needs to achieve. Most commonly in Vermont, rental housing is usually, or often, managed by a nonprofit entity. They tie the rental agreement to income and maintain those income eligibility requirements of tenants over time. But usually for the sale of affordable housing, you need to qualify for an income level when you acquire the property but are not tied to it over time. When you sell the house, there is a shared equity agreement. For sale housing would apply under subsection 1, rental under subsection 2 under administrative requirements on this page.

Lou _____ asked if you limit the resale price of these houses to be more affordable, how do you assess them as a tax base every year (market value or potential resale value)? As a town, Lou _____ said that is of fundamental importance. Martha Perkins said the law says that the lower price is what you base the taxes on. David Miskell said Housing Vermont and other groups have experience and suggested that maybe somebody can approach one of them and put the answer in an article in the Charlotte News. Frank Thornton said that a person can rent for more than taxes would bring in. Peter Richardson said that would violate the agreement. Nancy Richardson said that the issues being debated here and taken care of by laws and regulations by the state and to discuss them all tonight would be difficult, but raising them is a "red herring" for people who do not want affordable housing. Mr. Russell said the concern is for the Planning Commission and the Selectboard to ensure that the agreement covers all the issues. Allan Jordan said that the affordable housing committee will be having a public hearing after the SB finalizes their Planning Commission regulations and it will be some time in early February. The date has not yet been set but at that meeting, there will be legal experts, people from

affordable housing organizations, (Burlington Land Trust), and there will be representatives from Chittenden County planning.

Robin Reid said that she is not convinced and does not feel comfortable with this section and she has been involved in the process. She wants to figure out something to do, but doesn't like that it is included in this regulations document like it is. She would like to see it addressed by the Town separately so that people could have a chance to learn more about it.

Martha Perkins asked where the words as proposed came from, i.e. state regulations? Mr. Russell said they were written by the Planning Commission with help from the Affordable Housing Commission. Mr. Troy said that the definition tracks from what was discussed in the town plan and then follows the State statutory definition. Mr. Bloch said when open space agreements are made, definitions didn't define specifically what open space was. Brian Shupe said under the section for common land, open space agreements and other legal requirements, it is standard practice to require board approval, in consultation with the Town attorney, to approve agreements, specify objectives and work it out. Jeff McDonald said that the Town doesn't have to require perpetual affordable housing, but the Planning Commission said that they wanted to establish that it must be perpetual. Martha Perkins said that the City of Burlington and towns all around Vermont and the country have been providing affordable housing using similar regulations and statutes for a long time, so it works and there are protections and regulations.

Nancy Sabin noted that in the "Definitions" section, there is the word "airport" but since there are already airports existing in Charlotte, she recommended having the words "hangar" and "airplane" added. She also noted that under limitations and enforcements, the Town has 15 years to enforce and can fine on a daily basis; she thinks enforcement should be 6 mos. – 1 year and not 15 years. Mr. Troy said that it was a State statute.

On page 51, Lou _____ said that it assumes everybody commutes north rather than south (median income). Lou also said that he got a flyer in the mail and it describes how expensive it is to afford a house in Charlotte but doesn't give a percentage of the assessed value of houses in Charlotte that are affordable. He thinks that is the key number.

Mr. Thornton asked if the zoning regulations are increasing the cost of lots. David Miskell said that the zoning regulations as they are being printed now and in the past help make it so that lots in this Town are not affordable and he said that if the Town does want to do affordable housing, it has to be subsidies or there is no way possible that it is going to work. Lou agreed that that is where the worry comes from. The issue arose of whether there will be so many affordable housing projects that it will change the density of the Town. Robin Reid said that even if there are no market houses for sale that are affordable, the Town still has people living here that are doing it affordable, but are not part of the calculation. She said that adaptive use and accessory structures are more helpful to affordable housing as opposed to the state regulated red herring aspect of affordable housing. Allan Jordan said that "in the 1980 Town Plan, it said that the Town wanted affordable housing; since then, there have been 2 affordable houses built. The Town Plan still says that we want cultural and economic diversity in the Town and to sit here and say that we have to have the legal paperwork in front of everybody; people wouldn't understand it, but to do nothing would be very poor for the Town. To follow the Plan, whether it works or not, is what should be done. It won't work if we don't try." Spin Richardson said that he is not trying to put it off, but was just saying it seemed prudent to him to have all the ducks in a row so the Town would not have to have the argument after they do it. Mr. Russell asked him what he suggests putting in the document. Mr. Richardson said that his concern is that it remains affordable long-term. Rental is easy to control, but his concern is that you are going to have people have affordable housing and if income escalates, and if you reserve a unit for someone who has limited income, this current regulation doesn't do it for him.

Peter Richardson said that the difficulty of being too precise at a local level is that the State has its own set of laws and regulations and there has to be flexibility to match it.

On Page 52, line 23 Mr. Russell said it mentioned "in perpetuity." Mr. Shupe said that perpetuity is further defined on page 136 to be 99 years. Marty Illick thanked the Affordable Housing Committee for doing an amazing job on the regulations. Robin Reid said that in rebuttal, her concern is that it could undermine some of the other advances that have been made in thing like open space and being different than other towns. She has reservation of passing it off to states and regulators; she wants to do something different for Charlotte. Ms. Illick said that the State has defined "perpetual affordable housing" and that would be the only way of going about having it in Charlotte, but there are other elements in keeping with Charlotte, such as adaptive reuse, Charlotte Land Trust, etc. Gerald Bouchard said that he agrees with Spin Richardson; there is no reason that the Town couldn't pull information from different towns and have a set of documents that the Town could look at by Friday night, sit down and put it together so the public could see it.

Spin Richardson said that affordable housing would be much better if it was 100% rental because then the Town could maintain the group of people that you want to have come into town. His concern is that the Town have a program that is dynamic and that keeps it ongoing. John Owen said that he had been working with Habitat on a national level and by and large, people who buy affordable houses don't strike it rich suddenly and they usually stay at a certain income level. You can't kick them out if they suddenly get a lot of money, but usually that isn't the case. Ed Stone asked Mr. Richardson who would buy these rental units. Mr. Richardson said he did not know. David Miskell suggested watching Shelburne to see what is happening on Route 7; it looks nice when you drive by it and it fits the community. There are ways to make it work and not negatively impact the beauty, open space and wetlands of Charlotte if done properly and models are out there, he said.

Ed Stone asked Allan Jordan if the committee has a public input meeting. Allan said that meetings are always posted legally and that the Charlotte News had articles that resulted from those meetings and they put out a brochure/flyer in the Charlotte News. Jeff McDonald said that the Committee has had two meetings with the Planning Commission.

Martha Perkins asked about the schedule. Mr. Russell said if they make any substantive changes they have to hold another public hearing on January 26th.

Spin Richardson asked, for example, if someone had a 10-acre lot and had 500 feet of road frontage on a Class 3 road, and wanted to subdivide it in 2 5-acre parcels, if they put in right-of-way, would it decrease and not subdivide? Mr. Troy said there are road frontage issues too. Mr. Shupe said that a road is defined separately as a driveway and that lot requirement doesn't include driveway right-of-ways. Mr. Bloch said the Town doesn't consider frontage within the right-of-way of a Town road; if it is 2 lots, then just the driveway and if 3 lots, it is a road and would need more than 15 acres.

John Hammer suggested erasing this section.

Clark Hinsdale, Jr. had the following comments:

Page 106, line 1, "easement may be required for protective distance required for drilled well or spring" - what does "may" mean, he asked. He wants it to read an easement "must" be required. Mr. Troy said that they are trying to close it up. Ellie Russell asked if anyone had an objection to it saying "shall?" Jeff McDonald said it is too onerous to use "shall." Mr. Bloch said the Town doesn't control drilled wells and can require it only if it is a subdivision. Mr. Troy agrees with Mr. Hinsdale and said that the Planning Commission has authority to waive a condition to a later date in the subdivision process.

Page 102, line 39 – he would like to use the same language as in Page 106 ("shall" to "must").

Regarding riparian buffers, Don Jackson said that the buffer is now 100 feet from the edge of a stream and asked if that is more restrictive than the State law if there is one. He also asked about the regulation that vegetation should be left in an undisturbed state asking what it meant and if it included mowing and brush hogging. Marty Illick said that undisturbed means to leave it alone. Mr. Shupe said that the Charlotte Conservation Commission was very involved in comments regarding riparian buffers. Nancy Sabin said that Prindle Brook runs through and because it is a main stream even though there is a man-made pond by the creamery, you have to take your hands and pull cattails according to State wetland experts and you can't even use a shovel. It makes a beautiful landmark neglected.

Peter Richardson said that if affordable housing was separated out from the rest of the regulations, it would be a bad idea. The issue of exclusion would make them vulnerable.

Spin Richardson said that the logic is that the affordable housing issue may not stand on its own, so it gets put into the regulations, but if it was good for the Town, it should stand on its own. Mr. Russell asked Mr. Bloch if it was separated, would it be an amendment to the existing bylaws. Mr. Bloch said that it would be two amendments.

Mr. Hinsdale said that the Land Trust has said that unless the Town deals with affordable housing, they are done with supporting anymore projects in the Town.

Dave Nichols asked for a definition for "air strip." The regulations don't mention it at all and Mr. Nichols would like airports to be acknowledged as conditional use. He has contacted the Vermont Agency of Transportation and he has paperwork, but their first prerequisite is that he has Town approval. Brian Shupe suggested allowing it as an accessory use to a farm or residence. It is allowable presently under the existing bylaws as an accessory use and they can change the definition of accessory use to include airports.

David Miskell had comments regarding Page 101, Section 7.3 in the table (Conservation Subdivision Design Process). He said it seems that formalization of the process is going on now and the Planning Commission has been doing it for years. His concern is that in the first step of identifying conservation areas, if they continue to be strictly observed within the subdivision process, there needs to be some definitions, e.g. what is a wildlife habitat, what is a wildlife corridor, how are they defined? Jeff McDonald said that the Planning Commission doesn't know all of these variables until they see the application, so it is raised as an issue then and discussed and then when they do the site visit, the application may drop down to be a minor subdivision. Each application is dealt with independently.

Marty Illick said that the habitat research has been going on since the mid-1980s and that the map has been used at Act 250 hearings and it is used as a planning map which it states and the final delineation occurs after the site visit.

Ellie Russell moved to close the hearing. There was no discussion. **Frank Thornton seconded the motion. All were in favor and the motion was unanimously PASSED. The hearing closed at 9:25 p.m.**

The Selectboard then reviewed the capital improvement note for the firehouse for \$20,000. **Jenny Cole moved to accept the note. Ellie Russell seconded the motion. All were in favor and the motion was unanimously PASSED.**

The regular meeting of the Selectboard was adjourned at 9:45 p.m.

Minutes respectfully submitted by Kimberly Johnson.