

**PLANNING BOARD
TOWN OF PETERBOROUGH, New Hampshire**

Minutes of September 9, 2013

Members Present: Rick Clark, Alan Zeller, Tom Weeks, Joel Harrington, Allan Zeller, Barbara Miller and Ivy Vann.

Staff Present: Peter Throop, Director Office of Community Development and Laura Norton, OCD Administrative Assistant.

Chair Harrington called the meeting to order at 7:00 p.m. "Good evening and thank you for coming out" he said. He noted there was a quorum and introduced the members. He went on to note "the first thing on the agenda this evening is the Innovative Subdivision Design Ordinance Public Hearing" adding "and I would like to go through tonight's procedure", telling the public their comments are welcome. Chair Harrington went on to say "my intent is to really elicit comment from the public on the proposed ordinance, *not* have a public hearing about it." He concluded by noting "we want to hear from the public tonight, not solve the issues" adding "that will be reserved for a workshop on Monday, September 16th." He noted the comments and input tonight would "help us get out from under the weeds and resolve some issues." Ms. Vann interjected "we may want to respond to public comments if they are misinterpreted or if things have changed." Mr. Throop noted that depending on the comments received, the Board may want to put the follow-up workshop off to their October meeting. He also noted that the Traditional Neighborhood Overlay District was also on the agenda and would have a workshop September 24th. Chair Harrington advised the public to watch the newspapers for the public notices "or give us a call."

It was noted that this draft ordinance would replace the Open Space Residential Development Ordinance (§245-26) for the purpose of encouraging the preservation of open space and to facilitate the use of sustainable development practices.

He noted that the ordinance had been the subject of several workshops and input had been received from the Heritage Commission and the Conservation Commission. "Anything is open for discussion" he said and asked each speaker to identify themselves for the record and reference the section of the ordinance they were talking about.

Francie Von Mertens introduced herself and referenced to how the comments by the Conservation Commission were received. "You addressed them wonderfully" she said adding "there has been a very positive, well thought through process for the ordinance." She then noted her concern on Page 3, General Requirements (E-1-a) "where two family or multi-family dwellings are allowed, the Planning Board may, but is not required to approve those as individual, single, detached units." She then mentioned the density bonus for innovative land use activities and quoted "the Planning Board may award the development a density bonus that increases the maximum number of dwelling units available under conventional subdivision." She noted "this is pretty wide open" and asked "what guidelines does the Planning Board have in making their decisions?" She went on to point out a logical and fitting limitation would be to allow this only where town sewer is already

intact and available. Ms. Vann interjected “my understanding is that we are required by the state ordinance on affordable housing to allow multi-family units in the Rural District.” She noted the current ordinance allowed the construction of a duplex on a 3-acre lot and asked “if we are allowing that why would we care particularly if the units were in the same building or two buildings?” A brief discussion about the minimization of impact and the encouragement of the construction of smaller units followed with Mr. Weeks interjecting “what this is getting at is the density question. Is it one unit per 3 acres or two units per 3 acres?” He looked to Ms. Von Mertens and said “I think that is what you are getting at” adding “when allowing the current density is it one unit or two.” Ms. Von Mertens agreed and replied “that is a huge difference.” The members then discussed the language of the density bonus clause. Ms. Von Mertens noted the language currently uses the word “may” but wondered what would be the basis for the board’s decisions.

Ms. Von Mertens went on to say “I see a huge difference between a duplex and two single family units.” She noted a duplex is a single structure with two doors and a single footprint on the land. She talked about the potential with two single-family units of adding barns or sheds or pools that would double the demand on the landscape. “I see allowing duplex as two single-families as appropriate close to town but I question it in the outlying areas of town” she said. She concluded by noting “to allow a separation is quite a difference, I think you need more guidelines.” Chair Harrington replied “we will have to take this under consideration, thank you.”

Sharon Monahan introduced herself and asked about incorporating a maximum square footage for buildings on these lots noting if that were the case, “the amount impacted with square footage and impervious surfaces would be the same. Two units with a maximum of 5000 square feet (total) controls development without being a duplex” she said. Chair Harrington replied “so you are suggesting we keep the 3-acre minimum but in conjunction add a square foot maximum?” “Yes” replied Ms. Monahan. A brief discussion about maximum lot coverage in the conventional rural district (currently none) and the proposed ordinance (25% based on the characteristics of the lot) followed.

Loretta Laurenitis introduced herself noting she had several questions, the first of which was if the ordinance is to replace §245-26 Open Space Residential Development “what happens to §245-28? will it remain?” Chair Harrington replied “yes.” Ms. Laurenitis then asked about the plan to eliminate the 75-foot vegetative buffer around the perimeter of the parcel. “What is the rationale for that?” she asked. A brief discussion about referring back the setbacks of the underlying district followed. Mr. Weeks noted the need for buffers was no longer valid “what are we buffering from if the uses are consistent?” he said.

The members then reviewed (4) (ii) *Minimum Setbacks and Buffers* section of the draft ordinance. Ms. Laurenitis interjected “it seems the Planning Board has a lot of flexibility in terms of setback and I am not comfortable with Conditional Use Permits. It sounds like anything can be changed.”

A brief discussion about the Board reserving the right to increase the setback distance or to require vegetative buffering with the setbacks based on particular site characteristics (natural and historic features and slopes) followed. Chair Harrington noted much of what they discussed was consistent with the existing ordinance. “We have had that in Peterborough forever” he said. Ms. Laurenitis

then asked about the definition of conservation areas. She pointed out the primary definition included steep slopes, agriculture, floodplains wetlands, shorelands and their buffers. "All of which are considered to be unbuildable." She then noted the definition of secondary conservation areas included things like productive agriculture or forest soils, highest condition habitat areas and drinking water. She asked "why are they not considered primary conservation areas?" adding "and why is there no Heritage Commission and Conservation Commission input in the process? I would think you would want that input." Ms. Vann replied "on the first walk-through everyone gets invited." Chair Harrington redirected the conversation by interjecting "no, I think the question is why are these area *not* considered primary areas." Ms. Ogilvie concurred noting that language should be checked. Chair Harrington noted it was a discussion they needed to have but a key distinction was that the primary list includes those areas that would *not* be buildable where the secondary list would not necessarily be unbuildable. "If it is considered primary conservation land it is unbuildable period" he said. Mr. Laurenitis acknowledged the explanation noting "I follow but that doesn't mean I agree." Chair Harrington acknowledged that most likely *agriculture* should be taken out of the primary list and placed on the secondary list.

Ms. Laurenitis' next question regarded the requirement (except in certain circumstances) that all subdivisions on 10 acres or more in the Rural District set aside 50% of the parcel for open space preservation and in all other residential districts offer this as an option for all subdivisions on five acres or more. The brief discussion that followed included scenarios as well as how an applicant may be exempted.

Ms. Laurenitis' last questions was regarding §245-26 G *Homeowner's Association*. She noted a number of different items listed under the new ordinance. "A lot of the first part of "G" was incorporated but not the rest" asking "does that make a difference? Do the other things not need to be specified?" the members reviewed the old ordinance and discussed the need for an HOA assisting in determining the boundaries and uses in the common land and the where the open space would be. Ms. Vann noted if a structure had common land "you are required to have one." Chair Harrington noted page 8 of the ordinance where it stated "all open space and any associated facilities shall be permanently protected by covenants or easements as approved by Town Attorney and the Planning Board." He noted "it is about the ownership and maintenance of open space." Mr. Throop suggested the staff review Section G "and add what might be needed" for the next meeting.

Tyler Ward introduced himself and pointed out Page 7 (3) of the ordinance. He read the language as follows "all area of open space do not necessarily need to be contiguous, but consideration shall be given to connections between non-contiguous areas, as well as accessibility by all residents of the development." He noted the suitability of the open space will be determined by the shape, size topography and location for the proposed purpose and reiterated the initial, conceptual non-binding discussion with the Planning Board. He also noted the importance of this initial site visit for informational purposes and encouraging a landowner about what they may have on their site. He stated that he felt it would be valuable for other land use boards to attend site visits and share their knowledge.

Peter Brown offered his concerns with notifying the conservationists. He gave an example of a rural lot with no wetlands "would this be a requirement? he asked. Ms. Von Mertens interjected "it

is looking for much wider things than wetlands. It is very structured, very organized and the Planning Board may not be equipped to determine primary and secondary conservation areas. The Open Space Committee, the Heritage Commission and the Conservation Commission could help.”

A brief discussion about the initial non-binding site visit, notification of the Boards and Committees and the Public Notice Process followed.

Ms. Von Mertens noted page 5 F(1) of the Ordinance and told the members she had read this with great concern. She admitted I have trouble with every sentence in the code book, truth be told.” Ms. Vann interjected “your concern is about the yield plan” with Ms. Von Mertens replying “yes, on top of the bonuses that may be awarded.”

Mr. Weeks said “we are back to the basic question 1 or 2 unit per 3-acre lots. That is the bottom line. Ms. Von Mertens also mentioned the problems or trouble of “fitting” in new septic systems. “Again” she said “it makes sense in developed areas but in the outlying areas it is very alarming.”

Mr. Clark noted a misconception of new septic systems. “They are clear water and very small” he said adding “you can put them next to a lake” he said. With a smile a member of the audience asked “so no more mound septic systems?” with Mr. Clark replying “no.” Ms. Monahan stated she was a septic designer and told the members there was not a lot of loading factors for capacity for the sewage load based on soils. “But you have to meet the State subdivision requirements to fit wells and septic systems” she said. Ms. Von Mertens reiterated her concern about not just a unit on a lot “but the garage, the barn the shed and the pool.”

Chair Harrington identified the issues he thought most important:

Number of dwelling units on a 3-acre lot

Definitions that are consistent and current with the ordinance

Sections G and H of the existing ordinance and how they are incorporated into the proposed ordinance.

A review of the 25% lot coverage in the new ordinance

“And that is it” he said.

Mr. Throop told the members that Dario Carrara (Code Enforcement Officer) would be at the next workshop “and we may have other points of clarification from him as well.” Chair Harrington asked for any comments he may have be emailed to the Board before the next workshop and reminded the members “let’s not make the perfect the enemy of the good.”

Update on Traditional Neighborhood Overlay District

Carol Ogilvie was present and gave the members an update of the progress of this proposed zoning ordinance. She noted that in terms of the contract “we still have some time left” citing an extension agreed to by the New Hampshire Finance Authority. She told the members she and Mr. Throop had met with the consultants “and we are ramping up again.” She noted the workshop on September 16th would be the first opportunity to discuss the draft prepared by the consultants. She noted a public information session on the draft was scheduled for September 24th in the Upper

Hall of the Town House “where the design pieces the consultants put together for us would be explained and they would answer questions and concerns.” Ms. Ogilvie told the members that with a specific targeted area “we hope for a good turnout.” She noted postcards announcing the public information sessions would be sent to each household in the targeted area, “much like we have done in the past” she said.

“What is this and why are we doing it?” interjected the Chairman in a Devil’s Advocate fashion. Ms. Ogilvie explained the proposed amendment would allow the infill of lots with additional housing in the close proximity of the greater downtown area. Ms. Ogilvie pointed out that if the town wanted development “there is no vacant land left in the Family and General Residence Districts where that can happen.” She told the members “from 2003 to 2013 there have been 67 new house lots created” adding “66 were in the Rural District. There is no other place for people to go.” She concluded with “it complements our previous discussion on the Innovative Subdivision Design” she said adding “it is a bookend ordinance.”

Ms. Miller asked for clarification on the definition of overlay. “Where did the term come from?” she asked. Ms. Vann interjected “in older neighborhoods it is a Term of Art.” Ms. Miller went on to note the previous perception of the ordinance as *ghetto housing*. “We need to overcome that perception” she said. The members briefly discussed the language or vocabulary of the ordinance with Ms. Vann noting it was more difficult to try to explain the ordinance when using the word “infill.”

Ms. Von Mertens told the Board about several intersections in town that she avoids and asked the members about the traffic impacts of this build-out technique. Ms. Ogilvie explained that there was a map of lots that would be eligible “so we can count” she said. Ms. Ogilvie added “you will be surprised if many or any lots have the ability to be subdivided under this.” Ms. Vann agreed adding “there will not be a lot more cars.” Tyler Ward introduced himself and noted a handout on the architectural features, scales, building orientation and location of parking would be extremely helpful in educating the public.

Dick Estes introduced himself and (with regards to traffic congestion and pinch points of the intersections) said “the traffic is so horrific now this is just a drop in the bucket, it would not matter.” Ms. Von Mertens noted her concern over a home owner using this ordinance to subdivide their lot and then tear down the older house to put up two new ones.

Workshop on Business/Industrial District

Chair Harrington noted the August 12th Workshop where the members discussed the Commerce Park and Business/Industrial Districts. Chair Harrington noted “today we are talking about the B/I District only” and noted Peter Brown’s memo to the Board for the record. Mr. Throop passed out a hard copy of the memo as well as a comparison of the *Industrial District* of 2005 and the *Business/Industrial District* of 2012. It was noted that three permitted uses that were present in 2005 were not reflected in the current ordinance. Those uses were *Research Laboratories*, *Office* and *Personal and Professional Services*.

Mr. Throop gave a brief history of the proposal developed in 2005 described the Planning Board’s effort to implement the objectives of the Master Plan as it related to Economic Vitality. This

included the consolidation of five zoning districts into three to simplify and streamline zoning as it related to business opportunities in town. He noted that after the third Public Hearing the Planning Board voted *not* to move it to ballot and asked the Master Plan Steering Committee to evaluate the proposal with input from the Economic Development Authority (EDA).

Peter Brown introduced himself and noted the importance of definitions in the zoning regulations. He noted in two different districts the permitted uses of “indoor/outdoor recreation” and “recreational facility” had the same definition when he looked them up. “This inconsistency can be easily remedied” he said. Mr. Brown pointed out the vacancies could be filled with jobs versus preserving industrial land. “You can fill it with office and personal & professional services without taking away from it” he said.

Mr. Throop briefly reviewed the Master Plan Steering Committee and EDA consideration of the proposal in 2005. The minutes noted the following: the consolidation was to simplify the zoning districts and fill existing empty spaces in town before further expansions; there were concerns of the interchangeability of uses that may contribute to sprawl; there is a need to relax permitted uses to make it easier for commercial land use; there is a diminished need for industry and manufacturing in the town; there is a concern of “giving up” industrial land for commercial uses; and alternatively “as long as industrial land creates and sustains jobs the use should not matter.” Chair Harrington interjected “so we have to ask *what do we want our town to evolve to.*” Mr. Brown replied “2005 was a different world let’s keep that in mind.” He specifically mentioned a very different business economy adding the concepts of what people wanted was different. “Today we deal in reality” he said. Chair Harrington nodded and noting the empty storefront in the plazas said “the stock is not filled, when you look from a growth standpoint, it does not look good.”

Mr. Brown briefly re-reviewed his memo with the members pointing out “there is no definition for office in the zoning right now.” Mr. Throop replied “correct.” Chair Harrington interjected “I see three options” adding “we can consider §245-10.2 (the current Business/Industrial District Ordinance) and work on it through September, October and November. We will be straight out but we can forward and do it.” He went on note the second option would be to get the Master Plan Steering Committee and the EDA involved in the same capacity they were in 2005. “For Mr. Brown that means another year and a half before this goes to ballot which is a long time” adding “but we must act in the interest of the town and not an individual.” Chair Harrington concluded the third option was simply to do nothing. “Those are the three options” he said.

Ms. Miller asked if the zoning were to be changed “would Peter (Brown) be able to bring in new business?” She added “I ask this from the point of view of a taxpayer, smart growth is good, I would like to see that happen.” Chair Harrington replied “the charge of the Planning Board is not for individual opportunity, it is for the overall good of the town.” Ms. Miller replied “I would like to see the best use of the property.”

Mr. Brown stood up and told the members he currently had a client interested in leasing space “but his use is not permitted. I would have to go to the ZBA for a Variance to bring him in.” Mr. Clark interjected “how hard is that?” Mr. Brown replied “it is like rolling the dice; it may take one meeting or more to get through.” With regards to the Brookstone Building Mr. Brown said “there is no definition of what I can put there, it ends up being Dario’s (Carrara, Code Enforcement

Officer) interpretation of office space.” He explained that with personal & professional services if they make something (product of some kind) it is not office. “I am being penalized for the town not having proper definitions in their zoning” he said. Mr. Brown mentioned EMS, MAPS and InfoGroup as three other businesses located on Vose Farm Road, “unfortunately, a lot of this depends on interpretation right now” he said.

Chair Harrington thanked Mr. Brown and noted “it seems that the issue is the definition not the permitted use.” He noted the Board must move quickly if they were going to address this issue. He asked Mr. Throop to draft a definition for “office.” Mr. Throop accepted and noted meeting and workshop opportunities in the time frame of getting through the ballot process. The Board briefly reviewed the calendar and the potential meeting dates noting Public hearings for mid-November would determine whether or not they would be sufficiently ready to go forth to ballot.

Mr. Weeks pointed out “it is not just Vose Farm Road; it is the north section of town.” Chair Harrington asked “so we agree to move forward with this?” “Yes” replied Ms. Vann adding “and I urge us to think about the permitted uses in 2005 that are not in 2013 and scoot them back over.”

Mr. Brown stood and asked the members to take a drive down Vose Farm Road. “If you have a chance please drive down to the Brookstone Building” he said adding “there is a common area you can walk through, it will be worth it.” He concluded by noting “there are lots of happy people down there, you will see some good things. It is worth the inconvenience if you can.”

Review of 2013/2014 Work Program

Continued

Minutes

A motion was made/seconded (Vann/Zeller) to approve the Minutes of August 5, 2013 and August 19, 2014 will all in favor.

Update from Members Serving on Other Boards/Committees

Mr. Zeller noted the September Master Plan Steering Committee scheduled for September 11th had been postponed to October. Mr. Throop interjected he would be meeting with that Committee’s Chair and Vice Chair on Friday “to get all our ducks in a row.” He added the Master Plan Steering Committee had reviewed the Planning Board’s comments on the Population and Housing Chapter at their last meeting noting the language change of Goal #1 (B) “Amend the Open Space Development Ordinance to improve the process so as to encourage its use for the protection of open space and sensitive natural features ***and consider requiring its use in the Rural District.***”

Mr. Throop also noted a Commerce Park conversation with Craig Hicks last week and that District was also an item for the workshop agenda next Monday “so there will be five items on the agenda.” Mr. Weeks requested a written proposal from Mr. Hicks prior to the meeting so that they would have some idea of his plan. Mr. Throop replied “that is a good idea.” Chair Harrington encouraged participation by EDA and Master Plan Steering committee members at next week’s workshop.

Mr. Ward noted a discussion to change the Demolition Ordinance. He noted he had discussed the idea with the New Hampshire Division of Historic Resources adding “they have a great argument for not changing it” and that that information was available when that Work Plan topic came up. Chair Harrington thanked Mr. Ward noting “right now we need to focus on just the ballot items.”

The meeting adjourned at 9:05 p.m.

Respectfully submitted,

Laura Norton
Administrative Assistant