



Town of Westport
Planning and Zoning Commission
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Minutes

Planning and Zoning Commission's Zoning Regulation Revision Subcommittee

Tuesday, September 21, 2021 12:00pm

P&Z Commissioners in Attendance:

Danielle Dobin, Subcommittee Member and P&Z Commission Chair
Michael Cammeyer, Subcommittee Member and P&Z Commission Member
John Bolton, P&Z Commission Member Alternate

Public in Attendance

Eric Bernheim Monika Lazaro
Thane Grauel Valerie Seiling Jacobs
Robby Guimond

P&Z Staff

Michelle Perillie, Deputy Planning and Zoning Director
Michael Kiselak, Planner

Town of Westport Officials

Keith Wilberg, Town Engineer, DPW
Alicia Mozian, Conservation Director

Agenda

1. Discussion regarding updating drainage requirements with a focus on "construction period" issues.
2. Discussion of potential text amendment regarding placing "good" side of fence toward neighbor.

P&Z Zoning Regulation Revision Subcommittee Chairwoman Danielle Dobin welcomed meeting attendees and read **Agenda Item #1** into the record.

P&Z Deputy Director Michelle Perillie explained that the P&Z office get numerous complaints about drainage issues at development sites in the construction phase. This subcommittee is seeking input on ways to help alleviate the construction-phase drainage concerns.

Town Engineer Keith Wilberg explained that there is an issue with sediment migration. Sediment and Erosion Control (S&E) plans, as required in §37 of the Zoning Regulations, are designed to prevent sediment and pollutants from running off a site; they are not necessarily

designed to prevent flooding because the S&E measures allow water to run off. Construction sites are estimated to have up to a 250x increase in sediment migration compared to undeveloped woodland, so insufficient S&E controls can be a big problem when sediment impedes drainage systems from function. Often, measures put in place do not function as designed due to poor implementation or maintenance.

Most developments are single-family residential, which requires measures such as silt fencing and hay bales to allow water to pass through but not sediment. Stockpile areas and anti-tracking pads for trucks are typical, too. More complex projects, including most commercial projects, can have more involved S&E plans.

Denuded soil can lead to 2x or 3x more stormwater runoff compared to lawns or woodlands. More attention should be placed on monitoring this but current staffing isn't adequate to monitor/inspect every site regularly. The Conservation Department has also advocated for more enforcement capabilities, and DPW would like to see more "teeth" in the regulations to implore site stabilization during construction. More manpower would be necessary for enforcement.

Ms. Dobin asked what more can be done during the construction period on sites that remain unfinished for long periods of time?

Mr. Wilberg replied that it's not an easy solution. Sediment basins could help. Sedimentation and erosion is an inherent conflict with development. Vegetative growth, even weeds, can help from a runoff perspective to stabilize sites. Water runs off bare soils in sheet flow in the same manner as it does off asphalt.

Ms. Dobin asked about the lack of enforcement capabilities and what fees could be imposed for violating S&E plans? Are contractors responsive to violations?

Mr. Wilberg said enforcement and fees both appear to be insufficient. Most (estimated 90%) of contractors comply currently, and compliance increases if inspections increase. Fines are probably not steep as-is. Mr. Wilberg would defer questions regarding the legality of increasing fines.

Commissioner Michael Cammeyer had no comment at this time.

P&Z staff agreed to research what other towns in the area do regarding S&E requirements.

Ms. Dobin opened the floor to the public and recognized Ms. Valerie Seiling Jacobs.

Ms. Jacobs wants to expand the scope of the regulation revisions beyond just construction to include stricter drainage design standards. She has discussed the matter with the Public Works Department. She said she was informed that the water table is higher now. Coupled with rising sea levels and more frequent heavy storms, she has observed increased flooding in recent years. Westport's design standards are based on 25-year storm events, not 100-year. Complaints from developers/builders shouldn't prevent stricter standards. Clearcutting of lots is also an issue. She has observed residents doing work after receiving their Certificate of Occupancy and been told by DPW that there's no enforcement mechanism for the Town to use to fix this. She would like a central list of conditions that are imposed on developments to prevent unpermitted development post-CO and would like to see more enforcement.

Ms. Dobin acknowledged that the Commission can consider broad regulation revisions but

that today's agenda is focused specifically on construction phase issues.

Conservation Director Alicia Mozian was recognized by the Chairwoman and explained that an S&E inspector was hired approximately 10-15 years ago to help with sedimentation issues, but current budget allotment doesn't allow for as much time spent on this as she'd like. It's also important for the public to alert officials when they see something wrong. Ms. Mozian suggested researching legislation in New York that may enable municipalities to control tree clearing on private property. She explained that the RTM has considered a similar ordinance in the past but it failed because the Town Attorney advised that it was not legal. Ms. Mozian suggested a regulation revision for developers to identify areas of disturbance to prevent total clearcutting. She asked what legal authority there is to prevent tree clearing or demolition without a permit?

Ms. Dobin agreed that it's worth asking the Town Attorney if the P&ZC has jurisdiction for a tree ordinance or if it's a state-level concern. She also posed a question about the possibility of construction phasing.

Ms. Mozian stated that there's often an issue with the Conservation Commission receiving applications for new homes when the pre-existing home has already been demolished – their hands are often tied.

Ms. Jacobs suggested providing lot coverage incentives for leaving trees and vegetation. She asked if the Town could require bonds in case of flooding/drainage issues?

Ms. Mozian responded that bonds are a normal condition of the Conservation Commission, but not necessarily for staff-level permits. State law limits bonds to erosion control and doesn't allow for bonding related to landscaping.

Ms. Jacobs raised a concern about new construction inundating existing drainage infrastructure.

Mr. Wilberg responded that much of the infrastructure that she's referring to around Compo Parkway is on private property, which the Town can't manage and upgrade. A public/private partnership would be necessary to facilitate improvements to the fullest extent.

Ms. Dobin summarized that P&Z staff will research regulations in surrounding towns for ideas and that more staffing for enforcement/inspection of S&E measures is needed.

Ms. Mozian and Ms. Perillie agreed that P&Z has stopped doing residential inspections except in flood zones; compliance is based on as-builts provided by developers typically.

Ms. Dobin reiterated that staff should pose a question to the Town Attorney about tying coverage limits to retention of trees.

Ms. Mozian brought up an intent to explore low-impact development techniques for stormwater management soon.

Ms. Dobin agreed and stated it's important to have Conservation Commissioners provide input at a future subcommittee meeting on this topic.

Mr. Cammeyer said that he's in favor of planning for larger storms but that there must be a happy medium between over/under regulating.

Ms. Dobin read Agenda Item #2 into the record, which is a topic came out of discussions with community members.

Ms. Perillie explained that P&Z staff receives questions frequently about fence regulations. P&Z currently does not regulate fences (if they are less than 8 feet tall).

Ms. Dobin explained that many residents erect fences with the “finished” (i.e. more attractive) side facing inwards towards their house. This causes an eyesore/aesthetic issue. There would be enforcement difficulties if P&Z decided to regulate fences. She also noted that the distance of fences to the road would need to be considered.

Commissioner John Bolton thinks that fences should be regulated to have the nice side facing outward (toward the street) because the aesthetics can affect property values.

Mr. Cammeyer agreed that the nice side should face out, although some fences are finished on both sides. It’s a common courtesy to have the nice side facing out.

Ms. Jacobs noted that there the Building Code may already require the unfinished side to face inward with respect to pool fences. She acknowledged there would be enforcement issues to any new P&Z regulations because of existing fences. She favors encouragement for new fences to have the good side facing out.

Ms. Dobin said people don’t always follow guidance, especially if there is a financial cost. Education about fences is important. She agreed that pre-existing non-conformities will happen. She took a straw poll of the other commissioners in attendance regarding bringing this topic to a future work session.

Both Commissioners Cammeyer and Bolton responded in favor of bringing the topic to a work session.

Ms. Dobin opened the floor to members of the public that want to offer other suggestions for the subcommittee to consider.

Ms. Lazaro was recognized and asked to discuss the treatment of pergolas in coverage calculations under the current regulations. It seems inconsistent that patios do not count towards coverage but pergolas on patios do, even when they aren’t roofed over. She asked for the P&ZC to amend the regulations so that pergolas do not count as coverage.

Ms. Dobin asked if staff can research the history of the pergola regulations. She agreed that it’s an appropriate topic for this subcommittee to take up.

Ms. Jacobs agreed that the regulation should be changed. She understands that the reasoning was a way of discouraging patios and that the height limits are probably intended to mimic the fence regulations.

Mr. Cammeyer agreed with Ms. Jacobs.

Mr. Bolton would like to be further educated on the topic before making any decisions.

Ms. Dobin asked staff to look into drafting an amendment to bring to a future subcommittee meeting. She reminded the attendees that pergolas cannot go in setbacks. She encouraged future public engagement regarding this topic. The topic could then possibly go to a P&ZC work session if the commissioners agree to it.

Mr. Guimond was recognized and explained that he wants to see the zoning regulations updated to facilitate his paddle club operating in the Res. A district. He thinks it would benefit the Riverside community.

Ms. Dobin asked if he's looking for a conversation to change zoning only in that area of town? Mr. Guimond agreed.

Attorney Bernheim stated that Mr. Guimond's property is in the Res A district and therefore many uses that would be good for the site are not permitted, despite being adjacent to commercial zones. He raised the potential of rezoning the Saugatuck area or parts of it to make it more usable, including improved river access.

Ms. Dobin recommended their best approach would be to go before the full P&ZC with a Pre-App proposal and to reach out to neighbors in advance.

Ms. Perillie agreed with Ms. Dobin's recommended approach.

Mr. Cammeyer said he had no comment.

Mr. Bolton said the idea could lead to positive changes and he liked the idea.

Ms. Dobin wrapped up the meeting and said that the next subcommittee meeting could feature more discussion of drainage and construction issues and potentially see a proposal related to the pergolas.

The meeting adjourned at 1:09pm.

A full audio recording of the meeting is archived and available on the Town of Westport's website, [here](#).

Respectfully Submitted by Michael Kiselak on September 22, 2021.