

Enfield Conservation Commission – Special Meeting**Minutes****DEPARTMENT OF PUBLIC WORKS/ZOOM****PLATFORM****March 1, 2022**

CONSERVATION COMMISSION MEMBERS PRESENT: Leigh Davis, Sue Hagerman, Jerold Theis (Chair), John Welenc

CONSERVATION COMMISSION MEMBERS ABSENT: Shirley Green, Dolores Struckhoff

STAFF PRESENT: Whitney Banker-Recording Secretary

GUESTS: David Fracht (community member and Planning Board Chair), Kate Plumley Stewart (community member, Planning Board member ex-officio, Selectboard member)

I. CALL MEETING TO ORDER:

Chair Theis called the meeting to order at 7:02 p.m. and took a “roll call” of members present.

II. NEW BUSINESS: Warrant Article 4 & Paul Mirski Letter

Chair Theis provided to Conservation Commission members details of the two zoning ordinances referenced as part of the narrative for Warrant Article 4, and in the letter from Mr. Mirski to the Planning Board: The Village Plan Alternative and Cluster Development. He provided information from the Planning Board stating the Village Plan Alternative and Cluster Development plan are redundant. Ms. Hagerman asked, the point is that if we vote “No” on Article 4, we maintain both options? Chair Theis said that is correct. The point of tonight’s meeting is to discuss how to alert community voters.

Mr. Fracht asked Chair Theis if at some point he will be able to address the board. Chair Theis said that he would be able to once they board had completed their initial discussion.

Chair Theis provided details of the Warrant Article 4 to Conservation Commission members. He pointed out that the Planning Board recommended deleting the Village Plan Alternative by a vote of 7-0.

Warrant Article 4 reads:

Article 4: Are you in favor of the adoption of Amendment #3 of the Town of Enfield Zoning Ordinance as follows?

DELETE THE ENTIRE FOLLOWING SECTION:

405.2 VILLAGE PLAN ALTERNATIVE

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44 The Planning Board recommends this article by a vote of 7-0
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46 Chair Theis provided the letter written by Mr. Paul Mirski to Conservation Commission
47 members to review. He said that Mr. Mirski was a representative from Enfield and was in part
48 responsible for passing the Village Plan into legislature in Concord and adopting it here in
49 Enfield. Mr. Fracht asked if the guests could review a copy of the letter as well. Ms. Hagerman
50 provided her copy to Mr. Fracht and Ms. Stewart to review. The letter was determined to be the
51 same that was previously reviewed by the Planning Board. Chair Theis said that Mr. Mirski had
52 also sent the letter to the Valley News for their publication.
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54 Chair Theis provided a letter written by community member Mr. Tim Jennings to the Planning
55 Board regarding his evaluation of the two different plans.
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57 Chair Theis provided a draft letter he had written for Conservation Commission members to
58 review and later vote on whether to send on to Enfield community members.
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60 **A. Discussion of information from Planning Board vs. letter from Mr. Mirski**

61 Chair Theis confirmed Conservation Commission members had finished reading the materials he
62 passed around. All had.
63

64 Chair Theis said his opinion is that the two zoning ordinances are not redundant, and it is his
65 opinion that the Planning Board has misrepresented their case for recommending the removal of
66 the Village Plan Alternative. He asked for members to share their views.
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68 Mr. Welenc said it appeared to him that the two are different, based on the amount of land that is
69 allowed to be preserved. They provide two different options for the town to utilize.
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71 Ms. Hagerman said she remembers when the two options were proposed originally in Enfield's
72 zoning. The two options were proposed differently, and she feels they are two entirely different
73 options. The Cluster Development will result in a layout like the condos in Grantham, where
74 there is a fair amount of open land, but the condos are spaced out so there is not a chunk of
75 contiguous land undeveloped. The Village Plan Alternative, she believes, is a better plan for
76 resource management and conservation purposes. It is also less costly to build, and less costly to
77 serve in terms of resources such as fire, sewer, water etc.
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79 Ms. Davis said she agreed with Ms. Hagerman that the plans are different, and that the Village
80 Plan Alternative is more cost effective. She said she does not believe that the Planning Board
81 was trying to fool anyone with suggesting the removal of the Village Plan Alternative. She is not
82 sure why they wish to delete it, as it is different from the Cluster Development in her opinion.
83 Ms. Hagerman agreed she feels it provides far more flexibility to developers to have both
84 options. Mr. Welenc said having the extra option available allows for mindful development in a
85 way that is beneficial for the town.
86

87 To help answer Ms. Davis's question, Chair Theis referenced Mr. Mirski's letter, which also
88 referenced Planning Board minutes and the discussion to propose Warrant Article 4. He said it

appeared some of the Planning Board members felt the two were redundant and confusing. Chair Theis said he did not find them confusing. Ms. Hagerman agreed. He did not know if Planning Board member Gotthardt, who suggested the two plans were redundant, may have influenced the other members or not. Chair Theis said this is the narrative supporting Warrant Article 4 provided by the Planning Board, to vote yes and remove the Village Plan Alternative.

Ms. Hagerman said she feels it is very important that members not put motive, or intent, or personal feeling into our position of this. She said she just sees these as two different and creative alternatives for developers to develop a large tract of land. Chair Theis agreed this is what the board was here to discuss, to keep the options available in Enfield.

Ms. Davis asked, was there a discussion about the differences by the Planning Board?

Mr. Fracht was asked to answer this question. He said there was quite a good discussion on several occasions when the proposed changes to the zoning ordinances were discussed. He said there was also quite a lot of discussion at the Planning Board meeting last week, which Chair Theis attended, as did Mr. Jennings. Mr. Fracht said he thought this was a good and productive discussion. One thing he thinks everyone agreed on at that meeting last week was that “redundant” was not the best or correct choice of words. He said he wrote it as part of the narrative after the term was used as part of internal discussion. In hindsight, that probably was not the correct choice of words. He said he thinks the majority of the discussion last week centered around the confusion and intent of the two ordinances. Mr. Fracht provided copies of a chart he created that outlined the features of the two ordinances. Mr. Fracht said he would plan to review the features one-by-one, to explain why the Planning Board feels the Village Plan is not the superior of the two ordinances, which is what Mr. Mirski has stated is his opinion.

Characteristic	Village Plan	Cluster Development
Availability	Encouraged, not required	Required for 10+ dwelling units, optional for <10
Open Space	Minimum 80% of tract available for development (max 20% developed)	Minimum 50% of gross buildable land, not including wetlands, steep slopes, drainage facilities, floodways, or road reserves
Dimensional Requirements	None required. Building setback from perimeter may be up to 2X district requirement	Lot size and setbacks reduced up to 55% of district requirements, 100' vegetative buffer between building lots and tract perimeter
Utilities	Not specified	Underground
Common Land	Easement to Town, Title/Ownership not specified	Owned by Homeowners Association, Planning Board may designate location(s). Taxes assessed to lot owners.
Use	Agriculture, forestry, and conservation, or for public	Recreation for Homeowners Association Members.

	recreation. Management not specified.	Managed by Homeowners Association.
Common Land Size	None specified	Minimum undivided 3-acre preserves, not greater than 4:1 aspect ratio. Directly accessed by largest # of lots. Access areas for non-adjointing lots provided.
Density	Not greater than district	Not greater than district
Construction Detail	Exterior Walls per NH Fire Codes	Not Specified

Mr. Fracht said he would like to preface his explanation of the chart by saying the fact that there is discussion about what the Village Plan Alternative ordinance actually says, is indicative of the fact that it is ambiguous. He said, as stated at the Planning Board meeting last week, he has been on Planning Boards for about 20 years. In his experience, the idea of zoning ordinances is to have a specific statue and set of guidelines which the facts of each case can be applied to. If hypothetically an ordinance says the setback says it can be whatever it wants to be, multiple developers can come along and use any setback they wish. Developer A could say they want their setbacks at 15', and developer B could say they want their setbacks at 5'. There is nothing in the ordinance that says one way or another. There would be no standard by which the Planning Board or Zoning Board of Adjustment can make decisions. Mr. Fracht noted that the ZBA is held to a higher standard as a quasi-judicial body.

Mr. Fracht reviewed the chart and differences between the Village Plan (Village Plan Alternative) and Cluster (Cluster Development).

Mr. Fracht said based on the ordinances, if a developer plans to have 10+ dwelling units, they must use the Cluster Development.

He recognized the differences in percentages of Open Space between the plans. He said he felt that as the town moves to the adoption of the Master Plan, the 50% Open Space requirement in the Cluster Development could be debated and potentially changed in the future.

He said that the Village Plan has no dimensional requirements, while the Cluster Development has a specific figure that the board can reference and impose.

Utilities are not addressed by the Village Plan. Cluster Development specifies utilities must be underground. Mr. Fracht said if there is a high density of housing, there is the potential for private community water and septic systems (except for a property on town sewer/water). Private systems are expensive, and heavily regulated. Ms. Davis asked whose expense? Ms. Hagerman said the developer. Mr. Fracht said ultimately the people who buy the houses. He reiterated that this is not spoken to in the Village Plan Alternative.

Common Land in the Village Plan states there is an Easement to the Town, and ownership of the land is not specified. Cluster Development calls for a mandatory Homeowners Association to own, manage, and apportion expenses (including tax assessment) to the individual lot owners. The Planning Board has the option of designating the areas in the Cluster Development that are common land. Depending on the circumstances and the developer, this could be a good thing for the Town, or in some circumstances this could be a good thing for the developer.

Usage in the Village Plan's deeded easement to the town is restricted to agriculture, forestry, and conservation, and public recreation. It does not state specifics and management cannot be interpreted. Mr. Fracht said regarding public recreation, in the Village Plan homeowners do get a say in this. The Cluster Development's use is recreation for Homeowners Association Members, managed by the association.

Common Land Size is not specified in the Village Plan. The Cluster Development specifies that the minimum for undivided land is 3-acres, and specifies a 4:1 aspect ratio to keep the tract of land usable. Cluster Development states access should be direct through the back yards by largest number of lots, and access areas for non-adjoining lots provided.

Density is the same for both plans.

Construction Detail has Exterior Walls per NH Fire Codes specified by the Village Plan. The Cluster Development does not specify, as Enfield has a building inspector who adheres to all current fire codes.

Mr. Fracht said although the Cluster Development has a lower minimum of 50% open space, it provides a much easier to administer zoning ordinance. Therefore the Planning Board feels the Cluster Development should be kept, and the Village Plan Alternative (well intentioned, though not particularly well written) should be dropped. He said he feels both ordinances follow the town's goal to maintain open spaces and conservation for wildlife, recreation, hunting, etc. There is no change in town policy as it is the same for both. He said he can assure members after working as Co-Chair of the Master Plan Task Force for the past year, the will of the town is to keep open spaces in Enfield open. The Planning Board felt that the Cluster Development plan provided a better and more complete tool than the Village Plan Alternative.

Mr. Fracht asked for questions. Chair Theis said he has comments.

Chair Theis said that nothing Mr. Fracht had said denigrates the option of the Village Plan Alternative. It is an option, which is something that is always better for people to make intelligent decisions – to have options. He said secondly, the Planning Board misrepresented the idea about the Village Plan Alternative. He read [zoning ordinance 405.2:B](#) (marked page 37 of the zoning ordinance/page 43 of the PDF document) *“The recorded easement shall limit any new construction on the remainder lot to structures associated with farming operations, forest management operations, and conservation uses, and shall specify that the restrictions contained in the easement are enforceable by the municipality. Public recreational uses shall be subject to the written approval of those abutters whose property lies within the village plan alternative subdivision portion of the project at the time when such a public use is proposed.”*. Chair Theis said the Village Plan Alternative offers not only 80% of the developable land to be preserved, but it also offers the opportunity for that particular portion of the land to be used by the community. He said it provides the owner with various uses of the property that they may not otherwise have if only the Cluster Development is available.

Mr. Fracht asked to respond to this. Chair Theis said he wished to finish speaking as Mr. Fracht had spoken for half an hour. Ms. Hagerman said Mr. Fracht had only spoken for 12 minutes and reminded Chair Fracht regardless of passion for the situation to keep the discussion civil. Chair Theis said the other thing with the Village Plan Alternative is it offers a taxability that is no different potentially than the Cluster Development. The Cluster Development will require a

homeowner's fee, which can be several hundred dollars a year. The taxes associated with the Village Plan, because the lots are smaller, perhaps may offer a less expense to people who buy homes in the area. Ms. Hagerman said she thought this was speculation. Chair Theis said he felt what Mr. Fracht had said was also speculation. He said the point is that homeowners' fees, if you look at them, are involved in a whole bunch of things that can turn everyone taking care of the land for a price. They don't have to maintain their property, but they must hire somebody, and all must pitch in to help. Ms. Hagerman and Mr. Fracht agreed. Chair Theis said the idea that the Cluster Development would save people money is not necessarily true. Mr. Fracht said he did not say that it would save money.

Ms. Hagerman asked, why don't we keep both and make changes to improve the Village Plan Alternative? Mr. Fracht said because it is ambiguous, subject to varying interpretations, and as such down the road it has the potential to cause issues for the Planning Board and ZBA. If someone wanted to push the non-specificity of the ordinance, and go to Superior Court, it is likely the town would lose a suit, and spend tens of thousands of dollars in legal fees defending it.

Ms. Stewart stated that Enfield adopted the ordinance subject to following the RSA. It is a state law that cannot be changed on a municipal level. Ms. Hagerman asked can you do a separate ordinance? Ms. Stewart said yes, a separate ordinance could be adopted, and the Village Plan Alternative repealed. Ms. Hagerman said her recommendation would be that they put together a separate ordinance before they repeal the Village Plan option. Ms. Stewart said that if someone were to take up the Village Plan in the meantime, they would have free range of all the items that aren't specific. The Village Plan is very developer friendly. It has been pitched a certain way, but in fact there are not requirements. The plan is pitched with a drawing that looks just like a Cluster Plan, but in fact houses could be scattered, counting front yards and side yards etc. Ms. Stewart agreed she has concerns for the wildlife and passages, many of the same things the commission members have, and said there are many of these same discussions on Planning Board as well. The Planning Board could not prohibit the building of something much different within the Village Plan ordinance than what everyone usually imagines.

Ms. Davis said that to her what is unclear is that the Village Plan applies to a 10+ dwelling unit, like the Cluster Plan – is that correct? Mr. Fracht said this is not stated. If it is not in the ordinance, it does not exist. The Planning Board, ZBA, and state court must interpret what is written in the ordinance. If it is not written, this can cause a ton of confusion. The idea is to keep the town out of court, as this is an unnecessary expense to the taxpayers.

Mr. Fracht asked Chair Theis to re-state his first comment, as he would like to go back to respond to it. Chair Theis said his first point is that the Village Plan states 80% is reserved for public recreation. Mr. Fracht said that the Village Plan does not specify who manages this. Is it the town? The homeowners? Other? Mr. Welenc said easement is not ownership. Mr. Fracht said this is correct, but if, hypothetically the common land was open for public recreation, and someone breaks their leg, will they sue the town, or the homeowner's association? Chair Theis read [zoning ordinance 405.2:B](#) (marked page 37 of the zoning ordinance/page 43 of the PDF document) "*on 20 percent or less of the entire parcel available for development, shall grant to the municipality within which the property is located, as a condition of approval, a recorded*

242 *ease*ment reserving the remaining land area of the entire, original lot, solely for agriculture,
243 *forestry, and conservation, or for public recreation.”*. The municipality gains control of the other
244 80% of the property. They can decide what they want to be done there (or not done). This is
245 granted in the Village Plan to the municipality. Mr. Fracht asked, would you like the
246 municipality taking your common land and giving it to a logger who comes every 10 years and
247 clear cuts? Chair Theis said clear-cutting is limited to a certain percentage of the property.
248 Second of all, the Fish and Wildlife service does a rotation of clear cutting on its own property.
249 The diversity of habitats improves the diversity of wildlife. Cutting forest allows brush to come
250 up and create shelter for smaller animals, to create a food chain and ecosystem etc. He said there
251 is nothing wrong with allowing cutting for this to develop. Mr. Fracht said what is wrong in his
252 opinion is giving control of private land to the government (the town). Chair Theis said he felt it
253 is an option available that a developer may or may not use. It does not mean the two cannot
254 coexist as options to develop property. Mr. Fracht said he did not think he and Chair Theis would
255 reach agreement about whether the common land owned by homeowners should even have the
256 option of being out of the control of the homeowner’s association. Chair Theis said there is no
257 homeowner’s association in the Village Plan. Mr. Fracht said this is a problem too. If there is
258 community sewer and water, private roads, this is a can of worms. If the plan is eliminated, the
259 can of worms disappears.

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261 Mr. Fracht asked Ms. Stewart, the ability to have the Village Plan Alternative is a state RSA. Ms.
262 Stewart said yes. Mr. Fracht continued, the town then had a choice to either adopt it as part of the
263 zoning ordinance, or not adopt it. If I understand what you said before, we cannot get rid of the
264 ordinance that we have adopted? Ms. Stewart said if the RSA is adopted in its entirety, it could
265 only be removed (not changed). She said adding a separate ordinance could be proposed at town
266 meeting in addition to proposing the removal of the Village Plan. Ms. Stewart said she could not
267 answer the specifics of how the change would be facilitated, if someone wanted to adopt a new
268 zoning regulation in addition to removing the Village Plan, but it would be something to work
269 with the Town Manager on. Ms. Stewart said if there is a strong interest in this kind of
270 preservation, it is important, but there is no guarantee that there would not be a pickle ball court
271 as this is “public recreation”. She said there is a difference in what community members wish the
272 Village Plan was, and what the words of the ordinance actually say. The village plan is a nice
273 idea, and the idea of preservation of land is important. However, there is also the piece of, is the
274 government the best steward of land that would be otherwise private? She said she felt the voters
275 must answer that question. She said if the option is left open, and someone wishes to do
276 something that is allowed within the plan but not what is pictured, this needs to be ok with those
277 who wish to keep the Village Plan. Ms. Stewart said that when community members think
278 village, they think of the nice little cluster – which is the represented picture that is associated
279 with the Village Plan – however the legal language is not in line with this. She also suggested if
280 the Conservation Commission was interested, they could contact Town Manager Ed Morris to
281 work with him on this.

282
283 Ms. Stewart said that the Conservation Commission cannot tell community members to vote
284 “no”, they cannot lobby for a specific vote. She said the Planning Board is not telling community
285 members to vote “yes”, they have put it on the ballot for community members to make an
286 educated decision. She said because of the meetings she herself has learned a lot.

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Mr. Welenc and Ms. Davis thanked Mr. Fracht and Ms. Stewart for their comments. Mr. Fracht asked for any further questions. There were none. Mr. Fracht thanked the Conservation Commission for allowing him the time to present the different perspective on the issue. Ms. Hagerman said she felt it was a fuller version, and the history of adoption the RSA is a whole other level of complication that was not done clearly.

Ms. Stewart reminded Conservation Commission members that town committee meetings, like those from the Planning Board, are all [available on YouTube](#). Reviewing the meetings can provide a fuller picture of issues like this.

B. Decision on actions CC should take

Chair Theis said the Conservation Commission should decide if they would like to do anything regarding the warrant article, or let it go to the public to decide, or something else entirely. He asked members for their comments and thoughts.

Mr. Welenc said what attracted him to the Village Plan was the 80%/20% ratio, and the ability to use the land for agriculture, forestry, and purposes like that. The lack of specificity is not ideal. Those two things are what he thinks are important and why it would have been nice to keep the Village Plan. He said he thinks Mr. Fracht provided a good explanation. He likes the idea of the 80/20 distribution, and broader land use. He said he does not have knowledge of the history of the plan. Ms. Hagerman said the plan was if it's a large square plot, the village is only in one corner and the rest is open. She does not recall discussion about access and use. The idea of further condensing the development to 20% of the land was attractive because it allows access for wildlife. She does not recall any presumption that the community would be able to use that space but was coming from a sheer wildlife perspective.

Ms. Hagerman said she would not be comfortable with the Conservation Commission coming up with a statement, other than perhaps working to improve on a better ordinance like the Village Plan that does not open the town to the potential liabilities having adopted the state RSA does.

Mr. Welenc said one thing he is not familiar with is how these plans are applied. With the differences in percentages of undeveloped land, how is that determined in practice? Ms. Hagerman said it would go to Planning and Zoning. Mr. Welenc asked does the town have to approve it? Ms. Hagerman said yes. A developer could come in and say they want to make another development like Lakeview, a Cluster Development. Mr. Welenc asked can the town restrict what the developer does? Ms. Stewart and Ms. Hagerman said no. Ms. Davis said if the developer follows all the ordinances, they can do what they want. Ms. Stewart said this is where having a good Planning and Zoning Administrator is important, and Enfield has come a long way in this. She said Land Use Boards often do not win when going to court in New Hampshire. Everyone wants to work together; however, it is a question of how do we write it so it is enforceable and protects the way of life we want to have here together.

Chair Theis asked members to circle back to what they wish to do. Ms. Hagerman said she recommends that we keep the Village Plan and come up with an alternative. Chair Theis said they cannot do both. Ms. Hagerman said it sounds as if Ms. Stewart said that by law, they cannot come up with a determination like that. Ms. Stewart said they cannot say "vote no" but they can

say they recommend, or do not recommend. Chair Theis agreed. He said that the wording of the Village Plan being redundant is on the warrant. Ms. Stewart clarified it is not on the warrant. Chair Theis said the description of the Planning Board's recommendation says that the two are redundant. Ms. Stewart said it is part of the narrative. There is an important legal difference between the warrant and the narrative. The warrant is the specific legal piece of paper community members vote on, and the narrative is what voters are referencing regarding that vote. Chair Theis said the narrative is recommending that community members vote to eliminate the Village Plan. He said the Conservation Commission then has the authority to recommend that community members don't vote to eliminate the Village Plan.

Chair Theis asked, do we want to go on record against eliminating the Village Plan, or be silent? Mr. Welenc, Ms. Hagerman, and Ms. Davis all agreed they wished to be silent. Mr. Welenc said he learned a lot today, and the lack of specificity seems to be problematic in the Village Plan. Chair Theis said there will be nothing sent to community members regarding the Conservation Commission's position.

Chair Theis thanked members for attending. Ms. Hagerman thanked Chair Theis for bringing the issue to them for review. Mr. Welenc agreed it was a good process.

IV. OTHER BUSINESS:

None.

V. NEXT MEETING: March 3, 2022

VI. ADJOURNMENT:

Ms. Hagerman MOVED to adjourn the meeting at 8:19p.m.

Seconded by Chair Theis

Roll Call Vote:

Leigh Davis, Sue Hagerman, Jerold Theis (Chair), John Welenc all voting Yea.

None voted Nay.

None Abstained.

**** The Vote on the MOTION was approved (6-0).***

Respectfully submitted,

Whitney Banker

Recording Secretary