Town of Fayston, Vermont

Planning Commission Minutes

Monday January 13th, 2025

Fayston Town Office

Attendees: Planning Commission: Paul Quinlan (Chair), Freddie Graves, Langford Davidson, Andrew McNealus (Vice Chair) and Michael Duell **Zoning Administrator:** Jason Wilson (Zoom) **Public:** Wendy Bridgewater (Zoom), Sally Dwyer (Zoom), Brian Litmans (Zoom), Chuck Martel, Carol Chamberlain, John Weir (Zoom), Ruth Robbins (Zoom), Craig Whipple (Zoom) **Guests from State Agencies:** Claire Polfus [VT Dept. of Forests, Parks & Recreation] (Zoom), Nick Bennette [Vermont Trails & Greenways](Zoom)

1. Call to Order at 5:33PM
2. **Agenda Modifications:** None
3. **Approval of the October November 18th, 2024 Minutes:**
   Freddie motioned to approve the 11/18/24 minutes; Michael seconded. All approved.
4. **Public Comments:**
   Carol Chamberlain- Carol spoke how she would like to see a public comments section on the agendas. She stated that this section is not limited to what is on the agenda and the public can speak on any item they would like to inform the PC about. She then spoke about how she would like to see the PC work on the Town Plan. Stating that she was a former PC member and it may take 2.5 to 3 years to update the Town Plan.
   Paul- What would you like Fayston to focus on?
   Carol- if I were on this planning commission right now with everybody else new, I would be saying, let's start talking about the town plan. Let's start educating ourselves about what's needed to get a town plan rewrite in place. Let's start thinking about what we would want to formulate a survey to look like.
   The PC had short discussion about some items they would like to begin discussions about in relation to the Town Plan with answers ranging from protecting the environment in relation to floods, housing and recreation.
5. **Fayston Land Use Regulations Amendments- Review and vote on updated language and format of Section 9.4 Certificates of Occupancy and Compliance that was discussed at the November 18th, 2024 PC Meeting:**
   Freddie had a concern over an error on the version copied into the agenda (Gap between Administrative and Officer in Section 9.4(A)(2)). Langford stated that was not there in the Word version. Jason stated that was a formatting issue when trying to paste into the Agenda. Langford motioned to approve the changes to Section 9.4 that are written as:

Section 9.4. Certificates of Occupancy and Compliance

*(A) **Certificate of Occupancy.** A certificate of occupancy issued by the Administrative Officer is required prior to the use or occupancy of land, structures, or part thereof, for which a zoning permit has been issued.*

(1) Application(s) for certificates of occupancy shall be provided with the zoning permit issued by the Administrative Officer. The applicant shall submit an application to the Administrative Officer upon completion of required improvements, but prior to the use or occupancy of the land or structure.

(2) The applicant shall demonstrate, to the satisfaction of the Administrative Officer, that the proposed use or structure has been completed in conformance with the zoning permit and any associated approvals, including all applicable permit conditions. The Administrative Officer may inspect the premises to ensure that all work has been completed in conformance with the zoning permit and associated approvals prior to issuing a certificate.

(a) The applicant must provide certification from a professional engineer or site technician licensed by the state that any wastewater system has been installed and tested as approved by the state.

(b) The applicant shall have recorded or submit for recording with the application a certificate as required by 30 V.S.A. § 51 (Residential building energy standards) or 53 (commercial building energy standards) the RBES/CBES is a requisite to the issuance of a Certificate of Occupancy.

(i) In the case of an Owner/Builder when the owner in fact directs the details of construction regarding the installation of materials not in compliance with RBES. A Vermont Owner/Builder Disclosure Statement must be submitted with application of certificate of occupancy so it can be placed on file.

(3) A certificate of occupancy may be issued for a substantially complete structure provided that the Administrative Officer can determine it meets all applicable zoning permit conditions.

(4) A certificate of occupancy shall be issued or denied by the Administrative Officer within 14 working days of receipt of the application. If the Administrative Officer fails to either grant or deny the certificate of occupancy within 14 days of the submission of an application, the certificate shall be deemed issued on the 15th day. The decision of the Administrative Officer may be appealed to the DRB under Section 9.5(A).

Michael seconded. All approved.

6. **Fayston Land Use Regulations Amendments- Continued discussion on trails and proposed changes to Tables 2.1 (E)(3), 2.2 (E)(3), 2.3 (E)(3), 2.4 (E)(3), 2.6 (E)(1), 2.7 (E)(3), Section 9.2 and Definition of Trail in Article 10:**

Freddie: I have been reluctant to agree with everyone about the trails. I believe that it the revision as currently written is onerous; it's wrong to ask homeowners to build trails to the specs that are listed. I don't know why we are going to such an extreme from no regulations on walking trails on people's properties.

Freddie: I reached out to several people, including Carol Chamberlain, Craig Whipple, Claire Polfus, Nick Bennette, Ruth (Warren), who are all present now to participate in this discussion.

Andrew: We regulate driveways and logging roads; trails should not be different.

Craig Whipple: As Director of State Parks, I was involved with all trail business for the State; as I have not been involved for four years, will pass it to Claire who works on it now.

Claire Polfus: I serve as Recreation and Program Manager for the Department of Forests and Recreation. We have trail standards and require nonprofits who get grants from our departments to meet these standards. These standards are designed for trails that are open to the public. For private property, there are different needs regarding protecting the environment and therefore there should be different standards.

The State of Vermont encourages people to share their private property with the public. It is not required. There is generally no liability for the landowner when hosting the public on their property.

Nick Bennette: The Vermont Environmental Superior Court defined distinction between a private, though publicly used (de minimis use) trail versus a trail that is generally advertised for public use. The Court ruled in this case (Brewster River Mountain Bike Club) that a specific trail on private land that was used by the public, but was not publicly advertised, constituted de minimis private use and therefore was not subject to zoning. If you were to regulate construction of trails for de minimis recreational use on private land, it could be open to legal exposure.

The construction of a trail has environmental consequences. Building a trail for occasional personal use might create greater impacts than the use itself.

Michael: In the regulation as written, bike trails shall be constructed to certain practices, but the web link was broken. I'm trying to figure out what these standards are.

Claire: I recommend linking to Vermont pages instead of New York pages. Paul: We linked to VNR.

Carol: When the PC originally wrote the regulation, we had a concern with the development of a proliferation of bike trails not being built to any standards. There were no standards that we could find related to Vermont. It was specific to bike trails and outdoor recreational facilities. These facilities exclude private residences.

Freddie: In our revision list, we specifically created an exemption for private properties and necessitate that the trails then be built to the standards (per the link). Langford: So, your issue is that we made an exemption that says you don't have to pull a permit to build trails?

Carol: This requirement negates the intent of the Town Plan, to encourage recreational use and the sharing of property.

Claire: There are a multitude of trail standards, depending on the type of use. We are working on trying to consolidate a document.

Craig: The standards apply to the broad variety of uses and depend on how often they are used and how many people are using them.

Wendy Bridgewater: The definition of outdoor recreation facility was also a problem.

Michael: on p 143 the definition of outdoor recreation facility includes trails (except for those that are accessory to a single-family residence). Permitted use is allowed upon issuance of a zoning permit unless exempted. We decided that we would fix the link (to go to Vermont ANR) and added the language about the exemption so that a permit would not be needed.

Wendy: You might want to include reference to landowner with vacant land, not just homeowners with a single-family dwelling.

Claire: There is a statutory definition of trails. You can't pull out a definition of trail out of that context. I would recommend that you modify the definition of trail in a way that works specifically for the needs of the Town of Fayston.

JB Weir (via Zoom chat): Why don't you pull the word "trail" out of the definition of "Outdoor recreational facility" and create a new standard which pertains to "trails" only? IMHO private "trails" should be exempt so long as there is no addition of impervious materials nor motorized or commercial use thereof... Isn't creating an impervious surface the real concern given the steep slopes of Fayston?

There was a discussion about the process that should be undertaken to make this change.

Nick: The case mentioned before has gone to the Supreme Court, a decision is expected soon.

Paul: What was the initial complaint in that case?

Nick: That the town should not have issued the permit because of concerns about the location of the bridge.

Langford: So, what should we do now? Freddie: For the private homeowner, there should be no standards for construction of trails. Nick: As long as they met the definition of "de minimis".

Michael: What if we remove the reference to trails from the definition of outdoor recreation facility as JB suggested and fix the link to go to the ANR website.

Claire: Why not define "trails" as those open to the public? That way, de minimis situations wouldn't apply.

Michael: The reason that we didn't do that was because the VAST trails are open to the public part of the time and some are on private property. Claire: The VAST trails are working toward meeting the standards, they are subject to them. Nick: Same with any publicly mapped trails. Any trail on private land that is not advertised to the public is "de minimis". Posting of the land would not be necessary (and is contrary to the Vermont culture).

Brian Litmans: If the Fayston Conservation Commission can see proposed changes in draft form we can review them. We don't have any authority, but can provide recommendations or comments.

Paul: What is to prevent someone who owns land from taking actions that destroy the environment and affect neighboring parcels? Claire: There are environmental protection regulations – wetlands and water quality. There have been cases where actions from a landowner impacted a neighbor. JB Weir: Fayston has some pretty strict regulations, it's unlikely that refining this definition will create a problem.

(The Zoom attendees (except Jason), along with Chuck, left the meeting).

Freddie: With regards to the definition of a single-family dwelling, does an ADU change this? Others: No, the ADU is still on a single-family property.

Jason: In the case where there is no single-family unit (or ski operation), and there is a trail that the public is invited to, the use is an outdoor recreation facility.

Langford: We are saying that if you want to build trails (not just bicycle trails) in an outdoor recreational facility – not private landowners -- they must be built to standard. Can we put this in writing? (Langford pointed out to Freddie the changes that they propose be made. Freddie asked that she see it in writing.)

(There was some discussion about what de minimis means and how it would apply to the language in the regulations).

Jason: The exemption in 9.2 doesn't require a permit even if it is not built to standards. If you don't meet the standards delineated by the exemption doesn't mean you need to pull a permit.

Freddie: When we make decisions, we need to reference the Town Plan. Paul: Because of the events of July '24, we need to work on resilience in the Plan and scope the Land Use Regulations to recognize these issues.

Michael: Freddie, how about this: Section 9.2A will read as "The building and maintenance of de minimis trails. Trails for more than de minimis use, and public trails that use standards and practices found at the following website.". Freddie: That sounds reasonable, but I need to see it in writing. Others: Can we use another word instead of de minimis in the wording?

Jason: De Minimis relates to the trails not being promoted to the public. Freddie: And they can't be mapped. Jason: Perhaps we should wait to see what the final Supreme court decision is on this.

Michael: Freddie, how about this: Section 9.2A will read as "The building and maintenance of trails that are not commercially available to the public. Trails for public use, that use standards and practices found at the following website." Freddie, that's more onerous as well.

Paul: Perhaps we should see if the Supreme Court decision influences what we decide. I suggest we do nothing, table this topic and move on. We can revisit it after the Supreme Court decision. We should also discuss with reference to the Town Plan what our overall philosophies and goals are. We need to look at the big picture. Freddie: I'm in agreement that we table the issue.

7. **Liaison Reports:**
    a. **Paul (MRVPD):** The budget was discussed at last month's meeting. Josh and Sam's salaries and healthcare are the largest budget items. They are doing

great work. I believe that what we spend to fund the MRVPD is money well spent. They are responsible for most of the money that comes into the Valley for the Mad River Path. They worked with FEMA after the flooding and were key behind the scenes for the application for FEMA relief funds.

b. **Andrew (CVRPC):** CVRPC met on 12/10 and on 12/30 (for a special meeting to approve the Town Plan for Washington). CVRPC is applying to the EPA for funding to allow them to give out loans for flood cleanup. The Central Vermont Economic Development Corporation sets a priority list for development projects and Waitsfield's wastewater project was number #2 on that list.
c. **Michael (Mad River Path):** Things are full speed ahead. The engineering group has come back with some questions; Misha and Sam are working to address many of these questions. They are looking at alternative parking areas to the proposed Southern access point. The wastewater pipeline will be laid at the same time as constructing the trail. There's talk about tying into some trails in Middlesex; there is discussion about where the Northern terminus will be (Moretown or go all the way to Middlesex). The second public meeting is being planned for some time in March. Freddie: I heard negative comments about the first meeting, these comments are unofficial. Michael: We are working with farmers and other landowners to try to figure out how to develop easements. There was a lot of discussion about dogs, particularly when they chase wildlife. I have lobbied for dogs to be allowed on leash as well as for horses to be allowed on the trails. The trails would also open to snowmobiles (on sections that are on the VAST trails, during VAST season), pedestrians, and bicyclists.

8. **Other Business:**
   None
9. **Announcements:** The next PC Meeting is tentatively scheduled for February 10th, 2025 at 5:30PM.
10. **Adjourn:** Langford motioned adjourn the meeting; Michael seconded. All approved and the meeting adjourned at 8:38PM