

**TOWN OF UNITY
LAND USE REVIEW COMMITTEE MEETING MINUTES
JULY 16, 2014
LOCATION: UNITY MASONIC HALL, UNITY, MAINE**

MEMBERS IN ATTENDANCE: Jim Kenney, Barry McCormick, Randy Reynolds, Charlie Porter

MODERATOR: Jim Kenney

OBSERVERS: Garrett Morrison

RECORDER: Sherry Powell-Wilson

18:34:24 Jim Kenney: We have come to 6:30. We had gathered here last week and it was Sherry, Garrett, Charlie, and I and we decided to do no work. What is outstanding is Barry wants to give us a proposal, Garrett has done a review and has suggestions to improve our document and sharpen it and that needs to be worked through. You have the Minutes from two weeks ago.

18:36:02 Randy Reynolds: I make a motion to accept them as read. [Seconded.]

18:36:05 Jim Kenney: They are accepted.

19:01:27 Jim Kenney: The changes are not all that different. The key is that I hear and we settle, and are clear because I do follow what Sherry has typed down.

19:01:54 Garrett Morrison: Just a question about where it says Unity was incorporated in 1804, why is that in there?

19:02:02 Jim Kenney: I put that in there, that's the only reason it's in there.

19:02:09 Garrett Morrison: I don't mind having it in there but it's kind of out of place.

19:02:14 Jim Kenney: It need not be there. This was actually taken when I was looking, it's on the front of every Town Warrant just like that, and that's why I came up with the idea.

19:02:33 Garrett Morrison: If we do put it in there, we could have Town of Unity, Maine, and in parentheses have that incorporated in 1804. Now, Jim, I have a number of places where I've made marks related to the formatting, table of contents.

19:03:05 Jim Kenney: That is driven by the word processing.

19:03:11 Garrett Morrison: For example, if you go to page 3, top of the page you've got 2.71, 2.72, 2.73, and the indentation of application is greater than the indentation of the first two.

19:03:16 Jim Kenney: That will come...that entire table, once we get everything ironed out, I'll go back and line it up.

19:03:50 Garrett Morrison: On that same page three, item 2.10.1, nuisance is not defined in this document.

19:04:26 Jim Kenney: We took nuisance out and put that into another document.

19:04:37 Randy Reynolds: That's in Property Maintenance, right?

19:04:43 Jim Kenney: Let's see what the words are. That's a good find. Here's what happens here, I took in the other one but I didn't take this paragraph out. The header, I took the words but not the header.

19:05:43 Garrett Morrison: On 13.7.1, page 6, of the table of contents, just note that the next item is 13.7.3.

19:06:15 Jim Kenney: We dropped something, and the good news is let's go look at that. What I was pointing out is if you change anything it alters the table, I didn't go back and update the table of contents.

19:07:25 Garrett Morrison: Page 8 section 1, item 131, affordable, we haven't defined that.

19:07:40 Jim Kenney: To allow residential and commercial growth. Does that work?

19:07:47 Garrett Morrison: Right, again, what is affordable? You can't define it.

19:07:55 Jim Kenney: Agreed to allow residential commercial growth while preserving row of character. Does that work? [Yes.]

19:08:08 Garrett Morrison: Going to 1.99, amendments, in the first one, a written petition of at least 25 voters registered to vote in Unity file with the municipal officers and what is suggested here is within X days of the Town Meeting so it won't be done the night of the Town Meeting. I don't know what days that should be.

19:08:55 Charlie Porter; Well, you can have a special town meeting. That's why it's written this way. If you right now had something that you felt had to be resolved, you can gather up 25 people, go to the Town Office, and I think they have to hold a special town meeting.

19:09:19 Jim Kenney: They do.

19:09:20 Garrett Morrison: But it doesn't have to be held at night? That's the point here, that if you're going to hold this special town meeting that it's done in such time that people get notice of it.

19:09:35 Jim Kenney: What's he saying is there is a process.

19:09:44: Barry McCormick: That is spelled out in the Ordinance somewhere.

19:09:51 Garrett Morrison: It's amendment 1.9.1, last sentence, meaning you can place this on the Warrant with the permission of at least 25 voters who vote in Unity, filed with the municipal officers, and he's saying some number of days before this meeting is scheduled to occur.

19:10:16 Charlie Porter: The process doesn't go that way.

19:10:19 Jim Kenney: Once that petition is filed it is then within the confines of the officers, the Selectmen and the Clerk. This is trying to let the citizens know they can make amendments to this document. Is there a way to fix it?

19:10:46 Barry McCormick: It's very simple. It's spelled out in here somewhere how that works. Like he said, Sue has to get out in the papers 7 to 14 days prior to any meeting.

19:11:06 Charlie Porter: I just posted a Warrant for special town meeting today.

19:11:17 Jim Kenney: Garrett, I think it is covered.

19:11:22 Barry McCormick: If I could find it for you we could slide it right there. Anything voted on has to be in the newspaper 7 or 14 days prior to the meeting.

19:11:37 Jim Kenney: This is not setting up the process. This is letting an applicant know what will happen. The process of a special town meeting is under the control of the Selectmen and by State charter what has to be done.

19:12:02 Garrett Morrison: I'm reading this, you go in to amend the Ordinance, and you can have this placed on the Warrant of the Town Meeting by at least 25 voters, and there has to be something somewhere that says what kind of time period they have to have acted in to get it into the Warrant.

19:12:22 Jim Kenney: I see what you're saying. This petition will drive a special town meeting. It's not the annual meeting. This can drive the meeting in and of itself. Paragraph 2.

19:12:29 Charlie Porter: Any meeting. Special or regular, it doesn't matter.

19:13:05 Jim Kenney: What is generally done, in my experience, if it was something that was critical it would be held all by itself. I'll use by example the closing and moving out of Clifford Commons. That was a single discussion special town meeting but a lot of town meetings have a couple of things out there hanging and are brought together because it costs money to have a town meeting.

19:13:38 Garrett Morrison: What I'm questioning is if somebody comes into the Town Office and says we've got signatures of 25 people and we're going to meet tonight.

19:13:49 Jim Kenney: That's not the process.

19:13:59 Garrett Morrison: Moving on to page 11, section 2, 2.1.1, Board of Selectmen, this is saying the Board of Selectmen shall provide the necessary authorization and support. Can we tell them what they shall do?

19:14:30 Charlie Porter: They're supposed to be doing that now.

19:14:35 Barry McCormick: I don't think this committee can.

19:14:39 Garrett Morrison: That was my point. We're coming up with what will be the Land Use Ordinance and this will be shall if everybody approves this Ordinance. It sounds as if we're telling the Board of Selectmen how they must act.

19:15:00 Jim Kenney: Yes, but what this paragraph is doing is telling the Selectmen they also have to consider charging the CEO to enforce this document.

19:15:12 Barry McCormick: And I don't look at it that we're telling them, it's the Town of Unity.

19:15:20 Jim Kenney: This is as much a reminder as anything else.

19:15:26 Barry McCormick: And, for the record, as soon as we finish this, this committee will be dissolved.

19:15:50 Randy Reynolds: That's going to be after all the town meetings and public meetings.

19:15:58 Garrett Morrison: On page 13, permits required, Section 2.5.2, a person must obtain a permit before engaging in any of the following activities, where it says constructing, expanding or paving of certain parking lots, I think certain leaves this a very indefinite approach because we don't know what are certain parking lots or other uncertain parking lots or not.

19:16:47 Jim Kenney: We would drop the word certain?

19:16:50 Charlie Porter: Just drop the word certain.

19:17:12 Garrett Morrison: A question raised here, does this paving because this is the first one talking about constructing a new driveway or road, and the second one we're talking about and existing situation, and the question is, does this also require a permit if you're going to repave an existing surface?

19:17:43 Jim Kenney: No, you can repave within the perimeter that exists.

19:17:53 Garrett Morrison: Under 2.7.2 on page 15, Special Requirements, down under 2.7.22, the word in question here is downtown because previously it has been the village district.

19:18:38 Randy Reynolds: It should be village district.

19:19:05 Garrett Morrison: Next sentence in that same paragraph, it says to assess adequate either the proposed design. Either doesn't belong there.

19:19:31 Jim Kenney: Agreed. To allow the Planning Board to assess adequately the proposed design, but not either.

19:19:53 Garrett Morrison: On the next page under 2.8.1, Building Permits, in the first paragraph on the page, a site visit should occur within 10 business days after the application is submitted to the Town Clerk. It seems to me that that is not necessarily workable because it depends on the performance of

the Town Clerk, and if they didn't do anything with it for 9 days. I think it would be better to say within 10 business days after the application was acted on by the Town Clerk.

19:20:49 Jim Kenney: Let's have Charlie explain to us. I think what the Town Clerk does is put it in his basket. All that is just a, there is no action that has to be taken by the Town Clerk other than take from the applicant and put it in Charlie's mail slot.

19:21:09 Garrett Morrison: Is there any area that it might not be done, that it gets set aside.

19:21:14 Charlie Porter: There is always something. I'm usually there every day.

19:21:29 Barry McCormick: Should we rephrase it so it's not the Town Clerk?

19:21:38 Jim Kenney: The CEO is not in the Town Office on published hours. The Town Office is open and occupied by the Town Clerk during published hours.

19:21:52 Barry McCormick: She may get it today and Charlie may not get in there for three days.

19:21:59 Garrett Morrison: We're having to do this for whomever in that capacity.

19:22:07 Charlie Porter: I don't see anything wrong with it. It's the code enforcement officer's job to go in there and see if there is anything. Usually, he gets a phone call before that from the applicant and we hash over what's going on and I'll tell him to go down to the Town Office, get an application, fill it out, and bring it back to the Town Office.

19:22:32 Garrett Morrison: Can we in some fashion combine the receipt by the Town Clerk and the conveyance of that to you so that it happens within a day of something like that. What I'm concerned about is the applicant sitting there, waits his 10 days and goes in and the CEO says, oh yeah, I got that yesterday, and I haven't had a chance to read it.

19:23:11 Charlie Porter: Okay, the way this is made, everything has to go to the Planning Board. Now, it can be the day after the Planning Board meeting that Ray comes in with an application. Now he's got to wait a month or more.

19:23:34 Garrett Morrison: I'm speaking from experience, not with the Town of Unity, but with the State of Maine, DEP, I'm trying to say that we're going to write something here that governs the activity. We should protect the applicant as well as the Town.

19:24:01 Barry McCormick: Has it been an issue before?

19:24:09 Charlie Porter: No, if I'm not here we have a Deputy Code Enforcement Officer, Dave Schofield, the plumbing inspector. If I go on vacation, it's covered. Sue is pretty good about that. If there is something hot and heavy she'll pick up the phone and call.

19:24:33 Garrett Morrison: That would be the site visit should occur within 10 days after the application was submitted to the Town Clerk and conveyed to the Code Enforcement Officer.

19:24:53 Charlie Porter: That's fine.

19:25:13 Garrett Morrison: Go down to 2.8.1.4, is there a deputy. There is no reference to him in the document. J

19:25:40 Barry McCormick: That would be Dave Smith at this point.

19:25:49 Randy Reynolds: Deputy CEO of the Planning Board.

19:26:04 Charlie Porter: Hold on, the CEO is not on the Planning Board. What does it say?

19:26:04 Jim Kenney: That is a misnomer. I'll read it, the CEO, or Deputy CEO of the Planning Board. There is a Deputy CEO but 'of the Planning Board' needs to be taken out.

19:26:48 Garrett Morrison: Go to 2.8.5, Lot Permit, the Town Clerk shall forward a copy of the received application for a lot permit and my question is, is the lot permit the same thing as a building permit?

19:27:08 Charlie Porter: No, if you want to whack off a piece of your land to give to your kids or sell, it has to go through the town. The biggest reason is so we know it's the legitimate right size.

19:27:27 Randy Reynolds: Not only that but you've got to make sure it goes to the right owner and the taxes come out because of that.

19:27:34 Garrett Morrison: Should we have a definition of lot permit because it's not in there.

19:27:43 Jim Kenney: Let's find out.

19:27:48 Barry McCormick: Right here, 2.6.6, a lot permit shall be obtained in the Unity Town Office or CEO for the creation of any new lot other than for a subdivision.

19:28:12 Charlie Porter: Every once in a while we get one but there hasn't been that many over the years.

19:28:20 Jim Kenney: Garrett, does that cover it for you?

19:28:24 Garrett Morrison: Yes, to be acted upon within 10 business days of receipt. Does that mean receipt by the Town Clerk?

19:28:38 Charlie Porter: Yes, her receiving it. They don't usually charge for them. A lot of towns do.

19:29:05 Garrett Morrison: It just was a question in my mind because it almost sounds like an indefinite object here. The Town Clerk shall forward a copy of the received application for a lot permit to the CEO to be acted upon within 10 business days of the receipt. That could be receipt by the Town Clerk or receipt by the CEO.

19:29:33 Charlie Porter: The CEO has received it to be acted upon within 10 business days.

19:29:46 Garrett Morrison: We could just add receipt by the CEO. A question in that same sentence, the CEO shall approve. Should this Ordinance be saying shall or is that something that...

19:30:15 Charlie Porter: What's the difference?

19:30:18 Jim Kenney: Charlie, are you the one to approve all applications that meet lot requirements?

19:30:26 Charlie Porter: Right now, yeah, except for subdivisions.

19:30:32 Barry McCormick: Shall is the word.

19:30:39 Charlie Porter: The Planning Board can do it.

19:30:44 Jim Kenney: May, may, the CEO may approve. The word all would be dropped, the CEO may approve applications that meet the requirements. Right?

19:30:56 Barry McCormick: I don't think we've got a choice if it meets. He doesn't have the option to not approve if it meets the lot requirements.

19:31:13 Jim Kenney: Charlie just said that it might go to the Planning Board?

19:31:18 Garrett Morrison: That was the question we discussed.

19:31:18 Jim Kenney: The way it would work, the CEO may approve applications that meet the requirements.

19:31:28 Garrett Morrison: Let's back up here just a second. If we are going to say shall in this paragraph, bear with me, says shall approve, then it may be the CEO or the Planning Board, if can be referred to the Planning Board but one of those two shall and the question is by doing this, we're avoiding the potential that everybody meets the lot requirements of this Ordinance, but somebody doesn't like it and won't approve it. By having shall we've made it so that it's mandatory to obey the law.

19:32:16 Charlie Porter: Any thing I do or anybody else is subject to an appeal, the Appeals Board or Superior Court so anything is not final. If you feel strongly about something enough there is recourse.

19:32:46 Garrett Morrison: I want to ask first, is it proper for what we're writing, as an Ordinance here, to direct anybody by saying shall. And if we do, but you don't want to leave it as being able not to obey the law.

19:33:11 Charlie Porter: There are circumstances, let's say around the Shoreland Zone, high-value wetlands that I would not want to touch with a 20-foot pole.

19:33:31 Garrett Morrison: Because you're questioning whether they meet the requirements of the law and I'm saying if you know that they do, and you say I don't like you so I'm not going to approve it. That's why the shall is in there.

19:33:48 Charlie Porter: No, no no. There again, you have the right of appeal if you don't like any decision I make.

19:33:55 Garrett Morrison: Coming back to if the applicant meets all of the condition as demonstrated and paid whatever fees, if there are any that apply, and says okay I'd like to get a lot permit and you say no because I don't like you so I'm not going to issue it. You're just causing the applicant to undergo more time and effort and more money.

19:34:18 Charlie Porter: But you've got to justify not giving him that. Period.

19:34:29 Barry McCormick: Under what condition would you not approve a lot that meets the requirements? Other than that you shouldn't be able to do that.

19:34:38 Charlie Porter: I could hate the guy's guts but I still have to give him the permit.

19:34:46 Jim Kenney: If you abide by your code. There are other people who do not abide by their code.

19:34:53 Garrett Morrison: And all you have to do is look in today's newspaper to find out about that. If you leave the "shall" in I would suggest that you say the CEO or the Planning Board shall.

19:35:07 Jim Kenney: The CEO or the Planning Board, right? [Yes.]

19:35:27 Garrett Morrison: Go down to 2.8.6.3, create any noise, odor... in such circumstances the Planning Board shall consider permit application in consultation with the CEO. The Planning Board and CEO may only deny a permit, should be deny a permit only if some requirement of a local ordinance or state law is not being met.

19:36:16 Randy Reynolds: 2.8.6.3 should come out completely. We took that out. We didn't want anything to do with that. Remember, John was going to go back and find something? We decided to stay away from that one.

19:36:38 Garrett Morrison: Over to 2.10.3, the municipal officers are authorized to [inaudible] administrative consent agreements for the purpose of it says eliminating violations. What I'm suggesting here for the purpose of resolving violations.

19:37:09 Jim Kenney: That's a better choice of words.

19:37:22 Garrett Morrison: In the next sentence, such agreements where it says shall, where it says not allow an illegal structure or use but rather to read such agreements shall take into consideration, continuing unless there is clear and convincing evidence.

19:38:02 Jim Kenney: So we're striking not allow an illegal structure or use to continue, we're striking that? [Yes.] Such agreements shall take into consideration there is clear and convincing evidence that the illegal structure.

19:38:23 Garrett Morrison: I struck also here, I took 'for use was' and I eliminated that. It would read, there is clear and convincing evidence that the illegal structure constructed was conducted as the result of erroneous advice given by an authorized municipal official.

19:38:43 Jim Kenney: I didn't catch all that you skipped. That there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a result of erroneous advice given by an authorized municipal official. We're dropping the word direct, right?

19:39:19 Garrett Morrison: Leave direct in there. Let's start with such agreements shall take into consideration. Cross out continue and...

19:39:45 Jim Kenney: I'm striking out an illegal structure or use to continue unless. This will read, such agreements shall take into consideration there is clear and convincing evidence that the illegal structure or use was constructed or conducted....

19:40: Garrett Morrison: Such agreements shall take into consideration, then it is a there is clear and convincing evidence that the illegal structure was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith. What we're talking about is the agreements entered into by municipal officers.

19:41:19 Charlie Porter: It's a consent agreement. I understand. I don't like the word authorized. Who authorized the municipal official to do anything except at Town Meeting.

19:41:40 Jim Kenney: You are the Code Enforcement Officer of Unity, you've been authorized by the Board of Selectmen to represent Unity and you might give bad advice.

19:41:51 Charlie Porter: This has happened. You're the Selectmen, somebody comes to you and says, well, I want to build this and you say, ahh, don't worry about it, go ahead and build it. Right there he's legal. If he builds on your okay, the Town cannot do anything.

19:42:19 Jim Kenney: So what you're saying is any municipal official and not an authorized because Selectmen are elected...so you would drop given by a municipal official and authorized Garrett, can you draw up a straw man and send it out by e-mail or do you want to nail it down tonight?

19:43:13 Garrett Morrison: What I was going to say right now, where this says as a direct result of erroneous advice, I don't think anybody should be convicted of not giving good advice.

19:43:28 Charlie Porter: But it happens all the time.

19:43:38 Jim Kenney: You're suggesting dropping the word erroneous?

19:43:43 Garrett Morrison: No, advice because advice is not a very confining legal term. If we going to a consent agreement I would say, yeah, we'll take responsibility for this then it has to have been erroneous permission. Or it town official.

19:44:15 Jim Kenney: Permission.

19:44:18 Charlie Porter: That's great.

19:44:29 Garrett Morrison: Are we taking out and authorized?

19:44:34 Jim Kenney: Yes, it's going to be by a municipal official.

19:44:45 Garrett Morrison: Well we skipped over to section 4. At the beginning 4.1.1, introduction, and the suggestion was made where you're saying 2 baseline districts in Unity, there is a map reference sited in that statement? As to where they can see these.

19:45:24 Jim Kenney: What is being suggested is that we direct them to the Town Office. All four districts delineated on the land use map as incorporated in this Ordinance, which are available at the Unity Town Office.

19:46:04 Garrett Morrison: Well it references here just two baseline land use districts.

19:46:17 Jim Kenney: There are two overlays.

19:46:19 Randy Reynolds: Aquifer and Shoreland.

19:46:29 Garrett Morrison: Let's go back to this paragraph because there are two baseline land use districts in Unity, the village and the rural. All land in town is in one of the two districts. We've defined it as being two, as village and rural, and then these others are referred to as overlay districts and they are overlaying on one of those two?

19:47:01 Jim Kenney: Actually the Aquifer and Shoreland can be in either or all.

19:47:13 Garrett Morrison: If you draw a map that shows the Village District and the Rural on one map, you can take an overlay that shows the Shoreland and put it over those, and so those may encompass parts either of the other two, but they are overlay districts as opposed to trying to break the others into four parts. That's what this says. By referring to the four districts, that's not what this says.

19:47:46 Charlie Porter: I see what he's saying.

19:47:49 Jim Kenney: All districts are delineated. We drop the word.

19:47:58 Barry McCormick: But all four are delineated in that map.

19:48:03 Garrett Morrison: What you've done is this primary definition is to break the Town into two districts, and then with overlays you have added two definitions of areas that they fall in, either of those two districts, but the overlays show where they are. It's not a 4th district, it's an Aquifer Protection District or Shoreland District, which is defined by the area that it covers by an overlay on the two. I would strike where it says all four, and just say all districts. In the 2nd sentence after Village District and Rural District I think it should say all land in town is in one of two districts. All land in town is in one of these two districts.

19:49:46 Garrett Morrison: And then take the four out of that.

19:49:50 Jim Kenney: All four districts delineated on the land use map which is incorporated into this Ordinance and maps are available at the Town Office.

19:50:13 Garrett Morrison: Section 5.1.1.3, and the suggestion here is to strike the term in the 2nd sentence that says regardless of size so that 2nd sentence would read the applicant must show that a proposed lot can be provided with adequate subsurface wastewater treatment before a building permit can be granted.

19:50:59 Jim Kenney: That means all things within the Village District.

19:51:13 Garrett Morrison: Check 5.1.1.2, I think we're looking at a duplication here. Page 25. It says must show that a proposed lot regardless of size...that's the same thing up in... 5.2.1.6. On 5.1.2.3, have we defined odd or narrow? Odd-shaped lots in which narrow strips are joined.

19:53:08 Randy Reynolds: How about strange? Irregular-shaped lots. Comparatively narrow strips.

19:53:56 Garrett Morrison: If you said here narrow strips in which the length is more than five times the width.

19:54:11 Randy Reynolds: I think we've got this covered somewhere else.

19:54:28 Charlie Porter: I can't see the reasoning between 5.1-2-3. You create a conforming lot and you've got this piece of junk in the middle of two lots, why can't you divide that in half to create two bigger lots? You can at the lake.

19:54:58 Garrett Morrison: You could but I think what he's talking about here, at least the way I read this is that you're saying you have a 10,000 square foot minimum lot size and it's 8,000 feet so you go to your neighbor and you buy a two-foot wide section so you can get out back someplace. It is contiguous and now you're connected with this thing that is three feet wide. That's what this is trying to obviate. Where do you think you've seen that restriction on the narrow? Randy was saying he thought this is in there somewhere.

19:56:11 Randy Reynolds: You can't go over 5-1, that's called a spaghetti lot. They don't allow that because what you do, you come in, road frontage is say 100 feet wide here, you just develop the front with no way to get to the back. Five times longer than it is wide.

19:56:56 Garrett Morrison: How do they define it as a spaghetti lot? That may be the way we define a narrow strip is to adopt the same five to one. In a situation where somebody in town but not on the sewer needs to put in a leech field and they want to meet the 10,000 square foot minimum or whatever, you could accomplish it putting a two-foot wide strip and if you want to say that's not something we want it see done, odd-shaped or narrow, to define that as being a strip that is more than five times the length of the width.

19:57:41 Jim Kenney: We can insert that here.

19:57:47 Randy Reynolds: I don't know what it would do down the road, the ramifications.

19:58:11 Garrett Morrison: This isn't a lot, this is a strip that joins two lots.

19:58:16 Meeting closed.

Respectfully submitted,
Sherry E. Powell-Wilson, Notary Public
Approved: