

SOUTH HADLEY PLANNING BOARD PUBLIC HEARING

Proposed Bylaw Zoning Amendments to be brought forth at Special Town Meeting November 2019

MINUTES OF OCTOBER 7, 2019 As Approved

Present: Mark Cavanaugh, Chair; Melissa O'Brien, Vice-Chair; Diane Mulvaney, Clerk; Brad Hutchison, Member; Joanna Brown, Member; Larry Butler, Associate Member; Richard Harris, Town Planner; and Colleen Canning, Senior Clerk Planning and Conservation

Chair Cavanaugh called the Public Hearing into order at 7:15PM.

Clerk Mulvaney read the Hearing Notice out loud:

Pursuant to the provisions of South Hadley Zoning By-Law, Article II and M.G.L. Chapter 40A, Section 5, the Planning Board of the Town of South Hadley will hold a public hearing to discuss proposed amendments to the South Hadley Zoning By-Law regarding Section 255-35 (Water Supply Protection District) and Section 255-84 (Earth removal, extraction, and fill regulations) as noted herein. The public hearing will be held as follows:

*Place: South Hadley Town Hall, Selectboard Meeting Room;
116 Main Street, South Hadley, MA*

Date: Monday, October 7, 2019

Time: 7:15 p.m. (Proposed Articles PB-1 and PB-2)

The subject matter of the proposed amendments to the Zoning By-Law and Zoning Map are as follows:

Article PB-1. To see if Town Meeting will amend Chapter 255 (the Zoning Bylaw) in Section 255-35A by clarifying the purposes of the District; in Section 255-35B by clarifying status of uses prohibited in an underlying zoning district; in Section 255-35E by clarifying/modifying the prohibited uses; in Section 255-35F by deleting item (1) in its entirety and inserting a new item (1) regarding restrictions on "exempt" activities under Section 255-84 and clarifying/modifying the restrictions on uses; in Section 255-35H by clarifying that all uses requiring a Special Permit in the underlying zoning district also require a Special Permit in the Water Supply Protection District; in Section 255-35H(2)(a) by revising application requirements consistent with the Special Permit Granting Authority's Rules and Regulations; in Section 255-35H (3)(a) by clarifying/revising the Special Permit Review Process to be followed for the Water Supply Protection District relative to the basis and time frame for specified Boards/Commissions to vote on applications; and in Section 255-35H (3) by adding a subparagraph (d) regarding exceptions to requirements for votes as detailed in the Planning Board's Report to Town Meeting, or take any other action relative thereto.

Article PB-2. To see if Town Meeting will amend Chapter 255 (the Zoning Bylaw) in Section 255-84A(2)(b) by specifying limitations under which a Development of site improvements for a subdivision is exempt from an Earth removal, excavation, and/or fill permit; in Section 255-84C (4) by adding additional supplemental application requirements; and in Section 255-84D(1) by

deleting the existing delineation of “prohibited area” for major earth removal, excavation, or fill activity and inserting therein that such activity is not permitted “within the Water Supply Protection District as defined and delineated in Section 255-15 and Section 255-35 of the Zoning Bylaw” as detailed in the Planning Board’s Report to Town Meeting, or take any other action relative thereto.

The complete text and maps (if any are applicable) relative to the proposed amendments are available for inspection during regular business hours (8:30 a.m. to 4:30 p.m.) at the following place:

*South Hadley Planning & Conservation Department
Town Hall – 116 Main Street - Room 204
South Hadley, MA 01075*

Additionally, a copy of said proposed amendments is posted on the Planning & Conservation Department page of the Town’s website under “Proposed Bylaw Amendments” – Fall 2019 Proposals. Any person interested in, or wishing to be heard on, the proposed by-law amendment should appear at the time and place designated for the public hearing.

*Diane Supczak-Mulvaney, Clerk
South Hadley Planning Board*

*Publication: Friday, September 13, 2019
Friday, September 20, 2019*

Mr. Harris opened with background. He explained that the draft amendments before the Board had received many rounds of edits since the Planning Board had decided to withdraw proposed zoning bylaw amendments from consideration at May 2019 Town Meeting. Mr. Harris explained that the current amendment proposals addressed DEP concerns while not changing the boundaries or dimensional requirements within the Water Supply Protection District. The proposed amendments sought to bring existing law into conformity and sought to clarify the scope and purpose of interdepartmental voting on Planning Board applications. Mr. Harris noted that, due to clerical error, proposed amendments within Section 255- 84D(3) and Section 255-84F were not included in the Public Hearing Notice. Therefore, the omitted sections would be advertised for a Public Hearing at the next Planning Board meeting on October 28, 2019.

Discussion surrounding proposed amendments to 255-35 was addressed first. The discussion opened with Mr. Harris reading aloud the *Fall Town Meeting Zoning Bylaw Amendments – Public Hearing Draft* as follows:

Regarding Proposed Article PB-1, the changes to be made in Section 255-35 of the Zoning Bylaw are as follows:

- 1. Amend Section 255-35A - “Purposes” of the South Hadley Zoning Bylaw by inserting the phrase “and development” following the phrase “the regional form any use” and to insert the following phrase after the phrase “quantity of its water resources.”:***

to protect, preserve and maintain the existing and potential groundwater supply, groundwater recharge area, and the groundwater tables; to protect, preserve and maintain

potential sources of surface water supply and watershed areas for the public health and safety; and to prevent blight and the pollution of the environment.

Thus, the revised Section 255-35A will read as follows:

A. Purposes. The purpose of the Water Supply Protection District is to promote the health, safety and welfare of the community by protecting and preserving the surface and groundwater resources of the Town and the region from any use and development of land or buildings which may reduce the quality and quantity of its water resources; to protect, preserve and maintain the existing and potential groundwater supply, groundwater recharge area, and the groundwater tables; to protect, preserve and maintain potential sources of surface water supply and watershed areas for the public health and safety; and to prevent blight and the pollution of the environment.

- 2. Amend Section 255-35B - “Scope of Authority” of the South Hadley Zoning Bylaw by adding the following sentence at the end of the section:**

Uses that are prohibited in an underlying zoning district shall also be deemed prohibited in the Water Supply Protection District even if not stated as such in Section 255-35E herein.

Thus, the revised Section 255-35B will read as follows:

B. Scope of authority. The Water Supply Protection District is an overlay district and shall be superimposed on the other districts established by this bylaw. All regulations of the Town of South Hadley Zoning Bylaw applicable to such underlying districts shall remain in effect, except that where the Water Supply Protection District imposes additional regulations, such regulations shall prevail. Uses that are prohibited in an underlying zoning district shall also be deemed prohibited in the Water Supply Protection District even if not stated as such in Section 255-35E herein.

Mr. Harris noted that the above section was already implicit but the added language made it clearer.

- 3. Amend Section 255-35E - “Prohibited uses” of the South Hadley Zoning Bylaw in subparagraph (1)(a) by deleting the portion of subparagraph (1)(a) following the phrase “310 CMR 30.00” in its entirety:**

“, which generate less than 20 kilograms or six gallons of hazardous waste per month may be allowed by special permit in accordance with Article IX of this bylaw;”

- 4. Amend Section 255-35E - “Prohibited uses” of the South Hadley Zoning Bylaw in subparagraph (3) by deleting the word “automotive” and inserting the phrase “motor vehicle” in its place.**

- 5. Amend Section 255-35E - “Prohibited uses” of the South Hadley Zoning Bylaw in subparagraph (4) by deleting the portion of subparagraph (4) following the phrase “sludge and septage” in its entirety:**

“, with the exception of the disposal of brush or stumps.”

6. ***Amend Section 255-35E - “Prohibited uses” of the South Hadley Zoning Bylaw in subparagraph (6) by adding the phrase “and fertilizers” at the end of the subparagraph.***
7. ***Amend Section 255-35E - “Prohibited uses” of the South Hadley Zoning Bylaw by adding the following new subparagraph (11) to read as follows:***

(11) Any use prohibited by 310 CMR 22.21(2)(a) which is not expressly prohibited in the above provisions 255-35E(1) through (10).

Mr. Harris explained that the above section stemmed from DEP recommendations and would function as a “catch-all”.

8. ***Amend Section 255-35F - “Restricted uses” of the South Hadley Zoning Bylaw by deleting the existing paragraph (1) in its entirety:***

(1) Excavation for removal of earth, loam, sand, gravel and other soils or mineral substances shall not extend closer than five feet above the historical high groundwater table (as determined from on-site monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, whichever is higher). A monitoring well shall be installed by the property owner to verify groundwater elevations. This subsection shall not apply to excavations incidental to permitted uses, including but not limited to providing for the installation or maintenance of structural foundations, freshwater ponds, utility conduits or on-site sewage disposal.

(a) The access road(s) to extractive operation sites shall include a gate or other secure mechanism to restrict public access to the site.

(b) Upon completion of earth removal operations, all altered areas shall be restored with topsoil and vegetative plantings. All fine materials, such as clays and silts, removed as part of the earth removal operation and leftover as by-products shall be disposed of off-site to prevent damage to aquifer recharge characteristics

9. ***Amend Section 255-35F - “Restricted uses” of the South Hadley Zoning Bylaw by inserting the following new paragraph (1) in its entirety:***

(1) Earth Removal, Extraction, and/or Fill activities exempt from permitting under Section 255-84A shall nonetheless be restricted to ensure that any such removal or extraction does not extend closer than ten (10) feet above the historical high groundwater table. This subsection does not apply to installation or maintenance of structural foundations and utility conduits; nor shall it apply to maintenance of fresh water ponds provided all necessary permits, orders, or approvals required by local, state, or federal law are also obtained . This subsection does not apply to on-site sewage disposal systems; however the design, siting and installation depth shall be in compliance with Title V of the State Environmental Code and shall be subject to the regulatory authority of the Board of Health.

10. ***Amend Section 255-35F - “Restricted uses” of the South Hadley Zoning Bylaw in paragraph (9) by inserting the word “covered” between the words “freestanding” and “container”.***

11. ***Amend Section 255-35F - “Restricted uses” of the South Hadley Zoning Bylaw by inserting the following new paragraph (10) in its entirety:***

(10) If it is determined that 310 CMR 22.21(2)(b) imposes performance standards more stringent on land uses or activities than expressly stated in the above 255- 35F(1) through (9), said 310 CMR 22.21(2)(b) performance standard shall be deemed to also apply to land uses and activities in the Water Supply Protection District even though said performance standard or restriction is not specified herein.

Mr. Harris explained that the above section was developed with the aid of Mark Aiken, Water Department District 2 Superintendent, and functioned as a “catch-all”.

12. Amend Section 255-35H - “Special permit uses” of the South Hadley Zoning Bylaw by inserting the following introductory paragraph following the heading “Special permit uses” in its entirety:

The provisions this subsection 255-35H herein shall apply to all uses for which a Special Permit is required regardless of whether the provisions below require a Special Permit or the use is listed as requiring a Special Permit in the underlying zoning districts in the Schedule of Use Regulations (Attachment A).

Mr. Harris explained that the above section was added for clarity.

13. Amend Section 255-35H - “Special permit uses” of the South Hadley Zoning Bylaw by deleting the existing paragraph (1) (but not subparagraphs (a), (b) or (c) which exist under said paragraph (1)):

(1) Uses allowed by special permit. The following uses may be allowed by special permit obtained from the Planning Board:

14. Amend Section 255-35H - “Special permit uses” of the South Hadley Zoning Bylaw by inserting a new paragraph (1) to precede the remaining subparagraphs (a), (b) or (c) such that the paragraph (1) with the subparagraphs will read as follows:

(1) Uses allowed by special permit. In addition to the uses listed as requiring a Special Permit in the underlying zoning districts in the Schedule of Use Regulations (Attachment A), within the Water Supply Protection District, the following uses may only be allowed in the Water Supply Protection District by special permit obtained from the Planning Board:

(a) Commercial, industrial, governmental or educational uses which are allowed in the underlying district, and which are not prohibited in Subsection E.

(b) Any enlargement, intensification, change of use or alteration of an existing commercial or industrial use.

(c) The rendering impervious of more than 15% or 2,500 square feet of any lot, provided that a system for artificial recharge of precipitation to groundwater is developed, which shall not result in degradation of groundwater. (See Subsection G above.)

Mr. Harris explained that the above section was added for clarity so reiterate that underlying zoning requirements pertain to the Water Supply Protection District.

15. Amend Section 255-35H - “Special permit uses” of the South Hadley Zoning Bylaw in paragraph (2) by deleting subparagraph (a) not sentences/items “[1] and [2] which exist under said subparagraph (2)(a)

(a) The applicant shall file six copies of a plan prepared by a qualified professional with the special permit granting authority. In addition to those rules and regulations contained in the special permit application (Form SP), the plan shall include:

16. Amend Section 255-35H - “Special permit uses” of the South Hadley Zoning Bylaw in paragraph (2) by inserting a new subparagraph (a) to precede the remaining sentences/items [1] and [2] such that the subparagraph (2)(a) with the sentences/items [1] and [2] will read as follows:

(a) The applicant shall file the number and form of applications and plans as specified in the special permit granting authority’s adopted Rules and Regulations. In addition to the requirements specified in the special permit granting authority’s adopted Rules and Regulations, the plan shall include:

[1] Drainage recharge features and provisions to prevent loss of recharge.

[2] Provisions to control soil erosion and sedimentation, soil compaction, and to prevent seepage from sewer pipes.

Mr. Harris explained that the above section would bring the bylaw into conformity with the rules and regulations.

17. Amend Section 255-35H - “Special permit uses” of the South Hadley Zoning Bylaw in paragraph (3) by changing “35” to “50”.

Mr. Harris noted that the Planning Board is required to open a Public Hearing 65 days after receipt of an application.

18. Amend Section 255-35H - “Special permit uses” of the South Hadley Zoning Bylaw in paragraph (3) by adding the following sentence and sentences/items to the end of subparagraph (a) in its entirety:

In voting on the applications, the Board of Health, the Conservation Commission and the Water Commissioners are to take the following actions:

[1] Specify the jurisdiction they have regarding the proposed development/activity; and [2] State whether or not the proposed development/activity’s plans conform to the standards of the respective Board’s governing bylaws and regulations for approval or denial and how it does so; and,

[3] Any deficiencies or omissions in the plans which preclude the respective Board from making a determination regarding 255- 35H3(a)[2]; and,

[4] Recommendations for conditions which would remedy any deficiencies in the proposed plans.

Mr. Harris explained that the above sections stemmed from recommendations gathered at the interdepartmental working group sessions.

Thus, the revised Section 255-35H, paragraph (3)(a) will read as follows:

(a) The special permit granting authority shall follow all special permit procedures contained in Article IX of this bylaw. In addition, the special permit granting authority shall distribute copies of all application materials to the Board of Health, the Conservation Commission and

the Water Commissioners, each of which shall review the application and, following a vote, shall submit recommendations and comments to the special permit granting authority. Failure of boards to make recommendations within 50 days of distribution of the applications shall be deemed to be lack of opposition. In voting on the applications, the Board of Health, the Conservation Commission and the Water Commissioners are to take the following actions:

[1] Specify the jurisdiction they have regarding the proposed development/activity; and [2] State whether or not the proposed development/activity's plans conform to the standards of the respective Board's governing bylaws and regulations for approval or denial and how it does so; and,

[3] Any deficiencies or omissions in the plans which preclude the respective Board from making a determination regarding 255- 35H3(a)[2]; and, [4] Recommendations for conditions which would remedy any deficiencies in the proposed plans.

Mr. Harris added that comments from outside Boards and Commissions would be accepted even if the permit application did not require a vote.

19. Amend Section 255-35H - “Special permit uses” of the South Hadley Zoning Bylaw in paragraph (3) by adding the following new subparagraph (d) in its entirety:

(d) Exceptions to requirements for Board of Health, the Conservation Commission and the Water Commissioners votes under 255-35H(3)(a). The requirements for a vote by the members of the Board of Health, the Conservation Commission and the Water Commissioners shall not apply to any residential development which will result in 3 or fewer dwelling units on an existing tract of land. In such instances, the respective board's staff shall be requested to provide comments regarding the proposed development/activity.

Following Mr. Harris' review of the draft, Ms. Brown inquired about Section 255-35G which concerned maintenance of drainage systems. She inquired what inspection mechanism existed. Mr. Harris responded that routine inspection was typically performed by the permitting entity which would be defined in the maintenance plan. He added that no changes were proposed within Section 255-35G.

Mr. Hutchinson offered a general comment regarding the proposed amendments. He compared the original bylaw amendments with the current proposal. He recalled that initial discussion pertaining to amendments sought to shrink the WSPD and increase the protections in that area. He reflected on the trade-offs between greater ground water protection through increased dimensional requirements and the potential negative impacts those dimensional requirements could have on private homeowners. He reflected that the purpose of the amendments were to protect drinking water and an assessment of the WSPD delineations should be revisited at some time in the future. Mr. Harris added that an impact assessment study on private homeownership pertaining to dimensional changes should be considered prior to dimensional changes.

Neva Tolopko, 28 San Souci Drive, submitted a written statement with pairing documents which were compiled with the help of three other residents. She shared her support of proposed amendments within Section 255-35A and 255-35B as she compared them to the model bylaw provided by the DEP. She expressed support of Section 255-35F (1) which concerned ground water separation. However, she recommended adding language to incorporate new data in the

event that a study was performed which could result in a different separation recommendation. Lastly, Neva Tolopko noted that within Section 255-35H outside Board and Commissions needed to state their regulatory authority over a project when commenting. She noted that the intent of this bylaw was to protect the water supply and the regulatory bodies could be determined by the Town. Ultimately, she wanted assurance that relevant Board and Commissions could be given an opportunity to comment on projects.

Discussion continued with review of proposed amendments within section 255-84 with the expectation of Section 255- 84D (3) and Section 255-84F as they would be discussed at a Public Hearing on October 28, 2019.

Mr. Harris reading aloud the *Fall Town Meeting Zoning Bylaw Amendments – Public Hearing Draft* as follows:

Regarding Proposed Article PB-2, the changes to be made in Section 255-84 of the Zoning Bylaw are as follows:

20. Amend Section 255-84A - “Permit required; exemptions” of the South Hadley Zoning Bylaw by revising the existing subparagraph (b) under paragraph (2) - Exemptions and to insert two sentences under said revised subparagraph (b) such that the subparagraph and sentences are to read as follows:

(b) Development of site improvements for a subdivision for which definitive plans have been approved, and endorsed by the Planning Board; provided [1] the quantity of earth removal, extraction, and fill to be removed from/added to the site has been demonstrated to be essential to meet the requirements for the subdivision and [2] a hydrogeologic impact assessment has demonstrated to the Planning Board’s satisfaction that the proposed development will not have an adverse impact on the public water supply.

21. Amend Section 255-84C - “Planning Board approval required; application requirements” of the South Hadley Zoning Bylaw by inserting the following new sentences under paragraph (4) regarding “Supplemental application requirements”:

(d) Proposed reuse plan including, but not limited to, a revegetation plan (e) Additional information/materials as required under the Special Permit Granting Authority’s Rules & Regulations.

22. Amend Section 255-84D - “Limitations on operations” of the South Hadley Zoning Bylaw by deleting subparagraph (1) – “Prohibited Area” in its entirety:

(1) Prohibited area. No major earth removal, excavation, or fill activity shall be permitted in the area bounded as follows: on the south by Route 47, Pearl Street, and Route 116; on the east by Route 116 and the Granby Town Line; on the north by the Amherst and Hadley Town Lines; and on the west by Route 47 and the Hadley Town Line.

23. Amend Section 255-84D - “Limitations on operations” of the South Hadley Zoning Bylaw by inserting the following new subparagraph (1) – “Prohibited Area” in its entirety:

- (1) *Prohibited area. No major earth removal, excavation, or fill activity shall be permitted within the Water Supply Protection District as defined and delineated in Section 255-15 and Section 255-35 of the Zoning Bylaw.*

Mr. Harris explained that the above section was widely misinterpreted and the amendment would significantly increase the prohibited area; not decrease it. He added that if the section was not amended as proposed there would be inconsistencies within the bylaw.

Following Mr. Harris' review of the draft, Ms. Brown inquired about Section 255-84A which defined a hydrological assessment requirement. She inquired if the amendment should include language requiring the applicant to pay for the assessment. Mr. Harris explained that the requirement for the applicant to pay was implicit and language requiring it was not incorporated anywhere in the bylaw for any assessments or supplemental information.

Robert Pleasure, Jewett Lane, addressed the Board. He referenced Section 255-84D (1) which defined the 'prohibited area'. The existing bylaw referred to the 'prohibited area' by the streets that surround it. The proposed amendments defined the area by referencing another section of the bylaw. Robert Pleasure noted the importance of Zone 2 within the WSPD which reflected the prohibited area in the existing bylaw. Evidence of its importance was described within the study submitted earlier at the Hearing. The study detailed 8 criteria which helped define its significance. He was concerned that, in redefining the 'prohibited area', Zone 2 of the WSPD would lose its historical significance. Board members reflected on how to incorporate the comments.

Mr. Harris explained that the referenced area was initially protected through an overlay district which protected scenic views of the Mount Holyoke Range. The area's impact on drinking water was later observed which led to protection. Since then, DCR acquired much of the land inclusive of the Mount Holyoke Range. He noted that Zone 2's significance could be defined through a separate overlay district reflective of its diverse value; rather than just drinking water value.

Rudy Ternbach, Ferry Street, addressed the Board. He advocated for a study that could assess the complex nature of the WSPD. He recommended waiting for a study prior to making major changes to the bylaw.

Following the complexity of the discussion, Mr. Harris noted that the proposed amendments could be withdrawn from consideration at Fall 2019 Town Meeting and be reintroduced at May 2020 Town Meeting. Ms. Brown responded that she didn't want to see the amendments pushed off as the Planning Board was expecting applications for development and the amendments incorporated important requirements; such as a hydrological assessment study.

Rudy Ternbach, Ferry Street, addressed the Board again. He advocated for logical and consistent bylaws developed through scientific study. Vice-Chair O'Brien responded that she supported moving forward with the amendments and that the bylaw could be revisited following a study.

Mr. Harris reminded the Board of the urgent timeline for submitting warrant articles to the Town Administrator for consideration at Fall 2019 Town Meeting. Considerations for creating an overlay district to capture complexities of Zone 2 of the WSPD could be given at a future date.

Neva Tolopko, 28 San Souci Drive, addressed the Board. She inquired if there could be a potential loop hole within Section 255-35H. The amendment proposal stipulated that interdepartmental votes would not be required for developments with three dwellings or fewer. She expressed concern that a developer could build three dwellings at a time to bypass the requirement. Mr. Harris explained that the loop hole wasn't possible as the bylaw amendment refers to development on an existing tract of land.

Mr. Harris reviewed the next steps the Board could take. The deadline was approaching for submission of articles to be accepted on the warrant for Fall 2019 Town Meeting. A motion of support would be required to have the articles on the warrant. The Board would still be afforded the opportunity to change language within the amendments prior of Fall 2019 Town Meeting. Separately, he reaffirmed that unique considerations for Zone 2 could be afforded through an overlay distinct if developed.

As there was no further information to gather, Chair Cavanaugh closed the Public Hearing at 8:42 PM.

Respectfully Submitted,
As Approved
Colleen Canning, Senior Clerk Planning Conservation

Appendix

Document	Document Location
Fall Town Meeting Zoning Bylaw Amendments – Public Hearing Drafts	Planning Files
PB -1 – Section 255-35 Annotated – with proposed amendments	Planning Files
PB – 2 Section 255-84 Annotated – with proposed amendments	Planning Files
Publically Submitted Document titled ' <i>Before the South Hadley Planning Board: Hearing on Zoning Bylaw Proposals Pertaining to Earth Removal and to Water Supply Protection District South Hadley Town Hall, October 7, 2019</i> '	Planning Files