

Berlin Planning Board September 4, 2013

Present were: Chair Ernie Allain, Members Mark Evans, Tom McCue, Sue Tremblay, Lucie Remillard, Greg Estrella, Aline Boucher, Lori Langlois, Martha Creegan, David Morin, John White and Richard Cassidy

Members Absent: Andre Duchesne

Others present: Pamela Laflamme, Community Development Director; Barbara Tetreault *Berlin Daily Sun*, several citizens

Public Forum - Keeping Backyard Chickens

Chair Allain opened the public meeting at 6:00 p.m.

Ms. Laflamme reviewed what has taken place thus far regarding keeping backyard chickens. A resident approached the Council to allow chickens in the residential zone and the City Council referred the matter to the Planning Board. The Board has discussed the matter and the concerns that have come to light include lot size, enforcement, and increased cost to the City. The Board advertised this public forum to hear from the public; however the final decision does not rest with the Planning Board. The Board will present the Council with a recommendation and from there, the Council will make the final decision.

Ms. Laflamme read the letters and e-mails that were sent regarding the issue.

Lorraine Leclerc, Western Avenue stated in an e-mail dated 9/3/2013

Unfortunately because I'm working late I am unable to attend the meeting pertaining to having the right to have chickens in the city limits. I am not in favor of allowing chicken or bees to be raised in our city. We are in the process of cleaning up our blighted housing and the city is doing a great job. At this time my vote is No for chickens or bees.

Sylvia LaPuma, 71 Wood Street, Berlin in an e-mail dated 9/4/2013

I am unable to attend the board meeting tonight as I have a meeting at the same time with the Soccer coaches for our Son. We have been greatly interested in having a few chickens in our back yard. Our lot is 100x200. When we purchased our home we were told we could have chickens, I was very upset when we called to see if we had to get permission to have them and found out that we were not zoned for chickens. I feel as long as people are responsible and took care of them properly that there should be no problem with chickens on people's property. There should be rules set as far as how many are allowed and how people take care of the upkeep of having them. Like disposal of chicken waste and any noise issues. Also appearance might be an issues if in view of neighbors. If any legitimate complaints are made and not taken care of after a couple of warnings then they should be made to get rid of the chickens. There are many issues of unsightly yards in Berlin and nothing is done about people cleaning up there yards. People that want chickens should at

least have a chance to prove that they can be responsible citizens and enjoy the benefits of having chickens. Please consider this at your meeting tonight and let me know how things turn out.

Robert Franz, 77 Seventh Street in an e-mail dated 9/3/2013

WHAT'S THE SCOOP ON CHICKEN POOP?

"What came first, the chicken or the Salmonella?" Easy. The chicken. As in Cause (the chicken)...and Effect (Human Salmonella). Says Who?! The CDC. See <http://www.cdc.gov/media/dpk/2013/dpk-live-poultry-salmonella.html> . This press release has a long, but pointed title: "

Multiple Multistate Outbreaks of Human Salmonella Infections Linked to Live Poultry in Backyard Flocks

It goes on to say...in 2012. "The largest outbreak of human Salmonella infections linked to backyard flocks in a single year occurred." This press release has links within the CDC which declare that any ground a chicken walks on is officially considered contaminated. Regardless of the frequency of cleaning. I learned that it is normal for chickens to have Salmonella in their digestive tracts. Didn't know that. But everyone knows that it's not normal or good for humans.

More research says hens are very noisy. Yes, the hens. Also, that, since it is hard to do gender I D with chicks, people often get unwanted roosters, who eventually make their gender known in a most rude way! Then what? Eat your pet?

Sound like I'm against backyard flocks? It would actually be O K with me as long as the City restricts it to appropriate locations. The restrictions should be based simply on the Golden Rule... Restated...No neighbor should do to another neighbor; or have done to him by a neighbor, that which might be objectionable. With the small lots in Berlin, some lots would not be appropriate from an abutter's point of view. It would lower the value of a house on a 25 foot lot to have contaminated ground just ten feet away; all brought to a prospective buyer's attention by all the loud, continuous noise. And smell.

So here's my idea. Goes along with the Golden Rule: Restrict flocks to 200 feet away from abutter's lot lines. For anything less than 200 feet, require a Special Exception process where any abutter objection would be binding and would prevail. The permit process should document the flock owner's acknowledgement that any verified ground contamination on abutter's land would have to be corrected at the flock owner's expense. City Leaders, please also consider the timing of any decisions regarding backyard flocks and the necessary restrictions and risks: First, time is NOT of the essence. There is no pressing need for a quick answer for those who enjoy this hobby. Second, regarding timing, Berlin should not even consider allowing unrestricted backyard chickens until we all find out about the Biomass Plant's smell, noise, etc. This Plant is right in the middle of a crowded section of the City. If problems develop from the Plant, let's not compound that problem with already having approved unrestricted backyard flocks.

Finally, does the City have any legal exposure if someone claims health-related harm caused by contaminated soil?

Lauren Letourneau, Willard Street in a letter dated 9/4/2013

I am writing in support of being allowed to have backyard chickens in Berlin, NH.

I grew up with chickens. They are amusing, intelligent animals. They are also extremely beneficial. Aside from providing eggs, their waste is a wonderful fertilizer, they eat many bugs that are detrimental to gardens, they will also consume weeds and lawn clippings. Not to mention their personalities! They are not just "dumb" birds. They will learn your voice and come running at your call.

My family and I had chickens here in town a few years ago. Before we were asked to get rid of them, they were providing us with three to five eggs a day! Anyone who has ever tasted a farm fresh egg knows they don't compare at all to store bought. They are healthy, tastier and have no chemical additives. Our hen house was fully insulated, covered and had a wire floor preventing animals from escaping or getting in. We regularly changed the bedding and made sure there was no smell. Most of our neighbors would come and visit, enjoying watching our birds.

I am in full favor of having chickens in Berlin. It is one more way of creating self-sustaining living and a green environment. Please consider passing this request.

Robert Usherson, 44 Twelfth Street, Berlin in a letter dated 9/4/2013

I regret I am unable to attend your workshop this evening, as I am out of town. Thank you for inviting public comment this evening before you formulate your views on this matter. I understand that the proposal before you is whether or not the City's zoning code should be amended to allow the raising of chickens in the urban residential zones or, otherwise, to make some similar accommodation. I wish to go on record opposing such a change.

As a point of introduction, my wife and I chose to move to Berlin as our choice among other North Country options because, while we sought a north country home, we concluded that, on balance for us, we saw advantages to living in an urbanized place offering city services and amenities. Moreover, while reviewing some deed restrictions we saw in our prospective property records, we came to the view that the City's zoning regulations appeared to offer greater certainty about what can, and cannot, occur on surrounding properties than would be the case elsewhere. More recently, I have been encouraged to see that aesthetics have been getting more attention by the City and I even see urban design considerations suggested for inclusion in City policy. This place can become as attractive as it decides to be.

With regard to the raising or keeping of chickens, I believe that such activities are not compatible with the density, lot coverage, setbacks and other standards of development permitted in Berlin's urban Residential zoning districts. To authorize the keeping of chickens, as of right, would invite degradation of the quality of life for an indeterminate number of city residents. The additional sounds, odor, runoff, and attraction of fox and bear do not serve to protect, let alone advance, public health safety or welfare in such urban neighborhoods. Berlin evidentially prides itself in its status as a city. It should keep it so and not blur the distinction between it and its rural counterparts.

If the board does come to believe for some reason that chicken raising is appropriate in urban residential zones, I strongly recommend that the activity be permissible only by special exception, after public hearing, on lots having an area approaching that of the Rural Residential zone; limiting numbers of fowl and hours permitted outdoors no less protective of neighbors than those governing construction activity; limiting impervious coverage; requiring manure collection, off-site disposal and on-site runoff capture; addressing coup construction and requiring substantial setbacks of coups from all lot lines and requiring opaque fencing on coup-facing lot-lines; prohibiting advertising signs or sale of commodities from the residential site; and requiring written consent of abutters, among other considerations for the neighbors. Moreover, provision should be made to authorize and enable qualified city staff to conduct annual site inspections and to be readily available to investigate any complaints that may arise so the burden of enforcement does not fall to neighbors to document conditions and initiate difficult, costly action over an alleged nuisance. Therefore, an annual permit

and fee should be required to enable staff to ensure this activity maintains compliance and to initiate further code refinements if warranted.

Many cities undergoing similar economic transition have sought to further address their attractiveness by including, prominently in their reinvention strategies, a demonstrated commitment to improving residential qualities-of-life and aesthetics along with actions addressing the business/industry/infrastructure priorities. While commercial opportunity may be the imperative in our economic climate, so, too, is the promise of peace and tranquility in the retreat to one's home.

Thank you very much for your service to our City.

Chair Allain opened the forum at 6:15 PM

Crystal Carpenter, 374 Cates Hill

She stated that she is in favor of backyard chickens. It could be win/win in that residents could get what they want and a permit system could be structured so that the city charges fees to have someone to inspect the structure. Chickens eat bugs, mosquitos, and ticks. She also said she likes eggs.

Don Benski 297 Pleasant St. stated that he is for backyard chickens. He raised them in a residential neighborhood in another community where he had three hens and they laid two eggs per day. The waste was not that much. The coop only needed to be cleaned out completely twice per year as he used the deep litter method. This is not a huge farming operation and there is little waste; it is good in the garden.

Wanda Roberts, 592 Western Avenue.

Chickens eggs better for you. The rule could be that you have to buy a year old chicken so that they know they are hens; it would eliminate the possibility of not knowing you have a rooster. They are beneficial; they eat fleas, and they eat cockroaches and things that bring disease. The smell is not there and she is for having backyard chickens

Silas Roberts, 592 Western Avenue,

Chickens are good; they are safer since we don't know what chemicals are in food. There are less bugs in the yard; since we've gotten rid of chickens, he's seen a lot more bugs in the yard.

Ellen Tavino, Willard Street.

She is for responsible chickens; she raised them in Franconia. Salmonella chances are slim for an outbreak. The average dog produces more waste than chicken. She cautioned not to be anti-hen based on waste. Dogs make more noise as well. Chicken owners have to be responsible and if someone's hens are a problem, they should be forced to get rid of them.

Derrick Howry 208 Bridge Street.

He support the keeping of backyard chickens. The salmonella comparison is between commercial farms; there are not many cases in backyard farms. Based on income, he and his wife make a lot of their own stuff from the garden. Chickens support the family; it's a way to provide food, eggs and a way to provide for his family. With regard to safety, improper care of trash and birdfeeders bring predators and if chickens are properly cared for, there would not be a problem. The manure is good for lawns and gardens. Chickens eat table scraps lessening waste put out.

Jason Carpenter 374 Cates Hill Road.

He urged the Council to consider the reasonableness of having chickens. This is not considering industrial farming. It involves checks and balances, inspections and permit fees. People who don't keep up their coop likely will not keep up their front yard. He cautioned reasonable fees of \$25.00 or under. Considering what is arbitrary for property size; 200 feet is 70 yards and a big area to have three hens. Using a reasonable approach. It's a small city and this is a good thing.

Yvonne Thomas 557 Norway St.

She does not feel chickens should be in a one or two family zone. If chickens are allowed, it will open a can of worms and will not be able to be changed soon. Police can't do anything; this would be a civil case. It would have to be maintained closely and the City would be asking for trouble. A neighbor's property would devalue due to neighbors having chickens. Will be a cost to do in one and two family zones. There is economic value to the

property to be lost if chickens are allowed. If you have chickens next to your house, your value of property goes down.

Bob Roberts, 592 Western Avenue

He raised chickens and there is no smell and no salmonella. You have a right to have what you want on your property. He is in favor of chickens. No one complained of Western Avenue chickens; he is in favor of chickens

Lynn Lipari, 107 Church Street.

She questioned whether there is proof of having lower property values due to chickens. She said she can research and find out if it is a true fact. In most cases it does not lower value of property.

Kirstan Lukasak, 116 Washington Street

She is for responsible chicken ownership and urged looking at lot sizes. Dogs and cats are allowed and most are responsible pet owners. She supports being able to have a few chickens for fresh food and to teach her child. She supports allowing what people want and what they are interested in.

Lucien Langlois, 36 Hill Street

He is concerned about chickens in town. If there are chickens in neighborhoods, we will be seeing coy dogs and black bears.

Michelle Ball, 140 Maple Street

She is for the backyard chickens; however it would need to be regulated. Pick up is an issue and inspection to be sure the chickens are being properly cared for and there is no abuse or neglect. Check on lots; there are nice chicken coops. As far as predators, there are animals in the North Country; bears and coy dogs are here no matter what. Make sure it's clean. A dump house should not have a chicken coop and there should be no neglect on the birds. Fresh eggs are good. The noise is no different than a dog that barks all day. No chicken coop should be allowed in a place that does not deserve one.

Shawn Murphy, 122 Mannering Street

People would need to be responsible; chickens can service a family and people with not much money. A circle of friends can help with the cost. There should be inspections and licensing with one warning, you lose privileges. Don't punish good people because some don't want to be responsible.

Crystal Carpenter, 374 Cates Hill Road

It's an exciting time to be here when new people are coming to town. She came here to live a country life and this helps support that. They came from California. They should be able to have two or three hens. They walk and pick up litter in town and she feels that dogs and dog waste are a problem.

Jason Carpenter, 374 Cates Hill Road

The city has an opportunity to write its own policy and enforce the rules and regulation. There is an opportunity to be sure coops are inspected; it will generate revenue. He mentioned that some neighborhoods are tightly urbanized but as you start to head out to the college, some people live on over an acre and these huge lots are still in a residential single family zone. He moved to the country to raise animals and have a country way of life and for the city not to consider people's feelings is arbitrary.

Silas Roberts, 592 Western Avenue

He spoke of bears, foxes and snakes just from having rabbits and he saw on top of the mountain, there were mountain lion tracks. Chickens won't draw any animals we don't already have.

Bob Roberts, 592 Western Avenue

He said that he has no back yard so toys, picnic table and fire pit are in the front yard. A lot of people complain and he said don't take it out on people who may not have a place to put it.

Ms. Laflamme thanked everyone for coming and added if the Council decides to make an ordinance change and that there will be another public process that includes a public hearing.

At 6:45, Chair Allain opened the Planning Board Meeting

Public Comments – there were no comments

Approval of August Minutes

Mr. Evans moved to accept the minutes as presented; Ms. Remillard seconded and the motion carried.

Lot Line Adjustment – City & PSNH

Ms. Laflamme confirmed that the application is complete. Mr. Morin moved with a second from Ms. Boucher to accept the application as complete.

Jay Poulin of HEB Engineers representing PSNH stated PSNH and City of Berlin have been coordinating the details of the new substation for the past several months. The Council approved the purchase and sale agreement pending a successful lot line adjustment. The additional land provided will allow PSNH to rebuild their substation on the site.

The proposed lot line adjustment will add approximately 1.11 acres of land to the existing PSNH property making it 1.4 acres and it will decrease the City of Berlin property, Community Filed, from 10.78 acres to 9.67 acres. There is no change in use. The existing lot is non- conforming and the adjustment will make the lot conforming with more frontage. There is likely a drain line on the property that was not located.

Public Hearing

Chair Allain opened the public hearing at 6:58 p.m.; there were no comments from the public and the hearing was closed.

Board Member Comments

Ms. Creegan asked about the parking lot that is visible on the plan. Mr. Poulin stated that it was used by people who go to field. Ms. Laflamme noted that Cate Street Capital will be adding parking in an area across from the field and once the biomass project is complete, Community Street will once again be open for parking. Mr. Poulin stated that the fence will not surround the entire 1.11 acre parcel. He made it clear that an easement will be in place so that if a drain lines exists, it can be maintained.

Ms. Laflamme reported that the impacts to the park are being mitigated such as replacement of the storage building, relocating the skate park, restrooms at the snack shack, and trail work at the Laura Lee Viger Botanical Park.

Mr. Evans asked what kinds of things the Board should be considering when making a decision on a lot line adjustment. Ms. Laflamme stated that boundaries act like a minor subdivision; it does not require a public hearing. The Board should consider boundaries, zoning, setbacks, and whether it is in line with the particular zone. Notices have been sent to abutters. The site plan will have more detail.

Mr. Evans commented that the parking lot that is being stepped on was created as a result of much negotiating. The Police Department wanted to eliminate parking surrounding Community Field. He asked if the Council considered the effect this sale would have on parking. Ms. Laflamme indicated that Cate Street will be creating new parking and Community Street will reopen. Ms. Remillard added that this will make a better parking situation. Ms. Laflamme stated that one condition should be that the lot line is contingent upon the sale being complete.

Mr. Evans moved to accept a lot line adjustment adding 1.11 acres to PSNH Map 129; Lot 53 from City of Berlin Map 129; Lot 52 contingent upon the final sale of the property; Mr. McCue seconded and the motion carried unanimously.

Lot Mergers

Thomas & Sophie Fortier, 151 Jericho Road applied to merge lots on Hillsboro Street Map 131/Lots 44, 45 & 64. These lots were recently sold by the City and are undevelopable; they will be used as buffer to another property. Mr. Morin moved to merge Map 131; Lots 44, 45 and 64; Mrs. Boucher seconded and the motion carried.

Audrey Albert, 70 Crestwood Drive, Gorham applied to merge lots on Dustin Street Map 125/Lots 65 and 66. Mrs. Boucher moved to merge Map 125/Lots 65 and 66; Mr. Estrella seconded and the motion carried.

Zoning Ordinance Discussion

Ms. Laflamme commented that the Planning Board has discussed the issue of chickens in residential zones at length. The Board can make its recommendation to the City Council as supporting, not supporting or supporting with cautions and conditions.

Mr. McCue expressed concern over the talk about “reasonable” and “having the capabilities” and how we make that determination.

Mrs. Boucher said she commends people who are here to follow the rules. When it comes down to enforcement, there are rules that we are not enforcing now. Defending cases add cost to the taxpayers as the City does not have resources.

Ms. Creegan said that two or three hens have been mentioned; she questioned, who will know? Enforcement is multi-tiered with review needed of the cleanliness, setbacks, caging, and number of hens. Are we hiring someone to do this? She concluded that it would be cost prohibitive.

Mr. White said that chickens cannot be compared to domesticated pets; these are farm animals. He advocated for keeping things the way they are adding that chickens on a small lot does not make sense. Checking with every abutter is not feasible either.

Mr. Morin commented on Mr. Usherson’s letter saying that he chose to live where he did partly because of the existing rules and the expectations he has for living in a residential

area. There are areas where chickens can be raised in the rural residential zone by special exception. There is a distinct separation between the two zones.

Mr. Evans commented that he supports allowing chickens saying that the Board has addressed a lot of the issues. He suggested an airtight ordinance that addresses allowing chickens by special exception, having the neighbors approve, licensing, fees, fees to pay for enforcement. He thought the zoning ordinance was boilerplate and copied from some other city.

Mr. Morin defended the ordinance saying that farm animals were considered and due to the density in city it was found that the rural residential zone was and is the best place to allow chickens by special exception.

Ms. Remillard stated that she will recuse from voting on the issue. She advised to keep in mind that enforcement issues cost money. Any time someone is forced to eliminate their chickens, it will be extremely costly. She added that we have difficulty maintaining what we have; do we want to add to a situation that doesn't already exist?

Mr. McCue voiced that he is not opposed but he sees the nightmare of enforcement. He cautioned that a Special Exception is a landowners' right. The landowner will come in and say, "I'm doing this" and it is up to the city make the case of why they can't. A special exception also runs with the land.

Mrs. Boucher said the city cannot afford this and it should not impose on taxpayers. This would force citizens to spend money. Ms. Creegan noted that people buy their property based on what is going on when they buy it. Property values would be affected by a less than pristine operation. There is zoning for a reason.

Mr. Estrella indicated that his primary concern is the health issue and if there were an Ebola issue. What would be the recourse duty of the inspector? Where to dispose of sick chicken? Keeping the coop clean is done by hosing down and runoff would get into the city drain lines and end up at the pollution plant. A different waste would be encountered and he didn't know how it will affect the plant.

Mrs. Boucher said that in the research, she found that there are only two vets that care for hens, one in Rumney and the other in Concord; there is also no butcher here. Ms. Langlois reiterated that there is a cost to enforcement.

Summarizing the comments Ms. Laflamme said there were many concerns specific to enforcement. There is a Board member who supports a thoughtful decision making process. The overall consensus of the group was that due to concerns over enforcement and financial concerns, they could not support changing the ordinance.

Chair Allain added that location is key and he cannot see small lots accommodating chickens. Mr. White said that it starts with chickens, why not other animals?

Ms. Laflamme said she would send the board's conclusions to the Council.

Other - there were no items

Public Comments

Warren Horsfield 327 School Street handed out a flyer from Granite State Future, and commented that this is a program coming from HUD where 9 regional planning commissions will take decision making away from communities.

Member Comments

Mr. McCue stated that he is now a member of the Coos County Planning Board which exists for the unincorporated places.

In further comments, he stated that construction of the biomass plant is winding down; the turbine is loud perhaps because they are in the testing phase and doors are open.

Planner Comments

Ms. Laflamme said that the City has been advised that the biomass plant will be doing testing on Saturday and there may be very loud steam bursts.

At a future meeting, the board will discuss an antenna array on top of Paul Cusson's building on Main Street. She suggested reviewing the Telecommunication ordinance.

In November, Municipal Election Day is the first Tuesday; she suggested changing the meeting to the first Thursday of November.

An e-mail will be forwarded regarding the Law Lecture series coming up.

PSNH will be in for site plan review, likely in November.

Mr. Estrella asked if the biomass plant is exceeding its decibel level and asked if someone checking. Ms. Laflamme stated they do have an order that any challenges or questions would have them pay to test the levels. Mr. McCue added that the noise ordinance speaks to noise levels at the property line; however due to the valley sound, several monitoring sites for noise were created. He suggested that there is supposed to be a committee to hear complaints and if they could not be resolved, then Concord would be called.

Ms. Remillard said that it would be good if the steam bursts were done by the time Wingzilla starts.

There being no further business to come before the board, Mrs. Boucher moved with a second from Ms. Creegan to adjourn the meeting.

The meeting ended at 8:05 p.m.

Respectfully Submitted, Susan Tremblay