

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

Minutes of November 6, 2013

Members Present: Chair Joel Harrington, Ivy Vann, Alan Zeller, Jerry Galus, Audrey Cass, Rick Clark, Barbara Miller and Tom Weeks.

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

Chair Harrington introduced the members and appointed Alternate members Galus to sit for Ms. Vann who recused herself for this agenda item. He continued "our first order of business is to open the public hearing on proposed amendment §245-26 *Innovative Subdivision Design* to replace §245-26 *Open Space Residential Development*."

Chair Harrington noted he would open the public hearing by requesting a motion to rescind their vote of October 14, 2013 "to send §245-26 *Innovative Subdivision Design* to ballot." He told the members "we already took a vote, I know but according to town counsel we made substantial changes in Deliberation without public input." He reminded the Board of their changes, the first of which was approving §245-26 with a language change of *any subdivision with proposed lots of 10 acres or greater and is located or has its access gained through a private road is exempt*. The second was an approval of replacing §245-24 *Home Business, Professional Uses and Customary Home Occupations and Home Industries* with §245-26 *Home-Based Business* and move Home Day Care from A. 1. *Exemption* to §245-24.C Professional Uses.

Chair Harrington looked up and said "I will entertain that motion" adding "this will make that vote null and void and we would continue the public hearing to take more public comments."

A motion was made/seconded (Galus/Clark) to re-open the public hearing of October 14, 2013 to rescind their vote and gather additional public input with all in favor except Mr. Zeller.

Chair Harrington reminded both the Board and the public that re-opening the public hearing "re-opens us to anything in the ordinance." He went on to ask that people be respectful of each other, speak just once on any topic to allow all to speak before speaking a second time "and to address all questions to the Chair and identify yourself for the record." He concluded "if I feel we are getting off reservation I will ask you to get back on track. If we can't - we will move on."

"Tonight is our third public hearing" he said and reviewed a timeline of meetings and workshops dedicated to the review, discussion and revision of the ordinance.

July 16, 2012 - Ordinance subcommittee was formed

January 28, 2013 - Initial draft was scheduled to be reviewed (This meeting was cancelled due to Planning Board Chair Rick Monahan's death)

May 20, 2013 - 1st workshop held and included a Planning Board exercise

June 10, 2013 - 2nd workshop held with the revised draft reviewed

July 1, 2013 - 3rd workshop held, revised draft reviewed with a presentation of sketches of the

ordinance applied in three districts

July 29, 2013 - 4th workshop held, reviewed comments from the Conservation Commission

September 9, 2013 - 1st Public Hearing

October 14, 2013 - 2nd Public Hearing

November 6, 2013 - 3rd Public Hearing

Chair Harrington concluded "that has been the trajectory with all legal notices filed appropriately and on time."

Ms. Cass arrived and Chair Harrington appointed her to sit.

Chair Harrington then gave a brief review of what the ordinance entailed is about paying particular attention to the *Purpose* section of the ordinance. He reviewed the charge of the Planning Board from the Master Plan. "It is not pie-in-the sky it is something we want to do." He went on to ask "what do you want rural Peterborough to look like?" adding "I live there; we do it for a reason." He noted the open space to walk and hike in the woods, to hunt and fish. "The Master Plan highlights this as essential to the fabric of Peterborough."

Chair Harrington noted large-scale subdivisions in the rural area can be unsustainable or inappropriately designed." He noted "in the fall we have *Peak into Peterborough*, not *Peak in Subdivisions*."

Chair Harrington also gave a brief history of the Open Space Residential Development Ordinance concluding "it has not been used so we looked at it to figure out why." Chair Harrington also noted we also looked how the Mater Plan looks at conservation values of our rural land, setting a portion of it aside, "this ordinance does this" he said adding "many of the communities in New Hampshire have this."

Chair Harrington briefly reviewed how earning bonus points could increase density up to 25%. He looked up and said "that is the background and why the Board has explored and is considering this charge by the Master Plan." He concluded by noting several abutting communities that have this ordinance in place and noted "with that said let's get the public to give us their thoughts."

Francie Von Mertens introduced herself and noted "I am speaking for myself" adding "but the Conservation Commission sent a letter to the Board about concerns they had with this ordinance and I can't speak for the ConCom but in fact you addressed all their concerns."

Ms. Von Mertens said "I tell you when I am not for something and I would like to tell you why I am in favor of this ordinance." She began with her research and investigating what our neighboring communities were doing. She told the Board she had read the Master Plan noting "the long range look" that sometimes land owners do not see. She noted several neighboring communities that require it "with the basic difference being what the towns are calling it." She added "and with the exception of Greenfield all of them are mandatory." She made note of the Office of Energy and Planning's positive view of the ordinance and told the Board "so we are a little slow to pick it up but we *are* catching up with our neighbors."

Ms. Von Mertens went on to say “you may hear *it is a taking* but a landowner cannot be denied reasonable use of his land” adding “I trust the Planning Board, I have known you for decades and you have always been respectful of the applicant. You have always been an applicant-respectful and friendly Board and I don’t see that changing.” She went on to say “this is telling the land owners to pay attention; zoning is all about the long range. I say congratulations this ordinance protects rural land by looking at the natural resources, not the number of acres. I say well done.”

Andy Peterson introduced himself and thanked the Board for their hard work. He noted he appreciated the re-opening of the public hearing and the hearing of additional testimony. He began by urging the Board to hold up and speak with major stakeholders “before moving forward in an omnibus design because that is what this is.”

Mr. Peterson spoke about the role of the Planning Board in implementing the Master Plan and planning for the future “is setting the ground rules for the community and setting up the scenario from which many decisions will be made.” He mentioned the people of generations ahead and what they may want to have for the town. He noted “*they* will want to hunt and fish and walk and farm the land” adding “under this ordinance you are required to come before the Board with fairly significant amount of planning and engineering done. They will have to come in and set up a plan for their entire parcel of land. To me looks like a condominium-type ownership.”

Mr. Peterson went on to speak about what is desirable to some may not be to others. He noted “cultural, natural historical and economical resources are the purview of the Planning Board to protect” adding “and you have large tracts of land that the owns never thought of developing.” He looked to the Board and asked “how would you feel if all of a sudden the value of your land is going to be severely altered? You would have wished you subdivided your land long ago before they changed the rules on you.”

Mr. Peterson cited the Stone Ridge development as a 9-lot geothermal project developed under the Open Space Residential Development ordinance that has half of the land conserved. “A development that has contributed to our tax base” he said. He again urged the Board to be good stewards to the land for future generations, keeping the incentive to come and enjoy a unique community. “Right now this monolithic requirement, in my view is a disincentive. Let’s take a breath and think about it” he said adding “give real, live breathing people who have put the wherewithal into their property the freedom to have some basic rights on their land and look for a way to develop it when the request comes. Under this the land owner does not have rights anymore.” Mr. Peterson concluded by noting “I ask you who among us wants to invest in something we have no real baseline knowledge of what your rights are?” adding “you work hard and do well and have something to hold in your hands and say *this is mine*. Not the communities, it is *the person* who owns it. That is the base of what it is to be an American.”

Mr. Peterson urged the Board not to rush forward and take time to meet and talk with the stakeholders. “Thank you for your attention and courtesy” he said as he sat down.

Loretta Laurenitis introduced herself noting she had several questions. She began by asking about the private impact of the ordinance. Chair Harrington asked Ms. Laurenitis where she was in terms of page and paragraph. Ms. Laurenitis replied “page 4” adding “why is this a requirement for the

rural district but not others? (and) why is not optional?” Chair Harrington asked Ms. Ogilvie to clarify. Ms. Ogilvie noted the Open Space Residential Development is voluntary “but as we got into the process and had more discussion we found it has been used in a limited fashion, but it was not effective as it could be.” She noted other towns with a similar mandatory ordinance “and it works well” she said adding “I doubt that if it remains voluntary it will get used for the development it was intended to create.” A brief discussion about the abutting community’s ordinances followed.

Ms. Laurenitis again asked why the ordinance was not a requirement in the other districts. “I am just trying understand the implications” she said. A brief discussion about the 10-acre minimum tract size in the rural district and 5 acre minimum tract size in all other residential districts followed with Chair Harrington noting “considering the number of acres in the other districts it is my sense there are not a lot of lots that would fit into this ordinance” adding “and lot sizes you want to create out of a subdivision depends on the configuration.” Ms. Laurenitis asked about how much engineering would have to be initially involved with Chair Harrington reviewing the attention to the primary and secondary conservation areas adding “we rarely see engineering plans except for roads and stormwater anyway.” He noted “you start with a conceptual plan and eventually move to survey work and engineering.”

Ms. Laurenitis noted the way the regulation was written “it seems like it is forcing a condominium situation” adding “it talks about common land.” She also pointed out Section G of the ordinance titled *Homeowner’s Association*. Chair Harrington replied the Homeowner’s Association is for the purpose of the ownership and maintenance of any common land and facilities. “It does not have to be a traditional condominium” he said adding “in most cases there will be some common facilities or open space and you need a mechanism to manage these things.”

Ms. Laurenitis asked if the common land could be donated to the town. Mr. Throop interjected “that in the current ordinance there is a provision for transferring the land to the town, but that the town attorney thought that the common land cannot be transferred to another party because the common land area is required for the density calculation under the zoning ordinance.” A brief discussion about the creation of non-conforming lots followed. Mr. Throop suggested that this could be further explored.

Mike Salera introduced himself and began by thanking Mr. Peterson “for speaking so eloquently” about the large land owners “he hit the nail right on the head, he did a great job.” Mr. Salera went on to say he had not heard of the ordinance until recently and noted the name of the ordinance was misleading. “Innovative means creative” he said adding “it is misleading.” He looked to Ms. Von Mertens and said “pardon me Francie but it is a taking. It impacts 59% of the land in Peterborough. The number of land owners this ordinance will impact is enormous and it should be renamed to say exactly what it is doing.” Mr. Salera told the Board “24,000 acres will be affected when this is done.” Mr. Salera told the Board “putting everyone into a cluster is not what people want to do. I build two (referring to Governor’s Square and Colonial Square). There is a time and place for that. People want to own their land; they don’t want to share it in common with someone else.” In conclusion Mr. Salera urged the Board to change the requirement of the ordinance from mandatory to voluntary. “I wish you would re-think this so it is an option, the way this is going is not healthy for the community” he said.

Jeff Crocker introduced himself and asked if there was anything in the ordinance that would have an effect on abutters land values in Family or General Residence Districts as well as what was required from the board when considering if it is appropriate or not to be before the Planning Board. He told the Board "it is not a sense of how many parcels would be affected by this but where they are located." He asked "have you looked at the maps and identify those particular parcels in the zones where this might apply?" He asked "what is the impact to the neighborhood?" adding "it is different from the impact in the rural zones? The residential zones should not be overlooked."

Ms. Vann asked "am I correct in saying that in the proposal the density of a new development in the Family or General Residence districts can only be a certain percent?" The Board replied "yes it is 25%" with Ms. Vann noting "so the ordinance is structured to put conservation first" (meaning) "no engineered designs just the pertinence of the landscape is addressed in the first step of the conceptual meeting." Chair Harrington agreed.

Chair Harrington asked if there were any other question or concerns from the audience. Ms. Laurenitis interjected "I would just urge you not to rush through this ordinance" noting "many rural landowners are not aware of this." She mentioned the postcards that were sent out to hundreds of residents that may be affected the Traditional Neighborhood Overlay District ordinance and asked "why didn't you do the same thing for this ordinance, especially when it is a requirement and not voluntary?" A brief discussion followed about the number of meetings held to discuss the ordinance, the notice requirements being met, and the cost of doing this kind of outreach. Ms. Ogilvie said "the outreach for the TND ordinance was cover by a grant, we did not have any budget to do something similar for this ordinance."

Ms. Von Mertens suggested the members of the audience "step out of envisioning the Peterborough of today with the land owners of today" adding a study of the land owning population shows both land owners and their ties to the land were dying. She noted their children are all over the world and have don't share those ties. "The percentage of land transfers in New Hampshire is on the rise." She said the trend is to get the most out of long held estates by subdividing and selling. "There will be no more people who have been here since the founding families."

Ms. Von Mertens noted this ordinance would allow for reasonable development of the land "looking for farm soils and checking the natural resources, intact scenic viewsheds, water supplies and aquifers. This is challenging the land owner to pay attention" she said concluding "parents die; the kids divide out the estate and sell."

Mr. Crocker noted Page 4, Section C (Exceptions) (a) (iii) and suggested the wording be changed from *will carry out* the spirit and intent of the ordinance to *not be contrary to* the spirit and intent of the ordinance." A brief discussion on whether or not a subdivision design could be carried out followed.

Tyler Ward introduced himself. He described a related article he had recently read. He said "this is encouraging, thank you." He also noted the Bus Tour the Planning Board sponsored in July,

specifically pointing out Stone Ridge Drive as "an excellent example of where the ordinance can shine." He complimented the builder noting "he is excellent but not all builders are like that." Mr. Ward concluded "I wanted to say I appreciate what you are doing with this ordinance."

Andrew Dunbar introduced himself and began with thanking the Board for their dedication and hard work. He went on to note he had heard many different improvements that may be made to the ordinance. He suggested the Board "take their time to work in an open and positive and hopefully productive way in improving this ordinance" adding "including the stakeholders."

Mr. Dunbar noted the way the ordinance is written "it seems it does involve significant engineering and design as well as cost to implement." A brief discussion about considering the upholding of owner land values and unwittingly producing unintended consequences followed.

Heather Peterson introduced herself as a large land owner in town. "My experience is that (as Andy says) it allows for more intense development on back land parcels than the conventional ordinance allows, and that is contrary to the Master Plan." She suggested the Board focus on infill of the existing settlement and nodes adding "this is the opposite." Ms. Peterson briefly noted the lack of diversity in cluster neighborhoods, greater use of rural roads ("pretty soon we are going to need to put a yellow line down the middle of Sand Hill Road") and the dead-end roads and cul du sacs in town. "I feel this is the gentrification of Peterborough" she said adding "with HOAs and rules about no clotheslines or trash outside and what kind of pets you can have."

With no additional comments Chair Harrington noted "let's wrap it up; I will entertain a motion to close." A motion was made/seconded (Miller/Galus) to close the public hearing with all in favor. Chair Harrington explained the deliberative process and that no additional testimony would be heard. He did note however that he reserved the right to call on the expertise of Ms. Ogilvie and Mr. Throop for clarification if he felt it necessary.

Ms. Miller asked "are you going to read the letters?" Chair Harrington replied he had been asked to read two letters hand-delivered that morning for the record. These letters were from Steven and Ann Lord of Sand Hill Road and John M. Lord, Jr. of Middle Hancock Road. Chair Harrington read both letters into the record (letters attached). The essential message of both was to make the ordinance a voluntary alternative.

Deliberation

Ms. Miller noted the amount of public input (after 3 public hearings) they had collected. She asked "how much more do we need to do when asked if we have done enough?"

Mr. Clark interjected "the two sides have been set." Ms. Miller asked "can it be done in stages?" adding "I believe in it. Can we make it mandatory the applicant come for the conceptual but not mandatory they use the ordinance?" Mr. Clark said "I perceive this as giving incentive for doing good things." He added "then it got twisted to being required because no one used the Open Space ordinance." Ms. Miller asked "can you have a voluntary ordinance? How does that work?"

Chair Harrington briefly explained how an applicant would go to the Office of Community Development and talk about taking advantage of this ordinance to increase their density. He noted

the features of the ordinance would be reviewed and the applicant would be able to do the right thing while increasing his density. He also briefly touched on the economic value by building less and shorter roads.

Chair Harrington asked “any other thoughts? And the discussion immediately went back to how the ordinance became mandatory. Mr. Weeks noted he was inclined to agree with Mr. Clark. “This is not what we were talking about. It went for incentive to requirement and I am uncomfortable with that.” Mr. Galus noted he agreed noting it seemed dictatorial, “from what is reasonable to you *must* do this.” Ms. Miller again suggested the requirement is that the applicant must come in so that all the options could be explored. Chair Harrington replied “we already require that in the preliminary application.”

Chair Harrington noted “I thought the ordinance was always mandatory.” Ms. Cass offered her recollection of information they discovered after a Planning Board exercise that swayed them into making it mandatory months ago. Mr. Clark agreed adding “it was after the discussion with the Conservation Commission.” Ms. Cass noted the use history of the other towns with similar ordinances (both voluntary and mandatory) “did not see significant changes between voluntary or mandatory so we went with mandatory.”

Chair Harrington replied “it should not be voluntary for a number of reasons” adding “as a law professor I teach land use and I can tell you voluntary ordinances never get used.” He noted the spirit and intent of the ordinance was to allow flexible subdivision design while promoting the natural and cultural resources of the land. He told the audience “my neighbor has a 25 acre lot that is going to be subdivided and they are not going to use a voluntary ordinance.” He added “I have two small kids; I want them to be able to enjoy the woods” adding “voluntary ordinances do not get used in the State of New Hampshire. If you want to go for voluntary let’s not do it at all.” Chair Harrington looked to the Board and said “our goal is on many fronts. Public water, aquifers and scenic areas should be protected and left intact. I can tell you (and I am a republican) I will tell you right now there is no research this creates any downtrodding of land values. That is wrong. It is not true.”

Chair Harrington then said “we are going to do it with *everyone* in, if not let’s not go forward, just kill it and not do it at all.” He went on to say “we have spent months on this. It could have been two days if you just put *voluntary* on it.” Ms. Cass noted she had lived in four areas of the country and with voluntary “you get nothing but destruction of the land, so much that you no longer want to live there.”

“Anything else?” asked Chair Harrington with Mr. Week noting the amendment to Section C (1)(a) (iii) reading “a subdivision where the Board finds that a proposed conventional subdivision design *will carry out* the spirit and intent of the regulations” be changed to “a subdivision where the Board finds that a proposed conventional subdivision design *not be contrary to* the spirit and intent of the ordinance as suggested by Jeffrey Crocker. Chair Harrington asked “how do we feel about it?” he looked at Mr. Weeks and asked how do you feel about it?” Mr. Weeks replied Jeff makes a pretty good point.” Mr. Week then asked if the change would require another public hearing with Chair Harrington replying “it is not a substantive change. I can live with it and it does make more sense.”

Mr. Galus noted Section G. Homeowner's Association and asked "can we clarify it in some way?" adding "common ownership is difficult to manage." Ms. Cass asked "ownership or management?" with Mr. Galus replying "I am not sure" and Chair Harrington replying "it is both" adding "ownership and maintenance agreements are recorded with each deed, we could add that." Chair Harrington asked again "anything else?" Ms. Cass replied "what about the name of the ordinance?" (Referring to the word "Innovative") with Chair Harrington replying "now that may be a substantive change, we need to be careful."

With nothing further Chair Harrington said "I guess we are done, that is everything I have. It is time to get a sense of the Board." He went on to say "I am in favor of it, it took an extreme amount of work to get here" adding "let's not let the perfect become the enemy of the good. I will vote in favor without the change to voluntary. He asked "do I hear a motion?"

A motion was made/seconded (Zeller/Weeks) to change Section C (1)(a) (iii) with the wording being changed from *will carry out* to *not be contrary to* with all in favor.

Chair Harrington asked "any *other* motion on the ordinance?" A motion was made/seconded (Cass/Miller) to approve the proposed amendment with a language change and move it to Ballot with Chair Harrington, Mr. Zeller, Ms. Cass, Ms. Miller and Ms. Vann in favor and Mr. Clark and Mr. Weeks opposed.

At 8:05 Ms. Vann rejoined the Board as Chair Harrington noted "our second order of business is to open the public hearing on proposed amendment §245-24 *Home-Based Business* to replace §245-24 *Home Business, Professional Uses and Customary Home Occupations, and Home Industries* and the removal of Home Day Care from A. 1. *Exemption* and added to §245-24.C. *Professional Uses*" Mr. Clark recused himself from this item and went and sat in the audience.

Chair Harrington looked up and asked "is there anyone who wishes to comment on the ordinance?" Mr. Clark indicated that he supports the ordinance. With no other significant discussion, a motion was made/seconded (Vann/Weeks) to approve the proposed amendment and move it to ballot with all in favor.

Minutes

A motion was made/seconded (Miller/Zeller) to approve the Minutes of October 14, 2103 as written with all in favor.

Other Business

Mr. Throop noted a meeting on Monday, November 18th to determine Board Leadership, review the Work Plan and vote on the Minutes.

Respectfully submitted,

Laura Norton
Administrative Assistant

