

Nottingham Planning Board
January 21, 2014

Members Present: Arthur Stockus, Chair; Troy Osgood, Vice Chair; Susan Mooney, Secretary; Eduard Viel; Gary Anderson, Alternate; John Morin; Hal Rafter, Board of Selectmen Representative

Members Absent: Dirk Grotenhuis, Robert “Buzz” Davies

Others Present: Paul Colby, Building Inspector; JoAnna Arendarczyk, Land Use Clerk; Kristen Lamb, Resident; Mary Bonser, Selectman/ Resident; Peter Landry, Resident; Terry Bonser, Resident; Raelene Shippee- Rice, Resident; Michael and Teresa Bascom, Resident; Mark Carpenter, Selectman; Chris Albert, Resident; Heidi Seaverns, Resident; Celia Abrams, Resident; Charlene Andersen, Resident; Cheryl Smith, Resident; Tom Sweeney, Resident; Bill Garnet, Resident;

Call to Order at 7:00

Mr. Anderson will be seated and voting for Mr. Grotenhuis.

Invoice

Mr. Chairman started the meeting with a CMA Invoice on the Merry Hill Development that came in after the agenda was printed:

CMA Invoice #4 \$2,890.31 dated January 17, 2014

Motion: A motion was made by Mrs. Mooney to remove from the Escrow account \$2,890.31 for the Merry Hill Development inspection.

Second: Made by Anderson

Vote: 7-0-0 motion passed

Public Meeting/ Hearings

Mr. Chairman opened the Public Hearing on the proposed Open Space Development Ordinance change at 7:02.

Mr. Chairman read the proposed change:

Article IV General Provisions

S. Open Space Development

4. Applicability

Proposed Language

- a) In furtherance of the goals of the Nottingham Master Plan, any subdivision for residential use that is proposed on a parent parcel within the Agricultural and Residential Zoning Districts of twenty (20) or more acres ~~shall~~ **may** be ~~an~~ **considered for the** OSD **Option Subdivision.**

Mrs. Mooney spoke about her time serving on the Master Plan Committee and the views of the committee during that time as to the vision concerning the Open Space Development Ordinance and minimizing rural sprawl.

Mr. Anderson brought up a point concerning opinions from the public that had been expressed to him; one being that the current developers are choosing the Open Space Development approach voluntarily why make it mandatory?

Mr. Chairman informed the public that this amendment proposal is not a unanimous vote of the board.

Nottingham Planning Board
January 21, 2014

Mr. Viel explained his reason for voting for the proposal and that his vote is not for personal beliefs. Based on his research he found all pros and no cons. He cited that Deerfield adopted this ordinance as well and they have the guidance regulations that other towns have copied. He listed off reasons for making it mandatory: maintain rural character (which he states that definition is debatable), economic benefits and health benefits. He said he would be happy to speak with anyone about his research.

Mr. Chairman opened the meeting to the public.

Mr. Peter Landry asked if this mandatory “dedication” is legal without any compensation to the land owner.

Mr. Viel stated the land stays within the home owners association, it is not given to the town.

Mr. Landry read from Zoning Ordinance:

10. Protection and Management of Open Space

Prior to the approval of the final plat by the Planning Board, the Designated Open Space Area, not defined as Common Area, shall be protected and managed by one or more of the following methods subject to Planning Board approval:

- a) Easement deed conveyed to a land trust or other recognized conservation organization the principal purpose of which is the conservation or preservation of open space, or
- b) Easement deed conveyed to the town with permanent deed restrictions or conservation easement under the care, custody and control of the Conservation Commission, and be accepted by it for open space use. Land conveyed to the town shall be open for public use.

Mrs. Mooney stated that the easement deed can be owned by a third party.

Mr. Landry clarified, with an agreement from Mrs. Mooney, that the land owners are not being told they have to donate land to the town.

Mr. Chris Albert spoke about his concerns about the public health aspect when clustering septic’s and wells.

Mr. Viel answered that the lots would generally be about 1 acre conforming lots that don’t have to be abutting. This option gives the developer the ability to choose better more well drained soils that are more suitable for septic’s. The 2 acre zoning is actually creating sprawl.

Mr. Albert brought up the loss of Current Use status.

Mr. Chairman stated that there is the option to go to the Zoning Board for a Variance.

Mr. Albert felt that would be going backwards.

Ms. Kristen Lamb thanked the Board for taking into consideration water quality where this mandatory Open Space Development (OSD) would allow the developer to position the development in areas with better soil and drainage. She also spoke on 2 acre zoning and how it has served the town well but we need to look ahead in the case of a housing boom.

Mrs. Mary Bonser from the Board of Selectman stated that the Board of Selectman voted 2-1 against this proposed amendment. Mrs. Bonser also mentioned that based on statistics Nottingham is comprised of 30,080+/- acres of land and has 2,500+ acres of land that is in easement and 5,000 acres that makes up Pawtuckaway State Park. Add the two figures up that makes 23% (7,500 acres) of protected land in Nottingham. She added that the advice that a townsman who would want to give land to a family member would have to appeal to the Zoning Board is another layer of government control.

Mr. Viel commented on the Land Use Tax there are 3 ways to preserve land and maintain rural Character:

Nottingham Planning Board
January 21, 2014

- Open Space Development
- Conservation Easements
- Purchase

The last two cost the town money, this method would not.

Mr. Terry Bonser questioned Selectmen Representative Hal Rafter directly about why he did not support the Board of Selectmen's vote against the proposed amendment and he referenced a past case involving Mr. Rafter's position as Chairman on the school Board with Mr. Bonser.

Mr. Chairman stopped Mr. Bonser seeing that this discussion was not pertinent to the change to the ordinance.

Mr. Bonser then mentioned that it is a free country.

Mrs. Raelene Shippee- Rice stated that she supported the idea to prevent sprawl and that open space is vital to keeping the land and rural character. She thinks that changing the ordinance to "shall" will hold developers accountable in keeping the rural character.

Mr. Mark Carpenter Board of Selectmen submitted a copy of a discussion he started on the All Nottingham Face Book page:



Mark Carpenter

http://www.nottingham-nh.gov/Pages/NottinghamNH_CableCal/S0450B275-0450B52E?formid=161

This public hearing, tonight at 7pm, is to decide whether to put an open space proposal on the ballot. The proposal would make it MANDATORY (the change, not me yelling!) that all subdivisions of 20 acres or more give at least 50% of the land to conservation. Further, it would require an individual who wants to cut a piece of land for their children to give land to conservation.

Please attend and have your voice heard.



Like · Comment · Share · 6 hours ago

Mr. Mark Carpenter then read the comments to the Board members:

Nottingham Planning Board
January 21, 2014



Dawn Igoe Fernald Mark Carpenter do you have the link to the OSD policy itself?
3 hours ago · Like



Dawn Igoe Fernald or the portion of the Master plan that discusses what is currently stated in regards to OSD?
3 hours ago · Edited · Like



Julie Dean Wise Let's just forget about the rights of the individual!!! Another way for gov't to get control of private land. Say NO!!
2 hours ago · Like · 5



Mark Carpenter Hi Dawn Igoe Fernald, I don't but I can copy the language change. It is a minor change with significant implications. It currently reads "any subdivision for residential use that is proposed on a parent parcel within the Agricultural and Residential Zoning Districts of 20 or more acres may be considered for the OSD Option." The proposal is to change "may be considered for the OSD Option" to "shall be an OSD Subdivision". Since it says "any subdivision" at the beginning, it applies to, well, any subdivision whether it be a builder or a private home owner splitting their property for their kids.
2 hours ago · Like



Mark Carpenter Julie Dean Wise, please come if you can. These types of things are being discussed and debated often and unfortunately we have a large 'silent majority' in town who doesn't get heard because it's only the people who want to make changes such as these that show up and voice their views.
2 hours ago · Like



Vicki Branyan Jenkins Wow - let's just let the government whether local or not keep taking more and more and more. (Please read the intended sarcasm.) FREEDOM! VOTE NO!
2 hours ago · Like · 4



Amanda Luzi Dellario What?! I am ALL for conservation, but this seems kind of Big-brother-ish to me. Who birthed this piece of legislative joy?
about an hour ago · Like · 3



Dawn Igoe Fernald I did follow the link Mark Carpenter-- thank you. unfortunately It doesn't say much beyond what you posted (which I worry will lead people to not think it is a very big deal if that is all of the information presented at the poll). I was wondering if you had snippets of the bigger implications that I could post, as I share the sentiment of all above that we are just getting downright out of control with giving away people's private land rights. The supposed word change neglects to point out what you have here, which is that a land owner will be subject to this rule when simply passing down land. And I couldn't agree more that the 'silent majority' will not hear this information before the polls open without us all sharing it wherever we can.
about an hour ago · Like · 2



Nicole Belanger-McMahon Maybe people should have the entire picture prior to making there judgments? I do not have the whole picture, but if it is what I am thinking then they are trying to conserve this town instead of allowing it to continuously grow to a population that this SMALL town should not get too. What is the point of moving to a small town if it is all developments like the one off of route 152? I am not saying I am for it, but this town needs to decide if they want to stay a small town or outgrow itself.
about an hour ago · Like



Mark Carpenter The builder gets the same number of lots whether it is Open Space or not. It's just that the lot sizes change to put aside the open space. So instead of 10 x 2 acre lots, for example, to make up 20 acres, it would be 10 x 1 acre lots plus 10 acres in conservation.
49 minutes ago · Like · 1



Write a comment...

Nottingham Planning Board
January 21, 2014

Mr. Mark Carpenter stated that he spoke with Mr. Viel to learn the background for this proposed change. He also stated that right now we have a free market for the builders to choose to build this way or not and it's already being done as Open Space Development. He asked the board to vote the proposed change down and not put it on ballot.

Mr. Viel countered that the Facebook post did not have all the facts. This isn't government control of the land. This is a plan for the future, we are being proactive not reactive.

Mr. Mark Carpenter asked the Planning Board to come up with a way to entice the developers to choose Open Space not mandate (coerce) them. It comes down to liberty and freedom of choice.

Teresa Bascom stated that she supports Selectman Carpenter's opinion that this is taking away the rights of the home owners. This affects family farms, family homes as well as Home Owners Association. She stated that unless her home or land needs to be taken by the government, residents should have the right to decide what to do with their land. She then requested that the Planning Board not put the warrant article on the ballot and mentioned that there will be voters who won't be educated to vote accurately because they are not educated in the matter and see that the Planning Board supports the warrant article so they will too.

Heidi Seaverns stated that if developers are using Open Space Development then why the change. This would take away the rights from people who shouldn't have to go to ZBA for a smaller piece of land.

Mrs. Mooney asked for clarification that this is even for minor subdivisions. She thought it was only for major Developments.

Mr. Colby stated that yes it is for any subdivision due to all exceptions that were proposed having been removed from the Warrant Article.

Bill Garnett gave a history of his 33 acres of land. They subdivided the 33 acres due to family reasons. They chose to subdivide large lot sizes to maintain a rural character. This Zoning Ordinance is in affect right now and if he were to subdivide right now he would only have 16.5 acres to divide and the chances of the subdivision being done in a way that keeps the homes obscured is slim. He stated that land should be preserved but land also offers some financial stability. If he came today to do the subdivision he would have to consider if he wanted to have 3 lots or more because the lots can't be subdivided in the future. In order to get those lots he would have to put in a road and it is less costly put in a shorter road with no exceptions for small subdivisions. He asked the Planning Board to make it work as it is now.

Mr. Chairman asked Mr. Colby to explain how Mr. Garnett's example of a subdivision would happen if it were brought forward now.

Mr. Colby replied that with 33 acres Mr. Garnett would have to give 50% to OSD. The Zoning Ordinance is in affect at this time. 15 or so acres would have to go into OSD even for 2 acres going to a family member.

Charlene Andersen spoke with regards to the Incentives and recommendations from Mr. Mettee by voting them down she feels that the Planning Board may have set the ordinance to fail. She states that OSD is best for the community to protect land and water resources. It makes no difference to potential developers as they follow the rules, same as buying a business. Agricultural land must be protected and more land should be used

Nottingham Planning Board
January 21, 2014

for Agricultural purposes. Ms. Andersen asked the Board to reconsider the recommendations from Mr. Mettee.

Mr. Osgood asked why it should be mandatory if there are going to be exceptions.

Ms. Andersen said there is always the ZBA.

Cheryl Smith stated that she was under the impression that this was aimed at major subdivisions not minor. She agrees this would create a hardship for smaller subdivisions and there should be exceptions.

Tom Sweeney stated that he doesn't approve and requested the Planning Board to vote it down.

Mr. Morin gave a brief history on the discussions and that there was some opposition from the board.

Mr. Landry asked that the Planning Board to consider a maximum or minimum number of lots as opposed to acreage. Rural Character isn't necessarily what is thought of when you look at the subdivisions with homes about 50 feet apart. He stated that making OSD mandatory benefits the developers more than the town.

Mr. Albert questioned public health with smaller clustered lots he questions water quality. He stated that as far as taxes go the majority of taxes go to school.

Mrs. Bonser showed a picture of the Town's motto, "Defender of Liberty". Liberty means freedom of action and to own, control and use property. The image on the seal has a gun and stands on his property. She stated that she feels this amendment is an affront to liberty. Mrs. Bonser stated that statistics show the US is 12th in the world in economic freedom.

Ms. Lamb stated that people who have lived here in town for a while this is to protect against outside developers. She asked the Board to go forward with the change and to continue to protect our clean air, water and land.

Mr. Carpenter stated that he is a neighbor of Gary Anderson's. There are larger lots on their road which makes it appear rural. The OSD would take away the views which is some of the attraction for people who may want larger lots.

Mrs. Bascom asked that the Board keep open space by stopping the development and let citizens control the land.

Mr. Garnett talked about the people who linked the ordinance to water and air quality. He asked the board if there is a study indicating that OSD vs Traditional subdivisions affect wells.

Mrs. Mooney stated that 50% of wells in Durham are affected by salts from roads.

Mr. Garnett stated that if we create cluster developments we are placing wells near roads.

Mrs. Mooney stated we could put the wells in the back.

Mr. Garnett then asked how the Planning Board considers OSD rural.

Mr. Viel stated that studies have been done on OSD. That land has better water and air quality.

Mr. Garnett asks about studies on 1 vs 2 or more acre lots.

Mr. Anderson stated that wells and septic's are affected. 2 acres gives more options for well and septic placements.

Mrs. Shippee- Rice stated that she has two issues: 1. "Mandatory" vs "May"; May gives the developers freedom to make the decisions and so far they are choosing OSD.

However they may not always choose that. 2. The talk of exceptions that are not in place. Those would maintain the integrity for those that want a smaller piece for family. She

Nottingham Planning Board
January 21, 2014

then stated that we do need to preserve land, air and water quality so please keep the mandatory piece of language.

Mr. Chairman stopped public comment time due to the repetition of comments.

Mr. Osgood gave a history of Rocky Hill off Ledge Farm which is OSD. He stated that making OSD mandatory will force developers to group houses and not allow open spaces to be spread out. Making OSD mandatory will not solve all our issues

Mrs. Mooney told the public that she appreciated their input and loves woods more than houses. She feels the exceptions are important for the family issues. She is considering ideas like Mr. Landry's minimum lot number suggestion.

Mr. Rafter agreed that the input was good and the proposal may need adjustments. In the past the history of the town large tracts of land have been taken away. Open space has been compromised and the goal is to preserve it. Mandatory is a problem even our ZO has them. PB wants to preserve open space if there is a development. It is true many voters aren't educated and Nottingham's no exception to the issue. He proposed the Board reconsider the vote.

Mr. Anderson also thanked the public. He feels that OSD is working so why fix it. He also stated that if incentives or the word "exceptions" were built in it would sound inviting. It would also cost more to both the applicant and developer.

8:42 Mr. Chairman thanked the public and closed the public hearing.

Mr. Colby gave the procedure as to what happens next:

Vote YES the warrant article will be put on the ballot as written—then staff will post the warrant article

Vote NO it will not be placed on the 2014 ballot.

If it is decided to amend the warrant article- the Board can debate on it and post to hold a second Public Meeting on Feb 4th. After that only a Yea or Nay will be allowed.

If a Tie vote, the article will be defeated.

Then Mr. Colby addressed the public: If this is accepted by the Board it will be on the ballot for the March 11th elections.

Motion: A motion was made by Mr. Morin to not put the warrant article on the ballot.

Second: Made by Mr. Osgood

Vote: 6-1 Motion passed

Adjournment

Motion: A motion was made by Mr. Osgood to adjourn.

Second: Made by Mr. Morin

Vote: 7-0 Motion passed

Adjourn at 8:45 pm

Respectfully submitted,
JoAnna Arendarczyk
Land Use Clerk