

DRAFT FOSP COMMITTEE MINUTES OCTOBER 19, 2011

Attending:

John Greene (Chairman), Chris Franklin, Frank Governali, Caitlin Jordan, Carol Anne Jordan, Bo Norris, Jessica Sullivan
Maureen O'Meara (Town Planner), Michael McGovern (Town Manager)
Charles Lawton, Planning Decisions
Thomas Leahy, Esq., Town Attorney

Absent: Richard Bauman, Wayne Brookings, Craig Cooper

Call to order at 10: 07 AM by Frank Governali.

Call for Public Comment:

Richard Carlson was recognized by Mr. Governali, but declined comment.

Motion to approve October 5, 2011 minutes was seconded and passed unanimously.

Motion to approve September 28, 2011 Subcommittee minutes was seconded and passed unanimously.

Cost Benefit Analysis

Charles Lawton of Planning Decisions reported on his progress with an "Interim Interview Results" presentation. There are no conclusions yet. He has been interviewing Department Heads in town, and will complete this phase once he interviews the Superintendent of Schools and the Community Services Director. Some common themes he has learned to date are;

- Demands for most public services (police, fire, rescue, public works) are not formulaic, rather that public services may be altered by the character of the community, not necessarily by the numbers of households, or of people. For example, an increase in the elderly population may result in an increase demand for rescue services.
An increase in the number of new homes might not result in an increase in fire department calls, because new homes are more fire resistant than older homes.
- Regulatory changes continue to increase the cost of services; mandatory technological advances, for example, may increase paperwork

requirements of volunteer service personnel such as emergency technicians. This already has resulted in loss of some volunteers who cannot dedicate increased hours, thus creating the need for more paid staff.

- Increase in demand for services may also affect management decisions. For example, a new neighborhood might require a change in the pattern of plowing within the town, and/or a reallocation of existing crew, but not necessarily a new snow plow.
- All department heads avoided naming a "plateau" figure, but did say that at some point or threshold, additional staffing would be needed in order to maintain the quality of service delivery.

Mr. Norris: Does a seasonal increase in population (summer) affect the data or demand for services ?

Mr. Lawton: In general, no, per the Departments Heads.

- Discussion of study methodology began. Mr. Lawton reported that he will make forward projections based upon current trends in population and the current public service delivery structure. Trend projections from 2010 to 2020 are based upon the historical numbers from 2000 to 2010. Methodology would project budget costs for the Town as a whole if current trends continue. School enrollment in 2020 is estimated to be down by 326 students. 15 houses per year are projected to be built each year through 2020. A methodology question; if we reduce the 2020 homes by taking some and replacing them with "open space", what would the impact be upon various public service departments ? The fiscal impact would be dependent on the number of units in a development. We don't know what the thresholds would be. Again, there are no conclusions yet.

Mr. Governali: Is this projection realistic and does this imply no change in the demographics?

Mr. Lawton: The demographics are driven by projected birth rate per human services.

Mr. Governali: How do you account for deaths and change in household occupancy?

Mr. Lawton: We don't use house to house sales or link them to school enrollment.

Mr. Governali: Is immigration totally the additional 15 homes per year?

Mr. Lawton: This is unknown. The birth demographic is a differential between cohort survival births to enrollment.

Mr. Governali: In the study, we didn't ask whether or not a decrease in housing prices, thus making houses more affordable to families, would increase immigration.

Mr. Norris: This raises a range of scenarios; for example whether a static

population effects study results.

Mr. Lawton: The level of the academic program (school costs) would be true at 1800 enrollment, at 1600 and presumably at 1400. 1700 in 2010, 1300 in 2020, the marginal cost is zero. This moves away from a decrease in households affecting services. We need to make a projection and examine alternatives and enumerate new expense thresholds.

Regarding open space, are expenses saved by delaying development?

We will work from the given demographics.

Mr. Franklin: Costs will increase regardless.

Mr. Norris: We need to state the numbers.

Ms. Sullivan: The cost per student still increases with decreasing enrollment, even with the same level of academic services.

Private Property Rights Presentation

Tom Leahy, Esq., Town Attorney, discussed private property rights as they relate to the FOSP Committee Charge outlined by the Town Council. The three areas of greatest relevance are; condemnation, regulatory takings and impact fees.

Regulatory Takings

There are sovereign powers of federal, state and municipal governments.

The US Constitution limits "takings". Just compensation is needed along with bonafide public exigencies. Sovereign powers of municipalities are generally limited to acquisition of land for schools, parks and public works, such as roads and highways.

In 2005, in *Kelo vs. New London CT.*, the City of New London took, by eminent domain, private homes in order to establish a public redevelopment area which included retail facilities. A lawsuit was filed and ultimately heard by the U.S. Supreme Court, which found the taking of land for economic development to be a legitimate public purpose. Due to the following nationwide public outcry, 46 other states subsequently revised their takings laws, making them more restrictive, in efforts to further protect private property owners. In 2011, Maine also tightened its "takings" laws in order to further protect private property from government acquisition by eminent domain. According to Mr. Leahy, the growing legal trend is towards increasing the protection of private property rights and further restriction of eminent domain.

Mr. Governali: This type of governmental taking is for only for public use.

Mr. Leahy: There must be a public necessity. For example, if the Town Council were to recommend taking private land for open space, the courts would look hard at this. There must be a compelling public need. Most takings through condemnation are for a highway.

In a recent local case, MC Associates vs. the Town of Cape Elizabeth, the plaintiff complained that wetlands zoning devalued a lot that was thought to be buildable, and therefore, valuable. The court ruled that the plaintiff had failed to prove the lot's value before the wetland zoning, and therefore could not show that a devaluation of the lot had occurred as a result of the zoning. In this case, the plaintiff claimed that the wetland zoning was a "taking" of his property by the Town, as the plaintiff claimed that the lot had lost its value; the value had been "taken" by the Town.

Mr. Greene: Has there been any discussion of the cumulative effect, over time, of wetland and wetland buffer zoning on land values?

Mr. Leahy: I don't know. The courts probably won't go back over time to look at any possible cumulative effects.

Mr. Greene: I was thinking of a multi-generational farm whose property may have been impacted over time.

Mr. Leahy: I have not seen that argument made.

Mr. Franklin: Is the same burden of regulatory taking used for public benefit as in re-zoning for agriculture?

Mr. Leahy: The courts will give great deference to the Town with respect to zoning for public benefit, as in public safety. This must pass the "straight face test". That is, could you require a 15 acre lot size for public safety? The courts would likely say "no".

Mr. Franklin: Some communities do this to increase land availability for agriculture.

Mr. Leahy: The city of Auburn and its recent 5 acre zoning is controversial and a test case may result in court.

Mr. Governali: We are not likely to encounter hard rules of buildable vs. non-buildable, but if we increase lot sizes, we may have problems.

Mr. Leahy: You can make lots unbuildable.

Mr. Franklin: How long can people challenge regulations such as shoreland zoning?

Mr. Leahy: A challenge would start with the cause of action, such as the application of a building permit.

Mr. Governali: How do we deal with past regulation that may or may not decrease property values?

Mr. Leahy: There would be a substantial devaluation before the Town has to pay. In prior cases, extreme loss must be shown and must pass the public use "test" first.

Mr. Franklin: What if the Town changes zoning to allow half the amount of

development that is currently possible?

Mr. Leahy: The Town Council would need to make a good case under police powers, such as for the health, safety, welfare of the Town.

Mr. Greene: How do we translate this to the FOSP Committee?

Mr. Leahy: Shoreland zoning does fall into the public health/safety category. The Town Council must be careful to present the health/safety criteria.

Impact Fees

Mr. Leahy: Concerning Impact Fees, they are allowed by State Law and should be periodically reviewed for compliance with the State.

Ms. O'Meara: This has just been done, and we are in compliance.

Mr. Governali: Could we have an impact fee for a new library, or for storm water?

Mr. Franklin: Could you apply a new development fee?

Ms. O'Meara: No. Our stormwater fee is universally applied across town to any project. It is not structured as an impact fee.

Mr. Greene: Would restrictive zoning or other tools get us into trouble?

Mr. Leahy: Impact Fees are limited by State Law. You can't arbitrarily increase them.

Mr. Franklin: There is a difference between a stormwater fee and an impact fee. Stormwater fees are applied to new development. Why not for open space? Can we apply impact fees for new development?

Mr. Leahy: Where is the public need?

Mr. Franklin: Could we have a new development fee that's not an impact fee?

Ms. O'Meara: Impact fees must be related to the cost of anticipated additional public services.

Ms. CA Jordan: Are you talking about a fee in addition to a building permit?

Mr. Franklin: Other towns do this; for example, a 1% tax on any new home, in order to discourage development and to increase open space. Nantucket does this to every home sale and they have millions of dollars to buy open space.

Mr. Leahy: The Town can certainly add taxes.

Mr. McGovern: Real Estate transfer taxes and local sales taxes are all regulated by the state legislature.

Mr. Franklin: Where do the storm water funds go?

Ms. O'Meara: We have never collected them. However, impact fees are not a tax, as you are funding a burden on public services that you are creating with new development.

Mr. McGovern: It costs \$4000 to connect to sewer.

Ms. Sullivan: It would be unfair to charge infill lots an impact fee.

Mr. Governali: Could we add an incremental fee to maintain current open space? We should discuss if an Impact Fee should apply to all new development.

Mr. Franklin: Could you apply this to every new home?

Ms. O'Meara: You could expand the open space requirement in new development.

Range of Tools

Discussion ensued concerning the RA and RB Zone Districts and how farmland is affected.

Mr. Governali: How can farmers sell one lot at a time to keep going and avoid clustering? Of if selling two lots?

Ms. O'Meara: There is an assumption that RB is bad for farms; this is not the case and must be looked at closely. In fact, RB has already benefitted 2 farm families. In RB, you can create an 80,000 SF lot, then 1 lot every 5 years.

Mr. Greene: What are farmers' options? Some farmers are very comfortable in RB.

Mr. Governali: Can we give farmers the option of RA or RB, to cluster or not?

Ms. CA Jordan: Clustering will preserve open space.

Mr. Greene: Most of those in RB are OK with it. The Cape Farm Alliance (CFA) does not want any more restrictions. The CFA is comfortable with the status quo and wants to protect private property rights.

Ms. CA Jordan: Most of those opposed to RB have gotten confused with the word "growth".

Discussion ensued concerning TDR (transfer of development rights) as a tool.

Ms. O'Meara: This can be difficult, which is why it is rarely used. Density can be changed within TDR. For example, you could increase a development from 8 lots to 12 lots. In cities, a higher skyscraper could be approved to achieve the desired density by the builder, leaving extra land available for a park.

Mr. Greene: Can we tie this to a TDR zone?

Ms. O'Meara: No. There is no "receiving" area. The intent is to preserve "sending" areas. Any land that is not in the sending area is automatically a receiving area.

Mr. Governali: We need further discussion on this.

Impact Fees and the Land Acquisition Fund

Ms. O'Meara: I will draft language for your approval concerning different accounts for open space and general land acquisition. Are you considering an open space impact fee to all new buildings?

Mr. Governali: Why would we exempt individual land owners? How many open lots are available?

Ms. O'Meara: About 1300 and most are in established subdivisions. This would not apply to renovations.

Ms. CA Jordan: If a new building is built on a 1/4 acre lot in the RC district, that impact fee would be \$6000, the same for a 2 acre lot.

Ms. Sullivan: This would not be a viable tool politically or financially.

Brief discussion ensued concerning the following:

Possible money that would be realized from a new building tax and there was consensus that it was not a viable tool.

TDR (transfer of development rights) as an acquisition tool. There are different scenarios possible. There was consensus to table discussion on this until the next meeting.

Easements as a tool. Owing to the late hour, it was decided to continue easements, and further discussion on range of tools at the next meeting.

Motion to adjourn was made, seconded and unanimously approved.

The meeting was adjourned at 12:20 PM by Chairman John Greene.

Respectfully submitted,

Jessica Sullivan,
Secretary

