



Town of Shelburne, Vermont

SELECTBOARD MEETING AGENDA

Tuesday, August 11, 2020

Shelburne Town Offices, 5420 Shelburne Road, Shelburne, Vermont

VIRTUAL/REMOTE MEETING -- LOGIN/CALL IN DETAILS BELOW

Join Selectboard Zoom Meeting

<https://us02web.zoom.us/j/86363715771?pwd=Q3QrMEN5RzkySIUvbGRZQ2NPdDNwdz09>

Meeting ID: 863 6371 5771

Password: 4Mnxh1

Dial by your location

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

Meeting ID: 863 6371 5771

Password: 643757

Call to Order/Roll Call	7:00 P.M.
*Approve Agenda	7:00 P.M.
*Approve meeting minutes of July 28, 2020	7:00 P.M.
Public Comments	7:05 P.M.
Selectboard Comments	7:15 P.M.
Town Manager Report/Update	7:20 P.M.
Business update during the pandemic	7:25 P.M.
Updates from Shelburne Community School and Social Services Committee	7:30 P.M.
*Masks/face coverings to come from the State: ideas/options for use/distribution	7:45 P.M.
*Public Hearing – proposed zoning amendments PUD buffers	7:55 P.M.
*Finance Committee adoption/appointments	8:10 P.M.
*Regulatory reform action plan	8:15 P.M.
*Economic development action plan	8:35 P.M.
*Approve bond vote language for the RT 7 wastewater upgrade project for November ballot	8:55 P.M.
*Approve new road name (Ferndale) in the proposed Gardenside Nursery subdivision	9:00 P.M.
*Adjourn	9:05 P.M.

* Decision Item

Times allotted to each agenda item are approximate and may vary depending on the discussion.

Reasonable accommodations will be provided upon request to ensure that this meeting is accessible to all individuals



Town of Shelburne, Vermont

SELECTBOARD MEETING

ANNOTATED AGENDA

Tuesday, August 11, 2020

Shelburne Town Offices, 5420 Shelburne Road, Shelburne, Vermont

VIRTUAL/REMOTE MEETING -- LOGIN/CALL IN DETAILS BELOW

Join Selectboard Zoom Meeting

<https://us02web.zoom.us/j/86363715771?pwd=Q3QrMEN5RzkySIUvbGRZQ2NPdDNwdz09>

Meeting ID: 863 6371 5771

Password: 4Mnxh1

Dial by your location

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

Meeting ID: 863 6371 5771

Password: 643757

Call to Order/Roll Call	7:00 P.M.
*Approve Agenda	7:00 P.M.
*Approve meeting minutes of July 28, 2020	7:00 P.M.
Public Comments	7:05 P.M.
Selectboard Comments	7:15 P.M.
Town Manager Report/Update	7:20 P.M.
Business update during the pandemic from one or several local business owners	7:25 P.M.
Updates from Shelburne Community School and Social Services Committee	7:30 P.M.

We anticipate informative updates from SCS Principals Alison Celmer and Scott Sivo, as well as Sue Furry-Irish, Chair of the Town's Social Services Committee on school plans and social service needs.

***Masks/face coverings to come from the State: ideas/options for use/distribution** **7:45 P.M.**

When we learned that the State was offering to distribute masks/face coverings to municipalities, our Health Officer/COVID Officer/Emergency Management Director Bob Lake responded immediately. We have learned that we will receive 1900 masks/face coverings in the near future. The question is then how might we make best use of these and distribute them according to need? Given the vast uncertainty of timing of COVID-related needs, I suggest holding a certain level of supply back for the Town's own needs. Sue Furry-Irish, Chair of the Social Services Committee may have insights into needs that may exist among individuals or clients of social service agencies to which our committee gives grants; I have invited her to offer ideas or participate in this conversation. There may also be requirements or restrictions from the State on distribution, which I'm sure Bob Lake will know. We are certainly open to other ideas. Let us remember also that this is likely a "one-time" distribution from the State; we should not anticipate nor expect that additional deliveries will occur again.

***Public Hearing – proposed zoning amendments PUD buffers**

7:55 P.M.

We anticipate a presentation and explanation by Planning Director Dean Pierce and/or Planning Commission Chair Jason Grignon of the rationale for and benefits of this proposed zoning amendment. I'm sure there is value in this proposal, but from my perspective, does not go far enough. It is another example of responding to a narrowly tailored request, but which may not address larger known issues directly related to this very matter. It also relates to the regulatory reform action plan which is also up for discussion tonight.

This PUD buffer proposal would 'lighten up' in certain respects on what may be permitted within PUD buffers. I believe that's a good idea. However, it would still require conditional use review before the DRB for a fence or a path on one's own property, which to me is a significant mismatch of resource requirements for matters that in many communities would be exempt from any permitting. By definition, fences are frequently used to define property boundaries. This proposal before us might allow fences closer to a property line than the significant setback presently required in certain areas, but as noted, would still require DRB hearings and review. While on the topic of PUD buffers, it might have been prudent to just delete fences from the definition of structures that are either reviewed or prohibited in PUD buffers. As for paths, it's curious why DRB review is needed for someone to build a path on their own property. Would property owners even reasonably expect that they need to ask about or need any review at all, let alone board hearings, for a path? Is this really a matter requiring regulatory attention and review?

Approving this proposal as presented would answer one property owner's question, and help that landowner be able to build a desired retaining wall, but it might have been helpful from a planning perspective to have expanded our view to also address other directly related, known issues and concerns at the same time.

***Finance Committee adoption/appointments**

8:10 P.M.

Attached please find a proposed Charter for this new standing committee, formed out of the pro-tem advisory committee that worked so hard for us on fiscal matters earlier this year. Along with this Charter will also come the formal committee member appointments. As you know, most of the advisory committee members are able and willing to participate further. As noted in the Charter, initial terms must be staggered to allow for the partial, progressive turnover of members over time; after those initial appointments, the standard terms for (re)appointment will be for three years each. A suggested approach follows:

Initial term of one year: Roz Graham, Ken Albert

Initial term of two years: Tim Williams, Tom Denenberg

Initial term of three years: Don Porter

***Regulatory reform action plan**

8:15 P.M.

This item and the next are taken directly from the Town Manager/Selectboard Goals and Objectives for 2020. These were introduced briefly at our last meeting, and the Board directed me at that time to prepare action plans for both topics for this meeting. The Board has been clear that both are of highest priority and demanding of action. As you will see, considerable thought has been put into these in breadth and depth. These action plans are intended to spur thinking and discussion, and challenge ourselves to tackle the hard questions that need to be asked and addressed. I recognize that parts of these may seem radical. Some may suggest it's about time that we surfaced these issues; others will find them unwelcome or critical of current systems and operations. However, the Board directed me to present plans for improving our regulatory system and launching an economic development initiative. Neither can succeed if we are afraid to take bold steps; if we just nibble around the edges; or if we defer to lengthy dialogue among our many CBCs. Further dialogue with staff and CBCs may well be needed, but an action plan must include *action*.

Further, as you know, I believe firmly that regulatory reform and economic development are inextricably related. While each must be considered within its own context, these must also be considered in tandem, for each depends upon the other.

Toward these ends, please find attached a detailed and descriptive proposed action plan for regulatory reform, and the starting point for an action plan for economic development. As the Board, department heads, and the public will have these in advance, I intend to summarize key issues and why I believe these proposals of absolute and fundamental importance to help launch the conversation. While not expecting final decisions in one evening, given the breadth and depth of these matters, it will be important to learn whether the Board finds these ideas and concepts worth pursuing, whether in part or in whole.

Further, I hope that various parties to the discussion will approach all of this with an open mind and consider these ideas from the perspective of “*why not?*” rather than “*we can’t do that because...*”.

***Economic development action plan**

8:35 P.M.

Same introduction as above; need not be repeated here.

***Approve bond vote language for the RT 7 wastewater upgrade project for the November ballot 8:55 P.M.**

This is before us tonight for purposes of timing: the Town Clerk informs me that if we ratify language timely, we can have it printed and included on the ballot for the November general election, and save us all the considerable time, effort, and cost that would otherwise be involved with a separate ballot. There is also an entirely separate, multi-step process that we must follow prior to a bond vote (multiple publication dates and postings...), so getting this done early also helps us prepare for and implement that process.

Language proposed for this bond item by our engineer and approved by our bond counsel Paul Giuliani:

Shall general obligation bonds or notes of the Town of Shelburne in an amount not to exceed Three Hundred and Fifty Thousand Dollars (\$350,000) subject to reduction from available state and federal grants-in-aid and other financial assistance, be issued for the purpose of financing the construction of the Route 7 sewer capacity improvements, the aggregate cost of all such improvements being Three Hundred and Fifty Thousand Dollars (\$350,000) Dollars?

Note that the present cost estimate from our engineers is \$315,000. I propose here a higher ‘not to exceed’ figure due to the unpredictability of supply chains and materials costs, as well as unforeseen matters that can arise when you start digging in the ground or within a highway right of way. The proposed figure can be decreased if thought too high.

***Approve new road name (Ferndale) in the proposed Gardenside Nursery subdivision**

9:00 P.M.

***Adjourn**

9:05 P.M.

Thank you.

* Decision Item

Times allotted to each agenda item are approximate and may vary depending on the discussion.

**TOWN OF SHELBURNE
SELECTBOARD
MINUTES OF MEETING
July 28, 2020**

***Meeting held via teleconference.**

MEMBERS PRESENT: Jerry Storey (Chair); Mike Ashooh, Mary Kehoe, Jaime Heins, Kate Lalley.
ADMINISTRATION: Lee Krohn, Town Manager; Peter Frankenburg, Finance Director; Dean Pierce, Planning Director; Chris Robinson, Water Quality Superintendent.
OTHERS PRESENT: Members of the public participating in the meeting included Joyce George, Don Porter, Gail Albert, Ken Albert, Bill Deming, Allyson Myers, Anthony Seidita, Jason Grignon, Megan McBride, Diana Reilly, Jay Keeler, Sean Moran, Clare Sheffield, Wayne Elliott.

1. CALL TO ORDER

Chair Jerry Storey called the teleconference meeting to order at 7 PM, explained the procedure to be followed, and held a roll call.

2. APPROVE AGENDA

MOTION by Jaime Heins, SECOND by Kate Lalley, to approve the agenda with the addition of a wastewater allocation request. VOTING by roll call: unanimous (5-0); motion carried.

3. MINUTES

July 14, 2020

MOTION by Kate Lalley, SECOND by Mary Kehoe, to approve the minutes of 7/14/20 with the following correction(s)/clarification(s):

- **Minutes, Motion to Approve - correct the date in the motion to “6/30/20”.**
- **Public Hearing, Proposed Zoning Amendments – add “7:29 PM” as the time the public hearing was closed.**
- **Emergency Order on Masks – change the effective date to “7/20/20”.’**

VOTING by roll call: unanimous (5-0); motion carried.

July 21, 2020

MOTION by Mary Kehoe, SECOND by Mike Ashooh, to approve the minutes of 7/21/20 as presented. VOTING by roll call: unanimous (5-0); motion carried.

4. PUBLIC COMMENT

Anthony Seidita, resident, asked if the Selectboard will respond to the issues noted by a group of residents in correspondence to the Selectboard. Jerry Storey assured the Selectboard will respond to the communication.

5. SELECTBOARD COMMENTS

- Jerry Storey passed on well wishes to Paul Goodrich following his shoulder operation. Also noted was the Shelburne Museum limited opening this summer, the availability of absentee ballots for voting on August 11th, and recognition of John Lewis for his contribution to society.
- Mary Kehoe observed the mask ordinance did pass and the Governor mandated mask wearing in public in the state beginning August 1st.

6. TOWN MANAGER REPORT/UPDATE

Lee Krohn reported:

- Crosswalks are complete on Marsett Road.
- Bay Park path improvements will soon be underway.
- The Town has published an ad seeking a candidate for Town Treasurer.

7. PUBLIC HEARING: Proposed Zoning Amendments - Martindale Node/Frontage Zones in Form Based Zoning, Shelburne Road Corridor
MOTION by Mike Ashooh, SECOND by Kate Lalley, to open the public hearing on proposed zoning amendments relative to the Martindale node/frontage zones in form-based zoning in the Shelburne Road corridor. VOTING by roll call: unanimous (5-0); motion carried.

The public hearing was opened at 7:11 PM. Dean Pierce reviewed the reasons for the proposed changes to the frontage zones and the edits to the Regulating Plan to remove the Martindale node/frontage zone.

COMMENTS

There were comments by members of the public on the lack of communication with residents and the lack of transparency about the removal of the Martindale node. There were also comments in support of keeping the node or reconsidering all three nodes/frontage zones, stressing the need for evidence of what could occur in a node before making changes. Concern was expressed about making zoning changes for a particular project and setting a precedent. The loss of the “cut through” road used by residents of the mobile home park and the need for more affordable housing in Shelburne were also mentioned.

Mary Kehoe asked how removal of the Martindale node and the apartments without retail on the first floor will impact the Martindale neighborhood. Joyce George, resident, stated the development of large lots with a significant number of housing units on the lots will put a burden on the town.

There were no further comments.

MOTION by Mary Kehoe, SECOND by Mike Ashooh, to close the public hearing on the zoning amendments relative to the Martindale node/frontage zones in form-based zoning in the Shelburne Road corridor. VOTING by roll call: unanimous (5-0); motion carried.

The public hearing was closed at 8:04 PM.

Jerry Storey outlined the options for handling the amendments including adopting the proposal, rejecting the proposal, making changes to the proposal, asking the Planning Commission to reconsider and redesign the frontage zones.

Mike Ashooh spoke in support of all the individuals who volunteered many hours of their time to work on form-based zoning and to serve on the Planning Commission. Also, if someone feels there is a conflict of interest, the town has a process to follow to handle the complaint.

Jason Grignon, Planning Commission Chair, said it is possible to redesign the nodes, but the Selectboard should be clear on what is wanted in the frontage zones. The Planning Commission is willing to work with the public. There may be some confusion on the work of the Planning Commission which does not review and approve projects and the work of the DRB which does review and approve projects.

Following discussion, the Selectboard concurred with asking the Planning Commission to reassess all the frontage nodes in the form-based corridor on Shelburne Road and hold additional public hearings.

MOTION by Mike Ashooh, SECOND by Mary Kehoe, to ask the Planning Commission to reconsider the form-based zoning nodes, re-evaluate the merits of keeping all the nodes, eliminating all the nodes, or modifying the nodes in the current proposal. VOTING by roll call: unanimous (5-0); motion carried.

Dean Pierce and the Planning Commission were thanked for all their work.

8. WASTEWATER CONSOLIDATION – South Burlington Option

Staff reviewed the options with the wastewater treatment plants and the recommendation to consolidate the two plants into one at the Crown Road location. The plant on Turtle Lane would become a pump station. Consulting engineer, Wayne Elliott, reviewed the benefits of consolidating the plants versus sending the wastewater to South Burlington for treatment. There is significant cost to direct all the wastewater flow to Plant #1 (i.e. consolidating the plants), but the Town would maintain control of operations and maintenance as well as capital investments. There was continued discussion of the options, associated costs, the long-term commitment to South Burlington if Shelburne sends wastewater flow there, and relinquishing the town's wastewater discharge permit if South Burlington is handling Shelburne's flow.

MOTION by Mary Kehoe, SECOND by Kate Lalley, to direct the Town Manager to withdraw the town's interest in the South Burlington option to send wastewater flow to the South Burlington treatment plant. VOTING by roll call: unanimous (5-0); motion carried.

9. FINANCIAL ADVISORY COMMITTEE

There was discussion of establishing a Financial Advisory Committee and having the committee draft a preferred scope of work to fit the priorities and activities listed by the Selectboard. Don Porter confirmed the committee is ready to go and will pull together a list of priorities. All current members are willing to continue serving except for Catherine Collette who unfortunately is not able to continue on the committee. It was suggested the terms be staggered so there is continuity on the committee. For flexibility, the items of priority should be reasonably determined with input by the committee, Selectboard, and Town staff. The Selectboard will make the official appointments to the Financial Advisory Committee on August 11, 2020.

MOTION by Mary Kehoe, SECOND by Jaime Heins, to establish a Finance Committee with appointment of the current membership except Catherine Collette and with Don Porter as Chair of the committee. VOTING by roll call: unanimous (5-0); motion carried.

10. ECONOMIC DEVELOPMENT/REGULATORY REFORM/PLANNING & ZONING RESTRUCTURING

Jerry Storey stressed a decision on the town office organization and hiring an Economic Development Director either as an employee of the Town or as a consultant is needed by August 11, 2020. There is \$25,000 in the budget for the Economic Development position. Concern was expressed about over-burdening existing staff with the assignment to work on economic development and regulatory reform. There was discussion of hiring a consultant to develop a program or hiring a paid employee to bring more business to Town and help grow the existing businesses. It was suggested a consultant could be hired to work on the job description for the Economic Development Director position as a first step and also to determine how to best work with in-house staff and expertise. Lee Krohn will develop more concrete ideas and alternatives for the economic development position. Don Porter, Financial Advisory Committee, said it would be helpful to separate the person in the position from what the town wants to be done with economic development. The Selectboard will make a decision on August 11, 2020 based on the Town Manager's recommendations to move forward on the economic development position with either a new hire or a consultant.

Regarding a Town Treasurer, the Town Manager will make a recommendation on the decision for action by the Selectboard at the August 25, 2020 meeting.

Regarding regulatory reform, the Selectboard agreed a decision is needed, but the problems need to be identified first. The issue is linked to the economic development action. Dean Pierce stated regulatory reform has been under discussion for many years. There are people on staff with knowledge on the matter. Better communication between the Selectboard and Town staff is vital. Jerry Storey said an administrative plan is needed by August 11, 2020 to address regulatory reform as a whole. The subject needs to be attacked in a reasonable, moderate way. Kate Lalley suggested doing a roadmap giving an overview of the issues and objectives, and a strategy for action.

COMMENTS

Ken and Gail Albert, residents, observed the regulations to go with the town plan must be written, but the Planning Commission is constantly being given other assignments. The Selectboard is urged to stop delaying decisions.

11. SELECT AN AUDITOR

MOTION by Mike Ashooh, SECOND by Kate Lalley, to accept the staff recommendation to select RHR Smith and Company to conduct the Town of Shelburne fiscal year 2019-2020 audit at a fixed price of \$21,000 per year with the option of conducting the fiscal year 2020-2021 and 2021-2022 audits for that same fixed fee. VOTING by roll call: unanimous (5-0); motion carried.

12. PENALTY FOR LATE PAYMENT OF HOMESTEAD DECLARATION

MOTION by Mary Kehoe, SECOND by Mike Ashooh, to set the penalty for late filing of the homestead declaration at 3% of the education property tax. VOTING by roll call: unanimous (5-0); motion carried.

13. POLICE DEPARTMENT RADIO SYSTEM UPGRADE

Staff sought confirmation from the Selectboard that this project should still be pursued. The Police Department has price quotes on the radio system upgrade. The Board agreed by consensus that this is still a "go". Staff will seek best financing options, and will bring a formal proposal to the Selectboard for action. It was also agreed to continue the original plan to spend \$20,000 in this year's budget toward the project, thus lessening the amount to be financed.

14. WASTEWATER ALLOCATION: 142 Caspian Lane

MOTION by Kate Lalley, SECOND by Mary Kehoe, to approve a wastewater allocation of 210 gpd for a single-family house at 142 Caspian Lane in the Kwiniaska Ridge housing development. VOTING by roll call: unanimous (5-0); motion carried.

15. EXECUTIVE SESSION/ADJOURNMENT

The Selectboard entered Executive Session to discuss pending or probable civil litigation and invited the Town Manager to attend.

Executive Session was convened at 10:19 PM.

RScty by tape: MERiordan

For the Selectboard

Date



Town of Shelburne, Vermont

CHARTERED 1763

P.O. BOX 88 5420 SHELburne ROAD SHELburne, VT 05482

Clerk/Treasurer (802) 985-5116	Town Manager (802) 985-5110	Zoning & Planning (802) 985-5118	Assessor (802) 985-5115	Recreation (802) 985-9551	FAX Number (802) 985-9550
-----------------------------------	--------------------------------	-------------------------------------	----------------------------	------------------------------	------------------------------

MEMORANDUM

TO: SHELburne SELECTBOARD
VIA: LEE KROHN
CC: DIANA VACHON, JASON GRIGNON [JG by email only]
RE: **BYLAW AMENDMENTS-PUD BUFFER /RETAINING WALLS / FENCES**
FR: DEAN PIERCE, FOR PLANNING COMMISSION
DA: JUNE 15, 2020

At their May 28 meeting, Planning Commissioners voted to submit proposed Zoning Bylaw changes to the Selectboard for its consideration and action. The vote took place following a duly warned public hearing. Commissioners also approved transmittal of a related bylaw change report. The text of the proposed changes and a copy of the bylaw change report are attached.¹

The current proposal would address zoning requirements relating to certain PUD buffers as detailed in a separate memo. Please see that memo for an “Executive Summary” of the proposal.

As authorized in statute, the Selectboard is now able to consider moving the proposal forward. Typically the first step would be to receive (i.e., acknowledge via motion) the proposal. The step after that would be to agree (again via motion) to conduct a public hearing on the proposal, with the date of the hearing coming at least 15 days after publication of a legal notice.

As noted in section 4442 of Title 24 VSA,

(a) Public hearings. Not less than 15 nor more than 120 days after a proposed bylaw, amendment, or repeal is submitted to the legislative body of a municipality under section 4441 of this title, the legislative body shall hold the first of one or more public hearings, after public notice, on the proposed bylaw, amendment, or repeal, and shall make copies of the proposal and the written report of the planning commission available to the public upon request. Failure to hold a hearing within the 120 days shall not invalidate the adoption of the bylaw or amendment or the validity of any repeal.

The Selectboard may make changes to the proposal. However, these changes would affect the hearing schedule. Again as noted in section 4442 of Title 24 VSA,

¹ Please note that the proposed changes are shown in the attachment using a common convention. Unchanged text remains in black standard text. Text proposed for deletion is depicted in red, with strikethrough (as shown ~~in this manner~~). Text proposed to be added is depicted in red, with underscore (as shown in this manner).

(b) Amendment of proposal. The legislative body may make minor changes to the proposed bylaw, amendment, or repeal, but shall not do so less than 14 days prior to the final public hearing. If the legislative body at any time makes substantial changes in the concept, meaning, or extent of the proposed bylaw, amendment, or repeal, it shall warn a new public hearing or hearings under subsection (a) of this section. If any part of the proposal is changed, the legislative body at least 10 days prior to the hearing shall file a copy of the changed proposal with the clerk of the municipality and with the planning commission. The planning commission shall amend the report prepared pursuant to subsection 4441(c) of this title to reflect the changes made by the legislative body and shall submit that amended report to the legislative body at or prior to the public hearing.

Whether or not changes are made, the proposal can be adopted or rejected following the close of the hearing. According to statute,

(c) Routine adoption. (1) A bylaw, amendment, or repeal shall be adopted by a majority of the members of the legislative body at a meeting that is held after the final public hearing, and shall be effective 21 days after adoption.

In brief, the steps from this point on would include:

1. Formal receipt of the proposal from the Planning Commission at a meeting of the Board;
2. Formal action to warn a public hearing on the proposed changes on a date no less than 15 and no more than 120 days from date of receipt;
3. Issue public notice at least 15 days prior to public hearing and make copies of proposal available;
4. Conduct public hearing as warned;
5. If proposal is acceptable to a majority of the Board, at a meeting following the hearing, vote to adopt the proposal.

However, if the Board wishes to make substantial changes to the proposal, it shall

6. warn a new public hearing or hearings and repeat steps 3-5 and also file copies of the new proposal with the Town Clerk and the Planning Commission at least 10 days prior to the hearing;
7. consider the Planning Commission's revised report on the conformance of the proposed amendment with the Town Plan; and
8. when the Board does take action, changes shall be effective 21 days after adoption.

If you have any questions, please do not hesitate to contact me.

MEMORANDUM

TO: Shelburne Selectboard
FR: Planning Commission, Via Dean Pierce
RE: Latest Proposed Amendments to Zoning Regulations
DA: June 11, 2020

This memorandum was prepared in anticipation of questions being raised regarding the Planning Commission's latest proposal to amend the Zoning bylaws. It addresses the following:

- (1) Why changes are being proposed,
- (2) Which of these are, in the PC view, considered major,
- (3) How many can be categorized as 'edits' or technical corrections,
- (4) Which have respectable alternates,
- (5) How much community input is reflected in them, and,
- (6) Which may generate more than usual interest from those principally affected.

Why changes are being proposed

The Planning Commission developed the changes in response to recommendations made by a Shelburne property/business owner. The owner expressed frustration at the lack of flexibility or accommodation of retaining walls in PUD buffers, particularly when the retaining walls are proposed as part of stormwater management facilities that will help improve water quality. The purpose of the proposed changes is to support best land use practices in the interest of the community..

Which of these are, in the PC view, considered major

It is the Planning Commission's position that the following two components of the proposal may be considered major:

1. **Addition of definition of "retaining wall" and text adding retaining walls and fences to the list of structures allowed within certain PUD buffers** (modification would apply to the side/rear yard portion of PUD buffer and only commercial/mixed use PUDs in the Route 7 corridor north of Shelburne village; a definition is proposed to avoid confusion about the scope of the new allowance). See Attachment 1.
2. **Addition of specific requirements relating to retaining walls** (the general retaining wall requirements are proposed as a "good practice" addition to the bylaw and would establish height limits, setback requirements, and conditional use allowances for larger walls). See Attachment 2.

How many can be categorized as 'edits' or technical corrections

It is the Planning Commission's position that one component of the proposal may be considered an edit or technical correction:

1. **Modification of certain references to PUD buffers and reordering of text** (The proposed change would begin the process of making more-consistent reference to PUD buffers in the bylaw; it would do so by limiting use of descriptors periphery and perimeter –which the Environmental Court has ruled are synonymous in the context of Shelburne's PUD requirements–thus simplifying the bylaw.). See Attachment 3.

Which have respectable alternates

As has been noted in previous communications, consideration of alternatives is a recurring activity when bylaw amendments are prepared. Typically, the first alternative considered is whether to pursue any change at all. When doing nothing is not considered desirable, the Commission's discussions of changes often involve a range of options (such as whether to allow some feature to increase by, say, 25, 50, or 75 percent or some other numerical variation). Other times, however, the alternatives are binary, meaning simply that the regulations either will require something or will not.

Rather than recount the actual alternatives considered by the Planning Commission as the major changes identified above were being considered, it appears to be the Selectboard's preference that the Planning Commission identify alternatives it might now recommend as fall back alternatives or compromises. For that reason the Commission has prepared Table 1 below.

Table 1. Respectable Alternates to Major Changes

Major Change category	Summary of current proposal	Alternatives, if any, in descending order of desirability		
PUD buffer allowances	Addition of definition of "retaining wall" and text adding retaining walls and fences to list of structures allowed in PUD buffers in selected district	Add definition and revise PUD buffer allowances as proposed but allow walls in buffer with height greater than 4 feet.	Add definition and revise PUD buffer allowances as proposed but in more or all districts/PUD types	Remove or substantially rework PUD buffer requirements throughout entire Town (“Do nothing” not considered desirable)

Retaining walls generally	Add requirements relating to retaining walls	Add retaining wall requirements but increase maximum allowable height	Add retaining wall requirements but decrease required setback	Do nothing
---------------------------	--	---	---	------------

How much community input is reflected in them

The Major Changes included in the proposal delivered to the Selectboard have been the subject of public discussions but not voluminous ones. A summary of the community input relating to each major change is presented in Table 2 below.

Table 2. Community input relating to proposals

Major Change Category	Input
PUD buffer allowances	Public input from property owner at public meeting
Retaining walls generally	Limited

Which may generate more than usual interest from those principally affected

Those principally affected by proposals include those owning or occupying property governed by the regulations under discussion. They also include those owning or occupying abutting property or in the immediate vicinity of the affected property. The Planning Commission's assessment of which major proposals may generate interest from those principally affected is presented in Table 3 below.

Table 3. Identification of those principally affected by major proposals

Major Change	Party	Possible concern
PUD buffer allowances	Property owners/operators of businesses within commercial or mixed use PUDs the Mixed Use District; developers; owners of abutting property	<p>Owners: Allowance should be expanded to include more or larger features</p> <p>Abutters: Changes raise possibility of water or drainage impacts, etc.; Allowance should not be expanded</p>

Retaining walls generally	Owners/developers of property on which retaining walls might be employed ; owners of abutting property	Owners: Restrictions are unnecessary or burdensome Abutters: Changes raise possibility of water or drainage impacts. etc; Allowance should not be expanded
----------------------------------	---	---

Conclusion

The Planning Commission has endeavored to provide this simple, clear, and concise summary of responses to a series of topics identified by the Chair of the Selectboard. Should the information provided generate questions or concerns, the Planning Commission would, of course, be happy to discuss or provide further information.

Attachment 1. PUD buffer allowances

Details regarding this change are presented below. Text editing conventions are followed. As a result of the change,

2. Minimum frontage - 150 feet.
3. Minimum front yard PUD buffer widthsetback – As specified for front yard setbacks in the district in which the PUD is located.
4. Minimum side and rear yards pertaining to the periphery of the PUD buffer width - 50 feet.
5. Minimum side and rear yard PUD buffer width where the PUD abuts non-residential properties - 20 feet
6. This Side and rear yard PUD buffers zone must be kept free of buildings, structures, parking and roadways other than driveways and must be landscaped, screened or protected by natural features so that adverse effects on surrounding areas are minimized. Paths, and sidewalks, fences, and retaining walls with an average height less than 4 feet shall be allowed in the periphery buffer with the approval of the DRB as part of PUD approval or amendment. Retaining walls allowed in the buffer shall also comply with the requirements of Section 1980.10.
5. Minimum side and rear yards where the PUD abuts non-residential properties shall be 20 feet

Addition to Definitions section Article XXI

2110.1 Retaining Wall - A wall or terraced combination of walls used at a grade change to hold soil and other earth material at a higher position. Retaining walls may be attached to or independent from other structures. The exposed side of a retaining wall shall be known as a "face". The area between a lower wall and a successive higher wall shall be known as a "terrace." Does not include Lakeshore Erosion Control Structure.

Attachment 2. Retaining walls generally

Details regarding this change are presented below.

New paragraph in miscellaneous section

1980.10 Retaining Walls

A. Except where further restricted elsewhere in this bylaw, no retaining wall shall exceed twelve (12) feet in height at any point.

B. Terracing of retaining walls is allowed. In a terraced retaining wall system, if two (2) retaining walls are separated by a distance at least one times (1x) the height of the higher of the two (2) walls, the walls shall be considered as separate walls; if two (2) retaining walls are separated by a distance less than one times (1x) the height of the higher of the two (2) walls, the walls shall be considered as a single wall.

C. Retaining walls greater than four (4) feet in height shall not be located within ten feet of a property line, with the exception that portions of such walls which measure four (4) feet in height or less than four (4) feet shall not be subject to this requirement.

D. In areas zero to two (2) feet from a property line, retaining walls two (2) feet high are allowed, with a maximum height at any point of two (2) feet. Retaining walls more than two (2) feet from a property line may be three (3) feet high, with a maximum average height at any point of three (3) feet. Multiple walls not meeting the requirements of 1980.10.B, shall be measured in height as a single wall.

E. Conditional Use approval shall be required for any retaining wall 8 feet in height or more to be located within any required yard setback.

F. Retaining walls constructed and/or permitted prior to the adoption of these regulations shall be allowed to remain in their existing state; however, significant changes or alterations to such walls shall be made in conformity with these regulations. The repair and routine maintenance, as determined by the Administrative Officer, of nonconforming retaining walls shall be allowed without requiring conformity with this section.

Graphic illustrations of concepts follow below and on subsequent pages.

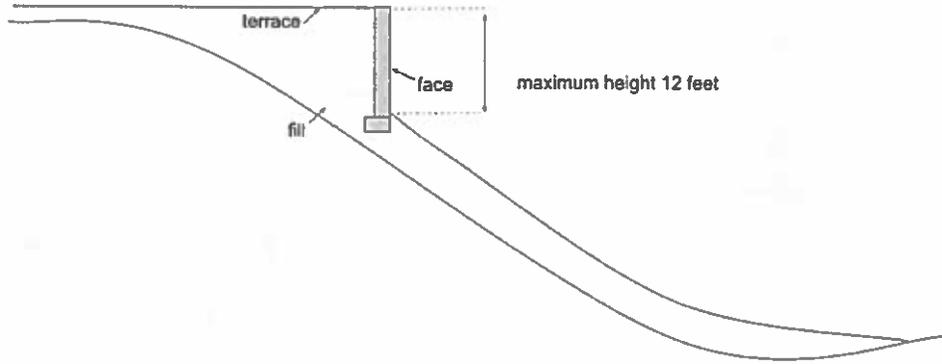
Several of the graphics incorporate a hillside shown in profile (viewed from side).

Measuring wall height

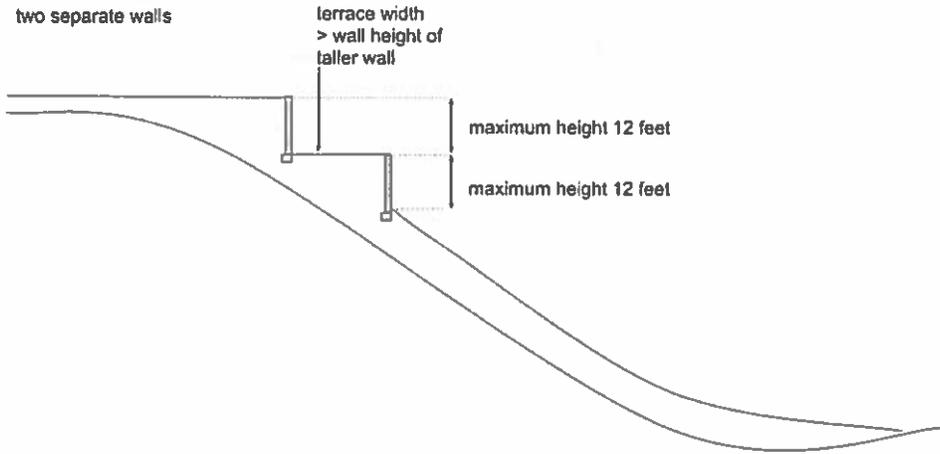
Existing condition



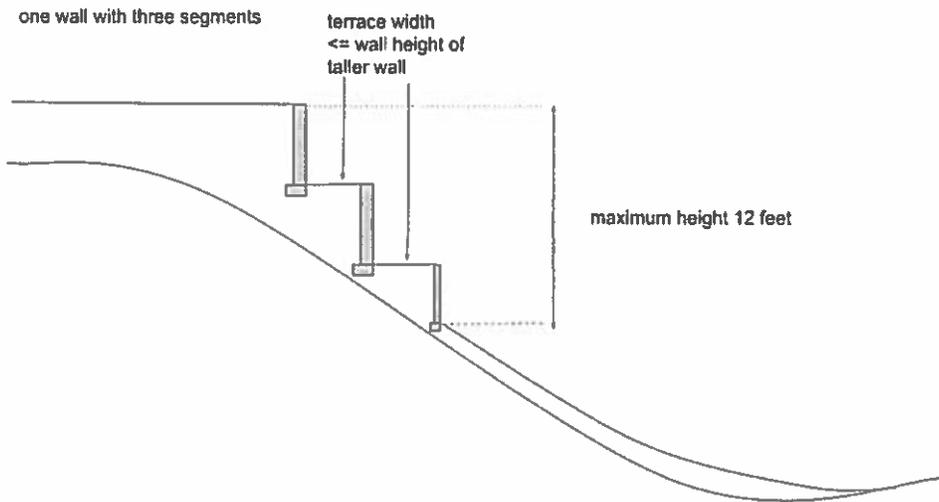
One wall with single segment



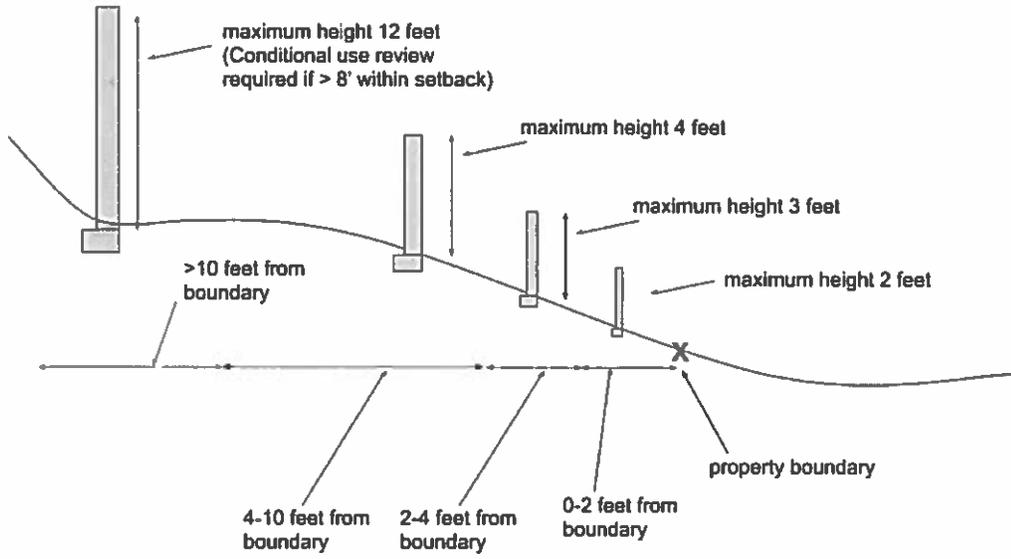
two separate walls



one wall with three segments

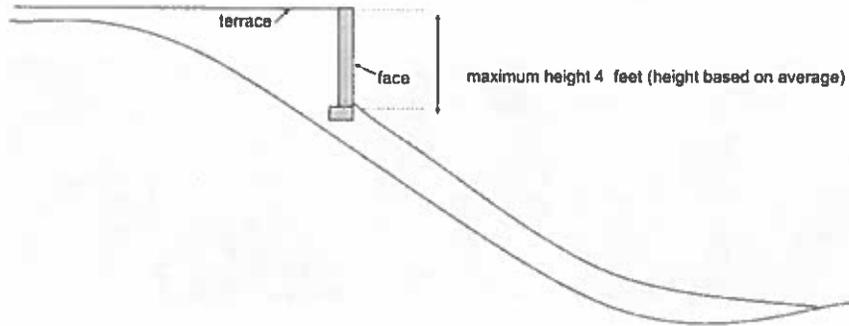


Wall height limits outside PUD buffers-- NOT TO SCALE

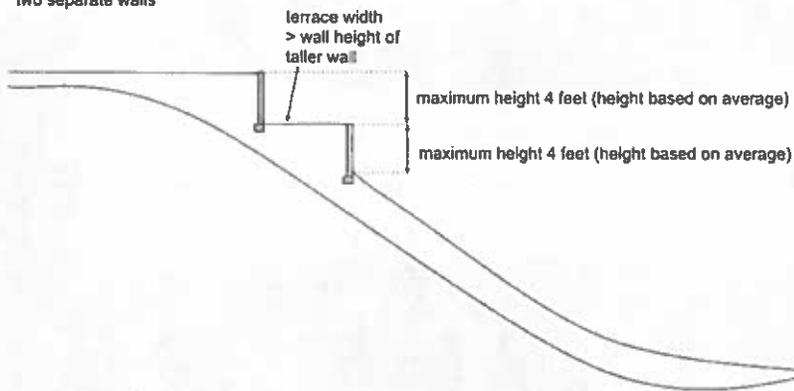


Wall height limits within PUD buffers – NOT TO SCALE

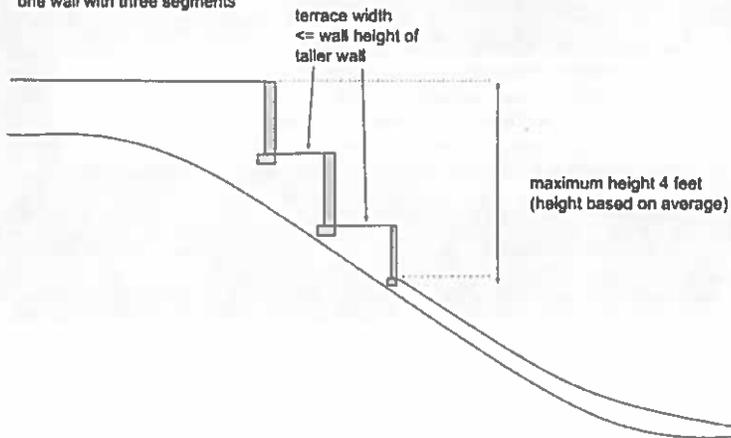
One wall with single segment



two separate walls



one wall with three segments



Attachment 3. Modification of certain references to PUD buffers and reordering of text

Details regarding this change are presented below.

shall be located to readily serve parking areas. Connections to adjacent residential areas shall be designed to discourage through traffic.

4. **Parking:** Parking shall be encouraged to be located behind or beside buildings, but not in front of buildings. Parking in front of buildings shall not be in the ~~perimeter-periphery~~ buffer. Parking shall be designed to serve the entire development and not be assigned to specific buildings. The Development Review Board may reduce the number of spaces required if a careful analysis of shared parking

G. Setbacks and Dimensional Requirements:

1. Minimum total area of development - 2 acres.
2. Minimum frontage - 150 feet.
3. Minimum front yard ~~PUD buffer width~~ setback – As specified for front yard setbacks in the district in which the PUD is located.
4. Minimum side and rear yards ~~pertaining to the periphery of the PUD buffer width~~ - 50 feet.
5. Minimum side and rear yard PUD buffer width where the PUD abuts non-residential properties - 20 feet
6. ~~This side and rear yard PUD buffers zone must be kept free of buildings, structures, parking and roadways other than driveways and must be landscaped, screened or protected by natural features so that adverse effects on surrounding areas are minimized. Paths, and sidewalks, fences, and retaining walls with an average height less than 4 feet shall be allowed in the periphery buffer with the approval of the DRB as part of PUD approval or amendment. Retaining walls allowed in the buffer shall also comply with the requirements of Section 1980.10.~~
5. ~~Minimum side and rear yards where the PUD abuts non-residential properties shall be 20 feet~~
67. Maximum total building coverage - 30 percent.
78. Maximum total lot coverage - 50 percent. If a PUD extends beyond the boundary of the Mixed Use District, the total lot coverage on the land within the Mixed Use District shall not exceed 50 percent, and the total lot coverage on the land outside of the Mixed Use District shall not exceed the maximum allowed in that zoning district.

Commented [DP1]: On May 28, Bylaw text approved for forwarding to Selectboard.

1930 Planned Unit Developments. In accordance with 24 V.S.A., Section 4417, Planned Unit Developments (PUDs) are permitted in various zoning districts, as authorized by Articles III through XVIII describing the individual zoning districts. In addition to any specific purposes specified below, it is the intent of this section to implement the goals and objectives of the Town Plan, to encourage the orderly development of the land, to protect important scenic and natural features of the landscape, to encourage effective neighborhood design, and ensure the unified and integrated design of development projects.

1930.1 Review Process.

- A. In accordance with the provisions of 24 V.S.A., Section 4417, and as may be specified in Article XX of these Regulations, the Development Review Board shall conduct public hearings to consider applications for Planned Unit Development approval. All PUDs shall be considered to be major subdivisions under the Subdivision Regulations.
- B. The Development Review Board may conduct all development reviews associated with the development (e.g. site plan approval, planned unit development approval, subdivision approval) simultaneously.
- C. Except as may be limited in Articles III through XVIII describing individual zoning districts, the Development Review Board may modify applicable area and dimensional requirements, excluding the periphery buffer, simultaneously with the approval of the subdivision plat.

1930.2 General Standards.

- A. A site plan shall be submitted to the Development Review Board with a preliminary subdivision plat application showing the location, height and space of buildings, building envelopes, open spaces, parking spaces, streets, driveways, landscaping, and all other significant or unique physical features (including but not limited to waterways, wetlands, flood plains, fields, forested areas and tree-lines, and topography), accompanied by a statement setting forth the nature of all proposed modifications, changes, or supplementations of area and dimensional requirements of the applicable zoning regulations. The site plan must contain sufficient detail to allow the Development Review Board to assess the relationship of the proposed development to the site's natural features, and compatibility with surrounding lands.
- B. All Planned Unit Developments shall be subject to Site Plan Review in accordance with applicable portions of Section 1900 of these Regulations.
- C. In determining the number of units which may be developed within the residential portion of a PUD, the Development Review Board

shall consider, as an upper limit, the number which could be developed in conformance with the zoning and subdivision regulations for the district in which the project is located. In making this determination the Development Review Board shall consider only developable land as defined in Article XXI of these Regulations. When determining the size of any area occupied by a slope of 15 percent or more, the Development Review Board shall use the "bare earth" Lidar data compiled by Earthdata International for the Chittenden County Metropolitan Planning Organization in 2004, and apply the lidar data at its original grid cell resolution using a methodology calculating the maximum amount of elevation change between each cell and its neighbors. (The Shelburne Zoning office shall provide applicants with Lidar data and/or slope area calculations based on this approach upon request.) Residential density in PUDs shall be calculated on a gross density basis.

- D. Where a district boundary line divides a lot being developed as a PUD, the Development Review Board may allow the development of a single PUD with a total density based on the allowable density of each district.
- E. The proposal shall be an effective and unified treatment of the development possibilities on the project site, and the proposed development plan shall make appropriate provision for the preservation of streams and stream banks, steep slopes, wet areas, soils unsuitable for development, forested areas, agricultural land, significant views, and unique, natural and man-made features.
- F. The proposal shall be consistent with the Town Comprehensive Plan and all applicable bylaws.
- G. The proposal shall be consistent with all evaluation standards set forth in the Shelburne Subdivision Regulations.
- H. The proposal shall provide for the appropriate allocation, distribution, preservation and maintenance of open space and/or agricultural and forestry lands. Design that allows for contiguous open space areas is encouraged.
- I. The proposed design shall provide for the economy and efficiency of street, utility, and public facility installation, construction and maintenance.
- J. Except in the Rural District, proposed PUDs shall be connected to municipal water and sewer service systems, and such systems must be capable of accommodating increased flows due to the proposed development.
- K. The development shall be compatible with neighboring properties.
- L. The Development Review Board may require phased construction of the development in order to stay consistent with the Town's desired rate of growth, and in accordance with the Town Plan and any duly adopted Capital Budget and Program.

- M. The development may be subject to requirements regarding traffic.
- N. In a PUD containing residential development, the dwelling units permitted may, at the discretion of the Development Review Board, be of varied types as allowed in the district in which the PUD is located, and may be located in buildings connected by ground level or elevated covered walkways, or underground tunnels.

... *[NB: several intervening sections]*

1930.7 Planned Unit Developments-Commercial and Planned Unit Developments—Mixed Use in the Mixed Use District. Planned Unit Developments-Commercial (PUD-C) and Planned Unit Developments—Mixed use (PUD-MU) may be allowed in the Mixed Use District in accordance with the following:

- A. Purpose: The PUDs in the Mixed Use District are intended to encourage high quality design of commercial development that achieves the purposes set forth for this district, and to provide a pleasant entry to the Town of Shelburne.
- B. Design Standards:
 - 1. Buildings and Building location: The use of multiple buildings is encouraged, and no single building may have a footprint that exceeds the limits established for the district in which the PUD is located. Buildings shall be located in clusters which, in conjunction with landscaping and land form, create pleasant and functional spaces within the site. Buildings connected by a walkway shall be considered separate buildings.
 - 2. Road Access: Direct access from Shelburne road shall be minimized. A PUD-C or PUD-MU which has frontage on a cross road shall be required to use the cross road for access and no curb cut on Shelburne Road shall be allowed. A PUD-C or PUD-MU which does not have frontage on a cross road, and which has no more than 300 feet of frontage on Shelburne Road, may have one curb cut (no more than three lanes) on Shelburne Road. A PUD-C or PUD-MU which does not have frontage on a cross road, and which has between 300 and 1,000 feet of frontage on Shelburne Road, may have no more than two curb cuts (each no more than three lanes) on Shelburne Road. A PUD-C or PUD-

- MU which does not have frontage on a cross road, and which has more than 1,000 feet of frontage on Shelburne Road, may have no more than three curb cuts (each no more than three lanes) on Shelburne Road. For the purpose of this section, a cross road is any preexisting public road, private road, or right-of-way intersecting with Shelburne Road and having a right-of-way width of at least 40 feet.
3. Access to adjacent lots: Access between lots in a PUD-C shall be encouraged, thus allowing shared use of parking as well as travel between lots without the need to re-enter Shelburne Road. Connections between lots in the PUD-C shall be located to readily serve parking areas. Connections to adjacent residential areas shall be designed to discourage through traffic.
 4. Parking: Parking shall be encouraged to be located behind or beside buildings, but not in front of buildings. Parking in front of buildings shall not be in the ~~perimeter-periphery~~ buffer. Parking shall be designed to serve the entire development and not be assigned to specific buildings. The Development Review Board may reduce the number of spaces required if a careful analysis of shared parking justifies such reduction. Parking areas shall be divided by appropriate islands and/or landscaping so that no double or single banked bay of parking contains more than 20 spaces.
 5. Landscaping: The PUD application shall contain a written statement of the goals and objectives of the landscaping and a discussion of how the landscape plan addresses those goals and objectives. At a minimum, landscaping shall be used to create attractive front yards, augment the visual appearance of buildings, create and reinforce views, define spaces internal to the site, and separate pedestrian from vehicular areas. At least one curbed, landscaped island shall be provided for every twenty parking spaces, and may be located at the end of a parking aisle or internal to the parking area.
 6. Pedestrian access: Convenient and pleasant pedestrian access shall be provided from the sidewalks along Shelburne Road to building entries, from parking areas to building entries, and between buildings. In addition, connections between the proposed development site and adjacent commercial and residential areas shall be designed to encourage, and provide a pleasant environment for, pedestrian and bicycle travelers.
 7. Building design: Buildings shall be designed to be consistent with the purpose of the Mixed Use District, to create visual interest, and to generate a sense of human

scale. Fenestration, varied roof lines, and other architectural treatments shall be used to break up blank facades. Facades facing streets or parking areas shall be designed to incorporate glass in the form of windows or window-like features in a significant portion of their façade area (including entries). A significant portion of the buildings' total foundation perimeter shall be treated with plants and shrubs.

C. Setbacks and Dimensional Requirements:

1. Minimum total area of development - 2 acres.
2. Minimum frontage - 150 feet.
3. Minimum front yard ~~PUD buffer width~~ setback – As specified for front yard setbacks in the district in which the PUD is located.
4. Minimum side and rear yards ~~pertaining to the periphery of the PUD~~ buffer width - 50 feet.
5. Minimum side and rear yard PUD buffer width where the PUD abuts non-residential properties - 20 feet
6. ~~This Side and rear yard PUD buffers zone must be kept free of buildings, structures, parking and roadways other than driveways and must be landscaped, screened or protected by natural features so that adverse effects on surrounding areas are minimized. Paths, and sidewalks, fences, and retaining walls with an average height less than 4 feet shall be allowed in the periphery buffer with the approval of the DRB as part of PUD approval or amendment. Retaining walls allowed in the buffer shall also comply with the requirements of Section 1980.10.~~
5. ~~Minimum side and rear yards where the PUD abuts non-residential properties shall be 20 feet~~
67. Maximum total building coverage - 30 percent.
78. Maximum total lot coverage - 50 percent. If a PUD extends beyond the boundary of the Mixed Use District, the total lot coverage on the land within the Mixed Use District shall not exceed 50 percent, and the total lot coverage on the land outside of the Mixed Use District shall not exceed the maximum allowed in that zoning district.

D. Uses.

1. Permitted uses as set forth in Section 1010 of these regulations.
2. Conditional uses as set forth in Section 1020 of these regulations.

[Amend]*[New paragraph in miscellaneous section]*1980.10 Retaining Walls

- A. Except where further restricted elsewhere in this bylaw, no retaining wall shall exceed twelve (12) feet in height at any point.
- B. Terracing of retaining walls is allowed. In a terraced retaining wall system, if two (2) retaining walls are separated by a distance at least one times (1x) the height of the higher of the two (2) walls, the walls shall be considered as separate walls; if two (2) retaining walls are separated by a distance less than one times (1x) the height of the higher of the two (2) walls, the walls shall be considered as a single wall.
- C. Retaining walls greater than four (4) feet in height shall not be located within ten feet of a property line, with the exception that portions of such walls which measure four (4) feet in height or less than four (4) feet shall not be subject to this requirement.
- D. In areas zero to two (2) feet from a property line, retaining walls two (2) feet high are allowed, with a maximum height at any point of two (2) feet. Retaining walls more than two (2) feet from a property line may be three (3) feet high, with a maximum average height at any point of three (3) feet. Multiple walls not meeting the requirements of 1980.10.B, shall be measured in height as a single wall.
- E. Conditional Use approval shall be required for any retaining wall 8 feet in height or more to be located within any required yard setback.
- F. Retaining walls constructed and/or permitted prior to the adoption of these regulations shall be allowed to remain in their existing state; however, significant changes or alterations to such walls shall be made in conformity with these regulations. The repair and routine maintenance, as determined by the Administrative Officer, of nonconforming retaining walls shall be allowed without requiring conformity with this section.

[NB: Addition to Definitions section Article XXI]

2110.1 Retaining Wall - A wall or terraced combination of walls used at a grade change to hold soil and other earth material at a higher position. Retaining walls may be attached to or independent from other structures. The exposed side of a retaining wall shall be known as a "face". The area between a lower wall and a successive higher wall shall be known as a "terrace." Does not include Lakeshore Erosion Control Structure.

Planning Commission Reporting Form for Municipal Bylaw Amendments

Shelburne Planning Commission—
approved March 12, 2020 and May 28, 2020

This report is in accordance with 24 V.S.A. §4441(c) which states:

“When considering an amendment to a bylaw, the planning commission shall prepare and approve a written report on the proposal. A single report may be prepared so as to satisfy the requirements of this subsection concerning bylaw amendments and subsection 4384(c) of this title concerning plan amendments. The report shall provide (:)

(A) brief explanation of the proposed bylaw, amendment, or repeal andinclude a statement of purpose as required for notice under §4444 of this title,

(A)nd shall include findings regarding how the proposal:

- 1. Conforms with or furthers the goals and policies contained in the municipal plan, including the effect of the proposal on the availability of safe and affordable housing;*
- 2. Is compatible with the proposed future land uses and densities of the municipal plan;*
- 3. Carries out, as applicable, any specific proposals for any planned community facilities.”*

Brief explanation of the proposed bylaw amendment.

The Planning Commission proposal would if approved modify Planned Unit Development (PUD) buffer requirements for commercial and mixed use PUDs in the Mixed Use zoning district. More specifically, it would expand the list of structures allowed in buffers to include [fences and] retaining walls with an average height of [four] feet or less. The proposal also adds a definition of retaining wall.

Purpose

The Planning Commission has developed the change in response to recommendations made by a Shelburne property/business owner. The owner expressed frustration at the lack of flexibility or accommodation of retaining walls in PUD buffers, particularly when the retaining walls are proposed as part of stormwater management facilities that will help improve water quality. The purpose of the proposed changes is to support best land use practices in the interest of the community. The Commission believes the proposed changes address the issues expressed by the owner while also reflecting the policy input and prerogatives of the Commission.

Findings regarding how the proposal conforms with or furthers the goals and policies contained in the municipal plan, municipal including goals and policies pertaining to the availability of safe and affordable housing

Under state law, the Zoning Regulations must be “in conformance with” the Plan. To be “in conformance with” the Plan, the bylaw must: make progress toward attaining, or at least not interfere with, the goals and policies contained in the Plan; provide for proposed future land uses, densities, and intensities of development contained in the Plan; and carry out any specific proposals for community facilities, or other proposed actions contained in the Plan.

The Planning Commission hereby finds that the proposal conforms with or furthers the goals and policies contained in the municipal plan. Such policies include but are not necessarily limited to the following:

4. Facilitate development review and permitting to the extent permitted by law for commercial and industrial development in areas designated for such uses in the Land Use section of this Plan. Establish expedited review process for development projects implementing key objectives of Comprehensive Plan.

15. Manage stormwater and other impacts of growth and development so that they do not exacerbate impaired waterways or degrade water quality so that additional waterways are classified as impaired due to stormwater.

1. Take active steps to attract appropriate types and sizes of businesses to Shelburne and utilize local, regional and state organizations for assistance. Explore using tools such as revolving loan funds, tax incentives, tax rebates, and tax stabilization agreements to attract such businesses.

Planning Commissioners find that the proposal would positively address and advance the foregoing language. They believe that:

- By judiciously expanding the list of features allowed within PUD buffers—with DRB review—in the Mixed Use District, the Town is improving the development review process in an area planned for commercial and industrial development.
- By making a change that would provide greater flexibility to developments attempting to better manage stormwater, the Town is contributing to the improvement of the Munroe Brook watershed, which is impaired due to stormwater.
- By improving local regulations the Town is enhancing its ability to attract and retain business development.

Commissioners also recognize the potential for the proposal to promote other Comprehensive Plan goals and objectives.

Findings regarding how the proposal is compatible with the proposed future land uses and densities of the municipal plan

The default development densities authorized by the zoning bylaws are not affected by the proposal. Thus, in conclusion, the Planning Commission finds that the zoning amendment proposal that is the subject of this report would be entirely compatible with the Comprehensive Plan.

Findings regarding how the proposal carries out, as applicable, any specific proposals for any planned community facilities.

The proposed amendment does not directly carry out specific proposals for any planned community facilities. In addition, the proposed amendment does not conflict with any specific proposals for planned community facilities.

Findings regarding how the proposal affects housing.

The proposed amendment does not directly affect requirements relating to the development of housing. The Commission finds that the proposal would not negatively affect the formation of housing.

Regulatory Reform – August 11, 2020

Initial draft action plan

Introduction

The Selectboard has set forth three key priorities related to regulatory reform, economic development, and potential restructuring of the Planning & Zoning Department. While some may see each of these as separate and distinct matters, I see them as inextricably interrelated and all parts of a whole. Thus, while each will be addressed individually, each will also be linked to the others. This and the plan to follow this evening address the first two; the third will depend upon eventual decisions on these two.

The Selectboard directed me to prepare “action plans”. To me, the key word here is “*action*”, steps to be taken to get things done. In a process-driven environment such as public governance, this often means meetings and discussions that might someday yield results. Indeed, meetings and discussions with staff and boards are likely necessary in the long game, but if we are serious about these matters, then action must also mean what can we do now to effect needed change?

Let me be clear in my assumptions. Some may see the call for regulatory reform as something fearful, that it is somehow code for greasing the skids for unbridled development. That is not what this means. Rather, to me, regulatory reform means improving the effectiveness and efficiency of our processes; abandoning work that adds no value or has no basis in land use law; simplifying systems; breaking down silos; removing redundancies; and enhancing internal consistency. We can have high standards and still have a clear, efficient, and predictable system and outcomes. It must also necessarily include changes in attitudes and approaches to applicants, systems, and operations. It might eventually include possible changes in staffing/duties/responsibilities/initiative, but these are matters for another time and topic.

So... please find below suggestions for action on regulatory reform. Whether to tackle any of these is the ultimate question; and then whether via the regular Planning Commission process, or expedited at the Selectboard level via interim bylaws as “quick wins” to improve our systems.

Remove apparent or actual requirements for permits for projects that involve no actual zoning issues.

Examples include but may not be limited to interior kitchen or bathroom remodeling, replacing existing signs of like size and location, creating closets out of existing interior space, replacing fences or steps/porches/decks/roofing materials when of same size and location, raised flowerbeds, historic preservation/design review for paving of driveways or changes of use within existing buildings that involve no exterior architectural changes, and small garden sheds. We should simply be thanking people for maintaining or upgrading their properties, and wishing them well with their projects. Not only do these create much work for all involved, they are only realistically enforceable against those who may ask, have no apparent relevance to zoning bylaw compliance, and divert resources from more useful and important work (not least of which could be economic development).

Expand the types of projects that can be handled administratively, and which don't need the cost/complexity/time/effort of DRB review. I see many cases before the DRB that could easily be handled administratively. Just two examples include boundary line adjustments (we seem to call these “resubdivisions”, creating greater process as well as restrictions on use of land); and minor subdivisions that should be handled administratively. Requiring PUD review for even one- or two-lot subdivisions in certain districts is self-contradictory to the purpose and intent of PUDs, which are more typically intended to allow greater flexibility for larger projects. We made a small step forward recently regarding minor design review projects, some of which can now be approved by staff after HPDRC review, but many other opportunities exist to simplify process and cost/complexity for applicants and staff alike.

Eliminate redundant/duplicative reviews. For example, we still define certain types of land development as subdivisions, when they do not actually involve subdivision of land. This requires what was said in a recent hearing on form-based zoning to be redundant and duplicative review in the form-based corridor. If that's the case there, then it's likely true everywhere. Defining projects in this manner requires the additional layer of subdivision review for projects that are not subdividing land. This is an important change by itself, and will also lead neatly into creating a unified bylaw, which should not be a difficult or complicated process if we look through the lenses of efficiency and effectiveness. Consider also whether we must continue with separate preliminary and final plan reviews – why not go directly from sketch plan to full plan review, continuing hearings if needed to allow for final details or project changes, but within the context of a single application, a single fee, and a single decision? It accomplishes the same procedural and substantive outcomes in a simpler and more efficient approach for everyone.

Eliminate rules that don't make sense, or which create needless hardship for landowners. We define a fence as a structure in PUDs, which must in certain areas be up to 75' inboard of property lines. Fences are traditionally ways to actually define property lines; requiring any type of significant setback is inherently self-defeating, and can end up creating an inaccessible 'no man's land' on one's own land or between adjoining properties. Requiring conditional use review for a path on one's own property in a PUD is a curious construct, too.

Requiring landscaping to be based on a dollar amount rather than qualitative outcome is another example; this is hardly a matter for quantitative analysis. And based on the Healthy Living example, the bylaw requires that fully 75% of building frontage be screened in some manner by landscaping. Why is that thought a good idea for a commercial building on a commercial corridor? We should by all means require high quality landscape design, but writing quantitative requirements like this don't help if we are looking to encourage commercial development. The same issue arises with sign limitations under form-based code – we offer greater development density yet it appears we may then impose tighter restrictions for signs to advertise the very businesses we say we want to encourage.

Streamline design review and/or natural resource review with development review for certain applications. Have advisory and decisionmaking boards meet together/simultaneously, so that applicants only need to appear once instead of twice on two different days and times; both boards have the benefit of hearing the others' thought process; only one meeting or hearing need be noticed; and decisions can be issued more timely. A similar approach could be taken with the natural resources committee. These might not work for all applications, but it would surely help for some.

Sequence reviews properly; speak with an accurate and consistent municipal voice, with full information as early as possible, and take a leadership role to resolve differences. We have had cases where different CBCs issued conflicting recommendations, or where applicants were 'sandbagged' by new information late in the process, or left on their own to try to resolve differences which were not of their own making, but in which they were caught in the middle. Other applicants have been opposed or denied lawful uses of their property by the Town because we didn't "like" what they proposed, or by virtue of applying a single clause in the bylaws without reading the rules in their entirety, seemingly to accomplish a predetermined outcome.

Present a more welcoming approach to applicants, seeking solutions, not problems, wherever possible:

While not a regulatory change, I believe it foundational and fundamental to all that we do – again, the interrelatedness between planning, regulatory review, and economic development. We are very good at regulating and imposing requirements, but not so skilled at presenting information in clear and understandable ways, being inquisitive about applicant desires or needs, and helping applicants to solve problems while still ensuring that requirements are met. All are possible, and indeed, are essential if we are to achieve our goals.

Reconsider form-based zoning: I accept that this may appear to be heresy after all of the time, money, and effort that was spent to create it. However, and I mean no criticism of the applicant/landowner, but I think we must ask ourselves whether the first new building approved and built under this complex scheme is really what was intended as transformative for this corridor. Perhaps it did accomplish a goal regarding additional development density, but did this really work out architecturally? And as noted above, if we seek to encourage higher density mixed use redevelopment with new businesses, being overly restrictive with signs will not help those businesses succeed. Rather than asking whether form-based zoning should remain optional or become mandatory, I think we must also ask whether it should continue to exist at all; or should be rescinded until it can be dramatically simplified and reconfigured. Again, I know it's heresy to suggest, but I think that a much simpler set of illustrated design guidelines, coupled with an incentive-based approach to (re)development with clearly stated goals for high quality architectural design and materials, super energy efficiency, building/site design, etc. would more likely get us closer to where we wanted to go, with density bonuses built into the incentives. This would also allow landowners to work from a spectrum of options, and not just the 'all or nothing' approach which presently exists, and which in some cases may create opportunities on one hand yet take away opportunities on the other.

Interpret rules with common sense. I know well that statute tells us to interpret rules literally; but if that were truly the case as has been suggested to me, or possible in every instance, then we would not need human beings in zoning administrator or CBC positions – all decisions could be made by computer. In fact, there are few rules written by humans, most certainly including zoning bylaws, that don't require some form of intelligent interpretation. To reinforce this concept, courts have ruled routinely that since zoning bylaws are in "derogation" of private property rights, any uncertainty must be decided in favor of landowners. So "literal" interpretation cannot really be so. I could offer tangible examples, but I don't wish to appear accusatory, nor deliberately create conflict in this setting.

Reconsider "on the record" review: this is not a new issue, but is certainly timely to revisit within the context of regulatory review. The original rationale was primarily to lessen cost and complexity of appeals of DRB decisions to court. Appeals would be based solely on the DRB record, and not tried anew as "de novo" hearings in court. I have heard no suggestion that it has accomplished this goal; and indeed, the DRB can and will still hold proper quasi-judicial hearings without it. It would simplify DRB and staff work and process both during hearings and in preparing staff reports and drafting decisions. Indeed, staff reports and decisions currently include far more detail on lists of exhibits and lengthy recitations of bylaw sections in order to create a complete record than actually describing the projects themselves and what was actually approved or denied.

Encourage and facilitate dialogue between the PC and DRB. While some believe it inappropriate, I believe it *absolutely essential* to working toward more effective and efficient systems. If the PC is considering work on bylaws, it *should* ask the DRB for their thoughts: do they understand the purpose, do they understand how and when to implement, do they think they make sense? The DRB *should* be informing the PC regularly whether the rules work, are internally consistent, need to be improved or removed, or are creating problems that they must either force unwillingly upon applicants or ignore; and the DRB *should* be suggesting improvements to the PC that they believe desirable.

This is a purely logical and sensible aspect of regulatory reform, and is integral to an overall approach to improving our systems. For each to operate in a vacuum just doesn't make sense. How many times in our own lives have we wrestled with software, or tried to perform a simple repair on a device, only to be absolutely stymied in our efforts, asking, "How could they possibly do this or design it this way?", because designers or manufacturers never talked to users to see if something made sense, or was designed in an intuitive or practical, workable manner.

Yes, this is a long list of "action" items. It is not thought that immediate decisions will be made, but I hope this is all food for thought. However, it will be important and helpful to learn thoughts and reactions to any or all of these; and which we might be willing to address right away to demonstrate commitment to change. Yes, some of these or other concepts might warrant more thorough discussion among staff and/or CBCs, but at the same time, let us not mire ourselves too deeply in process such that we never actually make forward progress.

Two DRB Coordinators have described to me the abundant workload, in many cases due to the unduly heavy burden of many of the issues described above. I have certainly witnessed it myself. It's been suggested by both that either we need more staff, or must lighten the load. I suggest the latter is far more fruitful, certainly more cost-effective, will serve our community better, and will help create the bandwidth needed so that staff and committees may spend more time and effort on what really matters.

Remember the old adage about doing the same thing over and over expecting a different result...

We just need to get started and create forward momentum. To borrow a phrase, *the last step depends upon the first.*

Economic Development – August 11, 2020
Initial draft action plan

It may be repetitive to suggest, but an action plan for economic development cannot be simply to hire a person and expect that new businesses will appear magically. We have to create an environment where economic development is welcomed, encouraged, and can flourish; and we have to be clear about our hopes, dreams, and expectations for such a process or a person. As noted in my treatise on regulatory reform, this does not mean an “anything goes” mentality; rather, that we are welcoming and pro-active about how we approach economic development; that we don’t just wait for people to come to us so we can describe the rigors of our review processes, but that we seek out and make connections, offer creative ideas, suggest improvements to projects - not just means of compliance - all to help our systems work more smoothly, efficiently, transparently, and effectively, while simultaneously transforming the reputation that Shelburne has in the development community.

I believe that an action plan must necessarily include:

Regulatory reform as “Job 1”. As already described at length, our current systems are overly complex, and need a significant, multi-dimensional “reset” to help create an environment and foundation for a successful economic development initiative. Our time and effort cannot just be focused on writing more regulations in light of the new town plan as suggested in a recent meeting.

Refine expectations for an economic development “hire”, and determine the most cost-effective way to gain that expertise for the community. Hiring a staff person has advantages, but is costly. \$25,000 less FICA and other overhead costs leaves perhaps 2/3 of that amount for actual salary. That won’t go very far. You should also know that the Town of Northfield has been seeking a similar person with similar experience for similar pay; they have had very limited response to date. In my opinion, a better option would be to hire someone on a consulting basis. That said, and before launching into that, I’d like to explore a partnership arrangement with an existing entity such as GBIC or LCCC. Given current financial circumstances for everyone, perhaps we can share an employee who already does this type of work in the area, offloading costs from that other organization while leveraging knowledge, contacts, and expertise. The Town of Waterbury has a hybrid approach with a non profit which seems to serve their purposes and needs reasonably well.

Cultivate businesses that are already here. A primary tenet of economic development is retention – keeping those who are already here, who have made the personal, business, and financial investments to be here, survive, and hopefully thrive. Too often, existing businesses are taken for granted in economic development initiatives, and the push is always to find new businesses or to seek new development. Reaching out to existing businesses must occur simultaneously and in parallel with regulatory reform. We don’t have time to do these sequentially. We need to listen and learn from those who are here what works, what doesn’t, and what the Town might be able to do to help (not that the Town can solve all problems...).

It’s important to take action, generate forward momentum, and create confidence in the community that we are actually going to *do* something and not just talk about all of this. Ideally, we’ll also create some quick successes along the way to reinforce the commitment to action.

Adjusting attitudes and approaches to land use development: this one is far more difficult, but absolutely essential. I hear concerns about this frequently. We need a more pro-active, “can do” attitude toward problem solving, not just regulating, among staff and committees. This includes creating a welcoming and helpful approach to all that we do – helping to seek and create solutions, not problems; integrating disparate staff or committee opinions or requirements into coherent, collaborative outcomes; helping applicants to solve problems, not just informing them of rules to satisfy; reaching out to realtors and landowners, playing “matchmaker” between interested parties and properties appropriate for those uses, being more interested in and inquisitive about applicants, projects, goals, reasons for investing in Shelburne...

Similarly, it has been suggested that we need an economic development staff person to do a survey of vacant buildings. Why doesn’t this already exist? There’s nothing particularly difficult nor burdensome about this. I’ve already reached out to the realtor for the Harrington’s building to see what we can learn, and perhaps how we can help. One could reach out to owners of the old Sirloin Saloon, Red Apple Motel, buildings on Falls Roads, or other sites and structures to learn what they see as challenges or opportunities. We shouldn’t need to wait to be told that this might be an easy, fruitful way to help encourage redevelopment, and advance planning into implementation.

Tap into significant expertise that exists in Shelburne, not least of which is our Finance Committee, comprised of residents and experienced businesspeople. Others in town such as Fresh Tracks, a venture capital investment firm, may have insight, ideas, and expertise to offer. Discuss and determine research or analyses that might be helpful to an overall economic development effort.

In summary, there are many interrelated aspects of regulatory reform and economic development. It’s a big lift, but let’s not let ourselves be overwhelmed with process and substance. Let’s pick priorities to attack and challenge ourselves to get started and build forward momentum.

Finally, as with many aspects of life, *how* we conduct ourselves is at least as important as *what* we do. Let us work to create the trust and relationships and partnerships that are ultimately the currency with which we can accomplish essential goals.

Onward.