

SUPPLEMENTAL REPORT OF THE POULTNEY PLANNING COMMISSION 24 V.S.A.§4384(c)

On November 6, 2017, the Poultney Planning Commission submitted its report in response to a petition by various members of the slate industry to repeal certain portions of the Poultney Unified Bylaws. The Select Board held a public hearing on December 18, 2017. The Select Board voted to refer the matter back to the Planning Commission for further hearings and reconsideration of its recommendations. The November 6, 2017 report is incorporated by reference in this supplemental report, as modified by this supplemental report and the accompanying further revised proposed bylaw revisions. This report of recommended bylaw revisions is submitted for approval by the select board pursuant to 24 V.S.A.§4384 (c).

Not less than 30 and not more than 120 days from the submission of this report and recommended amendments, the Select Board is required to hold at least two public hearings after statutorily required notices and publication. A copy of this report and recommended bylaw revisions is being simultaneously delivered to the Town Clerk, for public inspection.

SUBSEQUENT HEARINGS

The Planning Commission held further public hearings on January 19, 2018, February 19, 2018 and March 7, 2018. At those subsequent meetings, representatives of the slate and excavation industries modified their requests for outright repeal of certain bylaw provisions affecting the slate industry and submitted new proposals for amendments to the bylaws. Comments were also received from members of the general public.

The slate industry has proposed in a submission on December 18, 2017 that the Poultney Unified Bylaws exempt from regulation any existing slate quarry which is exempted from Act 250 jurisdiction; and for new quarries there be a 40-foot setback to any residential structure or property line from quarry pits and from dumps and buildings, with provisions for a waiver with appropriate written agreements between property owners; that a plan of reclamation be deleted; and that a gate or blockage be required only to limit vehicular access from a public road; and all final sawing and trimming of slate blocks into marketable final products shall be conducted within an enclosure.

The Planning Commission has attempted to adhere to the Town Plan, upon which all zoning bylaws must be based. Concurrently the Planning Commission has attempted to balance the legitimate concerns and needs of the slate industry with the protection of adjoining property owners from the adverse effects of blasting, noise, and traffic from slate quarrying operations.

SUMMARY

Certain bylaw amendments were approved for recommendation to the select board

throughout the subsequent hearing process and this report reflects final amendments recommended by the Planning Commission at the last public hearing, March 7, 2018.

As stated in the first report, recommended changes to the bylaws clarified that provisions of §417-418 apply only to conditional use applications for new quarries to be opened. The requirements for a plan of reclamation have been removed and the requirements for fencing and security have been relaxed.

The Planning Commission does not accept the position that an exemption from state land use regulation under Act 250 should entitle a slate quarry owner to exemption from all local zoning. The state law creating that exemption from state regulation did not change the enabling legislation for local zoning and made no changes to a municipality's ability to create reasonable zoning restrictions. The Planning Commission reiterates its position that the slate industry is and should be subject to reasonable regulations, just as any other industrial or commercial use, consistent with the town plan.

Considerable discussion was devoted to the issue of setbacks and height restrictions for quarry pits and slate dumps. Previous recommendations by the Planning Commission to impose a height limit on slate dumps were withdrawn and setback requirements were pared down from the original proposals. A compromise recommendation as set forth in the attached proposed zoning bylaw amendments provides different setbacks with respect to existing quarrying operations, which are required by state law to be evidenced by recorded jurisdictional opinion letters issued by the District Environmental Commission and recorded in the town land records:

A 40-foot setback from the edge of the quarry pit and from the base of the slate rubbish pile to the property line of any parcel improved with a residence in a residential zone;

A 100-foot setback from any residential structure constructed in a residential zone and existing on the effective date of this proposed amendment to the bylaws;

Any currently existing nonconformity with such a setback is to be grandfathered but not expanded or enlarged to increase the degree of nonconformity.

The owner of a quarry and an owner of an adjoining parcel of land may, by a written, recorded agreement, waive the setbacks as they pertain to their respective properties.

Any person acquiring property adjacent to slate quarrying operations is deemed to be on notice of the potential development or reactivation of slate quarrying activities on the registered parcels. It is recommended that instruments of conveyance concerning affected parcels contain notice language as to proximity to such registered parcels.

The 100-foot setback from residential structures and written waiver agreements are consistent with the 2008 version of the zoning bylaws (although the setback in 2008 was 200 feet). However it is not consistent with the town plan which requires 200 foot setback. This will have to be addressed in the next review and update of the town plan.

With respect to the provisions of §1424, limiting the dumping or removal of fill, the previous limit of 14 cubic yards in a year has been substantially relaxed to provide a limit of 28 cubic yards per acre, per parcel per year. Explicit cross references to other exemptions and to required additional control measures applicable to the Lakeshore district are incorporated for clarity. Certain standards by which the zoning administrator is to review an application for the dumping or removal of fill are added.

Certain other technical corrections for minor errors and cross-references the text are also included.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark Teetor', with a long horizontal flourish extending to the right.

Mark Teetor, Chair

Date: 3-22-11

PROPOSED AMENDMENT – POULTNEY UNIFIED BYLAWS

Section 201. Zoning Map is corrected to show VI instead of I for the entire parcel on Beaman Street between Church St. and Main St.

All cross-reference citations in sections 1402, 1603 and elsewhere to Sections 1405-1407 variances are corrected to read section 1605 and following.

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 or structures benefitted by Sections 701 or 707.

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 or structures as specified.
- 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:

- o 1. There shall be a minimum setback of 40 feet from the edge of a quarry pit, and 40 feet from the base of a slate rubbish pile to the property line of any parcel improved with a residence in a residential zone, and a setback of 100 feet from any residential structure constructed in a residential zone existing on the effective date of this amendment to the bylaws [*inert date approved by select board*]. Any setback nonconformity existing on the date of adoption of this amendment may be maintained indefinitely provided the owner complies with the requirement to record the jurisdictional opinion letter, re subparagraph 5 below, however the existing quarry pit or slate rubbish pile may not be further expanded to increase the degree of nonconformity or encroachment.
- o 2. For structures used for final sawing and trimming of slate blocks into marketable final products, there shall be a minimum setback on all sides to the property line of 40 feet. Any such existing structure with such setback nonconformity 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.
- o 3. For all other structures, the setback requirements applicable to the subject zoning district shall apply.
- o 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 in this section 502 H may be waived, provided the following subparagraph is complied with.
- o 5. The owner of a parcel benefitted by a slate registration under 10 V.S.A. § 6081(i) shall record in the office of the town clerk at the owner's expense, the jurisdictional opinion letter issued by the District Environmental Commission. All persons seeking to improve adjoining parcels shall be deemed to be on notice of such registration.

Section 1204: Time for Action

The Development Review Board shall approve, disapprove, or approve with conditions any site plan within forty five (45) days after the date upon which it receives the complete site plan and supporting data the date upon which it receives the complete site plan and supporting data close of the evidence and adjournment upon completion of the hearing. Failure to act within such period shall be deemed approval and shall be effective the 46th day.

Section 1424: Site-Development

Any site-development including bringing in fill or removing earth in excess of TWENTY-EIGHT (28) cubic yards per acre, per parcel, in any one (1) calendar year shall require a permit. For a parcel of less than one acre, any deposit or removal of more than 28 cubic yards 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 affect public highways or infrastructure.