
**TOWN OF SOMERS
OFFICE OF THE FIRST SELECTMAN**

TO: BOARD OF SELECTMEN
FROM: DAVID PINNEY
SUBJECT: FINAL RECOMMENDATION - LAND USE REORGANIZATION
DATE: 6/23/09
CC: BOB CAFARELLI, GREG SIMMONS, MARCIA MITCHELL

As you know, on June 1, 2009 I submitted a recommendation to the Board of Selectmen to reorganize the Land Use department, including the elimination of the full-time Town Planner position. Since that time, we have had two regular Board of Selectmen meetings with time scheduled for the purpose of receiving responses to my recommendation prior to taking final action. A number of individuals, including members of the Planning Commission, and the incumbent Town Planner have submitted comments at these meetings. A correspondence file containing all of the written responses received has been assembled and is available for public review. I have considered all of these responses carefully, and conclude that the elimination of the Town Planner position is justified under all of the circumstances.

For many months now, the Selectmen have been engaged in a comprehensive review of each Town department, examining the work performed and the resources, both human and otherwise, required for support of that work. The Selectmen have recognized their responsibility to continually evaluate Town government operations to confirm that services are being delivered in the most efficient and economical way possible to meet the requirements and needs of the Town, particularly as increased use of technological improvements is reducing the demand on the staff's time.¹

The downturn in activity in the Land Use department prompted us to focus our town-wide review in that area. We examined activity levels, work products and work flow. While we

¹ Already, we have determined that, with some modification to the office layouts, one administrative assistant could support both the Assessor and Tax Collector. As we improve the capacity for the public to do more business with each of these departments on-line, this staffing arrangement will likely be sufficient for some time to come, with the only exception being the need for extra help during the busier collection months. We have also determined that activity is low enough in the Town Clerk's office that the assistant there is available to help in other departments and has been doing so. She has also been trained to handle applications for pistol permits and support police services in other ways. This has proven more convenient for the public to find assistance any time the Town Hall is open rather than the much more limited times that someone is available at the Police Station.

might have anticipated that the downturn in activity was a recent development that would turn around as the housing market improved, examination of activity over a longer period of time indicates that it has been decreasing gradually long term as well as decreasing more dramatically in the recent short term. This realization combined with information from the work product and work flow review brought us to the point of considering the feasibility of dramatically reconfiguring the staffing assignments in Land Use and anticipating that as a longer term arrangement. This is what has brought us to recommending the elimination of the position of Town Planner and reassigning the work done by that position to other staff, as fully outlined in my June 1 recommendation.

I now would like to address the substantive issues that have been raised during the period of public comment. Some have questioned whether the First Selectman had the right to engage in this type of analysis in the first instance and whether the Town has the right to eliminate a position contrary to the wishes of the land use commissions. The Town Charter provides in relevant part that the “First Selectman shall be the Chief Executive and Administrative Officer of the town...” and “shall be an ex-officio member of all Boards and Commissions of the town...” The Board of Selectmen “shall generally supervise the administration of the affairs of the town...” and “shall generally be responsible for coordination the activities of all the agencies of the town, and for keeping under review the present and future needs of the town...” Further, the Board of Selectmen is expressly granted the sole authority under the Charter to enter into labor contracts with unionized employees of the Town. I have been advised by legal counsel that these enumerated duties are not subsumed by state statute which permits Planning Commissions to “engage such employees as are necessary for its work...within the amounts appropriated for its purposes.” Section 8-22 of the General Statutes.

Members of land use based commissions and others have expressed concerns that the quality of the work done by these commissions will decline without the support and guidance that has been provided by the Town Planner. There is concern that commissions would make decisions that end up prompting more law suits against the Town or that commission members themselves might find themselves individually named in law suits. We reviewed this concern with the Town’s long-time insurance agent. He indicated that individuals serving the Town on commissions are fully covered by the Town’s insurance policies. He also indicated that in over thirty years of experience, he has not seen individual commissioners suffer any damages, whether in the form of property liens, personal law suits or otherwise. In conversation with other towns that have seen change in the Planner position or towns that do not have a Town Planner, there is no indication that these towns experience more legal challenges than towns with full-time Planners. As an example, Plainfield, a town of 15,450 people, has one person staffing both engineering and planning functions and serving the Planning and Zoning commission. No legal challenges have been brought forward regarding the work of the department or the commission since he started in this role in 2002.

It must also be noted that the Town Attorney has always been and will continue to be available to advise regarding legal issues related to land use on an as-needed basis.

The question has also been raised as to why this recommendation occurred after the budget had been passed. We first worked on developing a level funded budget as directed by the board of

finance. Once that was delivered and under review by the Finance board and the Town, we took up the task of considering where and how we might lower operating costs, consistent with the duty to “be responsible for coordination the activities of all the agencies of the town, and for keeping under review the present and future needs of the town...” as prescribed by Charter. This subsequent work brought to light the information that lead to this recommendation to eliminate the Town Planner position.

Some have asked if the staff members who would take on the work presently done by the Planner are capable of doing that work, and how is it that the Town Engineer, who would assume responsibility for that work, has the time to do that along with all the other work he is doing. We considered that by breaking the work into its component parts – technical, administrative and strategic – and evaluating what knowledge, experience and skill is required in each area.

The technical work done by the Planner consists of reviewing the matters and applications presented to ensure they conform to Planning and Zoning regulations as well as to state statutes. This part of the work requires the greatest amount of technical knowledge. The individuals who would take on the bulk of it under the reconfiguration plan, those filling the positions of Town Engineer and Town building official, each have substantial experience and familiarity with most of the work done currently by the Planner. The Town Engineer has over thirty years of experience preparing the types of plans handled by the Planner, including developing familiarity with zoning and planning regulations as he worked to make those plans compliant with the regulations of the towns where his clients' projects were located. Much of the technical and compliance review done from the planning perspective has been done by the town's long time consulting engineer. The Town Engineer has the expectation that continued collaboration with the consulting engineer will support a successful transition of these functions to the Town Engineer. The Building Official also has many years of experience in his role. He has been bringing that experience to bear on updating and improving applications and processes in our Land Use department. He has been building his familiarity with local zoning regulations as he oversees local enforcement of the state building code. He is well positioned to expand his engagement with zoning compliance to become the primary reviewer of compliance issues in permit applications and site plan reviews that come through the department. These two professionals will be working with and supported by other well trained and experienced professionals in the department in the form of the Zoning Enforcement officer, the Town Sanitarian, and the Wetlands Enforcement Officer.

The administrative work done by the Planner includes making sure work needing Planning and Zoning review is handled properly and expeditiously. Procedures and actions have to comply with state statutes and Town regulations. Staff professionals and land use commissions have to execute their roles in a timely manner with all the information provided that is necessary to make decisions that are both compliant with all applicable regulations and meet the town's strategic objectives. The one and one-half administrative support staff positions have been with the department for a number of years, already taking care of some of this work. With proper direction and training, they can expand their roles to include the vast majority of the administrative functions currently taking up more than half of the Planner's workload. Given the current reduced workload in the department, there is no time like the present for these positions to get up to speed in these areas.

That leaves the strategic component of the work. This includes developing and maintaining an overall picture of land use and development for the town, identifying and engaging in initiatives whose objectives are to help realize that picture, and looking at all projects, proposals and applications with an eye toward how closely each is consistent with that picture. The Plan of Conservation and Development (POCD) represents the picture of how the Town sees itself, now and in the future. The planning commission is responsible for developing and updating that plan. The Selectmen are responsible for integrating the POCD into an overall strategic plan for the Town and also for supporting the structure and effective activity that establishes the overall plan and the POCD as the guiding principles driving day-to-day engagement by both staff and commissions. The Town Planner has supported the commissions, especially the planning commission, as they worked with a consulting firm to develop the current POCD, adopted by the planning commission in 2004. The Planner engages with those bringing forward ideas, proposals and applications to help guide the projects toward consistency with the POCD and reviews with the commissions the degree to which individual projects are consistent with the POCD. As we consider these functions with the Planner position removed, the planning commission and Selectmen would continue to own the POCD and overall strategic plan for the Town as well as responsibility for progress in realizing these plans. Staff engagement with proposals, applicants and commissions pertaining to plan development and implementation would be spearheaded by the First Selectman working directly both with staff and commissions.

The engagement of staff in both strategic and technical work would be taken up by a “land use steering committee” in place of that work as performed currently by the Town Planner. The committee would consist primarily of the three full-time professionals in the land use department (the Town Engineer, sanitarian and building official). It would be supplemented to some extent as needed by the part-time professionals, the ZEO, fire marshal, and wetlands agent. The committee would meet weekly or as needed to oversee all current activity moving through the department. Members of the committee would meet with the land use commissions to provide the staff support that they currently do as well as that currently provided by the Planner. The First Selectman would participate with the committee in meeting with people developing proposals prior to formal application. Similarly the First Selectman would work with the committee as it works to support the commissions in updating and implementing the POCD and overall long-range plan for the town. Several questions have asked how the Town will maintain a successful, consistent engagement with the ongoing and thus far successful effort to foster controlled, attractive development and growth in town. The Selectmen and land use commissions are ultimately responsible for this, but staff support will come from this land use steering committee working with the First Selectman. This will likely be a more robust arrangement than the one that anticipates just the Town Planner providing this kind of support.

The Town Engineer is already supervising the land use department as well as providing technical engineering review as required for the department. Given that he also serves as the director of public works, some have asked how he could have enough time to take on the additional functions anticipated in this proposed staffing reconfiguration. Early this calendar year, the Town hired a foreman as working member of the highway crew. This position has taken on much of what the director was doing in overseeing the crew and coordinating that work with other work in the department for the transfer station, the mechanic, and parks maintenance. The

foreman, supported by the administrative assistant in public works, can now relieve the director of most of the day-to-day engagement with the department, freeing him to relocate to the land use department and devote most of his time to supervising that area and addressing the engineering and planning reviews required there. The Director/Engineer would direct and be part of the land use steering committee as well as oversee the training and direction provided to the administrative assistants as they take on expanded roles in fulfilling some of the functions done by the Town Planner.

Some comments about the proposed staffing reorganization raise a concern that spreading the work the Planner does over several different staff members will increase the time it takes for an application to work its way through from first submission to final approval. It is in fact reasonable to anticipate that the opposite would be true, that projects would be likely to move more quickly through the process. By moving the review work done by the Planner to others who are already involved with an application doing reviews of their own, all of the reviews will likely be completed more quickly. The Engineer, who is already conducting the technical review and much of the compliance review, would take on the balance of the compliance review now done by the Planner. The building official, who is already reviewing a proposal for compliance with the building code, would take on the zoning compliance review as well. Moving most of the administrative functions done by the Planner to the support staff would not add delay to the work that moves across the Planner's desk but would more likely accelerate the work. With more people familiar with both the requirements for the process and the status of a particular project, questions and delays are more readily addressed. It is reasonable to anticipate that the reorganized land use staff would be more efficient in terms of work hours required to move an application through the process, more robust in terms of fewer instances where the process slows or stops than would be the case when only the Planner can address an issue that arises, and have more institutional capacity to perform well even as individuals are out of the office for a period or as staff members change.

Within the reorganized land use staff, the Town Engineer would be the primary person staffing both the planning commission and the zoning commission. For zoning he would be supported by the building official who would attend regarding zoning compliance review and the ZEO regarding zoning enforcement. In much of the planning commission's work, this would provide the commission with direct access to the individual conducting much of the review of projects before the commission. Currently, the review is done by the engineer, consulting or town, and reviewed with the commission, either with the engineer directly or through the Planner. Covering this area of support with only the Engineer should not compromise the commission. When the commissions have to be mindful of statutory or regulatory constraints pertaining to a matter before them, they may seek input from the Town attorney if the issue is large or complicated enough. Currently the Planner presents the question to the attorney and conveys the response back to the commission. That can be as effectively done by the Town Engineer.

Some see the Planner as playing a vital role in envisioning, developing and consistently implementing a long range plan for land use conservation and development that would not be replicated under the reorganization and would lead to undesirable development. We have taken up that concern to some extent previously in identifying the planning commission, in concert with the Selectmen and other land use commissions, as being responsible for the POCD and its

implementation. The question that remains is whether they would be less effective in that work without the position of Town Planner. The POCD is created by the community, not by the Planner. The one currently in place for Somers was prepared through the services of an outside consultant and represents a comprehensive guide for the commissions. It can be reviewed in small scale projects as exemplified by the recent work of the recreation commission to bring information to the planning commission that could be used to update the plan in regard to recreation facilities in town. Larger scale reviews and updates will be conducted with an outside consultant. But overall, the strategic work of updating and implementing the POCD is work that the commissions and Selectmen have and will continue to do. Professional staff will support this as needed, supported by direct participation of the First Selectman.

The Planner's role in the procurement and preservation of open space can be regarded as an example of exploring how the role has played out and what to expect under the reorganization. People are concerned that the Planner has played a key role in recent acquisitions and that these would not have happened were it not for her involvement. While the Planner certainly played a role in regard to the Whitaker and Trappe properties, contributions from a number of others were critical as well to the ultimate success. The key issue in each case was securing from the owner the agreement to sell the property. When the current First Selectman first came into office in 2003, prospects for the Town acquiring the Whitaker property were essentially dead. Only after a number of telephone conversations between the First Selectman, the trustee for the estate that owned the property, and family members who were beneficiaries of the estate were we able to get agreement to sell the property.

After property acquisition comes the challenge of funding the purchase. The First Selectman worked with members of the Northern Connecticut Land Trust and the Planner to develop a plan for the Town to partner with the land trust in seeking a grant and coming up with the balance of funds required. Connecticut's open space and watershed land acquisition grant program was the logical place to look for support. The Planner pulled together the application materials with contributions from the land trust and the Selectmen. But the fact remains that the application was successful because the project represented exactly what the grant program exists to fund, not because the Planner made a particularly compelling case for this project. The combined efforts of land trust volunteers and Town staff will continue to seek support from state and federal grant programs and expect to be successful when bringing forward projects that meet the criteria of the grant program. The Planner helped secure the support of the Hartford Foundation and while that was a necessary piece for the success of the project, the First Selectman and others are also qualified to provide that type of engagement with prospective sources of funds in future projects.

With this model for success in place, the land trust and the Town pursued the Trappe property. Again, while the Planner played an important role, the project's success ultimately depended on several participants. As with the Whitaker family, the critical step was securing agreement from the Trappe family to sell the property. This time, the president of the land trust has to be credited with achieving that, again only after many telephone calls. Once the agreement to sell was in place, the project proceeded very similarly to the Whitaker project. As the Town and land trust identify and secure other opportunities to acquire land for open space preservation in the future, I am confident that we can be successful in those efforts even as we pursue them without the support of a Town Planner.

The Town's interest in preserving open space is one of the strategic objectives identified within the POCD. It is clearly the responsibility of the planning commission and Selectmen to work together on pursuing this objective. In Durham, Plainfield and other communities, the conservation commission plays an active role in seeking opportunities to preserve open space, but that doesn't have to be the model here. The point is that it is the commissions and Selectmen that actively spearhead the effort. Somers needs to do more in supporting and preserving working farms in Town as one of the most cost effective ways of protecting desirable land use from being replaced by undesirable development. Durham is considering establishing an Agricultural Commission for that purpose. Maybe Somers should as well. It is not something to expect of the Town Planner, regardless of how that position might support the effort. It is the work of the Selectmen and commissioners to identify the directions to go, steps to take and to take those steps.

In summary, the concerns raised by the commission members and the public have helped refine elements of the proposal, but that has only made it stronger and more compelling. Other communities similar to Somers address land use needs without a Town Planner. As we see the potential for improved efficiency, lower costs, more robust engagement with land use functions, more institutional capacity to perform well as staff changes, improved success for the community as commissions and Selectmen engage more strategically in identifying and pursuing the goals set by the community, we have many reasons to view this proposal as clearly in the best interest of the community and something the Selectmen should adopt.