



Town of Shelburne, Vermont

PLANNING COMMISSION AGENDA

THURSDAY, July 14, 2022

7:00 P.M.

Meeting will be hybrid: in person and via zoom

PLEASE NOTE: Given rising case counts of COVID in the county,
all persons attending in person are encouraged to wear masks. Thank you.

Join Zoom Meeting

<https://us02web.zoom.us/j/86968885205?pwd=ZkpzWmxaL2YxSlpYMkkrdlNjc3ppZz09>

Meeting ID: 869 6888 5205

Passcode: 0p3iNQ

Dial by your location

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

Meeting ID: 869 6888 5205

Passcode: 724533

- | | |
|---|------------------|
| 1. Call to order/roll call | 7:00 P.M. |
| 2. Approve agenda | 7:07 P.M. |
| 3. Approve meeting minutes of June 23, 2022 | 7:08 P.M. |
| 4. Disclosure related to potential conflicts of interest | 7:11 P.M. |
| 5. Public comments on matters not on the agenda | 7:12 P.M. |
| 6. Conversation about MRCD | 7:15 P.M. |
| 7. Old Business | 8:15 P.M. |
| 8. Other Business | 8:20 P.M. |
| Petition (Available in Clerk's Office, upon request) | |
| 9. Adjourn | 9:00 P.M. |

A VIDEO RECORDING OF THE MEETING IN ITS ENTIRETY IS AVAILABLE THROUGH VERMONTCAM.ORG. THE WRITTEN MINUTES ARE A SYNOPSIS OF DISCUSSION AT THE MEETING. MOTIONS ARE AS STATED BY THE MOTION MAKER. MINUTES SUBJECT TO CORRECTION BY THE SHELBURNE PLANNING COMMISSION. CHANGES, IF ANY, WILL BE RECORDED IN THE MINUTES OF THE NEXT MEETING OF THE COMMISSION.

**TOWN OF SHELBURNE
PLANNING COMMISSION
MINUTES OF MEETING
June 23, 2022**

***Hybrid meeting.**

MEMBERS PRESENT: Steve Kendall (Chair); Deb Estabrook, Jean Sirois, Stephen Selin, Shawn Sweeney, Tom Karlhuber. (Marla Keene was absent.)

STAFF PRESENT: Adele Gravitz, Planning Director and Aaron DeNamur, DRB Coordinator.

PRESENTER: Mary Madden, Blue Zones

OTHERS PRESENT: Members of the public participating in the meeting included Gail Albert, Monica LaLime, Chris Badami, Chris Latta, Dorothea Penar, Pete Serisky, Robilee Smith, Rowland Davis, Don Rendall, Paul Mayer, Mike Major, Anne Bentley, Susan Jean Hull Grasso, Mark Sammut, Mike Ashooh, Jim White, Brian Precourt, Allyson Myers, Bob Glover, Dianne Davis, Tracey Beaudin, David Webster, Donna Millay, Jessica Trautwine, Greg Doremus, Nancy Badami, Rowland Davis, Jessica Brumsted, Barbara Grant, Media Factory.

AGENDA:

1. Call to Order
2. Approval of Agenda
3. Approval of Minutes (5/26/22 & 6/9/22)
4. Disclosures/Potential Conflicts of Interest
5. Open to the Public
6. Presentation: Blue Zones
7. Old Business
8. New/Other Business
9. Adjournment

1. CALL TO ORDER

Chair, Steve Kendall, called the meeting to order at 7 PM and introduced the newly appointed Planning Commissioners: Shawn Sweeney and Tom Karlhuber.

2. APPROVAL OF AGENDA

MOTION by Stephen Selin, **SECOND** by Deb Estabrook, to approve the agenda as presented. **VOTING:** unanimous (6-0); motion carried.

3. APPROVAL OF MINUTES

May 26, 2022

MOTION by Deb Estabrook, **SECOND** by Jean Sirois, to approve the minutes of 5/26/22 as presented. **VOTING:** 3 ayes, 3 abstentions (Stephen Selin, Shawn Sweeney, Tom Karlhuber); motion carried.

June 9, 2022

MOTION by Steve Kendall, **SECOND** by Stephen Selin, to approve the minutes of 6/9/22 with correction in Item #6 of “exclusionary zoning” to “inclusionary zoning”. **VOTING:** 2 ayes, 4 abstentions (Deb Estabrook, Jean Sirois, Shawn Sweeney, Tom Karlhuber); motion carried.

4. DISCLOSURES/POTENTIAL CONFLICTS OF INTEREST

None.

5. OPEN TO THE PUBLIC

None.

6. PRESENTATION: Mary Madden (Blue Zones) on Form Based Code

Adele Gravitz noted the scope of the RFP was for the consultant to Clarify and Illustrate the Ramifications of the Mixed Residential Character District (MRCD) in the Shelburne Road Form-Based Overlay District. The consultant that was chosen was Blue Zones.

Mary Madden, Blue Zones, briefly explained the focus of Blue Zones on healthy living, living longer and living better by looking at food policy, tobacco policy, and the built environment with the idea that people live healthier if they can move naturally during the course of their daily lives. This is achieved when the built environment allows people to walk, bike, and engage in the community.

Mary Madden reviewed the “ABC’s” of Form-Based code and the MRCD.

1. ABC's of Form-Based Code (FBC)

FBC is a tool for shaping community form and character. FBC is a tool that fosters predictable built results and high-quality public realm by using the physical form (rather than separating uses) as the organizing principle.

What is the desired outcome and reason for using the FBC tool?

Placemaking qualities:

- Preserve and enhance?
- Evolve?
- Transform or create?

2. Issues with the Mixed Residential Character of the Shelburne Road Form-Based Code Overlay District

- Complexity
- Process
- Standards
 - The town’s goal for using the Form-Based tool is not clear.
 - The Form-Based overlay district is overly complex and difficult to understand.
 - There is no specific process set up to review applications in the Form-Based Overlay District.
 - Standards in the Mixed Residential Character District should produce the results wanted by the town, but the language for the overlay is unclear, vague, or contradictory and the desired results for this area are not clear.
 - Parameters for the form based mixed residential character district are too broad.

Post-presentation:

1. Can the Planning Commission (legally) require certain building types in certain places? Madden suggested consulting with Vermont attorney, but yes. Different options might include: change the zoning, or, if zoning is optional--when a developer opts in, they are choosing to accept.
2. The question of how many people relates to car dependency. Car need is, in part, a marketing question. For example, a single parent may want a two-bedroom apartment with just one parking space (and not pay the cost of two parking spaces).
3. Missing are standards to subdivide larger parcels to ensure blocks and lots that create neighborhoods and connectivity. The private roads in Shelburne are an unaddressed issue in the current code.

4. There is a difference between allowed, permitted and required. Standards that allow more development potential, in return, require the developer to provide what the town needs. This code does not.
5. Is the issue the complexity of interpretation of the rules of Form-Based code or are the rules so open-ended to be confusing? It is a combination of both.
6. MRCD in an area of an existing neighborhood raises question. Was there a long-term goal to transform the area? MRCD in 2014 was made up of vacant properties as well as established neighborhoods.
7. Time and resources to revamp the code – the town needs to decide what it wants to achieve and that will help identify the process (time and resources).
8. Final Blue Zones Presentation will be posted on Front Porch Forum.

7. OLD BUSINESS

Staff reported:

- Website to be updated to reflect current Planning Commission members. Nameplates will be provided for the members.

8. NEW/OTHER BUSINESS

Next Planning Commission meeting will focus on next steps with MRCD of the Shelburne Road Form-Based code based on the information from Mary Madden (Blue Zones).

9. ADJOURNMENT

MOTION by Stephen Selin, SECOND by Deb Estabrook, to adjourn the meeting. VOTING: unanimous (6-0); motion carried.

The meeting was adjourned at 9:10 PM.

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MEMO

TO: Planning Commission Chair Stephen Kendall
Selectboard Chair Michael Ashooh
Planning Director Adele Gravitz
DRB Coordinator Aaron DeNamur
Town Clerk Diana Vachon
Peter Serisky, petitioner

RE: ZONING PETITION

FROM: Lee Krohn, AICP, in my capacity as Administrative Officer

DATE: JULY 8, 2022

I write today regarding the zoning petition that has been submitted, and for which the Town Clerks have certified a sufficient number of signatures to validate that petition. By this memo, I am clarifying the required legal process that must be initiated from here. While others may not agree with what is presented here, the process described below is not my “interpretation”; it is clear restatement of the applicable state statutes governing land use planning and zoning in Vermont. As you will also see, the attached document from the Vermont Land Use Education and Training Collaborative provides the same, consistent statements of these statutory requirements.

The applicable statutes (24 VSA 4441 and 4442) are crystal clear. 4441 governs the process for how Planning Commissions must review proposed zoning amendments; 4442 governs the process for how legislative bodies (here, the Shelburne Selectboard) must handle proposed zoning amendments.

The standard process is that ideas are generated at the Planning Commission level, and if thought worthy, are eventually considered in a warned public hearing process. If the PC approves those ideas as zoning amendments, they are forwarded to the Selectboard for consideration in its own warned public hearing process. Alternatively, if the PC does not approve those proposed amendments, the process ends there.

The matter before us here differs in that the ideas were generated via petition by residents. Statute provides for that opportunity. A key difference from the standard process is that a petition submitted by a valid number of residents forces the zoning amendment consideration process to begin. Another key difference is that the PC must forward the petitioned amendments to the SB for consideration, even if the PC might not find them appropriate to recommend for adoption. The PC may issue its opinion about the petitioned proposal, but cannot stop the process at its level. The third key difference is that petitioned amendments may not be changed, other than to correct “technical deficiencies”; it is thus an “all or nothing” approach to eventual adoption or rejection to petitioned proposals.

Note, importantly, a petition only forces the process to begin, and in a somewhat more constrained manner; but it does not in any way alter the statutorily required processes for consideration at each level. Warned public hearings are still required of both the PC and the SB.

Let us examine each section of state statute that apply to zoning amendments:

24 VSA 4441(b) specifically requires that upon submission of a petition signed by at least 5% of the voters, the PC must “promptly proceed in accordance with subsections c through g of this section...”. Those subsections are clear and prescriptive. They require a report to be prepared addressing specified criteria; the PC must hold “at least one public hearing...after public notice...”; and notice must be sent to specified external parties at least 15 days prior to the first public hearing.

24 VSA 4444 defines “Public Notice” as the minimum 15 day posting/publication requirement as applies to all manner of public hearings.

Note here that “promptly proceed” is followed by “in accordance with subsections c through g of this section”. It does not supersede those clear and specific statutory requirements for holding a public hearing after public notice.

24 VSA 4442(a) is identical in requiring that the Selectboard hold a public hearing after public notice. The Selectboard must hold the first of one or more of these public hearings after public notice between 15 and 120 days after submittal to the Board.

As with any such matter, the Selectboard is still able to make whatever decision it finds appropriate. A petition forces the process, but at the conclusion of that process, does not bind the Board to any predefined outcome.

In summary, a petition as submitted here forces the zoning amendment consideration process to begin, but it does not in any way alter the statutory process requirements for public notice and public hearings. Warnings, legal notices, and reports must still be drafted, published, posted, and sent as clearly required by statute.

None of this is either opinion nor “interpretation”; it is the plain meaning of these statutes as they are written, and as confirmed by the Town Attorneys. From Attorney Kristen Shamis:

“Yes - I reviewed, discussed with Brian, and we agree with your analysis. All notice and hearing requirements must take place regardless of whether the amendment proposal is made by the PC or by petition”.

I hope you find this information helpful.



VERMONT LAND USE

Education & Training Collaborative

Bylaw Preparation and Adoption

Overview

Bylaw is an old term for a local law that is adopted by a municipality or organization chiefly to govern its members and manage its affairs. A bylaw is a form of community self-regulation that, in Vermont, represents an extension of the police power of the state, by charter or statute, to municipalities. The words "bylaw" and "ordinance" are often used interchangeably. Only bylaws that regulate land use and development are covered under Chapter 117; other types of municipal ordinances are authorized under separate chapters of state law.

Under Chapter 117, Vermont municipalities are authorized, but not required, to adopt bylaws that regulate land use and development. A municipality may adopt one or more bylaws to protect public health safety and welfare, and to control the type, pattern and pace of development within

its borders. Ideally, bylaws, along with other plan implementation tools, should help to create better communities. Land use regulations necessarily differ from one community to the next. However, any municipality that regulates land use must follow specific Chapter 117 requirements governing the preparation, adoption and repeal of bylaws and bylaw amendments. **To adopt a bylaw, at a minimum, a municipality must have in place:**

- A **planning commission**, to develop and/or review proposed bylaws and bylaw amendments;
- An **adopted municipal plan**, currently in effect, that provides the basis in public policy for bylaw development and adoption (*see Bulletin #2 Conformance with the Municipal Plan*); and
- The **administrative capacity** to administer and enforce the regulations once adopted.

"Bylaw" is a modern form of the Middle English word *bilawe* dating from the 14th century and, according to *Merriam Webster's Dictionary of Law*, is likely derived from Old Norse terms for town (*byr*) and law (*log*).

Bylaw Preparation

Drafting. By statute, the Planning Commission, is responsible for either preparing or "directing" the preparation of bylaws under Chapter 117 [§4441]. The actual work may be done by staff, planning commissioners, subcommittees, attorneys or planning consultants, but the Planning Commission is ultimately responsible for, and should take ownership of, the initial draft. It's the Commission's job to present a proposed bylaw to the community at large - to explain why it's needed, who it affects, and how it will work - so it's important that commissioners know what's in it!

A proposed amendment or repeal of a bylaw may be prepared by the Planning Commission, or by another person or group for submission to the Planning Commission. If a proposed amendment or repeal is supported by a petition signed by at least five percent of municipal voters, the Planning Commission can correct "technical deficiencies" (e.g., spelling, section numbering or cross referencing) but cannot make any other changes to the proposal.

A Note on Drafting Regulations...

Writing local regulations that can be fairly administered and enforced - and that may someday be challenged in court - can be a daunting task. Drafting bylaws requires some knowledge of Chapter 117 and related case law, familiarity with the municipal plan, understanding the community's capacity to administer regulations, and some savvy regarding the local political climate for regulation. Usually no one person or small group can cover all these bases.

It often takes staff, one or two dedicated volunteers, or paid consultants to do the drafting - but all planning commissioners should be actively involved in bylaw development, at least to review and comment on drafts. It's also a good idea to run proposed language by your municipal attorney.

Technical assistance for bylaw development and adoption is available from your regional planning commission and the Vermont League of Cities & Towns. If you need to hire help, consider applying for a Municipal Planning Grant from the Vermont Department of Housing & Community Affairs.

Planning Commission Report.

When considering a proposed bylaw or amendment - including a "petitioned amendment" - the Planning Commission is required to prepare and approve a written report. The report must include a brief explanation of the proposed bylaw, amendment or repeal, a statement of its purpose as required for public notice, and findings regarding how the proposal:

- Conforms with or furthers the goals contained in the municipal plan, including the effect on the availability of safe and affordable housing,
- Is compatible with proposed future land uses and densities of development as set forth in the municipal plan, and
- Carries out, as applicable, any specific proposals for planned community facilities.

A single report may be prepared to cover both proposed plan and bylaw amendments. A reporting form is available from the Vermont Department of Housing & Community Affairs. For more information on determining bylaw conformance with the municipal plan, see *Bulletin #2 Conformance with the Municipal Plan*.

Planning Commission Hearing.

Once the Planning Commission has a draft ready for public review and comment, it must hold at least one formal public hearing, warned in accordance with Chapter 117 notice requirements. Prior to the formal hearing process, it may be beneficial to hold one or more community forums to give local residents the opportunity to help shape the development of the bylaw.

Note: If a "petitioned bylaw" amendment is under consideration, it must proceed "promptly" to a warned public hearing.

At least 15 days before the date of the hearing (not including the hearing date), the Planning Commission must send a copy of the draft and the Planning Commission's written report - with proof of receipt or by certified mail - to each of the following:

- The chairperson of the planning commission of each abutting municipality or, in the absence of a planning commission, to the municipal clerk;
 - The executive director of the regional planning commission;
 - The Vermont Department of Housing & Community Affairs;
- Any of these parties may submit

Reporting Requirement for Proposed Bylaws

Prior to the enactment of Act 115 (which went into effect on July 1, 2004), report preparation was recommended but not required. Under Act 115 the reporting requirement was mandated, and related criteria were substantively changed to require that the Planning Commission determine whether a proposed bylaw or amendment conforms with the municipal plan. The intent of this change was to clearly establish and strengthen the relationship between the municipal plans and an implementing bylaw.

comments on the proposal in writing, or appear and be heard at the Planning Commission's public hearing, or in any other bylaw adoption proceeding.

Submission to the Legislative Body. After public hearing, the Planning Commission may make revisions to the proposed bylaw or amendment and to their written report for submission to the local "Legislative Body" (i.e., the town selectboard, village trustees, or city council or aldermen). The Planning Commission may warn another public hearing on proposed revisions, but it isn't required to do so. In order to initiate the adoption process, however, the Commission must formally transmit its draft and report to the Legislative Body. Simultaneously with this submission, the Planning Commission must also file a copy of the draft bylaw and report with the municipal clerk for public review.

Note: If requested by the Legislative Body, or for bylaw amendments or repeals supported by petition, the Planning Commission must "promptly" submit the proposal to the Legislative Body following their public hearing, with changes only to correct technical deficiencies, together with its report and any recommendations or opinions it considers appropriate.

Public Hearing Notice Requirements

Bylaw Adoption, Amendment & Repeal [§4444]

Public notice must be given at least 15 days prior to the hearing date by:

- **Publication** of the date, place and purpose of the hearing in a newspaper of general circulation within the municipality, and
- **Posting** of the same information in three or more public places within the municipality.

The published and posted public notice must include either the full text of the material, or the following:

- A statement of purpose
- A map or description of geographic areas affected
- A table of contents or list of section headings, and
- A description of the place in the municipality where the full text may be examined.

As an alternative, the municipality may make reasonable effort to mail or deliver copies of the full text or the summary, with the public hearing notice, to each voter on the voter checklist and to each landowner on the municipal grand list.

Bylaw Adoption

Act 115 included major changes to the bylaw adoption process under Chapter 117, particularly in "rural towns." The intent of these changes was to make the bylaw adoption - and particularly the amendment process - more efficient, to keep bylaws current, relevant, and in conformance with municipal plans.

Legislative Hearing. Under Chapter 117 [§4442], the Legislative Body is responsible for bylaw adoption. Prior to adoption, the Legislative Body must hold at least

"Rural" or "Urban"? §4303

Rural Town: A town having, as of the date of the most recent United States census, a population of less than 2,500 persons, as evidenced by that census, or a town having 2,500 or more but less than 5,000 persons that has voted by Australian ballot to be considered a rural town [§4303(25)].

Urban Municipality: A city, an incorporated village or any town that is not a rural town [§4303(31)].

one additional public hearing, warned in accordance with Chapter 117 notice requirements. The first public hearing is supposed to be held not less than 15 nor more than 120 days from the date of submission by the planning commission; however, failure to meet this 120-day deadline does not invalidate the adoption process or the validity of any repeal. The "waiting period" was reduced from 30 to 15 days under Act 115 to help expedite the amendment process.

Note: The warning for the Legislative Body's first public hearing triggers the official adoption process. For more information about the review of new permit applications during the adoption process for proposed bylaws, see *Bulletin #7 Zoning Permits*.

Changes. The Legislative Body can make minor changes to a proposed bylaw, amendment or repeal, but not less than fourteen days prior to their final public hearing. If at any time "substantial changes" are made in the "concept, meaning or extent" of the proposed draft, another public hearing must be warned. Copies of any changes must be filed with the Municipal Clerk and the Planning Commission at least ten days before the public hearing. The Planning Commission is then required to amend its report to reflect the changes made by the Legislative Body, and submit the report as amended to the Legislative Body prior to or at the public hearing.

Routine Adoption. Routine bylaw adoption is done by a majority vote of the Legislative Body at a meeting held after their final public hearing. This once applied only to "urban" municipalities, but now also applies in "rural" towns unless the Legislative Body or voters take special action. A bylaw adopted by the Legislative Body takes effect 21 days after adoption unless, within 20-days of adoption, five percent of the voters file a petition for adoption by "popular vote." The Legislative Body must then warn a town meeting for a vote by Australian ballot.

Note: A "rural town," by action of the Legislative Body (e.g., a formal vote or resolution by the Selectboard) or by a vote of the town at a regular or special town meeting, can elect to adopt bylaw amendments and repeals by Australian ballot similar to the process in effect for rural towns prior to July 1, 2004. Once this decision is made by the legislative body or the voters however, it can only be rescinded by voters at a subsequent regular or special town meeting. Towns should consider carefully before giving up the ability to make amendments easily through action of their Legislative Body.

Timing. If no action is taken on a proposed bylaw, amendment or repeal within one year of the date of the final Planning Commission hearing, it is considered disapproved unless a petition is filed within 60 days of the deadline, by five percent of the voters, for a meeting to vote on the proposal by Australian ballot.

Distribution. Copies of bylaws, amendments and repeals - as adopted - must now be sent to the regional planning commission and to the Vermont Department of Housing and Community Affairs [§4445].

Bylaw Preparation and Adoption Checklists for both the Planning Commission and Legislative Body are available at www.vpic.info.

**Contact information:
Regional Planning Commissions**

Northwest Regional Planning Commission
802-524-5958 or 1-800-564-5958
Email: nrpcvt@nrpcvt.com
www.nrpcvt.com

Chittenden County Regional Planning Commission
802-658-3004
Email: administrator@ccrpcvt.org
www.ccrpcvt.org

Addison County Regional Planning Commission
802-388-3141
Email: alougee@sover.net
www.acrpc.org

Rutland Regional Planning Commission
802-775-0871 or 1-800-464-7900
Email: Comments@rutlandrpc.org
www.rutlandrpc.org

Bennington County Regional Commission
802-375-2576 or 802-375-9964
Email: bccrburk@verizon.net
www.rpc.bennington.vt.us

Northwestern Vermont Development Association
802-748-5181
Email: info@nvda.net
www.nvda.net

Lamoille County Planning Commission
802-888-4548
Email: lcpc@lpcvt.org
www.lcpcvt.org

Central Vermont Regional Planning Commission
802-229-0389
Email: CVRPC@cvregion.com
www.central-vt.com/cvrpc

Two Rivers-Ottawaquechee Regional Commission
802-457-3188 or 802-457-3189
Email: info@trorc.org
www.trorc.org

Southern Windsor County Regional Planning Commission
802-674-9201
Email: tkennedy@swcrpc.org
www.swcrpc.org

Windham Regional Planning & Development Commission
802-257-4547
Email: wrc@sover.net
www.rpc.windham.vt.us

Chapter 117 Bulletins

The following ten bulletins were published in November 2004 to provide information about the changes to 24 V.S.A. Chapter 117, the state statute governing local planning and regulation, enacted in 2004. These all are available through www.vpic.info and from the Education and Training Collaborative partners listed below.

1. **Chapter 117 Overview** (legislative intent and effective dates)
2. **Conformance with the Municipal Plan**
3. **Permissible Regulations**
4. **Bylaw Preparation & Adoption**
5. **Required Provisions & Limitations**
6. **Equal Treatment of Housing**
7. **Zoning Permits**
8. **Development Review Procedures**
9. **Appeals**
10. **Appropriate Municipal Panels**

Vermont Land Use Education and Training Collaborative

Working Together to Provide Improved Learning Opportunities for Vermont's Local Boards and Commissions

Questions about this bulletin and other chapter 117 materials produced by the Collaborative may be directed to the following members of the Vermont Land Use Education and Training Collaborative Steering Committee. For links to websites go to "About Us" at www.vpic.info.

Center for Rural Studies (CRS) at the University of Vermont
207 Morrill Hall
University of Vermont, Burlington, VT 05405
(802)656-3021

Department of Housing and Community Affairs (DHCA), Planning Division
National Life Building Dr. 20
Montpelier, VT 05620-0501
(802)828-5249

Vermont Association of Planning and Development Agencies (VAPDA)
Contact your Regional Planning Commission

Vermont League of Cities and Towns (VLCT)
89 Main Street, Suite 4
Montpelier, VT 05602
(802)229-9111

Vermont Secretary of State's Office
26 Terrace Street
Montpelier, Vermont 05609
(802) 828-2363

Vermont Planners Association (VPA)
c/o VLCT
89 Main Street, Suite 4
Montpelier, VT 05602

FOR MORE INFORMATION GO TO WWW.VPIC.INFO