

ACTON PLANNING BOARD MEETING

February 19, 2009

A. **ROLL CALL** – 7:00

Members present were: Thomas Cashin – Vice Chairman
James Fiske
Yoli Gallagher
Larissa Crockett – 2nd Alternate

Members absent were: Chip Venell – Chairman
Randy Goodwin
Keith Davis – 1st Alternate

Also present were: John Moore and Rob Meyer of the Comprehensive Plan Implementation Committee and Kenneth Paul, Code Enforcement Officer.

B. **MINUTES** - There were no Minutes approved.

C. **UNFINISHED BUSINESS** - There was no unfinished business to come before the Board.

D. **NEW BUSINESS**

Comprehensive Plan Implementation Committee Update - Mr. Cashin, the Chairman of the Comprehensive Plan Implementation Committee, asked the group to review the maps supplied by SMRPC and identify any streams that may not be included in the list of “first order” streams. He explained that the reason some streams are not on the map is because the State categorizes them as “minor”. He mentioned that the State has determined that any stream on the map should have a 50’ setback [from the water body] for any new structures. He gave a scenario of a leach field that requires pumping uphill which is within the setback from the stream. He advised that the State requires that “first order” streams must have a 75’ setback. He mentioned that the Department of Public Health has required a 100’ setback for a leach field near “first order” streams. He stated there are a good many “first order” streams that the State hasn’t covered that flow into wetlands, etc., therefore, the Town has to determine what the setback should be for those streams.

To Mr. Moore’s comment it appears that the Town doesn’t have to deal with “first order” streams that don’t appear on the maps, Mr. Cashin stated that was correct, but the Town can designate a larger setback from those streams if it chooses to do so.

Ms Crockett felt that the CPIC should make a decision and then advise the Planning Board what has been decided.

Mr. Cashin agreed, but said he would like to hear what the Planning Board has to say about it. He mentioned that there are a number of “first order” single streams that don’t appear on the map SMRPC designates them as being “optional”.

Mr. Moore felt any stream that appears on SMRPC’s maps should have a 100’ setback from a leach field.

Mr. Cashin asked Ms Gallagher and Mr. Fiske to review the map and advise the CPIC of any “first order” stream they know of that doesn’t appear on it. He stated that the CPIC has discussed designating a 100’ setback for any stream that appears on the map and a 50’ undisturbed vegetative setback for those streams not appearing on the map.

To Ms Gallagher’s question of how would a stream not appearing on the map be designated, Mr. Moore explained that every septic system requires a site evaluation which is approved by the Code Enforcement Officer who will know what the setback must be based on the Town’s adoption of the revised Zoning Ordinance.

Mr. Cashin mentioned that if a stream doesn't appear on the map, it falls into the "minor" category and requires a 50' setback as designated by the State.

Mr. Fiske pointed out that there are streams that are seasonal and after the snow melts, they disappear.

Mr. Cashin explained that the CPIC is looking at streams above the confluence which are not under the DEP's jurisdiction for setbacks. He said "first order" streams under the DEP's jurisdiction have no buffer and some of the CPIC's Members feel that if a waterway flows into a "second order" stream which flows

into a Great Pond they should be protected since there is generally wildlife in those areas. He said the CPIC has discussed a 50' setback in those areas and a 50' or 75' setback at the confluence. He said the next time there is a joint Meeting; the two groups can discuss it further. To Mr. Fiske's comment that he thinks all the setbacks should be the same even if the water body runs all year or only in the spring, Mr. Cashin said that is what he thinks also and mentioned a stream that flows from September to May.

To Mr. Moore's comment that any structure that is necessary to the operation of the stream should be allowed, Mr. Cashin gave an example of a cistern and the like.

Ms Crockett explained that the 50' argument is based on the idea that changes to zoning are generally not popular and the CPIC is especially unpopular with the Townspeople since residents already feel that the revised zoning adopted in June, 2009 has diminished their property's value. She said because of that the 50' setback is a compromise for the taxpayers who will be affected by the changes. She advised she also wants to protect Acton's resources, but the CPIC should take the taxpayers' concerns into consideration when proposing changes to the Ordinance. She felt that imposing a 50' setback will convey the message that the Committee would like to protect the Town's resources, but they also recognize the need of the taxpayers to use their property. She said that doing so might give the Committee more credibility with the Townspeople.

Mr. Moore mentioned that the 50' setback would only be applicable in the village area since they are small lots and no septic systems are permitted.

Mr. Cashin stated with regard to Ms Crockett's comments, he feels the lakes, as a whole, are in a state of slow decline. He said it is his hope that the Townspeople will go along with protecting those resources for the future of the Town. He mentioned that he is not in favor of compromising and the CPIC should not qualify the buffers because of a perception that they are attempting to limit a taxpayer's property rights. He stated he would hope that those people would become better advocates for what is being proposed. He said he feels strongly that the Committee would be doing a disservice to the Town if they [the CPIC] go along with Ms Crockett's recommendation.

Mr. Moore suggested that the setback be 75' and if there are negative comments at the public hearing [the CPIC will conduct], then the Committee can reduce it to 50' with Ms Gallagher and Mr. Fiske advising that they were in favor of a 75' setback for all waterways.

Mr. Paul pointed that if the setback is 75' on both sides, 150' could impact a property owner substantially. He stated although a dwelling may not be permitted in the setback, other structures could be. He asked the group to think about the existing non-conforming lots near streams that flow only two months a year. He said he has no problem with a vegetative buffer rather than a 75' setback. He felt that it will be beneficial to the Committee to obtain feedback at the public hearing.

Mr. Cashin said there is another issue that the CPIC is dealing with and that is steep slopes. He said the Committee has talked about making all steep slopes in Town Resource Protection even if they are in the Shoreland Zone so that nothing can be built on them. He mentioned that the Committee has decided to remove the term “undeveloped” so that the Resource Protection designation will be applicable to all lots with the 20% or greater slope designation. He advised the rationalization is based on the fact that everything will wash downhill. He indicated the location of areas that contain steep slopes on the map. He stated he hopes to enlist the support of the Lake Association since the Town receives a good deal of taxes from the lake properties and they are used mostly for recreational purposes. He said by doing so would make those lots non-conforming with full rights to use the property, but they would not be permitted the 30% expansion to which they are entitled.

To Ms Crockett’s comment that out of the two choices afforded the Committee, they choose the more restrictive, Mr. Cashin explained that there was a consensus to move forward into those areas and to revise the existing Resource Protection definition because of the removal of the term “undeveloped”. He said everything in Town with a 20% or greater slope will be designated Resource Protection and will therefore not be permitted to expand at all. He advised the decision the Committee made was to make those areas in the Shoreland Zone Resource Protection and for those lots that have existing structures, no expansion will be permitted.

To Mr. Cashin’s question of what they thought the fall out from that decision may be, Ms Gallagher asked if that was the determination of the State and Mr. Cashin answered in the negative. He explained the State has language about “densely developed” and SMRPC indicated with aerial photographs where those areas were located. He said “densely developed” is defined by the State as three structures within 500’ and those areas are permitted to expand by 30%. He stated the Town can allow them to expand or not through the Zoning Ordinance. He reiterated that within the Shoreland Zone, there will be Resource Protection Districts that will fall into that criteria.

Mr. Moore felt that retaining the 30% expansion restriction controls the size of any expansion a property owner may wish. He mentioned that most of the dwellings that are expanded are volumetric and not an increase in the footprint. He felt that allowing only a 30% expansion is sufficient sacrifice for the property owners and eliminating that privilege will take away the ability of a property owner to do anything more with his dwelling. He reiterated that he was in favor of retaining the 30% expansion privilege. He said he doesn’t think there are that many areas where that would take place anyway and some of the lots have the maximum lot coverage now. He mentioned that those lots belong to people who have paid taxes for many years and doing as suggested by Mr. Cashin would prevent them from doing something that they may have been planned all along.

Ms Crockett mentioned that the steep slope provision falls under the State’s jurisdiction, but there are a few places in Town where the Committee can say the property owner doesn’t have to follow the Resource Protection rules. She felt it wasn’t a question of the Committee suggesting a change from the State’s steep slope restrictions. She stated that the Committee had to decide whether to treat all slopes the same or allow the areas of dense development to expand.

Mr. Paul pointed out that the State has always had three or four districts in the Shoreland Zone that the Town didn’t include in its zoning. He stated that even if the Committee decided on a provision that would benefit the property owners, the residents will still be hesitant to accept it

because they don't understand what and why something is being proposed. He mentioned that if there are to be new Resource Protection Districts, the property owners must be notified.

Ms. Crockett pointed out that the CPIC has already voted on this issue and decided that what will be put before the voters is that the Committee understands it will be a hardship on the affected property owners. She mentioned there was a discussion with the Lake Association representatives regarding whether this proposal should be voted in with a three year time period before it would go into effect, but it was felt that doing so would only make the property owners who want to expand do it now rather in the future. She said the idea is that while we understand it [the impact the decision will have on the property owners] that is what the Committee has decided. She said this is what is being put before the voters.

Mr. Cashin advised that any decision the CPIC makes can be amended after it is reviewed by the Planning Board. He stated the CPIC needs a vote from the Planning Board and if the Planning Board revises some of the work done by the CPIC, that is how it is. He said that the Committee has to be clear as to what represents "densely developed" and how to treat it. He mentioned that he will have an answer for the Planning Board at the next joint Meeting.

E. **OTHER BUSINESS**

There was no other business to come before the Board

F. **ADJOURNMENT**

The Meeting was adjourned at 8:50 PM.

Respectfully submitted,

ANNA M. WILLIAMS,
Recording Secretary