

**Comprehensive Plan Update Committee
Town of Cumberland
East Conference Room
August 22, 2013 - 6:30 p.m.
Minutes**

I. Call to Order: Ms. Caron called the meeting to order at 6:30 p.m.

II. Roll Call:

Present: April Caron, Teri Maloney-Kelly, Peter Sherr, Shirley Storey-King (Council Liaison)

Absent: Jim Guidi, George Turner (Council Liaison), Peter Bingham (Council Liaison)

Staff: Carla Nixon, Town Planner, Bill Shane, Town Manager

Guest: Ted Chadbourne, of 50 Stockholm Drive

III. Minutes: June 27, 2013

Mr. Sherr moved to approve the minutes from June 27, 2013 as amended.

Ms. Maloney- Kelly seconded.

VOTE: Unanimous

IV. Land Use

Ms. Nixon stated tonight we are going to talk about the two Rural Residential districts: RR1 and RR2.

The question for the Committee is do we want to keep the different lot sizes in the RR1 and RR2 zoning districts? The RR1 requires four (4) acres and RR2 requires two (2) acres. The larger 4 acre lot size was created based on the Community Groundwater Study conducted in March, 1989.

If you look at the handout I provided, you will see that the two zones include the same exact permitted and special exception uses. The only difference is the minimum lot size.

Ms. Nixon reviewed the following power point presentation:

**Rural Residential Zoning
Comp Plan Update Committee Meeting
8-22-13**

- **RR 1**

Description/Purpose - Zoning Ordinance:

“The RR 1 district requires larger minimum lot sizes than does the RR 2 district on the basis of the results of the Community Groundwater Study; Cumberland, Maine, March 1989”

Primary uses: agriculture, low density residential and other low density uses, (e.g., private schools, riding stables, kennels, churches, cemeteries)

4 acre minimum (2 acres if on sewer)

200’ road frontage

- **RR 2**

Description/Purpose - Zoning Ordinance:

The RR 2 district requires a lesser minimum lot size than does the RR 1 district on the basis of the results of the Cumberland Groundwater Study, Cumberland, Maine, March, 1989.

2 acre minimum

200’ frontage

- **Issues to Discuss**

Is there general agreement with the idea of creating one RR zone that requires a 2 acre min. lot size?

- Consider Uses, Definitions and Level of Review

All non-residential uses are typically subject to some level of site plan review.

- 1) Animal husbandry (on a site greater than 3 acres) and agriculture do not, though nuisance impacts can be considerable. **Current definition implies commercial operation. (Other definitions do not) How do we want to define it? Issue of separating commercial from personal keeping of animals that could cause a nuisance. The use is currently on a site larger than 3 acres. Keep this? - Require (Staff?) site plan review?**
 - 2) Nor does Farm-Based Retail.
 - 3) Religious Institutions, Boarding Kennels, Riding Stables and Schools are subject to SPR.
 - 4) Animal Husbandry - Current Definition:
 - 5) The keeping of (add word “farm”?) animals for commercial purposes, including dairying, stock raising, poultry raising, and breeding.
- Should we require (Staff?) site plan review?

Ms. Nixon stated that she had previously been concerned about the nuisance effects of permitting animal husbandry on smaller lot sizes, but has done some research and found that it does not seem to be problematic in other communities that allow it. She referenced the handout she had provided of an article printed in the APA Zoning Practice: Issue Number 4: “Practice Urban Livestock.” She also related a discussion she had with Police Chief Charron about complaint calls from neighbors of property owners that have livestock. The Chief said the only times the Police Department gets calls are when animals get loose....usually it is a horse. He said they have not had to deal with calls about noise or smell related to livestock and pointed out that dogs are far more problematic than livestock.

Ms. Nixon explained that the town does not regulate or require permits for livestock, only for chickens and horses. Ms. Caron asked how many sites we have with animal husbandry type activity.

Ms. Nixon listed Spring brook Farm, Pam Harwood’s Alpacas; Pleasant Valley Farm, the Godsoe’s have horses. There really are not a lot of commercial animal husbandry related businesses. She said that another use that doesn’t require any review is farm based retail.

Ms. Caron asked why the Farm Stand across from the town office needed review.

Ms. Nixon said because he wasn’t farm-based retail he wanted a farm stand.

Ms. Nixon continued to review definitions.

- 6) Add Farm Animal - Definition?

“Any animal that customarily is raised for profit on farms and has the potential of causing nuisance if not properly maintained, such as cows, sheep, goats and pigs”

Ms. Nixon continued that Farm Animal would be a non-commercial definition of keeping farm animals.

Mr. Shane stated there are very limited restrictions for Agriculture and animal, other than horses and chickens.

Ms. Nixon reviewed the current zoning ordinance regulations on animals.

- 7) **Animal Husbandry - Agriculture** - Current Definition - The use of a tract of land for commercial purposes for cultivation and the production of crops, truck gardening, nurseries, or

greenhouses, or any allied industry, but exclusive of animal husbandry and *exclusive of private gardens less than ½ acre.(?)*

8) **Truck farm** – noun; a farm for the growing of vegetables for the market.

9) **Timber Harvesting?** – In Cumberland if under 3 acres, no permit is required.

Not subject to site plan review. CEO issues permits for more than 3 acres.

Definition doesn't distinguish between commercial and non-commercial harvesting. Could combine animal husbandry with agriculture definition:

The use of land for agricultural purposes, including farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, and animal and poultry husbandry, and the accessory uses for storing the products. The term shall include incidental retail sales by the producer of products raised on the farm.

Consider increasing setbacks?

Require all non-residential uses that involve structures (barns, stables, paddocks) to have increased setbacks.

The PowerPoint presentation ended.

Ms. Nixon stated other towns' ordinances limit livestock, options include increasing the setbacks from property lines; requiring a certain amount of square footage per animals; such as we do for horses. The uses of animal husbandry and agriculture have been in existence for a long time and as we look at the potential for two acre lots we may want to re-evaluate the uses.

Ms. Caron stated the area around Pleasant Valley Road is Rural Residential 1 (4 acre minimum). These changes could have animals closer to property lines.

Mr. Sherr stated we don't have dairy farms so cows haven't been an issue, but the Ordinance doesn't limit the number of cows as it does horses. The Ordinance states a piggery or chicken house can't be any closer than 100 feet to a property line. It also states animals other than horses, household pets and chickens may be kept for personal use and enjoyment and the lot size shall be two acres in all districts. I like the idea of larger footprints for some of the large animals.

Mr. Shane stated some issues that the Town has dealt with are when the RR1 district abuts a denser district such as the MDR. A farm that abuts a more dense zone might have unintended consequences such as noise, smells, etc., the farm could be in conformance, but located just too close to a more densely-populated zoning district. The yellow caution flag is something we need to think about.

Ms. Storey-King stated we regulate horses but not cows; people who raise cows and steers and those types of animals have told me that they need one acre of grazing area per animal. She continued stating her cousin has several cows and in the winter they might all be at his house in the barn; but during the summer they are placed in other pastures for grazing.

Ms. Nixon stated in my research, I have found the animals most often regulated are alpacas, chickens, cows, donkeys and ducks, fowl, goats, pigs and rabbits.

Ms. Maloney-Kelly stated Gray had real problem years ago on the top of Dunton Hill because people had let rabbits go and there were thousands of rabbits, which can be destructive.

Ms. Nixon reviewed excerpts from the Kaysville, Utah Planning Commission Minutes, stating every single meeting discussed animal issues. Their ordinance requires a conditional use permit from the zoning board of appeals.

Ms. Storey-King stated if you are going to bury anything over 100 pounds in Town you need a state soils permit. We had an incident where someone was burying a horse and the department of agriculture stated there were regulations due to concerns of ground water contamination.

Ms. Caron asked Ms. Nixon what was the expected outcome of this meeting.

Ms. Nixon stated she wanted to give the Committee information to mull over; next month's meeting is also on land use.

Ms. Sherr summarized with background stating he grew up in a rural town in Massachusetts outside of Boston, and they had very similar situations thirty of forty years ago. They have a two acre minimum lot size but added setbacks for buildings and additional setback restrictions for horses. They also established more conservation land in other areas to offset development. In looking at those types of uses we may need to draft some codes or ordinances that provide restrictions or minimums; while also providing some variances for certain cases. I am in favor of combining districts to a single Rural Residential zone this would provide uniformity throughout Town. Subdivision lots may still vary in lot size from two acres or a little smaller if the subdivision is clustered. Subdivisions protect wetlands and provide buffers to adjacent properties. The Town will be a little denser but with buffers and reviews it makes sense. I think we are tasked to allow growth but look at all facets for the overall benefit to property owners. He agreed there should be some buffers and restrictions for animals.

Ms. Nixon stated over the next month she will continue to send articles for review. I think there is a challenge with our definitions not addressing residential uses.

Ms. Caron asked if the Committee would be recommending to the Town Council to go from two Rural Residential districts to one district with a two acre minimum.

Ms. Nixon stated that is an option, yes, if done it would become part of the final report. It would be an action item for the town staff, planning board and council to consider and adopt the change. She explained that it isn't necessary for this committee to define or deal with the specific elements of the change, just that the committee supported it.

Ms. Caron asked how that type of change would affect existing home values; if I am currently on a four acre lot, I can I now split the lot. Would this affect my taxes?

Mr. Shane stated it doesn't automatically double your value, your assessment shouldn't change; the assessment is based on land value and building value.

Ms. Nixon added that her understanding is existing acreage is only taxed once it is legally split off and becomes a building lot.

Mr. Shane passed out detail maps showing lots in the Rural Residential 1 and 2 districts. In the RR1 and RR2 districts there are over 1100 lots that are less than five acres. That means there is not a lot that is going to change dramatically. Of the other 530 lots that are over five acres, quite a bit is owned by the Town. Mr. Shane stated it is not going to be a catastrophic incident if we combine the RR 1 & RR2 zones into one Rural Residential zone.. His concern is when zones abut other zones which are less intensive. On Route 100 when a use abuts up to a residential use a greater setback is required. We will want to review uses that might be nuisance uses in a congested area.

Ms. Caron asked about the contract zones on Route 100, what zone are they in?

Mr. Shane stated they are a stand-alone Contract Zone.

Ms. Caron stated Castle Rock has open space at the back, is that part of the contract zone. The people on Wilson Road wanted to split their lots, and this change would affect those lots.

Ms. Nixon stated if lots to be split were in a subdivision, they would need Planning Board approval, if a lot was not in a subdivision and could meet zoning requirements such as setbacks etc., it could be split by the property owner.

Mr. Sherr stated we are trying to generate growth, in his hometown the comp plan looked at preserving open space, conservation land and trails, creating sustained growth in a desirable place to live.

Mr. Shane cautioned that Falmouth is over regulated and is almost punitive in some cases; we have to balance homeowner's rights with growth. The Planning Board looks at trails, preserving open space and wildlife habitats. We have a lot of open space in town; the land trust in both Cumberland and North Yarmouth are hoping to accomplish the acquisition of the land at Knights Pond; this land is almost 250 acres between land in Cumberland and North Yarmouth. This acquisition would be significant open space for the two communities.

Mr. Sherr agreed the goal is to create development and growth in the Town.

Ms. Maloney-Kelly asked why we would not consider one acre lots, where she lives she could have a one acre lot in the woods and not see anyone next door. Is there any reason to discuss the possibility of RR2 two acre minimums becoming one acre lots?

Ms. Nixon stated that is a good point, but that for now, the combining of the RR1 and RR2 zones into one zone is the first step. At a later time, the town could look at those areas in RR that are close to the MDR or the Route One commercial zones; consider allowing them to be smaller.

Mr. Shane stated if a zone has access to public water and sewer a lot size could be cut in half. The RR1 district requires a four acre minimum lot size or two acres if connected to public sewer.

Ms. Nixon explained that there is a density bonus for duplex and multiplex development.

Mr. Sherr asked if these zoning changes would replace contract zones.

Mr. Shane stated contract zones would still be used when they are best for a development; the next contract zone may be in West Cumberland in the former blue rock pit, for affordable housing.

Mr. Sherr stated so we are not doing away with contract zoning; there might be a situation where that option would work, such as Morrison's Hill and Castle Rock.

The Committee discussed the pros and cons of contract zoning; and proactive planning and zoning.

Ms. Storey-King stated tree growth is fantastic because you need to pay a penalty if land is removed.

Mr. Shane stated Open Space and Farmland designations also have penalties to remove properties.

Ms. Nixon stated she would like to review the use of Timber Harvesting and how we want to address this.

Ms. Nixon stated one of the first site walks she attended as a Planner was for the proposed Mary Lane subdivision. When we walked through the site we found that the entire lot had been clear-cut. The property owner cut the trees and sold the timber, then sold the land for house lot development.

Mr. Sherr stated in accordance with Tree Growth Plans the property has to be managed and can't be clear cut.

Ms. Storey-King stated some neighbors want different types of trees, evergreen trees have year round buffer and some residents hate evergreens and want deciduous trees. She suggested an educational program for homeowner's regarding tree programs and forest management.

*Ms. Nixon stated she thought it was an interesting idea to combine animal husbandry with agriculture in that it summarizes what Cumberland is all about in this regard. The definition she found is: " **The use of land for agricultural purposes, including farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture and animal and poultry husbandry, and the accessory uses for storing the products. The term shall include incidental retail sales by the producer of products raised on the farm.***

Ms. Maloney-Kelly asked how the growth or agriculture of marijuana comes into the mix of agriculture.

Ms. Storey-King stated the Ordinance Committee discussed this issue last week and the committee is recommending an amendment to the Ordinance to not allow the use.

Ms. Nixon asked if we should consider increasing setbacks. Require all non-residential uses that involve structures (barns, stables, paddocks) to have increased setbacks. This would involve uses such as the Alpaca Farm etc.

Ms. Caron stated she would like to have the questions brought up from this meeting consolidated for review at next month's meeting. Ms. Caron continued stating at last month's meeting we discussed public facilities and sewer which we all agreed was the most important. The Committee would like an overview on roads, natural gas and water. Ms. Caron also asked the Committee to review the sewer information and come back to next month's meeting with any recommendations or recommended changes.

Mr. Shane stated the maps received this evening have water and sewer locations.

Ms. Caron stated she thought it was more to have discussions on what you thought we might be needed in the future and if there was any action needed by the Committee.

Mr. Sherr stated we discussed some legal issues regarding animals, and there is concern regarding personal property rights; are we seeing a lot of legal issues for the town that would warrant additional restrictions. What kind of legal battles or costs does the Town have are they a burden.

Mr. Shane stated not today; most can be worked out with discussions.

Ms. Maloney-Kelly stated she doesn't want to stay in the same house she is in for retirement, but has enough land to build a smaller retirement home. There is also a need for multi-generational housing.

Ms. Storey-King stated she has thought of the same thing with perhaps building a Guest House.

Mr. Shane stated one of the maps generated in the Comp Plan shows growth areas; we may want to consider impacts of growth in the rural area; we want to be aware of growth areas as designated by the Comprehensive Plan Committee.

Mr. Sherr asked if there aren't major issues, is there a need to add restrictions for animals. Is there an issue other than nuisance?

Mr. Shane stated not presently, setbacks are one thing and buffers are different. We don't require buffers other than commercial review (site plans) or subdivisions.

Ms. Caron agreed the number of cases is a better question than the cost of a legal battle; if there was only one incident I would be less inclined to add restrictions.

Ms. Nixon stated the recommendations made don't have to solve the problems; you don't have to recommend how many acres for a pig. The committee just needs to say something like we recommend having only one Rural Residential area and that consideration be given to square footage requirements for animals. The last Comprehensive Plan Committee made recommendations to have a Committee to look at the Doane property for possible development. And it now has been developed.

V. Meeting Schedule:

Ms. Nixon provided a revised meeting schedule; the Committee will meet two times in September on the 12th and 26th and once in October on the 10th and November 7, with a report to the Town Council on November 15.

Mr. Shane suggested we as a Committee hold a televised public hearing prior to the Council presentation.

VI. Action Items:

- **Mr. Shane to review Public Facilities regarding sewer, water, natural gas and roads; and to finalize any recommendations for the final report.**
- **Committee to discuss Land Use and finalize recommendations for combining the Rural Residential One and Rural Residential Two zones into one Rural Residential zone.**
- **The Committee addressed the following concerns regarding combining the zones:**
 1. **Additional buffering and setback requirements for agricultural and animal uses.**
 2. **Amending definitions for agriculture, animal husbandry and timber harvesting to allow regulation of residential uses. Whether to add a definition of farm animal and regulations of farm animals other than horses.**
 3. **The question of reducing lot size from two acres to one acre in the Rural Residential Two (RR2) district.**

VII. Adjournment:

Ms. Maloney-Kelly motioned to adjourn.

Mr. Sherr seconded.

VOTE: Unanimous

The meeting was adjourned at 8:00 p.m.

Respectfully submitted,

*Pam Bosarge
Administrative Assistant*