

MINUTES

ORDINANCE COMMITTEE MEETING

Meeting of June 16, 2020 – 8:00 a.m.

Zoom Webinar

Present: Committee Chair, Councilor Shepard; Councilors Hartwell and Wilder Cross.

Also present: Town Manager, Ephrem Paraschak; Director of Community Development, Thomas Poirier; Town Planner; Town Planner, Carol Eyerman; Executive Assistant, Jessica Hughes.

1. Consideration of the minutes of the May 19, 2020 meeting.

Councilor Shepard noted one correction to the minutes of the May 19th meeting as his recommendation to add McClellan Road to the to the list of no through roads on the Streets and Sidewalks Ordinance was overlooked and should be added. Councilors Wilder Cross and Hartwell agreed.

A motion was MADE by Councilor Wilder Cross, SECONDED by Councilor Hartwell and VOTED to accept the amended minutes of the May 19, 2020 meeting as distributed. Unanimous vote.

2. Current Business

- A. Review and propose amendments to Chapter 2, Section 2-4 of the Land Use & Development Code, Clustered Residential Development, and bring back recommendations for updates to the Town Council (referred by the Town Council on February 4, 2020).

Director of Community Development Tom Poirier referred to the attachment A, in which staff drafted new standards for Clustered Residential Development that if a subdivision met these standards, the Planning Board would be required to approve them.

Currently, the Planning Board has the discretion to approve subdivisions. When the committee last reviewed these proposed amendments, there was a discussion regarding having a requirement for active open space; one example that was provided was the City of Saco. The Planning Board will usually hear back from homeowners associations (HOAs) regarding the challenge of insuring active open spaces, whether it is a playground or field that children would use, and the extra insurance costs incurred. Mr. Poirier corresponded with the City of Saco and via the listserv for Planners throughout the state to find out if they received push back from developers and HOAs regarding active space requirements within conservation and/or clustered subdivisions, and if so – how do they handle those scenarios. The feedback received was that developers don't like to require active open space, because it is a headache. Saco advised if a new subdivision is next to an already established active open space, then the City accepts it.

As the Town of Gorham's ordinance is currently written, some entity other than the HOA would need to accept the open space. Mr. Poirier was hopeful that the Presumpscot Regional Land Trust (PRLT) would take the active open space from these subdivisions and incorporate it; however, per his correspondence with the PRLT Executive Director – Rachelle Curran Apse, the

PRLT is not interested in accepting active open space that is owned by an HOA and allowing an easement on it, because they have some now and they are very difficult to manage as people use them as a dumping ground. Unless under specific circumstances like the open space is owned by an HOA and there is a conservation easement on it, the PRLT is not interested in incorporating open space. Per Ms. Apse, if the Town owned the active open space, the PRLT would be interested in having a conservation easement on it. Mr. Poirier will have to adjust that part of the ordinance moving forward.

Councilor Hartwell commented that he gained a new appreciation for stewardship of conservation easements when he did his externship with the Maine Farmland Trust. He participated in multiple weekly meetings so there is significant investment of time involved.

Mr. Poirier asked Councilor Hartwell to advise on his understanding of the Maine Farmland Trust's position with regard to active open space - specifically if the Town accepted a clustered residential or conservation subdivision, would the Maine Farmland Trust be interested in an easement, but not interested in being the holder of the land – they would want to give the land to someone else. Councilor Hartwell advised that sometime the Maine Farmland Trust use local land trusts to be the holder of the easement, but they will be the ones who hash out the legalise of the conservation easement to ensure that their language is included that is more favorable for flexibility of farms and funding. By having the local trusts be the holder of the easement, they can be the ones responsible for the stewardship.

Mr. Poirier can re-write the ordinance to have a level of preference, with the first level of preference being that the PRLT and Town take ownership of the open space; second tier is some other HOA-owned and PRLT easement – the tiered approach will better guide the Planning Board. Mr. Poirier does foresee there being some clustered subdivisions that will have open space that if it the Town or PRLT does not take ownership, it would just be preserved and owned by the HOA. Mr. Poirier also talked to the Town of Scarborough and if you're in their rural district and if you are going to impact soil types, wetlands or other natural resources, you automatically are categorized as a clustered subdivision and have to meet those standards.

Councilor Hartwell also commented that Keith Nicely reached out to him regarding his efforts with assisting the Irishes with their property on the Little River; the Irishes are hoping to subdivide some lots and access it through Town-owned property at the end of the subdivision out behind Gordon Farms. Mr. Hartwell suggested that if we were going to put an easement through the Town-owned open space that they limit it through only a couple of lots, and give the Town a conservation easement on the rest of the land that would provide some recreational area or river frontage and prevent future development.

One of the comments from the PRLT Executive Director - Ms. Apse was regarding how Falmouth requires common open space. Town Planner Carol Eyerman dealt with a similar situation in Topsham regarding how their Planning Board identified open space in their clustered subdivisions as part of their review. Ms. Eyerman commented that Topsham had a four-step approach in their review process, in which they looked at their land in a preliminary review prior to performing an expensive subdivision plan set with detail of roads, etc. The preliminary look is broken down into two components, which are primary and secondary resources; primary resources would include wetlands and natural resources, with secondary resources being historic and archeological resources, deer wintering areas, etc. The committee can identify what secondary resources should be included. After the first look at the property, the Planning Board

can then steer the developer in the way that the Town would like. Then conceptual bubble diagrams are usually drawn of where you would like the houses and roads to go, which gives a good look at the property and the resources. The language has switched from clustering to conservation in this approach, in which you still have some clustering along with pockets of opportunity rather than cutting down all of the trees and filling in wetlands. Then engineered plans are provided, so developers go in with a little more knowledge of all of the different elements of a property and hopefully make a better decision.

Mr. Poirier explained that Falmouth and Topsham have the same four-step process. The committee will need to decide if they want to go with that four-tiered approach, or keep the standards as-is, which would include an expanded list of secondary resources. The standards also include a first meeting with the Planning Board when they would look at open space first and then design around it, which is a better form of development.

Councilor Wilder Cross asked Ms. Eyerman if it is easier for staff and the Planning Board to start with the preliminary look for a subdivision. Ms. Eyerman said that it was much easier and cost efficient when there was more information provided up front in her experience with other Towns.

Mr. Poirier pointed out that under section 6 within the proposed amendments to the standards as they are currently, it already includes the preliminary review of conceptual plans and identification of natural resources.

Councilor Shepard does not feel we should require active open space. Councilor Hartwell commented that he sees the need for active open space, but it needs a threshold for the size of the development. If there is 5-10 houses, he does not see the need for an active open space requirement; however, for a larger development, active open space should be required. Mr. Poirier commented that active open space is required in the development transfer overlay district, because there is a need to provide space for people to actively recreate on those smaller lots. These proposed standards would only apply to the rural and suburban residential districts. Mr. Poirier also advised that the Town does have a recreational impact fee that takes care of buying new fields and land and other things for passive recreation. Ms. Eyerman asked to confirm if we have an open space and recreation plan so we know what we want to buy, where and what we're doing with the land, to which Mr. Poirier confirmed that there is a policy that if someone brings it in, we rank it. It basically provides guidance for when the Town does active searching for and buying land.

Councilor Shepard commented that he wants to be sure that we don't require things that will be under used or that fall into disrepair. Mr. Poirier said that he could add a provision that gives some flexibility that we can have active open space, but not always.

Councilor Hartwell commented that regarding number 2, he recommends adding the classification of farm land as a new statewide and local importance category. Under 5 on the second list of prohibited uses, he would add something about the removal of invasives to make it clear that it is clearly allowed. Additionally, Councilor Hartwell said that the principle that Ms. Apse of the PRLT referenced in her email could apply in these proposed standards - in that if the Town and PRLT do not deem the land as valuable open space, then the land would go to the HOA and the developer would pay an open space fee that goes into the Town conservation fund. Mr. Poirier commented that he will talk to the Town Attorney to check and bring back

their opinion at the next meeting; the developer needs to pay an impact fee anyway for the lots, so he's not sure how that would differ from another impact fee.

Mr. Poirier advised that he will bring back updates on items discussed, and staff will incorporate the tiering of open space and how resources are classified bring the revised draft of the proposed amendments at the next meeting.

- B. Work with staff to draft an Emergency Management Ordinance for Council review and approval (referred by the Town Council on June 2, 2020).

Town Manager Ephrem Paraschak explained that the attachment provided by email to the committee allows the Town Manager to declare an emergency if necessary, which can only last for 5 days and the Town Council has to renew it or let it expire. The ordinance allows the Town Manager to bypass certain ordinances and require people to shelter in place for an event that might hit suddenly that the Town would not be prepared for. Mr. Paraschak asked the committee to advise what they are comfortable with in the ordinance, and if they were okay with the emergency ordinance to begin with, which expired.

Councilor Shepard feels that there is a local use for this ordinance and it is to our benefit to have something to work with ahead of time, rather than when the time comes. He is aware of some of the concerns that folks may have with the power, but there are checks and balances that are in place. Mr. Paraschak can see the need to circumvent purchasing policies and policies in the personnel policy, so rather than having to issue an RFP for services, the ordinance would allow him to make decisions to mitigate risk to the Town.

Councilor Shepard commented that he is satisfied with the ordinance as it is written and would support sending it to the Town Council for review at their next meeting. Councilor Wilder Cross agreed with Councilor Shepard. Councilor Hartwell said that he was not in support of the ordinance as it was written, namely because he disagrees with the emergency proclamation procedure under section 6 – he feels that it assumes that the Council Chairperson has more power than they do, and the language has the Town Manager consulting with the Chair. There should be an attempt to get authorization from the Town Council if it is practical/when possible.

Based on Councilor Hartwell's requested amendment, Mr. Paraschak shared the proposed change to section 6 – A, which would read that, "The Town Manager shall have the power and authority, upon consultation with the Town Council members..."; additionally, Mr. Paraschak shared a change section 6 – B, which would read that, "Notwithstanding the above..."

A motion was MADE by Councilor Hartwell, SECONDED by Councilor Wilder Cross and VOTED to send the ordinance as amended to the Town Council for review and consideration at their next meeting. Unanimous vote.

3. **Items Referred by Town Council to Committee for Future Meetings/Action**

- A. Review general updates provided by Town staff to the Employee Personnel Policy and make a recommendation (referred by the Town Council on January 7, 2020).

Mr. Paraschak advised that HR Director Christie Young will provide a draft with all proposed changes for the committee at the next meeting.

4. **Other Business**

No items were discussed under 'Other Business.'

5. **Schedule next meeting and discuss agenda items for next meeting.**

The next meeting of the Committee is scheduled for Tuesday, July 21, 2020 at 8:00 a.m. The following items will be discussed at the next meeting:

- A. Review and propose amendments to Chapter 2, Section 2-4 of the Land Use & Development Code, Clustered Residential Development, and bring back recommendations for updates to the Town Council (referred by the Town Council on February 4, 2020).
- B. Review general updates provided by Town staff to the Employee Personnel Policy and make a recommendation (referred by the Town Council on January 7, 2020).

6. **Recent Items Sent to Town Council with Committee Recommendations**

- A. Review and propose amendments to the Streets and Sidewalks Ordinance to allow for more on street parking in the Gorham Village for Town Council review (referred by the Town Council on February 4, 2020).

The Town Council voted at their July 7, 2020 Regular Town Council Meeting to amend the Streets and Sidewalks Ordinance as recommended by the Ordinance Committee.

- B. Review adding requirements to the Land Use & Development Code requiring that property taxes be paid before the issuance of permits and bring back recommendations to the Town Council (referred by the Town Council on February 5, 2019)

The Town Council voted at their July 7, 2020 Regular Town Council Meeting to instruct the Ordinance Committee, after further discussion and guidance from the Council, to review adding requirements to the Land Use & Development Code requiring that taxes be paid before the issuance of permits and bring back its recommendations to the Town Council.

7. **Adjournment**

There being no further business, a motion was MADE by Councilor Hartwell and SECONDED by Councilor Wilder Cross and VOTED to adjourn. Time of adjournment: 9:05 a.m.

Respectfully submitted,

Jessica R. Hughes, Executive Assistant