

October 13, 2009
Planning and Economic Development Board - SPECIAL Meeting
Sanford Hall, 155 Village Street

BOARD MEMBERS PRESENT: Andy Rodenhiser, Bob Tucker, Chan Rogers, Tom Gay, Karyl Spiller-Walsh

ALSO PRESENT: Susy Affleck-Childs, Planning and Economic Development Coordinator

Gino Carlucci, PGC Associates
Brian Snow, Conservation Commission
Tony Pachelco, FinCom
Tom Holder, DPW Director
Dave Travalini, Conservation Commission
Dave Pellegrini, Tetra Tech Rizzo

The meeting was called to order at 7:04 p.m.

CITIZEN COMMENTS

Andy Rodenhiser – A citizen had called Susy and said she would come in regarding 5 Forest Road. She is concerned about a fence around a detention pond on her property that she said the Town had constructed. Forest Road is unaccepted. The fence is deteriorating. She would like the Town to take care of it. She is not yet here.

Susy Affleck-Childs introduced Tom Holder, the new Medway DPW director

Tom Holder – A lot is familiar, getting a handle on new locations, in time I am sure I will have it organized.

Andy Rodenhiser – Is there anything specific that you bring to the table that you would like us to work on, that we could be of service to you to help you get oriented?

Tom Holder – It is early. I haven't come up against anything yet, but you are already talking about accepted or not accepted streets. Those are the types of things I will work on with this board collaboratively to try to find common ground. I am sure we will be working together in the future.

Andy Rodenhiser – We want to be collaborative, that is how we function. So please have a two- way dialogue. If you need us to be cognizant of something or things that need attention, please don't be bashful on things we could improve. As you make policy changes, please share with us so we can be mindful.

Tom Holder – Through Susy Affleck-Childs I will be happy to do all of that.

Minutes of October 13, 2009 Meeting
Medway Planning & Economic Development Board

Approved – October 27, 2009

Andy Rodenhiser - If there is a hot issue, I am sure you can count on Susy Affleck-Childs to come to you.

Tom Holder – As we progress toward starting capital projects, I am sure there will be some things your board will need to make decisions on.

MEETING MINUTES

A motion was made by Karyl Spiller-Walsh, seconded by Bob Tucker to approve the Planning Board meeting minutes of 9/22/2009. The motion was approved unanimously.

A motion was made by Karyl Spiller-Walsh, seconded by Bob Tucker to approve the Planning Board meeting minutes of 9/28/2009. The motion was approved with all but Tom Gay voting yes.

OTHER BUSINESS

Susy Affleck-Childs – I want to update on PB meeting secretary position. There was an ad. We have received several resumes. There is another position for a secretary for the Capital Improvements Committee so we may combine interviews.

I apologize; I meant to prepare a motion for you on refunding the balance of the Blueberry Hill Road bond. I let that slip.

PUBLIC HEARING CONTINUATION ON DANIELS VILLAGE ARCPUD SPECIAL PERMIT (7:20 P.M.)

Betty McCall Vernaglia – I am still on hold. I am trying to work out something with the Trust for Public Land. That is my first choice. But I do have a prior offer of first refusal. That is a legal matter that I need to take care of. I am still optimistic. I would like to continue the public hearing.

Andy Rodenhiser – Are you willing to pay for the cost to renotify the public when you do decide to come back? We need to be fair to everybody.

Betty McCall Vernagli agreed.

The public hearing was continued to April 13, 2010 at 7:15 pm.

Betty McCall Vernaglia will contact Susy Affleck-Childs a month ahead of time re: status.

Chan Rogers – May I recap this? The developer who backed out is out of the picture. Now the owner wants to consider the various options.

DISCUSSION ON PROPOSED ZONING BYLAW AMENDMENT RE: HOME BASED BUSINESSES

Andy Rodenhiser – Susy Affleck-Childs sent out a draft to the PB members.

Minutes of October 13, 2009 Meeting
Medway Planning & Economic Development Board

Approved – October 27, 2009

Tom Gay – I said I didn't have any real problems with it, but I did have some questions that - I bumped into a few things that I wasn't quite sure about. Re: the definition of a home based business – does that open the door to someone who is a renter being allowed to have a business?

Chan Rogers – I am concerned about someone doing this as a renter.

Andy Rodenhiser – What if an employee takes up that residency? I got an email from somebody who was complaining about the way the town is falling into some disrepair with respect to some various properties, owner vs. non owner occupied, and the impact this has on our community. Chan Rogers's point may bring to light – if there is a person who just rents, would this apply to them?

Karyl Spiller-Walsh – You are very protected by what is in the text. The primary use has to be and appear residential. You can't change the nature of residential character.

Tom Gay – My concern is owner occupied vs. renter occupied.

Gino Carlucci – If anybody exceeds the standards here, then they could seek a special permit.

Chan Rogers – The key issue is whether a renter would be allowed.

Gino Carlucci – You can't use zoning to regulate the ownership - only by use. Even a renter would have to meet the standards.

Chan Rogers – I think you can control this and limit it only to owner occupants.

Susy Affleck-Childs – We need to seek legal counsel on this, whether home based businesses can this be limited to owner occupants.

Andy Rodenhiser – I would think fines would accrue.

Susy Affleck-Childs – page 8 of the Zoning bylaw text specifies the fees.

Andy Rodenhiser – perhaps companion legislation to adjust the fees.

Bob Tucker – This provides discretion on the part of ZEO – I'm not sure I agree with that. We have always tried to be equitable across the board.

Tom Gay – What latitude do we have? Are we opening the door...?

Karyl Spiller-Walsh – I think this is actually pretty restrictive.

Minutes of October 13, 2009 Meeting
Medway Planning & Economic Development Board

Approved – October 27, 2009

Andy Rodenhiser – It is providing an avenue for all those businesses out there to get into compliance so that the town can enforce those that are not in compliance.

Tom Gay – Perhaps there could be some limitation on storage in unheated structures to stop someone from constructing a huge barn or multiple sheds.

Gino Carlucci – The intent is the measurement of the heated space is where you are living.

Tom Gay – concerned that we might be opening the door to a population of sheds – as written, there is no real limitation

Andy Rodenhiser – What about the Quonset hut type structures?

Andy Rodenhiser – The fact that it is ventilated and heated is one thing – what about fire code?

Gino Carlucci – Those would have to be met, too. Those aren't zoning issues.

Tom Gay – I am afraid it pushes them outside the scope of the

Karyl Spiller-Walsh – Would it be helpful to call out the use of existing buildings?

Andy Rodenhiser – Could we limit this to existing buildings at the time this is adopted?

Tom Gay – Is this more about percentages?

Bob Tucker – We need to control the useable area as it relates to the residence and then maybe back into an allowable storage area based on lot size so you are not putting a mega mansion barn on a 10,000 sq. ft lot. You don't want things out of place.

Karyl Spiller-Walsh – with the way it is written, that should be understood

Bob Tucker – Ideally, you would want these businesses to grow up and out. We really need to have some place they can move to.

Chan Rogers – What is the impetus for all this?

Susy Affleck-Childs – The new Building Commissioner asked. He said there is not much guidance in the bylaw about what home occupation businesses need special permits.

Andy Rodenhiser – It forces these businesses to make use of commercial space that is available.

Tom Gay – on item number #3 re: one non-resident employee with parking. That may limit doctors' offices.

Susy Affleck-Childs – Only by right, they could still seek a special permit.

Minutes of October 13, 2009 Meeting
Medway Planning & Economic Development Board

Approved – October 27, 2009

Tom Gay – What about multiple people in multiple portions of the building having multiple businesses?

Andy Rodenhiser - The tenant could have a business, as well as.

Gino Carlucci – Only one visitor at a time per premises.

Andy Rodenhiser- What about trucks coming and going from my home? How is that going to suit the neighbors? A wholesaler delivering bulk quantities? the text may be a little vague . .

Tom Gay – commercial vehicles – I had one other question. how about a (non-commercial) vehicle that is all painted up but is used in the business. it could all be parked in the driveway – is that a concern? That is like a sign all over the yard – even if they were lightweight pick up trucks, they function as mobile signs –

Andy Rodenhiser – I would be concerned about a big panel truck that gets a sign parked on it and is never moved -

Gino Carlucci – if 3 members of a family all work in separate businesses and each has a pick up truck with the business name on it, there are no limitations on that as a sign right now.

Andy Rodenhiser – some language to not regulate that kind of situation

Bob Tucker – item 5 – Excessive or offensive noise should be better defined – we should be specific – not subjective.

Andy Rodenhiser – Could we tighten it up?

Susy Affleck-Childs – default to the noise section of the bylaw

Chan Rogers – We are supposed to be preserving the qualities of a residential neighborhood.

Andy Rodenhiser – quiet enjoyment

Tom Gay – one other question re: any prohibited – why those specific types of businesses?

Susy Affleck-Childs – saw these types on other towns' lists of prohibited home occupations

Susy Affleck-Childs – Do you want to put this forth for fall town meeting.

Tom Gay – We try to tackle too much. Maybe we should be listing and prioritizing them and working off a list in an organized fashion. I am concerned that we are not giving enough time to do this right.

Bob Tucker – I don't think this is going to be ready for this go around. The subject has way too many implications and trying to plug the holes in the sinking ship at this point in time.

Susy Affleck-Childs – So we won't have anything for this fall town meeting.

Minutes of October 13, 2009 Meeting
Medway Planning & Economic Development Board

Approved – October 27, 2009

PUBLIC HEARING CONTINUATION – SITE PLAN MODIFICATION FOR 4 MAIN STREET

Bob Potheau - I have copies of my comments on Susy Affleck-Childs's draft master sign plan to discuss tonight

One of the problems we have is someone driving and knowing where to access the site – we need to get permission from the adjacent abutter (Ellen Rosenfeld) to use 6 Main Street as an address for our site. There is also room to use 8 Main Street as an address. (NOTE – The next westerly business is Swenson Granite, 10 Main St).

I did adjust what you had on file – it – this becomes very clear – to use 2, 4, 6, 8. We are most concerned about the safety of someone who is driving.

John Williams – Is there any concern about emergency vehicles being able to respond to you at your home? I would suggest that every structure has its own address.

Bob Potheau – 4A would work for me. I have also included notes on the existing billboard. I want to keep that.

Gino Carlucci – I think it is grandfathered for what is already there.

Bob Potheau – I want people to recognize that it is part of master sign plan. I will want a continuation of this public hearing. I am leaving for Florida for several months.

Bob Potheau – I want a sign to be attached on the front of the middle barn building. It may be used for a business that is located in the rear of the westerly building. I have a national tenant but they need a Main Street sign.

Bob Potheau – I am coming in to take down a building. It is nonconforming and grandfathered. I am turning the property into something that is conforming.

This sign – people would pull into the driveway and see the business right there. I am not asking for anything that is terrible. But this is a deal breaker. I have tenant that wants to take the building. I am asking for an accommodation from the town. What I am giving up is a 3,000 sq. ft building (by doing this demolition).

Karyl Spiller-Walsh – Was that building actually condemned?

Bob Potheau – I am asking for a sign you see along Route 109. I am being upfront now.

Andy Rodenhiser – I remember being at a DRC meeting. I remember you saying that you would take down the building.

Bob Potheau – No, I remember saying that I would keep the building, and come in with a renovation plan.

Minutes of October 13, 2009 Meeting
Medway Planning & Economic Development Board

Approved – October 27, 2009

Karyl Spiller-Walsh – There was really both discussions

Bob Potheau – We are both right

Tom Gay – There have been a couple different things discussed here - you are planning to take the front down.

Bob Potheau – Yes, that is what I have applied for, as part of the application is a master sign plan. The only sticking point is the sign. Is there something that does not require ZBA approval? I am not asking you to do anything. I am looking for guidance

Susy Affleck-Childs – there are two issues – amount of signage and location of signage

Bob Potheau – I was hoping for some input on what you felt was best, and I would like to go to the ZBA for the special permit for the second development sign with your support. I am not pressing for anything immediately. What is your best wish?

Susy Affleck-Childs – We need to determine whether the bylaw provides specificity that a sign has to be actually on the building where the business is located - this is tricky because there are provisions for off-premises signs, but the sign he wants is on the premises but just may not be on the actual building where the business is located.

Andy Rodenhiser – In the numerous people I have talked to and suggested they go down and talk to Bob about tenants – universally, the conversation goes to the way that the middle building looks – and so whatever he does with it, he will do with it.

Bob Potheau – We all know it makes the most sense to take it down.

Andy Rodenhiser – It makes the most economic sense to take it down because it increases the value of the other buildings. Even the signage you choose will have an impact.

Bob Potheau – I have had a lot of people who have wanted to rent there – I would like to see in the office up front such as a large eye glass place or a sports rehab center. What I am asking to do is to have a tasteful sign on that building. The business would be right there off the driveway.

Bob Tucker – We need to continue the public hearing?

Bob Potheau – I will be out of town but I will fly back.

John Williams – I would suggest you give us some digital photos.

Andy Rodenhiser – Take a ride down there.

It was agreed to continue the public hearing to Tuesday, March 9, 2010 at 7:15 pm

Minutes of October 13, 2009 Meeting
Medway Planning & Economic Development Board

Approved – October 27, 2009

PROPOSED CONCOM RULES AND REGULATIONS

Reference to review letters dated October 8, 2009 from PGC Associates and Tetra Tech Rizzo Associates. Both are attached.

Andy Rodenhiser – I would like to see specific recommendations in all cases

Dave Pellegrini – We can look at that some more

Andy Rodenhiser – Dave Travalini, chairman of the ConCom is here.

Dave Travalini – Town Counsel is looking at the revised draft. She will be getting us some comments.

Dave Travalini – Our rules and regs say the buffer zone is a resource area. It turns out her reading of the bylaw is that it does say that the 100 foot buffer area around the wetland or vernal pool is a resource area. She is going to look at that and give a final clarification.

Gino Carlucci – I said there is confusion in the bylaw.

Dave Travalini – Gino Carlucci said that in his original letter.

Bob Tucker – People were interpreting that there was now going to be a 200 foot buffer area.

Dave Travalini – there is nothing that states you can't do any work in a resource area. Ours is a fairly common bylaw writing. It is fairly standard boiler plate per MACC (Mass Association of Conservation Commissions). Generally towns that have a similar bylaw have 100 foot around a wetland as a resource area but there is no additional area beyond that.

Andy Rodenhiser – So the 100 foot area as a resource area.

Dave Travalini – What has happened is that we have defined in the bylaw 100 foot from a wetland as a resource area but we haven't defined what a resource area is.

Andy Rodenhiser – So the rules and regs is an attempt to define a resource area.

Dave Travalini – The purpose of rules and regs is to define what you can and can't do in the areas protected by the bylaw.

Dave Pellegrini – I think the issue is that the language was confusing later on – circular reference.

Andy Rodenhiser – Wordsmithing fixes a lot of the issues.

Dave Travalini – It was inartfully worded. The intent is not to expand our powers, but to define them so people know when they come before us what they can and can't do.

Minutes of October 13, 2009 Meeting
Medway Planning & Economic Development Board

Approved – October 27, 2009

Andy Rodenhiser – You may have even heard us this evening talking about terminology being too subjective. I presume you are going to refine that stuff.

Andy Rodenhiser – so I understand it is 25 feet no disturb, and then they want to provide direction for how to work in next 75 ft – they are not trying to prevent work from occurring.

Chan Rogers – We lose our industrial area if they move into the 75 feet.

Dave Travalini – For the bylaw to work it has to be more restrictive than the Wetlands Protection Act. If it isn't, then the court won't consider the matter.

Andy Rodenhiser – Is the bylaw at present, more stringent?

Dave Pellegrini – Yes.

Andy Rodenhiser – By them putting in place these rules and regs, they are reinforcing their ability to conduct business such that they would have standing in court.

Dave Pellegrini – sounds right

Chan Rogers – Their intent was to expand into the 100 feet.

Andy Rodenhiser – No, the wording was mistaken and they are trying to take steps to correct it.

Chan Rogers – 90% of Medway's land is residential. I wouldn't care how much is restricted there, but the small industrial park that we have is vital to Medway's expansion of tax base. We can't do it anyplace else – we can't further inhibit that space – that would be a disaster.

Andy Rodenhiser – I don't believe they are advocating anything that is beyond what we are already doing.

Dave Travalini – We have a bylaw that says what our jurisdiction is. Rules and regs cannot expand jurisdiction of the bylaw (that has to go through town meeting) -

Andy Rodenhiser – what Dave Travalini is saying is that the original wording (in the proposed rules and regs) was inartfully done. It is not what they want to go forward with – they are back to square one with some process improvements to help administer the bylaw and help applicants.

Dave Travalini – I am hoping to be done with the wording and put it to a vote this week (Oct 15 public hearing).

Andy Rodenhiser – if there some something learned afterwards, you guys are not averse to addressing it (going back to further revise rules and regs)?

Dave Travalini – The other members would have to agree.

Minutes of October 13, 2009 Meeting
Medway Planning & Economic Development Board

Approved – October 27, 2009

Dave Travalini – It is the same thing you guys have to do with your rules and regs.

Dave Travalini – We don't want to write something that is going to be challenged.

Dave Pellegrini – It seems it is more an issue of whether it is more restrictive – the Planning Board's interests and the ConCom's interests may conflict. They aren't wrong, just different.

Andy Rodenhiser – We are trying to provide them with the analysis as we see it so they can take it into consideration.

John William - Was there ever any thought to make it more restrictive?

Dave Travalini – It has to fall under the guidelines of the bylaw - you can't change the bylaw through rules and regs.

John Williams – Was there any intention? I am a little confused – I was at a meeting of the Economic Development committee where there is a lot of concern.

Andy Rodenhiser – It is essentially Sharon's bylaw.

Dave Travalini – Part is from Sharon, part from MACC wording, we took some things from others places, created some definitions that didn't exist anywhere else, town counsel reviewed several times - the more eyes to look at it the better. Saying you don't like it isn't helpful. We were told by town counsel that we have to do this (adopt rules and regs) to be able to enforce the bylaw. We aren't trying to take over the town. As the bylaw exists now, people can work within 100 feet of a vernal pool.

John Williams – I can see where they may be a disagreement in intent. Is there still a disagreement? Or are we all OK that it is the same?

Andy Rodenhiser – That remains to be seen based on their vote.

Dave Travalini – Town counsel is re-reviewing the revised draft rules and regs. You have had your consultants go over them, wetland scientist has reviewed them – we take those into consideration. We seem to be amendable to changes. But we aren't going to make the regs less restrictive than the bylaw.

Chan Rogers – The army corps is charged with protecting the watershed for Charles River. The town needs commercial property. The wetlands are protected by the Army Corps - you are trying to say that all things watershed should be protected.

Dave Travalini – I am not going to get into a discussion about the Army Corps. They approached us about taking down a dam on the Charles River. Medway was basically hat factories. My guess is that a lot of silt in the bottom of the river contains a whole lot of mercury. I would dispute your claim that they do a good job.

Minutes of October 13, 2009 Meeting
Medway Planning & Economic Development Board

Approved – October 27, 2009

Dave Travalini – The Wetlands Bylaw was voted by the town’s people of Medway. It doesn’t take into account economics or what type of land. It protects all equally. I can’t tell you anymore than that. It is our job to make sure that the bylaw is enforced.

Chan Rogers – One piece of property in our industrial park does not make a difference in our watershed.

Andy Rodenhiser – He is saying that fairness principle is defaulting to science as opposed to use or zoning.

Dave Travalini – We can’t enforce the bylaw one way for one piece of property and a different way for another piece of property (residential vs. industrially zoned).

Chan Rogers – Right now you are talking about a bylaw that no other towns have.

Gino Carlucci – No other town had a “no-build” area of 100 feet, but most other towns have a 50 foot no disturb.

Andy Rodenhiser – In our case, it is actually better, because we have a 25 foot no disturb.

Dave Pellegrini – The only question I had – it didn’t seem like there was a reference to the riverfront area.

Andy Rodenhiser – So you will clean up the nuances?

Dave Travalini – We are not looking to regulate 300 foot. Gino Carlucci’s suggested wording is probably what it should be.

Dave Travalini – All towns that have this, they don’t enforce any more than 100 feet. We certainly can’t do less than the WPA.

Dave Travalini – Mr. Carlucci explained it well in his first letter. Town counsel said wording needs to be refined. she is going to work on it. We will probably take a consensus to come up with something that works.

Andy Rodenhiser – Gino Carlucci is the Town’s consultant, not just ours. He is contracted with the town. He is available to you.

Dave Travalini – Susy, will you email these review comments to me directly and I will forward to ConCom members.

Susy Affleck-Childs – will do

Gino Carlucci – An issue that is still of concern – the revised version still has the no-build of 100 feet with exceptions being limited to “rare cases”. That seems to be a very high standard.

Minutes of October 13, 2009 Meeting
Medway Planning & Economic Development Board

Approved – October 27, 2009

Dave Travalini – We only finished going through the definitions (at the first public hearing). we didn't get to everything. We probably haven't addressed the part you are referring to.

Dave Travalini – We understand the wording on septic is wrong, and the 100 ft and 25 ft needs to be fixed. We know we are going to be talking about that stuff.

Andy Rodenhiser – Is there anything anybody wants to address?

Tom Gay – The things that raised the hair on the back of my head have been addressed, rest of work is to be done – as long as the intent is to take these two guys seriously.

Dave Pellegrini - I noticed there was a discussion on bonds from the minutes of the last meeting. It seemed like their regs provide for bonds.

Andy Rodenhiser – The development community doesn't want to be tagged with two sets of bonds for the same thing.

Dave Travalini – I don't think Planning Board can bond ConCom work. – I don't see how the Planning Board can do that.

QUESTION - WHAT IS SCOPE OF PB BONDING AUTHORITY??

Dave Travalini – One of the things you have talked about was not recommending bond release or street acceptance unless there is a certificate of completion.

Andy Rodenhiser – We may be able to not give back a bond without it.

Chan Rogers – It can be done. Foxborough Patriot Stadium.

Andy Rodenhiser – We need to put that in the rules and regs.

Dave Pellegrini – Most of the time, wetlands work ties into the storm water system. It is all tied together.

Dave Travalini – If we hold a bond, it would probably be for replication, it may not have anything to do with a drainage system – it may not come under anything that is under your jurisdiction - I don't see how you can bond for something that is only our own such as replication.

Dave Travalini – You are going to bond the drainage. We aren't going to bond the same thing. But those things that are separate from any other board's jurisdiction.

Andy Rodenhiser – In the grand scheme, we are trying to make the permitting process more streamlined and meaningful to the boards and the applicants, and easier to get the results we all want.

Minutes of October 13, 2009 Meeting
Medway Planning & Economic Development Board

Approved – October 27, 2009

Andy Rodenhiser – Northeastern University is going to review Medway’s permitting process and try to identify where we have broken links, and stop doing things or do more of what does work. We want to be supportive of each others process and streamline at the same time.

Dave Travalini –I would agree, I don’t think we are going to achieve this utopia until we hold joint meetings.

Andy Rodenhiser – Would you be amenable to addressing some of these things in a joint fashion.

Dave Travalini –I think it is worth exploring – beneficial to us, to the developers and applicants

Chan Rogers – Other towns are doing this every day

Dave Travalini – But I couldn’t sit at a Planning Board meeting and speak for the ConCom.

Andy Rodenhiser – It would be great if we could meet together from time to time. We are meeting on Thursday with the DRC.

Dave Travalini – I don’t know if you and we can all vote.

Andy Rodenhiser – We open the public hearing jointly.

Gino Carlucci – It would be like having two separate hearings at the same time.

Dave Travalini – Right now it is hard enough to get people to show up 2 times a month. I am not against it though.

John Williams –Perhaps if we rearranged the space we could meet together, and then continue our separate meetings.

Andy Rodenhiser – That is good to hear.

Andy Rodenhiser – Is this board OK with us releasing the documents to ConCom and have them (PGC and TTR) represent us at the October 15th public hearing?

ALL Agreed

Chan Rogers – All of this is costing the town money. All of this should have been done before you went to public hearing.

Gino Carlucci – I could get to the public hearing between 9:30 and 10 pm.

Andy Rodenhiser – The Medway Business Counsel is meeting on 10/22 at 8 am. I would appreciate it if you could attend. I would be glad to give them a letter or something that could be from you.

Minutes of October 13, 2009 Meeting
Medway Planning & Economic Development Board

Approved – October 27, 2009

ANNOUNCEMENTS

**Development Review Coordinating Council briefing from Cumberland Farms –
10/15/09**

Andy Rodenhiser – We are meeting with Cumberland Farms on Thursday morning for an informal presentation to various boards and committees re: their ideas to redevelop their Medway location. You are all welcome to attend.

Susy Affleck-Childs – I have posted it as a meeting of the PB just in case 3 of you show up.

Karyl Spiller-Walsh – What may be different is the proportion. I had a thought about these meetings that occur before – they are going to have some kind of image or plan that is already going to be their box one start.

Andy Rodenhiser – The idea of giving feedback – this is designed to give input all at once.

Andy Rodenhiser – an opportunity here – I had a conversation about one of the tenants being able to hook up with Steinhoff property at 146.

A motion to adjourn was made by Karyl Spiller-Walsh, seconded by Chan Rogers. The motion was approved unanimously.

The meeting was adjourned at 10:15 pm

Respectfully submitted,

Susan E. Affleck-Childs
Planning and Economic Development Coordinator

Minutes of October 13, 2009 Meeting
Medway Planning & Economic Development Board
Approved – October 27, 2009

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October 8, 2009

Mr. Andy Rodenhiser, Chairman
Medway Planning Board
155 Village Street
Medway, MA 02053

Re: Revised Draft Conservation Commission Rules and Regulations

Dear Mr. Rodenhiser:

I have reviewed the revised draft Conservation Commission Rules and Regulations. I also have revised the matrix comparing some features of the draft regulations with those of other Towns that had been prepared jointly by Dave Pellegrini and me. I added information from Medfield and DEP's Wetland Protection Act regulations and revised the other entries in accordance with the revised draft.

In the comments below, I refer to the comments in the joint letter from Dave Pellegrini and myself dated September 17, 2009 (without repeating the comments, but using the same numbers and title as in the September 17, 2009 letter) and noting how the comments are impacted by the changes in the draft. I also make some recommendations as to how to possibly address those comments that are still applicable. The primary recommendations are in **bold** with accompanying explanatory material in plain text.

My comments are as follows:

1. Section 1.03 Jurisdiction – The primary issue was the definition of the buffer zone as a Resource Area, which created some confusion when the term “Resource Area” was used elsewhere in the regulations. This problem has been cleared up by deleting the phrase that defined the buffer zone as a “Resource Area.” However, as noted in the original letter and in the attached matrix, there is no definition for inner and outer riparian areas. There is a definition of “Riverfront Area” as the same as in the Rivers Protection Act, but it is not clear how the “No Build” and “No Disturb” areas apply to the riparian areas. **I would recommend that this be clarified by reference to the regulations pertaining to the Rivers Protection Act (no disturbance in 100-foot zone, up to 10% in 100'-200' zone with some exceptions. Including drainage and previously disturbed areas).**

Minutes of October 13, 2009 Meeting
Medway Planning & Economic Development Board

Approved – October 27, 2009

2. Section 1.04 Definitions – Several of the definitions have been clarified. The definition of “Prior Disturbance” still includes the term “vicinity” which is vague. **I would recommend using a specific distance, such as 500 feet of the subject property’s boundaries.**
3. Section 2.3 – This section seems to require that an “entire project, including full build out” must be included in any Filing. – This has not been addressed. **I would recommend that a resource delineation of the entire parcel or parcels in common ownership be required and kept on file in order to document cases where a “hardship” is self-inflicted.** It may require some legal advice to address a situation where land under the control of the same entity is divided into different companies with different names. Also, I suggest that the term “subdivisions” should probably be changed to “parcels” since even in the residential districts there are development options other than subdivisions, e.g. condominium developments.
4. Section 2.9- Requiring that hearing be kept open until MEPA process is completed. – **I suggest that this be amended to address only MEPA processes that involve issues within jurisdiction of Conservation Commission.** However, that could be broader than just wetlands issues. For example, if parking is the trigger for MEPA review, the outcome could result in parking changes that impact a resource area. Nevertheless, this could probably be determined on a case-by-case basis, and it could be at the risk of the applicant who would have to file for a modification if the MEPA outcome results in changes impacting an Order of Conditions.
5. Section 2.11 – This subsection says that Determinations of Applicability cannot be extended beyond their initial 3-year term. This is contrary to the Wetlands By-Law which, in Section 21.6, expressly authorizes a single 1-year extension provided a written request for it is received at least 45 days prior to expiration. – This has not been resolved. **I recommend amending the regulations to be consistent with the bylaw.**
6. Section 2.13 – Same as 2.11, except it does allow the Commission to approve an extension. However, the By-Law specifies that a 1-year extension can be obtained if requested 45 days prior to expiration. -- This has not been resolved. **I recommend amending the regulations to be consistent with the bylaw.**
7. Section 2.17 – Subsections (a) and (b) are contradictory since (a) says it presumes septic systems compliant with Title 5 or Medway Board of Health requirements protects the interests identified in the By-Law, then (b) says they can’t be within 100 feet of a Resource Area because they don’t protect those interests. – This is in large part dependent on what the final “No Build-No Disturb” policy and/or variance policy is approved. **I recommend that this either be made consistent with the WPA or that it be subject to a somewhat more relaxed variance policy.**
8. Section 2.19 provides for the Commission to limit lawn area and impose irrigation restrictions. I think this is a good idea, but I wonder if there is a legal basis for this authority for the Commission. – **This comment stands. I just recommend that legal confirmation of this authority be obtained.**

Minutes of October 13, 2009 Meeting
Medway Planning & Economic Development Board

Approved – October 27, 2009

9. Section 3.04 (1) (b) defines “Isolated Land Subject to Flooding.” **I recommend that this definition be made consistent with the Bylaw.**
10. Section 4.01- When this section refers to Wetlands I assume they mean Freshwater Wetlands as defined by the Regs. – No additional comment.
11. Section 5.06 specifies Minimum Performance Standards. It establishes a “No Disturb Setback” of 25 feet. This is accordance with the By-Law. However, the By-Law provides exceptions for certain utility work, agricultural practices and emergency projects. The regulations should include language such as “except as provided in the By-Law.” **This comment stands as a recommendation.**
12. Section 5.06 also provides for a 100-foot “No Build Setback” and “No Disturb Setbacks” of 25-, 50- and 75-feet for different circumstances. The 25-50-foot setback applies to already-disturbed areas. The 50-foot setback applies to new disturbances on previously undisturbed land. The 75-foot setback applies to certain specified sensitive areas. **I recommend that the “No Build” setback be eliminated and that the 50-foot “No Disturb” setback for previously undisturbed lands be maintained.** It should be noted that a 50-foot “No Disturb” area is common and there is scientific evidence to support such a setback. Logically, greater setbacks will generally provide better protection, but at the cost of reducing developable area. However, there should be some latitude in the 50-100 area by reducing the standard for a variance from “rare and unusual” to perhaps requiring an alternatives analysis and mitigation, such as some other towns do. This could result in strong protection for the sensitive resources without totally precluding development in those areas. The burden of proof should be on the applicant to demonstrate protection of the resource areas as well as the viability and efficacy of the mitigation.
13. Section 5.06 also states that the Rules and Regulations should not be construed to preclude access paths, vista pruning of construction of water-dependent structures within the buffer zone subject to the discretion of the Commission. It is not clear under what process such discretion may be obtained. It would seem appropriate for this to occur under a Request for Determination of Applicability. It should be noted that DEP regulations provide for “minor activities” that are not subject to regulation. These include unpaved pedestrian walkways for private use, fencing (as long as it is not a barrier to wildlife); vista pruning more than 50 feet from a resource area; planting of native species of trees, shrubs or groundcover (excluding turf lawns); conversion of lawn uses to decks, patios, etc. (if more than 50 feet from resource area); conversion of impervious surfaces to vegetated surfaces with erosion controls; and temporary activities with negligible impacts. **I recommend that the exemptions be made consistent with DEP regulations.**
14. Section 5.06 (a) states that the No Build Setback shall be 100 feet from any Resource Area. Since the By-Laws define the buffer zone as a Resource Area, this would require a No-Build setback 200’ from the Resource Area as defined by the WPA. Clarification of

Minutes of October 13, 2009 Meeting
Medway Planning & Economic Development Board

Approved – October 27, 2009

these terms as previously stated would alleviate this issue. – This has been clarified and is no longer applicable.

15. It should be noted that DEP regulations also exempt from regulations certain activities within the 50 to 100 foot buffer zone if certain conditions are met. The conditions include that the buffer zone does not contain slopes greater than 15%, there are no Estimated Habitat areas in the buffer zone, the buffer zone does not border on an Outstanding Resource Water (i.e. vernal pools, public water supplies, or Area of Critical Environmental Concern), impervious surface in the 50-100 foot portion of the buffer zone will not exceed 40% and no alteration of the 50-foot buffer zone will occur, stormwater management complies with DEP standards, and no Notice of Intent for work within the 50-foot buffer will be filed during the three years of the Order of Resource Delineation. Such exempt work may be authorized through an Abbreviated Notice of Resource Area Delineation. -- No further comment.
16. Section 6 Vernal Pools – The regulations state that a depression that possesses the physical characteristics of a vernal pool will be assumed to be one whether or not it is certified as such by DEP. The burden of proving it is not a vernal pool will be on the applicant, and this may require that observations of the depression during the appropriate seasons take place. – No further comment.
17. Section 7 Variance – The Rules and Regulations provide for the opportunity for the Commission to grant variances from the rules but only in “rare and unusual cases.” It is the responsibility of the applicant to provide “clear and convincing” evidence that the proposed work will not have any adverse effect upon the interests protected by the By-Law. It may also grant variances in cases where not doing so would result in an unconstitutional taking of the property, or where the work will have an overriding public benefit. – **As previously suggested, I recommend that the standard for variances be relaxed somewhat to less than “rare and unusual.”** As mentioned above, requiring an alternative analysis and mitigation for work (including buildings) within the 50’ to 100’ zone could provide strong resource protection while also allowing development to take place.
18. Section 8.02 specifies that plans shall include elevation contours and indicate the referenced datum used. **Since the Planning Board requires North American Vertical Datum of 1988, it is probably a good idea to specify this standard to avoid conflict with Planning Board standards since an applicant is likely to apply to Conservation Commission first.**
19. Section 8.03 specifies drainage information. – The drainage requirements have been made consistent with Planning Board requirements.

If there are any questions about these comments, please call or e-mail me.

Minutes of October 13, 2009 Meeting
Medway Planning & Economic Development Board
Approved – October 27, 2009

Sincerely,

A handwritten signature in black ink, appearing to read "Gino D. Carlucci, Jr.", with a stylized flourish at the end.

Gino D. Carlucci, Jr.



October 8, 2009

Mr. Andy Rodenhiser, Chairman
Medway Planning Board
155 Village Street
Medway, MA 02053

**Re: Medway Conservation Commission
Draft Rules and Regulations
Tetra Tech Rizzo Review Comments**

Dear Mr. Rodenhiser:

Tetra Tech Rizzo has completed its review of the revised draft Conservation Commission Rules and Regulations as distributed on October 6, 2009. This letter also attempts to incorporate comments generated from the September 28, 2009 meeting where these proposed regulations were discussed. The following list identifies where the proposed Rules and Regulations vary significantly with existing state and local laws, and where the regulations may impact future development.

Primary Issues

1. Section 1.04 defines the Buffer Zone as "Land within one hundred (100) feet horizontally landward from the perimeter or outer border of any Resource Area (other than a buffer zone)". This substantially extends jurisdiction beyond the WPA because it assigns a 100-foot buffer zone to all resource areas, while the WPA excludes particular areas. Specifically, the WPA states "The areas subject to jurisdiction identified in 310 CMR 10.02(1)(b) through (f) do not have a buffer zone." These areas which do not require buffers include Land Subject to Flooding and Riverfront Areas among others. We would recommend that the definition for buffer zones reference the WPA directly.
2. Section 2.3 states that an "entire project including full build out" must be included in any filing. A full build out scenario seems unnecessarily burdensome. We recognize the intent to eliminate segmentation of projects, however we suggest alternative wording that does not create a hardship for smaller applications.
3. Section 2.9 requires the completion of actions associated with the MEPA submittal prior to the close of a hearing by the Commission. This will make the permitting of the project more difficult for the applicant, because when filing the ENF the applicant does not always know whether an EIR is required. Therefore, the ENF response would need to be received prior to submitting the local Notice of Intent to ensure proper timing of approvals. None of the adjacent town regulations reviewed implemented this type of language.



4. Section 2.17(b) implies that the subsurface disposal system be prohibited within 100-feet of a Resource Area. This requirement is more restrictive than state regulations and may conflict with the local Board of Health requirements. Section 2.17(a) clearly identifies the state Title V and local Board of Health regulations as governing. To avoid future conflicts between jurisdictions of different local boards or commissions, we recommend that item (b) be eliminated. None of the adjacent town by-laws reviewed implemented this type of language.
5. Section 2.19 states that the “Commission reserves the right to limit the lawn area associated with development proposals”. This extends the Commissions jurisdiction well beyond resource areas or buffer zones and may conflict with the intentions and regulations of the Planning Board.
6. Section 3.04 (1) (b) defines “Isolated Land Subject to Flooding.” This definition does not include a minimum area. This conflicts with the By-Law, which states that in order to be afforded protection, Isolated Lands Subject to Flooding must encompass a minimum surface area of 5000 square feet. It should also be noted that DEP regulations define Isolated Land Subject to Flooding as encompassing at least a ¼ acre-feet of water with an average depth of at least 6 inches at least once per year. Without a minimum volume threshold, jurisdiction could be extended more than intended. We recommend that specific requirements be defined, or a reference to the WPA requirements be added.
7. Section 5.06 regulates a 100-foot “No Build Setback,” and a 25-, 50- and 75-feet “No Disturb Setback” for varying conditions. These requirements could substantially limit development by excluding varying types of work within the buffer zone. The By-Laws require a 25-foot No Disturb Setback, therefore the proposed Regulations extend the work restrictions in these areas. The Wetland Protection Act (WPA) does not provide specific setback requirements for work within the buffer, but rather evaluates the work based on potential perceived impacts. In our experience, these distances are in excess of typical “No Build” or “No Disturb” zones provided by adjacent communities (see Table 1). Additionally, “No Build” and “No Disturb” should be clearly defined.

Table 1

	Medway	Millis	Franklin	Holliston	Hopkinton
No Build/ No Disturb	No Build-100' No Disturb-Varies from 25' to 75'.	No Build-50' Disturbance Discouraged-50-100'	No Disturb-25' No Structures within 25-50' with exceptions.	No Disturb-50' The commission granted latitude to define and limit work based on perceived impact	The commission granted latitude to define and limit work based on perceived impact



Secondary Issues

8. Several definitions in this section extend the coverage of the By-Laws beyond the WPA. For example, the definition of “Owner of Land Abutting the Activity” extends the coverage beyond the WPA by adding “lake, and pond” to the end of the definition. Additionally, the definition for “Pond” in the By-Laws requires an area of 5,000 square feet, while the WPA requires an area of 10,000 square feet.
9. Some of the items described in the definition of a “Small Project” such as the construction of decks, patios, pools, sheds, etc, are exempt from the WPA if they are beyond 50’ from the mean annual high-water line within the Riverfront Area or from the BVW. This extends the coverage of the By-Laws beyond the WPA but does not conflict with the WPA.
10. Section 2.17 (b) states that “prohibiting work in the buffer zone prevents the pollution....of Medway’s water resources”. Prohibiting is a strong term and we feel that a term such as limiting would be more appropriate.
11. Section 6 states that a depression that possesses the physical characteristics of a vernal pool will be assumed to be one whether or not it is certified as such by DEP. This extends the commissions jurisdiction.
12. Section 8.03 (2) states that storm drains and retention basins shall be designed for a 10-year frequency, while the Planning Board requires that the storm piping system be designed for the 25-year storm. We would recommend that the Conservation Commission implement the 25-year storm requirement utilized by the Planning Board.
13. There is no appeal authority designated. While this is common in the case of Towns that have established Wetland By-Laws, it has made the appeal process difficult for developers. The length of the appeal process through the court system is often long and cumbersome, and typically dissuades developers from taking action which at times limits or restrict development.
14. There is no discussion of the Riverfront areas. While this does not provide a direct impact to development, we would recommend a section dedicated to the Inner and Outer Riparian Zones consistent with the other Resource Areas discussed in the document.
15. There is no clear distinction of temporary versus permanent disturbances. Temporary disturbances are often required in the buffer zone to complete work proposed outside the buffer zones.



If you have any further questions or comments, please do not hesitate to call me at 508-903-2000.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David R. Pellegrini', written in a cursive style.

David R. Pellegrini, P.E.
Project Manager

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Issue/Town	Medway	Millis	Medfield	Franklin	Holliston	Hopkinton	WPA Regs
Jurisdiction	Includes resource areas in addition to those in WPA and Bylaw.	Wetlands, water bodies and land within 100 feet of wetlands or 200 feet of streams.	Wetlands, water bodies and land within 100 feet of wetlands or 200 feet of streams.	Wetlands, water bodies and land within 100 feet of wetlands or 200 feet of streams.	Wetlands, water bodies and land within 100' of wetlands and 200' of streams. 100' and 200' buffers described as Adjacent Upland Resource Areas,	Wetlands, water bodies, and land within 100' and 200' of streams. No confusion about buffer zones. Minor extension of jurisdiction beyond WPA. (1).	Wetlands, water bodies and land within 100 feet of wetlands or 200 feet of streams.
Definitions							
Best Available Means	Similar to WPA definition of “Best Available Measures”	No definition	No definition	No definition	No definition	No definition	The most up-to-date technology or the best designs, measures or engineering practices that have been developed and that are commercially available.
Buffer Zone	Any land within 100' horizontally outward from the edge of any resource area as defined in this section.	No definition	No definition	No definition	Any land within 100' horizontally outward from the edge of any resource area as defined in this section. Confusing because of the Upland Resource Area Definition.	Any land within 100' horizontally outward from the edge of any resource area, 200' from rivers and streams, and 125' from vernal pools.	Any land within 100' horizontally outward from the edge of any resource area, 200' from rivers and streams
Pond	5,000 sq. ft.	5,000 sq. ft.	No definition	No definition	5,000 SF	No definition	10,000 sq. ft.

Issue/Town	Medway	Millis	Medfield	Franklin	Holliston	Hopkinton	WPA Regs
MEPA Relation	MEPA action required to be completed before hearing closed.	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed
Permit extensions	None for RDA, OOC at discretion of ConCom.	1-year extensions allowed		Not addressed	Valid for 3 years. Permit may be renewed for one year periods.	Valid for 3 years A one time one year extension (4)	Extensions allowed upon showing of good cause. Initial NOI expires in 2 years.
Septic systems	Excluded within 100 feet of resource.	Not specifically addressed		Emergency repair allowed, new systems not specifically addressed.	No Reference	Not specifically addressed	Excluded within 50 feet of resource
No disturb/No build Generally: No Build = No buildings or structures allowed No Disturb = No work to take place Definitions vary among towns	100-foot no-build No disturb varies from 25 to 75 feet.	50-ft “no Build.” Disturbance on 50-100 discouraged, structures allowed up to 30% of area with alternatives analysis and mitigation.	50-foot No Disturb. Burden is on applicant to demonstrate that any work within the 50-foot No Disturb area will not harm the interests protected by the Bylaw. Commission also reserves right to prohibit activity anywhere within the 100-foot buffer.	25-ft No Disturb; No structures 25’-50’ with exceptions for previously-disturbed areas; Structures allowed in 50’-100’ zone up to 30% of area and mitigation required for more.	No disturb – 50’, however the Commission is granted latitude in assessing the impact to the Upland Resource Area (URA). The URA is broken into several categories including No Disturb, Temp. Disturb, Limited Disturb, and Permanent Disturb. (2)	The Commission is granted latitude in assessing the impact to the Upland Resource Area (URA). The URA is broken into several categories including No Disturb, Temp. Disturb, Limited Disturb, and Permanent Disturb. (3)	Not applicable, but provides incentives for reduced regulation under certain conditions including no disturbance within 50 feet.

Issue/Town	Medway	Millis	Medfield	Franklin	Holliston	Hopkinton	WPA Regs
Exemptions	Provides exemptions for minor activities, less than WPA	No specific exemptions	No specific exemptions	Minor disturbances on previously disturbed properties may be allowed by Negative Determination with conditions.	No specific exemptions.	Only those specifically noted in Section 206-4 of the By-Laws (2)(7)	Provides exemptions for certain minor activities
Vernal Pools	Includes 100 foot buffer	Has separate definition for buffer zone and excludes lawns, gardens and other developed areas.	Not addressed in regulations	Isolated wetland subject to flooding voted by ConCom to meet requirements of vernal pool as defined by DEP	Similar definition as WPA with a few additional requirements. Has a 100' associated buffer.	Similar definition as WPA with a few additional requirements. Has a 125' associated buffer. (5)	Not specifically regulated
Variances	Allowed in "rare and unusual cases."	Waivers allowed when in public interest and consistent with intent of bylaw	Not specifically addressed, but No Disturb provides latitude	Allowed if evidence shows interests are protected	No Reference	No reference but the guidelines provide the Commission with latitude.	Provides for variances under local bylaws or regulations

Issue/Town	Medway	Millis	Medfield	Franklin	Holliston	Hopkinton	WPA Regs
Replication	Allows replication with performance standards		Not addressed	Not addressed	Commission strongly discourages any plan that requires replication. In those instances where replication is approved by the commission, specific conditions must be applied as outlined in section 6.3.5	Commission strongly discourages any plan that requires replication. In those instances where replication is approved by the commission, specific conditions must be applied as outlined in section 6.3.5	Provides for replication equal to area lost with conditions

					including a replication area 2X as large as destroyed area.	including a replication area 1.5X as large as destroyed area.	
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Hopkinton (1) - Resource areas are not required to border water bodies, and vernal pools and their buffers are protected regardless of whether they have been certified under the state program or whether the pool/buffer is located within state protection. Vernal pool buffers are extended from the state 100' to the town 125'.

Hopkinton (2) - Applications and permits required by the Bylaws shall not be required for maintaining, repairing or replacing, but not substantially changing or enlarging, an existing or lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, sanitary sewers and storm sewers, provided 48 hours notice is provided and work conforms to performance standards and design specifications meet the regulations. Also, the permit is not required for emergency projects necessary for the protection of the health and safety of the public per the requirements in 206-4 (B). Lastly an exception may be made at the discretion of the Commission.

Hopkinton (3) – The commission shall consider proposals for work in the buffer zone in terms of four (4) broad forms of disturbance areas. These terms are determined on a case by case basis unless applicant provides evidence deemed credible and sufficient that the area or part of it may be disturbed without harm to the values protected by the law.

Hopkinton (4) – The commission may at its discretion issue a permit expiring five (5) years from the date of issuance for recurring or continuous maintenance work.

Hopkinton (5) – The commission discourages any plan that requires replication. In those instances where replication is required by state law and/or approved by the commission, certain conditions found in section 5.6.2 must be met. These candidates require a replication area 1.5 times as large as the area of resource area being destroyed. Actual ratio shall be determined on a case by case basis.

Hopkinton (6) – All storm water runoff systems shall at a minimum conform to best management practices as specified in the DEP Storm water Management guidelines, volumes I and II. The conservation commission may impose the state regulation criteria located in 5.12.1.

Hopkinton (7) – The commission will consider a negative determination of applicability under the bylaw for all projects that qualify under the following guidelines which are more stringent than but otherwise parallels the state regulation criteria located in 5.12.1

Hopkinton (8) – The Regulations provide specific distances for Limits of Work or Disturbance and Limit of Structure from Resource Areas for varying types of work including residential activities, utilities, stormwater management, roads, driveways parking lots and all other activities.

Holliston (1) – Resource areas include 100' from resource areas defined in WPA. Holliston has the same issue as Medway where the use of the words “Resource Area” and “Buffer Zone” gets confusing.

Holliston (2) – The commission may require that the applicant maintain a strip of continuous, undisturbed vegetative cover in part or all of the 100-foot (200 feet for rivers and perennial streams) adjacent upland resource area that shall meet the specification provided in the regulations and set other conditions on this area, unless the applicant provides evidence deemed sufficient by the commission that the area or part of it may be disturbed without harm to the values protected by the bylaw. The bylaw gives the commission broad description to permit, condition, and prohibit work within the adjacent upland resource areas as the specific situation warrants. Therefore the commission shall consider proposals for work in the adjacent upland resource area in terms of four (4) broad forms of disturbance areas. This approach is intended to allow maximum flexibility for property use while maintaining adequate levels of resource protection. Categories include: No Disturbance Area, Temporary Disturbance Area, Limited Disturbance Area, and Permanent Disturbance Area. In general, work and activity within 100 feet of wetlands should be avoided and discouraged and reasonable alternatives pursued.