

TO: THE POULTNEY SELECT BOARD  
FROM: POULTNEY PLANNING COMMISSION  
SUBJECT: RESPONSE TO PETITION TO REPEAL SECTIONS OF ZONING BYLAWS

Robert Williams has submitted a petition to the Poultney Planning Commission purportedly signed by more than 5% of the voters asking for a repeal of Poultney Unified Bylaws adopted May 27, 2017 [sic] §§417 Slate Mining, 418, Slate Processing and 1424, Site Development. No supporting documents were included with the petition. If the requisite 5% is confirmed by the town clerk, the Planning Commission is required to present the petition to the board of selectmen, but may submit the same with any recommendation or opinion it considers appropriate.

#### SUMMARY

What the petition seeks in essence is that any and all restrictions on slate quarrying operations be removed, regardless of the town plan and the legitimate interests of neighboring properties that would be affected. All other uses, from Antiques Shops to Retail Stores and Veterinary Clinics are subject to certain, reasonable zoning requirements - slate quarry operations should be treated no differently.

The Planning Commission, opposes outright repeal and has separately proposed amendments to the zoning bylaws, to provide clarity and certainty to address slate industry concerns. These amendments were approved at the successive hearings and meetings of the planning commission through November 6, 2017 and are attached for further statutory hearings and final action by the select board. The sense of the commission is that many of these were generally well received at the initial hearing.

#### DISCUSSION

The Planning Commission held public meetings on June 27, July 6, August 2, November 1, and 6, 2017 to gather as much input as possible about whatever concerns existed that prompted the petition. Throughout the discussion it became apparent that many of these concerns about "onerous and oppressive" bylaw provisions were prompted by a misunderstanding and misinterpretation of the zoning bylaws, but it also became apparent that some "tweaking" of the bylaws could be beneficial.

The first two sections sought to be repealed, as "onerous and oppressive" are Sections 417 and 418, contained in ARTICLE IV: USES PERMITTED SUBJECT TO CONDITIONS:

*Section 417: Slate Mining*

A. *There shall be a setback of two hundred feet (200') of all pits, dumps,*

*buildings, to any residential structure or property line.*

*B. A plan for ongoing reclamation must be approved prior to the issuance of any land use permit.*

*C. A gate of sufficient height and strength for every access point to deny access to the public is required around any pit or excavation.*

*D. Loads per truck shall not exceed the weight limits of the roads over which the truck will travel within Poultney unless permitted.*

*Section 418: Slate Processing*

*All processing shall be conducted within an enclosed structure.*

Under §417 concern was expressed that:

A 200-foot setback from residential structures or property lines was too restrictive, especially for quarries on smaller parcels of land.

The cost of any reclamation would be exorbitant.

Although most quarries had some sort of chain or gate at roadway entrances, they could not be completely enclosed with fencing as a practical matter.

No substantial concern was expressed with respect to the weight limit provisions, because it was acknowledged that highway weight limits were separately enforced and required separate overweight permits, anyhow.

Under §418, it became apparent that there was no definition of "slate processing" in the bylaws. Testimony was that most of the sawing and trimming were done under roof but that "processing" arguably could also be interpreted to include drilling and blasting and splitting of large blocks, which are done outdoors.

The undisputed testimony from those in attendance was that slate quarries and slate quarrying have been part of the economic underpinnings of the town for decades, prior to the adoption of local zoning regulations. Although Act 250 is separate from municipal planning and zoning, it is noted that all quarries pre-existing 1970, if specially registered with the District Environmental Commission, are grandfathered and exempt from Act 250 permitting by a specific statutory amendment. It was further undisputed that it is extremely unlikely that anyone would undertake the opening of a new quarry, given the economics of the industry and the requirement to go through the Act 250 procedure for any new quarrying operations.

There was discussion about existing or future slate quarrying operations that would affect adjacent residential properties, including discussion about pre-existing quarries in closer proximity to pre-existing residential structures. Indeed it would appear that slate

mineral properties would be in geologically defined areas that are not conducive to future residential construction with related on-site sewage disposal. However, there are in existence now residences close to slate activities. A reasonably prudent person seeking to purchase a residential structure or construct one should be presumed to be on notice quarries existing on abutting parcels. Conversely, our zoning should provide some protection for the owners of pre-existing residential property from adverse effects of slate quarrying or when a new quarry is proposed to be opened on adjacent property.

There was no discussion and no evidence of any enforcement undertaken by the zoning administrator against any pre-existing quarry operations, for any alleged violations.

Our town plan, upon which our zoning bylaws are based, recognizes the contribution of the slate industry to the history and economy of the town (Town Plan §9.6) and has the "sand, gravel and slate goals and objectives" of promoting the continued growth of the slate industry in a manner that is compatible with other goals of the town but does include the requirement of a 200-foot setback from quarry pits to other buildings and land uses. (Town Plan §9.7).

What the petitioner apparently fails to grasp however is that the "conditions" under Article IV relate to new applications for "Slate Mining" or "Slate Processing," under Article III, Table of Uses.

*As stated in the preamble to Article IV: "a zoning permit shall be issued by the Zoning Administrator for any use or structure which requires a conditional use only after the Development Review Board grants such approval. In considering its actions, the Board shall make findings upon specific standards set forth in these regulations and the objectives of §1203."*

As specified in §204, these regulations are not retroactive. Under Article III, a new application for Slate Mining is a "conditional use" in the Industrial, Agricultural Rural Residential 2 Acre, 5 Acre and 10 Acre Zoning Districts and an application for Slate Processing is a permitted use in an industrial zone and a conditional use in the other three zones.

The conditions imposed by §417 simply do not apply to pre-existing quarrying operations. They do apply in the highly unlikely event that someone wishes to open a new slate pit and particularly one adjacent to existing residential properties.

More specifically, to the extent any pre-existing quarry does not meet the current criteria, it is deemed a Nonconforming Use under §701. The bylaws specifically provide that a "nonconforming use may be continued indefinitely, but subject to the provisions

of Article VII, NONCONFORMITIES.

Those other provisions §702 are: Change of Nonconforming Use (not relevant to the current discussion); §703: Extension of a Nonconforming Use dealing with extending a nonconforming use throughout a building (not relevant to the current discussion) and §704: Enlargement of a Nonconforming Use, which may be relevant and which provides:

*Section 704: Enlargement of a Nonconforming Use*

*A nonconforming use may be enlarged on the same lot with the approval of the Development Review Board, provided that:*

*A. All provisions of these Regulations, except type of use, are complied with;*

*B. The Development Review Board determines that the character of the neighborhood will not be changed substantially or adversely affected (see Section 711) by this enlargement;*

*C. The total enlargement or the sum of separate enlargements does not exceed thirty (30%) percent of the area of the nonconforming use in existence at the time of the adoption of these Regulations; and,*

*Examples of enlarged or expanded uses can include increased hours of operation, increased numbers of tables, number of employees or an increase in the size of the operation through the expansion of a complying structure.*

The bylaws do not specifically address the situation unique to slate quarrying operations, where a parcel of land has an existing slate quarry, which through normal mineral extraction operations expands the quarry pit, and may expand toward adjoining properties, residential properties. Would that expansion constitute an "extension" or an "enlargement" of a nonconforming use?

The other provision of the bylaws sought to be repealed is §1424:

*Section 1424: Site Development*

*Any site development including bringing in fill or removing earth in excess of fourteen (14) cubic yards in any one (1) calendar year shall require a permit.*

*Loam, slate, rock, gravel, sand, cinders, and soil may be used for fill.*

*In any District the dumping of waste material and refuse for landfill is prohibited.*

Representatives of the slate industry were concerned about the application of this provision to normal quarry operations where overburden is routinely removed in order to expose veins of slate.

Representatives of the excavation contractors were concerned about "onerous" permitting requirements involved in, for example, driveway maintenance and improvements, or excavation of foundations for new home construction.

However there are certain exemptions already set forth in the bylaws:

*Section 1503: Exemptions*

*No zoning permit shall be required for the following activities, unless located in the Special Flood Hazard Area (see Article VIII for exemptions within Special Flood Hazard Areas):*

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*(10) Minor grading and excavation associated with road and driveway maintenance (e.g., including culvert replacement and resurfacing), and lawn and yard maintenance (e.g., for gardening or landscaping), or which is otherwise incidental to an approved use. This specifically does not include extraction and quarrying activities regulated under Section 416 or 417.*

The bylaws are explicit that if an owner applies for and receives a permit for the construction of a house or other structure, the related grading and excavation would be incidental to, and covered by, that construction permit as “otherwise incidental to an approved use.”

The term “site development” is not specifically defined; however, the term “development” is defined under Article VIII:

*Development. The division of a parcel into two (2) or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building(s) or other structure(s), or of any mining, excavation or landfill, and any change in the use of any building or other structure, or land, or extension of use of land.*

So the situation addressed by §1424 is where a landowner has not applied for a permit for the construction of a house, building, or other improvements, but in preparation for such a project, has brought in or removed something in excess of 14 cubic yards of fill in a single calendar year.

## RECOMMENDATIONS AND OPINIONS

Through an extensive public meeting process spanning over many months, the planning commission developed the Town Plan with input invited by, among others, the slate industry, in 2011. Also, after further required public meetings and input, the board of selectmen approved the extensive revisions of the zoning bylaws in May 2014.

The town plan and the town bylaws seek to balance the interest of individual property owners with the interests of their neighbors and overall development of the town as a whole.

A wholesale repeal of these provisions is inconsistent with the stated objectives of the town plan and is internally inconsistent with the provisions of the bylaws themselves.

What the petition seeks in essence is that any and all restrictions on slate quarrying operations be removed, regardless of the town plan and regardless of the legitimate interests of neighboring properties that would be affected. All other uses, from Antiques Shops to Retail Stores and Veterinary Clinics are subject to certain, reasonable zoning requirements - slate quarry operations should be treated no differently.

The complaints about onerous and oppressive bylaws are unfounded, because they misinterpret the bylaw provisions. They simply do not apply to pre-existing quarrying operations which predate zoning bylaws. The provisions about landfill contain specific exemptions, which address concerns expressed. The planning commission recommends that the board of selectmen not do such a wholesale repeal of the bylaws, however it does recommend some minor amendments for the purposes of clarity.

Through lengthy deliberation, the planning commission realized that the bylaws were deficient in addressing setbacks from slate quarry pits and rubbish piles as they pertain to setbacks between existing quarrying operations and existing residential structures and striking a balance between the owners of slate and residential properties.

#### ALTERNATIVE BYLAW AMENDMENTS PROPOSED BY THE PLANNING COMMISSION.

Please refer to the attached bylaw amendments approved by the planning commission at its fifth and final hearing on November 6, 2017.

The following summarizes these approved amendments:

We have proposed to revise §417 to remove the requirement of a plan for reclamation. The theory is that if someone starts a new quarry and operates it for 10 or 15 years until the minerals are exhausted, it would be extremely expensive to reclaim the land by completely filling in the quarry pit. To what purpose does that serve? It seems unlikely that this type of land would be suitable for any different development anyhow. And if the quarry pit were exhausted we suspect that the quarry operator would not have the funds anyhow. So they could put in a plan for reclamation when they applied for a permit but how do we enforce it 15 years later?

We have proposed to revise §1424 to make it read "any development of a site . . ." This makes it more consistent with the definition of development. We have added a cross reference to the other exemptions for slate quarrying activities and for driveway maintenance for the sake of clarity.

We have proposed to revise the preamble to ARTICLE V about uses permitted subject

to conditions to specify that these conditions only apply in connection with new applications and are not applicable to otherwise protected pre-existing uses and structures.

We have proposed specific, clarifying setbacks to address slate quarry pits, rubbish piles and slate processing buildings and to maintain a 200 foot setback, to protect neighboring properties from the adverse effects of blasting, heavy equipment operations, and slate sawing. Existing encroachments are "grandfathered" but they cannot be further expanded into the setbacks. Other structures on slate lands, such as sheds used for storage, are unaffected and would be governed by the existing setbacks in the particular zoning district. We further propose exceptions to the setbacks when the neighboring property owners agree to encroachments. An example would be when two owners of slate properties want to expand their pits toward their common boundary line. The exception would also be available when the owner of a residential property agreed to waive the setback.

#### CONCLUSION

The planning commission recommends that the select board refuse the request to repeal the bylaws, and instead adopt the amendments approved by the planning commission, attached.

November 6, 2017

Poultney Planning Commission

By:   
Mark Teetor, Chair

### **Section 502: Other Restrictions**

- A. For All Zoning Districts - Setback of structures and driveways to a stream bank must be a 50 ft. minimum.
- B. Front yard, sideyard and rearyard setback requirements from a private right-of-way are not governed by these Bylaws. Setbacks apply only with respect to property boundaries.
- C. Open decks shall meet a minimum setback (rear yard, side yard) of 10 ft. to property lines. However the structures shall be allowed to encroach in one direction only.
- D. Storage sheds shall meet a minimum setback of 5 ft. to property lines (side yard, back yard).
- E. Storage sheds are considered structures not greater than 10 x 12 ft and are not used as a garage for the storage of cars.
- F. Garages shall meet a minimum 15' setback to property lines (side yard and rear yard).
- G. Front Yard Setback is 20 ft. measured from the edge of the road right-of-way.

#### **H. For parcels on which slate quarrying and / or slate processing is conducted:**

- **1. There shall be a minimum setback on all sides of 200 feet from the edge of a quarry pit, 40 feet from the base of a slate rubbish pile to the property line, and a height limit of rubbish piles of 40 feet. Any setback or height nonconformity existing on the date of adoption of this amendment may be maintained indefinitely, however the existing quarry pit or slate rubbish pile may not be further expanded to increase the degree of nonconformity /encroachment.**
- **2. For structures used for slate processing, there shall be a minimum setback on all sides to the property line of 200 feet. Any such existing structure with such setback non-conformity existing on the date of adoption of this amendment may be used and maintained indefinitely however the structure may not be enlarged in any dimension to further encroach on the setback.**
- **3. For all other structures, the setback requirements applicable to the subject zoning district shall apply.**
- **4. Upon a written agreement of the owners of all real estate interests in the parcel on which slate quarrying and / or slate processing is conducted and the owners of all real estate interests in affected neighboring parcels, signed and acknowledged with the formalities of a deed, binding upon the parties and their respective heirs, successors and assigns, and recorded in the land records and filed with the zoning administrator, the setbacks and height restrictions in this section 502 H may be waived.**

### **ARTICLE IV: USES PERMITTED SUBJECT TO CONDITIONS**

A zoning permit shall be issued by the Zoning Administrator for any use or structure which requires conditional use approval only after the Development Review Board grants such approval. In considering its action, the Board shall make findings upon specific standards set forth in these regulations and the objectives of Section 1203.

In granting conditional use approval, the Board may attach such reasonable conditions as it deems necessary.

The following conditions regarding minimum lot size and setbacks apply except where Article V would require more restrictive provisions.

If a use will be located in the Flood Hazard Area, the provisions of Article VIII shall apply.

**The conditional use requirements set forth in this Article IV do not apply to pre-existing uses benefitted by Section 701.**

**Section 417: Slate Mining**

- A. There shall be a setback of two hundred feet (200') of all pits, dumps, buildings, to any residential structure or property line. See section 502 H for setbacks on parcels with pre-existing slate quarry or slate processing uses .
- B. .
- C. A gate of sufficient height and strength for every access point to deny vehicular access to the public is required around any pit or excavation.
- D. Loads per truck shall not exceed the weight limits of the roads over which the truck will travel within Poultney unless permitted.
- E.

**Section 418: Slate Processing**

All final sawing and trimming of slate blocks into marketable final products shall be conducted within an enclosed structure.

**Section 1424: Development**

Any development including bringing in fill or removing earth in excess of fourteen (14) cubic yards in any one (1) calendar year shall require a permit. Loam, slate, rock, gravel, sand, cinders, and soil may be used for fill.

In any District the dumping of waste material and refuse for landfill is prohibited.

See Section 1503 for exemptions.

See Section 201 for additional erosion control requirements in the Lakeshore district.

The applicant must demonstrate the proposed introduction or removal of fill will not create soil erosion, alter the natural flow of surface waters onto other parcels, remove subjacent support to abutting parcels, adversely affect easements or rights of way nor adversely effect public highways or infrastructure.

As approved by the Planning Commission Nov 6,2017. Redlining and strikeouts show changes.