

PLANNING BOARD

Monday, January 03, 2005
Belmont Corner Meeting House
Belmont, New Hampshire

Members Present: Chairman P. Harris; J. Pike, G. Flack, W. Peterson, J. Marden and R. Caldwell (6:25).
Members Absent: C. Patten.
Alternates Present: C. Gilbert and C. Shibles.
Staff: C. Daigle, R. Ball and E. Murphy.

The chairman opened the worksession at 6:00 p.m. Attorney Tim Bates was also present.

WORK SESSION - PROPOSED AMENDMENTS (see attached):

C. Daigle explained that some changes have been made to draft as a result of early input from the public. There are two things that are used to trigger growth management, the rate of increase in building permits and tax rates as compared to surrounding communities. If growth in either building permits or the tax rate surpasses that of surrounding communities the Planning Board would hold a public hearing to consider requiring future residential subdivisions and multi-family projects be built out over more than one year. If Belmont surpasses surrounding communities in both building permits and tax rate percentage growth there will be a public hearing to also consider restricting building permits. Building permit restriction would be only for lots created under this Growth Management Ordinance. If phasing or permit limitations are enacted they shall be reviewed each year and shall be eliminated if the permit and tax rate indicators percentage fall to an acceptable level.

J. Pike wanted to know if the CIP info should be included in the Growth Management Ordinance as it changes from year to year. C. Daigle stated that the CIP can identify the need to manage growth in an orderly manner. The CIP helps manage improvements so they can be funded in a reasonable time frame. J. Pike considered having the fact-finding and CIP as separate supporting documents. Atty. Bates stated that it could be included as part of the Growth Management Ordinance noting that it changes from year to year. You do not have to amend the fact finding yearly as it is noted that the original fact-finding was done for November 2004.

C. Daigle stated that she had talked to one developer who noted that Belmont always has a higher tax rate than surrounding towns. She will be changing the language in the ordinance to clarify that it is the annual percent increase in tax rate in comparison to surrounding towns. This clarifies that it is the percentage rate not the tax rate itself. This percentage increase has happened in 2 of 4 comparison years, 2000 and 2003. This shows that the flow fluctuates and is not always higher. J. Pike stated that Belmont is centrally location and its demographics make it an attractive community for residential development. That fact hasn't changed since the 1992 Master Plan. Belmont has a higher number of manufactured units than surrounding communities. Approximately 25% of the housing units are manufactured units, but not all of those are affordable. Affordable

housing is not solely available to Belmont residents, as they cannot have priority over applicants from other towns. It has a limited benefit for Belmont residents in need of such housing and has a larger impact on the community through the increase of population. Some 15% of Belmont dwelling units are already multi-family.

The Board discussed the proposed wetland vegetative buffers. The buffer purpose is the same as those for Shoreland Protection including the amount of basal area to be disturbed. They discussed clarifying whether it is a no disturb area or whether 50% of the basal could be removed. G. Flack stated that it is the same as the State's requirements. R. Ball explained that the proposal is going to extend the level of protection to 50' to small stream the same as it is for great ponds. Mr. Don McLelland wanted know what the change is. W. Peterson explained that the vegetative buffer is new. C. Daigle stated that there is current a 50' setback for buildings not a vegetative buffer within the setback. G. Flack and C. Gilbert stated that they supported having a no disturb area with a conditional permit from the Conservation Commission. R. Ball explained that they used the State's definition of stream. He stated that sediment that goes into a small stream affects resources just as much as a large stream.

The members agreed to have another worksession on Monday, January 10th at 6:00 to discuss any changes that come out of tonight's meeting.

BOARD'S ACTION-MINUTES:

MOTION: On a motion by J. Pike, seconded by G. Flack, it was voted to approve the minutes of the December 13, 2004, meeting as submitted. (5-0-2) R. Caldwell and W. Peterson abstained.

STAFF REPORT:

C. Daigle explained that the Zoning Board of Adjustment is having Gary Springs from DES come and talk to them about water front development and Shoreland Protection. The meeting will be on January 19th at 7:00 and they are inviting the Planning Board and the Conservation Commission to attend this meeting.

PUBLIC HEARING – PROPOSED ZONING AND WETLAND AMENDMENTS:

The chairman opened the public hearing at 7:00. He explained that these are the proposed amendments and updates to existing ordinances. There will be a second hearing on January 24th at 7:00.

The first amendment is to Create an Open Space Residential Development Overlay District. C. Daigle explained that the language would create an open space overlay zone as identified by the Conservation Commission. This is designed to protect the important resources and coexisting resources for the community. In those designated areas lots of more than 20 acres that are subdivided into more than three lots require open space. Subdividing lots in those areas allows the same number of lots, but they are clustered closer together with an open area. Developers would also be eligible for a density bonus allowing them more lots if they meet certain requirements that create exceptional public benefit. This could include transferring the open space to the town to hold the permanent easement rights. It can also be transferred to a private, nonprofit organization such as the Nature Conservancy or Audubon Society. General public access to the Conservation Areas will not be

required unless the land is conveyed in fee simple interest to the Town or State, or a specific public trail corridor easement is proposed or if a density bonus was granted by the Planning Board. Provisions of deed restrictions or easements are subject to Planning Board approval and shall include: No further subdivision, no residential or industrial development and no roads or commercial uses except for agriculture, forestry or outdoor recreational activities conducted according to best management practices. The primary objective of the Open Space Protection Overlay District is to protect the scenic and rural character of the town, protect the surface and groundwater, maintain natural areas for wildlife and recreation. P. Harris explained that the Conservation Commission brought the overlay district to the Planning Board. R. Ball explained that the proposed open space residential zone came from work done by the NH Fish & Game. They analyzed the unfragmented lands to determine what areas would make good wildlife habitat. The proposed areas are along South Road down to Stone Road to the Northfield border, in the eastern part of town along Rte 140 to the Gilford border and along Hurricane Road to Dutile Road to Rte 106. Mr. David Morse wanted to know why unfragmented lands in the northwest were excluded. R. Ball explained that they had to prioritize to determine what areas would be the most beneficial to the town. There are other unfragmented lands but they took the larger pieces that have co-occurrence. He also stated they are protecting more areas than was recommended. It does not stop developers from doing open space subdivision in other areas.

Ms. Linda Frawley stated that the Master Plan recommended that they explore and foster fairgrounds area for partnership initiative with 4H, Belknap County Conservation District and Community College as a regional site for youth/conservation/education programs. It was also recommended that formalized arrangements with the Society for the Protection of NH Forests or Lakes Region Conservation Trust be used to help in preserving land and she recommended that those organizations be contacted as they are used to doing business locally as apposed to those who deal more on a federal level.

P. Harris continued with the next proposed ballot question, adopt a growth management ordinance. He read ballot question. C. Daigle explained that NH law does not allow communities to stop residential growth. However the law does allow communities to consider ways to time growth so that it does not occur so quickly that we cannot provide the services to support it. The intent of the law is that growth management be temporary and that the community continues to fund those capital items that are necessary to provide services to meet the growth. The law requires communities to compare its growth with that of it surrounding communities. Belmont has compared itself to the seven first tier communities. The Planning Board considered historic and projected information on population, housing, traffic, protected lands and tax rates. They looked at what capital investments had been recently made as well as those that are still necessary. Data has shown that growth in Belmont has surpassed that of surrounding communities throughout the study period beginning in 1980. The ordinance would only affect new residential subdivisions lots and new multi-family development. All existing lots would not be subject to the Ordinance. Once a year, or more often as necessary, the Planning Board will review the number of building permits and full value tax rates. If growth in either surpasses that of surrounding communities, the Planning Board would hold a public hearing to consider requiring future residential subdivisions and multi-family projects be phased in over more than one year so that the full impact does not fall on the community at one time. If Belmont surpasses surrounding communities in the rate of growth for both building permits and tax rate, the public hearing will consider restricting building permits. There would be separate pools of permits available for small developments and large developments and a restriction on how many permits one person could get in one year. The Growth Ordinance would expire in 2008 unless it is re-

adopted. It is used for the shortest time possible. Appeals to the ordinance would be made through the Zoning Board of Adjustment.

C. Daigle explained that there are suggested language changes as a result of input she has received. One change is to the indicators of growth. Belmont has traditionally had a high tax rate. The language change would be to clarify that an indicator of growth would be the annual percentage increase to the full value tax rate. This would allow the growth indicator to be the percentage of increase to the tax rate not the tax rate. This percentage increase has happened in 2 of 4 years comparison years, 2000 and 2003. If this should happen during the Growth Ordinance it would be considered a growth indicator. Another change is under the phasing period. It currently states the Planning Board may require the phasing of a development for a period of up to five years for a project that is proposed to have up to forty residential dwelling units or lots. This would be reduced to twenty-five lots phased out over five years. Another change would be under I2d to increase the 20% to 50% for the available building permits for units subject under the Growth Ordinance. This would give more permits for development to keep occurring at a rate more acceptable for the developer's needs. Under the GMO Permit Pool no project may receive more than 20% of the permits or permits for five units. Also allowed would be 15% of permits for small developments and the rest for larger developments. Under Phased Projects a change would be if they have subdivision approval it not reasonable to have to be subject to permit availability. If the developer does not use all his available permits in one year he can carry them over but would not be granted more than 125% of his allotted permits in one year. She also suggested that building fees be looked at to lessen permit hoarding.

P. Harris stated that the reason for the Growth Ordinance is to assure Belmont's quality of life. Mr. Don McLelland, a Belmont resident, had some questions on the fact-finding section. It states "The findings are based on data compiled in the report, Growth Data, dated November 17, 2004, the Board's experience obtained during their duties as Planning Board members and from their personal observations of growth within the community". He would like to hear some of the Board's personal experiences. J. Pike stated that he has watched the 100 acre property behind him become barren. The proposal is for 44 homes. As a Planning Board member he has heard about a 160 unit proposal on the Belmont/Laconia line. Just those two combined is close to 200 new units that is something to be concerned about. Belmont has the prime parcels of land and one of the finest school system in the area. The school is top in the State. Belmont is a hub that everyone wants to come to. The Fire and the Police Departments are some of the best and now also spend time helping surrounding towns. He is looking ahead and growth is coming too fast, if it comes all in the next three years then Belmont will have a problem. They need to maintain services to protect Belmont's current residents. A goal of the Master Plan is to maintain Belmont's rural character. Mr. McLelland wanted to know if the ordinance passes would it be used to control the budget in the future. J. Pike stated that the CIP is the budgeting tool and that changes every year. The Board is looking ahead and the ordinance would be a tool to maintain a reasonable amount of growth so the Town can afford the capital expenditures to provide services. P. Harris stated the ordinance is only temporary. The Board is concerned for people who live here and the cost of living here. They feel obligated to put something in place to prevent a sudden rush. J. Pike stated that if you look at surrounding communities they have growth ordinances of some sort. Developers will rush to Belmont if they find that it is the only community in the area not to have an ordinance. P. Harris explained that the Board doesn't have the final say the voters do.

Selectman and resident Brian Watterson wanted to know what the goal of the ordinance is. He doesn't

understand why there isn't a numeric figure as a trigger for the building permits. W. Peterson stated that it is compared to the percentage of the building permits of the surrounding towns. The numbers change every year and that is why a percentage works better than a static number. It changes to reflect current conditions. Mr. Watterson stated that the formula is too complicated. Loudon uses the numerical number. W. Peterson stated that this year the number would be 59 building permits based on the 2003 percentage of the surrounding towns. They will not know what the 2005 figure will be until they receive all the numbers from the first tier communities. Mr. Watterson wanted to know if staff knew of any other community that uses the number system. C. Daigle stated that some other communities do use other methods, but this is the method the Board felt is fairest to property owners and the Town. J. Pike stated that in fairness to the residents of Belmont and developers the percentage figures is a fairer method. Mr. Watterson wanted to know how they could do the growth finding without the anticipated 2004 full value tax rate when it won't be available until 2005. C. Daigle stated that those figures should be available in February which is the time the Board would annual evaluate those numbers. Mr. Watterson wanted to know if the trigger could be activated before those figures are available. W. Peterson stated that there is no restriction on building permits now and it will depend on what the voters adopt. If the Growth Ordinance is adopted then the Planning Board would hold a public hearing if one or more of the triggers are evident. Mr. Watterson wanted to know if there could be a stop to subdivisions if the Growth Ordinance is in place. C. Daigle stated it could require subdivisions to be phased in but would not stop them. There could also be a limit on available building permits for new lots. Existing lots would not be affected by it. Subdivisions would be guaranteed a certain number of permits per year as part of their initial approval. The developer knows up front what he will be allowed.

Mr. Watterson wanted to know what the purpose of the temporary mechanism is and what the deficiencies are. C. Daigle explained that subdivision phasing and building permit limitations gives the town time to correct any deficiencies that may have developed in the Town's ability to provide municipal services, services that may be strained or overloaded due to growth. The CIP allows towns time to fund those improvements. Mr. Watterson wanted to know what the regional needs are. J. Marden stated that they are housing, recreation and commercial and industrial workbase. Mr. Watterson asked if most developments aren't already phased. C. Daigle stated that many are, but that is driven by the developer, not controlled by the Town. The Board hopes these changes in the proposed Ordinance will complement the developers needs, allowing them to finance and construct their projects on a schedule that works for both the developer and the Town. Mr. Watterson had concerns about the CIP being part of the fact-finding. He stated that some of the projects have been identified even though there is no funding in place. He feels that it implies that the funding is available when in fact it is up to the voters to decide what is going to be funded. C. Daigle explained that the CIP is a budgeting tool and there are projects that are recommended for funding consideration during the next 6 years. There are other projects that are identified in the CIP as currently necessary, but for which funding has not yet been found. Some are therefore shown with money recommendations in place and others show only the need, without funding recommendations. The voter ultimately decides the priority of the list. Mr. Watterson stated that it is a complicated proposal and he is hoping to simplify it.

Ms. Nancy McCurry, Belmont resident, stated that in general she is favor of the Growth Ordinance with the exception of elderly and low-income housing not being addressed. They need to be exempted from it. She also stated that changing a seasonal home to a year round residence should be allowed. If they are not exempt, then it would limit the property owner's right to develop their property. C. Daigle explained that elderly

housing units count as only half units if they don't impact services in the same manner.

Ms. Linda Harvey, Director of Laconia Land Trust, stated that she works with area towns on elderly and low-income housing. The Growth Management Ordinance will have a serious impact on the area. It would eliminate affordable housing because phasing cannot be done on affordable house due to financial restraints. This would shut out all low-income single-family units as well as affordable rental units.

Mr. Terry Turner, Realty Resources, stated that the Growth Management Ordinance would affect your right to purchase land for affordable housing. Since the Interim Growth Management went into affect Belmont is listed as a high priority for affordable housing. He wanted to know what conditions have changed or what information has become available since March of 2004 to justify affordable housing not being excluded from the proposed Growth Management Ordinance? He has purchased 24 acres of land off Rte 107 that is zoned multi-family. He moved forward with the project because under interim growth management it was allowed. The project received \$1,000,000 because the USDA Rural Development lists Belmont as one of its highest priorities in the State according to their Master Plan. During the process they asked the Town of Belmont for their input and they declined because there was not enough information available until the LRPC report on housing was complete. The report was completed in September that stated that new affordable housing was needed in the Lakes Region. HUD recommended Belmont as an area at need. P. Harris stated that the Growth Management Ordinance is not an affordable issue. Mr. Turner stated that affordable housing cannot be phased in. P. Harris explained that they are taking all housing into consideration. Belmont has affordable housing. Affordable housing has a large impact on services. According to the CIP our schools are at full capacity as well as the Police and Fire Departments. People are concerned about the impact of buildout. Mr. Turner stated that the highschool and elementary school are below capacity. C. Daigle explained that the school data has been updated. Based on the October report 2 schools are at capacity.

Ms. Frawley stated that the draft is a good start but is too complex. She prefers shorter ordinances. The Master Plan consists of 8 visions and 51 goals. The primary vision is to guide growth. The CIP needs to be based on the Master Plan. The CIP is loosely based on the Master Plan but the Master Plan is an incomplete document. The Economic Chapter was never completed. She stated that citizens could misinterpret having the CIP under Findings. The Master Plan goals were not prioritized now this document prioritizes them. The CIP is temporary but Growth Management is not. She stated that the Board should go back to the Master Plan recommendation to consider impact fees to help fund the CIP. P. Harris thanked everyone who worked on the Master Plan for all the time and hard work they put into it.

Mr. Mark Mooney explained that his attorney, Ned Gordon, would be representing him tonight. Atty. Gordon complimented the Board on the hard work they have done putting this ordinance together. He stated that a growth ordinance has a valid purpose. He cautioned the Board that the State's court supports a development restriction with a growth overlay. The Court disfavors specifically limiting growth. A town cannot raise a drawbridge at the town line. Based on legislation RSA 67:22 requires that the Master Plan and CIP be updated. Growth management has to be based on community need and the impact that growth has on community services. There are different ways to do a Growth Ordinance and Belmont's is based on seven other tier towns not on Belmont. If Belmont's growth or the tax rate surpasses other towns than it goes into effect. It is not based on individual impact. It looks at seven communities that are not like Belmont they are very

different. Laconia and Tilton are highly commercial, income level and population size in the other communities are different from those in Belmont. The only community that is comparable is Northfield. If all tier communities had the same ordinance then the towns would get smaller. The ordinance should not be based on a one-year basis but should be done over a three to five year period. The ordinance does not take into consideration the regional needs and is complicated. At the end of the year the Board has to look at the percentage increase of tax rate and building permit to determine if it can continue. Impact fees are less intrusive.

Atty. Paul Bordeau stated that he is representing BBE Realty LLC. After reviewing the document he feels some of the language needs clarification. The trigger mechanism is based on the percentage increase in the full value tax rate and the percentage of growth in the previous year. If someone comes in for a subdivision that requires phasing how would the lots be treated for tax purposes as some will not be able to be built on until a year or two in the future. Will there be a different assessment for the buildable lots vs the ones that have to wait to be built on. He wanted to know what the Board considered affordable housing when they did their fact-finding. There is a need for the housing stock to be refurbished. The town's tax rate can spike due to items in the CIP and not the result of new growth. He stated that indicators of Growth Impact as outlined is highly subjective and could cause litigation because it is not objective. He commended the Board for working with developers on the concept of phasing. This allows them to control the pace of the development knowing they are allotted a specific number of permits per year. He suggested the number of permits allowed for phasing be increased from 5 to 6 a year. This would allow the contractor to build a house every 60 days. Originally he suggested increasing the permits to 8 but feels this is a compromise.

Mr. Mooney explained that he talked to realtor, Mike Normandin, and the real estate pendulum is swinging the other way. The real estate listing for Belmont has 39 homes for sale and only 2 of those are under agreement. Twelve of the 39 are new homes built on speculation and none are under agreement. The trend is there are 35% less building permits in the west and 8% less in New England. The market is going the other way. The Ordinance is unnecessary and too restrictive. It harms the elderly and affordable housing. He suggested that the Board table the ordinance for one year to watch the market to see if it slows down.

With no further comments presented, the Board continued with the next ballot question concerning limiting in-law apartments to one per lot. C. Daigle stated that an in-law apartment is not a second dwelling. It is one or more rooms within the confines of a single-family residence limited to the immediate family of the occupants of the primary dwelling unit.

There was no public comment for this ballot question.

The next ballot question was to permit retail use in the rural zone by special exception for a specific proposal. C. Daigle explained that this request is brought forth from the public. She explained that there are similar uses in the zone that are already allowed by special exception. The applicant would have to go before the Zoning Board to prove that there is no negative impact on abutting properties.

Ms. McCurry stated that she is against it. A mini mall may not have a negative impact on abutting property values but it is against rural character of Belmont. Mr. Phil Clairmont wanted to know if abutters

would be notified. C. Daigle stated that they would. It is part of the application procedure. Ms. Julia Perkins wanted to know if a home occupation is allowed in the rural district. C. Daigle stated that they are allowed but this proposal is for uses that are not home occupations. Retail businesses that are not artisans or crafts are more than home occupations. Ms. Perkins suggested rezoning the commercial zone. Mrs. Ruth Mooney stated that retail business belongs on Rte 106. Mr. Tom Dalton of Middle Rte stated that he is in favor of allowing retail by special exception. He has had numerous occasions to go before the Zoning Board for special exceptions and they are not easy to gain. You have to prove your case and there are a number of issues that are looked at before you can get approval. Rte 107 adjoins his property and he wants to utilize his mom's cape to show case his and his wife's work. There are multiple commercial uses on Rte 107, a glass shop, a mechanic, an auto body shop, an auto repair business and a machine shop. These are road front commercial uses on both sides of Rte 107. There would be restrictions on what could be done because of the land size. Giving the ability to apply for a SE gives the residents an opportunity to make money to pay for taxes. Mr. Morse stated that the definition of retail would give the Zoning Board the ability to interrupt the intent. Ms. Frawley stated that the Master Plan stated that Belmont wants to maintain its rural character. There is a lack of definition and they need to be updated.

The Board addressed the vegetative buffer ballot question. Mr. Mooney wanted to know how this would affect the logging industry. R. Ball stated that you cannot take over 50% of basal within 50' of ponds and rivers and 35' of intermittent streams. Mr. Mooney stated that if you have an intermittent stream on the property you would have to hire a wetlands scientist and that would eliminate forestry in Belmont because it is too restrictive. Most lots have an intermittent stream on them. Intermittent streams are covered under the State's regulations. C. Daigle stated that the Conservation Commission is looking at protection for the community and this is the first draft. The Board discussed eliminating the term intermittent and going with just ponds and rivers. R. Ball stated that intermittent stream is taken from the State's regulations. Mr. Mooney suggested exempting forestry.

P. Harris stated that due to public input the Board should remove the ballot question on allowing full retail in the rural zone. The Board should look at a definition for and allowing only light retail. The 1992 Master Plan had designated Rte 107 for light retail. W. Peterson stated that a definition is needed for light retail.

J. Marden had concerns about the ballot question on open space. The overlay map shows three areas but there should be a connector for Dearborn Street. C. Daigle suggested that they take the number out of the ballot question. J. Marden also had some questions about the dimensional requirements table for the buffer. He suggested removing intermittent from the chart and leaving in brooks and stream. It would be 35' from brooks and streams and 50' from perennial streams and rivers. R. Ball stated that the definitions should be consistent with the State's. That is why he included intermittent in the chart. Once the definitions are consistent, the Board can decide what actual buffers/setbacks they want to support for the Town. G. Flack stated they could follow the State's law on logging. J. Marden stated that the definition of intermittent should be consistent with the State's and should remain.

MOTION: J. Marden moved to put the in-law apartment question on the ballot

The motion was seconded by G. Flack and carried (6-0).

ADJOURNMENT:

MOTION: On a motion by J. Marden, seconded by G. Flack, it was voted unanimously to adjourn at 9:43 p.m. (6-0)

Respectfully submitted,

Elaine M Murphy
Administrative Assistant