

Bylaw Review Committee meeting, March 20, 2023. Via Zoom.

In attendance: Bylaw Review Committee: Lucy Fox, Eric Reid, Daniel Lieber, Joseph Pride, Tim Lilley, KYC, Katherine Howitt.

Members of other Town boards present: Dave Hatfield, Matthew Lowry, Bill Spaulding, Jim Hogan.

Attorney Mark Bobrowski presented. Attorney Bobrowski of Blatman, Bobrowski, Haverty, & Silverstein, LLC.

Chair called meeting to order at 7:01pm.

Public Engagement welcomed but no participation.

Approval of minutes from 3/6/23 moved by Ann Santos, seconded by Katherine Howitt. Approved unanimously via roll call.

Agenda Item 4 – Recodification Process of Zoning Bylaws. Bylaw Review Committee reviews bylaws of the Town every 5 years. Town Meeting approved funds to hire expert to assist bylaw committee with Zoning review. Town entered a contract with Attorney Mark Bobrowski to assist with full examination of zoning bylaws. Last review of bylaws was approximately 40 years prior.

Attorney Bobrowski introduced by Chair. Mr. Bobrowski has been working with recodification of zoning bylaws for 37 years, working with approximately 150 towns. Recodification is 3 moving parts: 1) make sure bylaw is consistent with changes in statutes and laws; 2) to resolve internal inconsistencies within the bylaw; and 3) to fill glaring omissions – typically in definitions. Atty. Bobrowski interested in hearing opinions from other departments.

Mr. Bobrowski review process starts with a Zoning diagnostic. He will then begin a series of 4 theme-oriented meetings: 1) job descriptions; 2) coordination between the use table and the definitions (adding definitions where they are missing; 3) residential use; 4) commercial side of things: parking, noise, lights, loading zones, etc. Mr. Bobrowski will put together a color-coded draft after approximately 1 month. First draft will show the committee what Mr. Bobrowski has changed. After the 3rd draft, we will have a workshop meeting. The meetings will involve stakeholders. Timetable may be Spring of 2024 when the Zoning bylaws will be presented to Town Meeting. Chair Lieber suggested possibility we may present to Town Meeting Fall of 2025.

Jim Hogan of the planning board – is the intent of the recodification to change the underlying policy of the bylaws? Mr. Bobrowski indicated it would likely not be as involved as map changes. However, if there are things that boards have not taken things into account, we can visit those. Mr. Bobrowski indicated we are not just shuffling the deck – this review will result in changes that may touch upon policy.

Mr. Hogan underscored that if there are policy and more significant changes, the boards should maintain open communication.

Dave Hatfield mentioned his concern that the MBTA Communities district law will be occurring in tandem with the bylaw review committee. Mr. Bobrowski answered that the MBTA law is visionary – and will not be a significant part of the bylaw recodification.

Mr. Bobrowski shared his memo written 3/10/23. Mr. Bobrowski organizes bylaws with intentional chapters that can be expanded. (Memo shared during meeting). Definitions should be placed at end of the bylaws. Mr. Bobrowski would like to know, early on, whether we want a definition section.

Discussion regarding use of variance/special permit in bylaw. Mr. Bobrowski suggested to change “variance” to “special permit” to allow for flexibility. Noted that Attorney General prefers this and makes it easier to work with.

Mr. Bobrowski suggested that Wakefield’s present bylaws are functional, but not easy to manage. Mr. Bobrowski proceeded to note several areas to focus on for potential change:

We have a purpose clause that includes language that should be changed. For example, “diminution of value” clause standing alone is contrary to what the Supreme Judicial Court says.

Many of our Commercial uses are undefined and should be defined. Anything that is in the Use table should be defined unless it is readily apparent.

Section 190.6 – we have definitions for the districts. Mr. Bobrowski finds this to be more trouble than it’s worth. For example: Neighborhood districts as mentioned gives too much room for interpretation, and thus litigation.

Accessory Dwelling Unit – definitions exist in Governor’s legislation. Short term rental bylaws adopted by some of our neighbors.

Our Use table jumps around. Certain uses should follow the definitions found in Mass. Gen. Laws c. 40a, s.3.

Adult Uses are protected by the First Amendment and towns cannot regulate the content. We can impose reasonable time, place, and manner restrictions – same result as we have but a legal way to get there.

FEMA is coming out with new language on flood plains.

Parking and Loading – special permits (detriment v. betterment). Special permits are easier to defend than variance.

Special Permits can consider several factors: (Page 6 of memo). Mostly a balancing test.

Suggests that any appeal of a site plan decision should go directly to the Land or Superior Court. The Land Court has ruled that if the appeal of a site plan decision is allowed to proceed directly to Court, there must be a public hearing process in Town Hall. Dave Hatfield suggested that this an area that we need to examine and clean up.

There is a section for the ZBA; Planning Board needs one too.

Use variance can be a creative and correct answer to have in the bylaws.

Fees do not belong in Zoning bylaw – can be moved.

Nonconformities – our section is too narrow and should be replaced with a new, more modern set of rules for nonconforming uses and structures that should be added to conform with recent case law.

Section 190-93: Can we make OSRD and Creative Development more helpful.

Section 190-96 – Affordability – applies to multiple-unit dwellings

Cannabis – can the moratorium be deleted

Solar is not included, but should be.

Adding a “Planned Development District” (Burlington and Lexington have). A PDD allows for new ideas to come before Town Meeting and to be authorized on a case by case basis.

Senior Housing, includes assisted living and allows independent living, assisted living, with or without memory units, long term care, and continuing care facilities.

Signs – 2 sections are separated. Dave Hatfield wishes to see one sign bylaw that does away with sign overlay district for consistency and ease of use.

Jim Hogan -- We have a pair of districts not defined, with no map associated with them. Another area to clean-up.

We do not have a 40R but we do have a mixed-use overlay district that addresses concerns in 40R. Wakefield is very close to 40B's 10%.

Erin Kokinda suggested the examination of the Master Plan may be helpful in our recodification discussions. She also suggested that the inclusion of digital copies for the ZBA, Planning Board, Con Com would be helpful.

A member of the public, Joy Pearson, stated concerns re: flood plains and new building project.

Attorney Brian McGrail – comments re: difference between non-conformity findings v. special permit. Chapter 190-95 (Creative Development) – never has been used in Wakefield but can be utilized in a creative way for special projects.

Chair Lieber asking a question for a participant that left meeting: are there any parts of the Bylaws that, as an emergency, should be updated because of inconsistency with state law.

Mr. Bobrowski: Something that we may want to act on quickly – adding solar use language based on statute. We need better language to allow for solar use, rather than just “solar cannot be used in residential areas.”

Bronwyn Della-Volpe had a question: Concerns ability to educate public with all of the changes to be introduced for one meeting at Town Meeting.

Mr. Hogan – the approval of bylaw recodification would be a 2/3 vote.

Good communities to review bylaws for assistance: Lynnfield, Medford, Burlington, Lexington.

Chair Lieber: We are open to public engagement and public discourse to engage our community.

Chair Theo Noell – Planning Board: Suggests that any content changes the bylaw review committee makes should be open for public engagement that can then be focused board by board.

Dave Hatfield – suggests posting drafts to Bylaw Review Committee page.

Mr. Bobrowski suggested that the theme-based edits can be completed by October 2023 with first draft by January 2024.

Next meeting of Bylaw Review Meeting will be April 3, 7pm via Zoom. Following Bylaw Review Committee meeting is May 1, 7pm via Zoom. Annual Town Meeting Monday May 15, 2023.

Chair Lieber announced that a member of the Bylaw Review Committee stepped down for personal reasons and Mr. Lieber noted his thanks for her contribution. Also announced that a posting will follow seeking at least one other member. Motion to adjourn at 9:05pm. Unanimous vote of approval via roll call.

Minutes approved 4/3/2023.