

MINUTES OF THE COMPREHENSIVE PLAN COMMITTEE

July 5, 2018

7:00 p.m. Town Hall

Present: Tim Thompson, Chair
Peter Curry
Susana Measelle Hubbs
Penny Jordan
Sara Lennon
Harvey Rosenfeld
Victoria Volent

Absent: Elizabeth Goodspeed, Kevin Guimond

Also present: Maureen O'Meara, Town Planner

Call Meeting to Order

Mr. Thompson called the meeting to order and called for public comment.

Public Comment

Paul Seidman, 21 Oakview Dr - These chapters need a complete overhaul, based on the degree that they focus on housing and commercial development rather than preservation. In the existing land use chapter, the words preservation and character are used once. Words used too many times are housing (17), commercial (12), development (48). In the future land use chapter, the word preservation is used 10 times, housing (19), commercial (17), and development (52). These are not the most important things to residents.

Nate Perry, representing Cape Elizabeth fishermen, 10 Pine Ridge Rd - He sent an email and apologized for not sending it to everyone at first. He is offering more overview on aquaculture. On page 7, type of license, number of licenses have not significantly dropped. [A copy of his comments were distributed by Chair Tim Thompson at the meeting.]

Minutes

One reference to Jim Carey was revised to Jim Casey. The minutes were approved with amendment 6-0.

Marine Resources Chapter

The committee began its second draft review. The committee questioned the paragraph on page 7 regarding student licenses and incentivizing. The draft was written by the Harbor Committee. Staff offered to review the language with Harbor Committee staff to clarify the statements. The committee agreed.

The committee discussed fluctuations in license numbers. It was noted that there is a lack of confidence in the accuracy of the numbers and caution should be used in making major policy recommendations based just on the numbers. Mr. Perry was recognized and suggested that during periods of economic recession, fisherman reduce costs by using moorings rather than pay rent for berths (a savings of \$600-\$700/month).

The committee agreed to add the overview information provided by Mr. Perry (first 4 paragraphs) into the aquaculture section.

The committee discussed whether it is desirable for the town to take steps to encourage commercial fishing. Councilor Lennon was concerned with possible environmental impacts on water quality. Other committee members were interested in possible ways to support commercial fishing, such as encouraging aquaculture. The committee did not have enough information to make a specific recommendation, but will recommend that the town study possible efforts, such as a local role, to promote commercial fishing.

Staff suggested and the committee agreed to include a map showing where shellfish harvesting areas are closed. The committee wondered why the waters around Richmond Island were prohibited from harvesting. Councilor Lennon asked that climate change information, such as beach erosion and flooding, be included in the plan.

With the added draft recommendation, the committee voted unanimously to approved the draft Marine Resources Chapter.

Existing Land Use Chapter

Staff introduced this chapter and reviewed the charge to the committee from the Town Council to prepare a comprehensive plan that is consistent with state goals. The state Comprehensive Plan Rule requires that existing land use information must be included. Ms. O'Meara reviewed the state rules, including requirements that the town evaluate development, examine if existing regulations are adequate to manage development, and if development is occurring in or out of subdivisions. A summary of development by land use classification is required, as well as a summary of current lot dimension standards. The location of new structures built in the land ten years, and whether

those structures are residential, commercial, etc. must be provided. An estimate of the expected development in the next ten years and the minimum amount of land to accommodate that development is also required and usually a difficult topic for towns.

The future land use chapter should discuss how you will manage expected development. The state wants towns to take steps so the development that does occur is located in designated growth areas and not in designated rural areas. The chapters were structured to meet state requirements.

Councilor Lennon asked what happens if there is no more room for development. Ms. O'Meara suggested redevelopment.

Mrs. Lennon asked why a rural area is designated a growth area? With new home builds, why can't we put those in infill in the more concentrated areas where there are services? Ms. O'Meara said the current growth areas were identified in the 1990 Comprehensive Plan as areas that were best suited to absorb development, with less natural resource impacts and ability to support septic systems. There has been no effort to replace existing growth areas with new growth areas. If you remove a chunk of growth area out of a part of town, then you need to designate a new growth area.

Mrs. Lennon asked if we can designate a growth area to take advantage of infill, allowing some lots to be divided in half and allowing large single family homes to be converted to multi-unit, then how onerous is it to undesignate a growth area? Ms. O'Meara said that development would then occur in another neighborhood.

Ms. O'Meara said she has started on a build-out analysis and it is a little dismal, because the town may need to designate a new growth area. She described the growth areas. The RB zone is the principal growth area, made up of 10+ acre lots. Development in the RB is the classic subdivision where most people tend to live. The RC is an infill growth area and there is not much room left. The Town Center and BA Districts are also considered growth areas. There is very little capacity left in the RC. She showed a draft map with the remaining undeveloped land in the RB, which is limited. The remaining RB land is also limited by resource protection and often not served by public sewer. We are starting to run out of RB land able to accept new development. Why does that matter?

Cape will continue to be a very popular place for people to live. The older land owners will begin to transfer property ownership and more development will occur in the rural areas. Mrs. Lennon asked why? Ms. O'Meara said that

additional development, in the range of 120 units, will happen. So where do you want those 120 units to go?

Mrs. Lennon asked about the large landowners. Ms. O'Meara said that if you look at the last large developments, they were built on land previously owned by older land owners, who died or did estate planning. If you don't want more development or want to believe there will be no development, that is contradicted by the analysis and trends.

Mrs. Lennon expressed doubt that more growth will occur in towns where there is literally nowhere else to go. With that as a logical extension, virtually everyone in town strongly supports open space. When you are out of land, and that will happen at some point, how can the state require you to accommodate growth that can't be accommodated? Ms. O'Meara said our planning period is the next 10 years, and there is land in the next 10 years.

Ms. Jordan said one way to manage growth and preserve/conservate land mass in town is to leave opportunity for large land owners to operate their businesses and generate revenue from some land development. If you work against some options, farmers may give up land preservation. Most land owners want to retain their land, not sell for development. Ms. Lennon asked how do you help land owners preserve? Should the town stay out of it, or use tools?

Ms. Jordan has heard the argument for years. Development is happening on farms because, obviously, that is where the land is.

Ms. Lennon asked if this chapter works for farmers? Ms. Jordan said it does. Ms. O'Meara noted that the land use policies would be in the next chapter, Future Land Use. She mentioned a build-out exercise the committee can use to generate land use policy recommendations. For the last committee, that exercise was the the roots for the Land Use Amendments. Ms. Lennon noted that the amount of development projected in the current plan did not happen.

Mrs. Lennon does not want to predict how much new development may occur. Ms. O'Meara noted that the state rules require that a growth prediction be made and then planned for. If you plan for 300 units and you get 194 instead, that means that you planned for more than you needed and you have more room in the next 10-year period and you don't to use up more land in the next 10 -year period. It's not a growth "goal."

Mr. Curry said the scheme we have right now manages growth. We can fiddle at the margin, for example the accessory use provision for farms that allowed the Well, the transfer of development rights tool, and the overlay districts. We don't

need a major new initiative, but instead can use the existing framework. We can do more to tinker at the margin to help new families, develop affordable housing.

Ms. Volent noted infill in existing dense neighborhoods. In the future land use chapter, I wonder if farmers would like to have to option to create a multiplex without dedicating a minimum of 10 acres? The Cottage Farms multiplex has 8 units and on much less than 10 acres. One house is 2 acres. Ms. Jordan would like time to respond to that, and wants to preserve flexibility as a property owner.

Ms. Lennon asked about the most westerly RB district owned by Sonny Young. It is somewhat farmed and very far away from public sewer.

Mrs. Lennon wanted to know where to talk about strategies like the land acquisition funds? Ms. O'Meara said recommendations about the land acquisition fund was already discussed in the Recreation and Open Space chapter.

The existing land use chapter is supposed to show you how the town has grown in the last 10 years. She reviewed the analysis. She explained base zoning and overlay zoning as a tool. The RA District is 50% of the town, 30% of the town is wetlands, RB is 7%. The RC are the compact neighborhoods and are the reason there is so much open space in town. The RB District has been written to accommodate new development with a minimum amount of total land use. Mrs. Lennon asked about the RB and if a maximum density has been established? It has. Ms. O'Meara explained the Open Space Zoning requirements that are mandatory in the RB District and require that 45% of gross land area be permanently preserved as open space. Mr. Thompson confirmed that minimum lot sizes go down to 10,000 sq. ft. Ms. O'Meara noted the density allowed also makes it possible to pay for the cost of installing public sewer.

She reviewed the growth occurring from 1998-2007 and 2008-2017. The average growth is continuing to decline. She is estimating the next 10 year period will have 120 new dwelling units. Is this a reasonable projection and, if so, where should it go and still preserve community character? About 62% of development occurred in growth areas.

Mrs. Lennon is less concerned with development in RA neighborhoods, such as the subdivision on Hannaford Cove Rd, than on undeveloped land in the RB district. She questioned if the neighbors objected to that subdivision, or if the development could be seen from the road. Three single family homes can be seen from the road and the neighbors were opposed.

Mrs. Lennon considers individual new homes built in the RA District to be considered infill. Ms. Volent said infill lots are vacant lots in dense, older neighborhoods. Mr. Rosenfeld noted compact infill lots in South Portland. They can help with affordable housing. That's infill. Ms. Volent added that it provides some diversity in housing.

Mrs. Lennon suggested that individual homes judiciously sprinkled throughout the town, even in the RA District, is something residents would prefer to cutting down a pine forest. She suggested distributing the development that occurred in Eastman Meadows would be preferable. Committee members and staff noted that a single, infill lot can be very controversial. Mrs. Lennon suggested if you have destruction of huge tracks of land with large multiplexes as one option or preservation of that land with tools and allowing sprinkling of the development, 9 houses is a sprinkle, and polled your average Cape citizen, they want to preserve open space.

Mr. Thompson noted that the overall land used in the RA is so much larger than what is used in the growth area. He compared Eastman Meadows (46 units) to the Berry subdivision (3 lots). In addition, Eastman Meadows is on public sewer and 45% open space. Mrs. Lennon asked about the open space? Most of it is never to be cut down trees and permanently preserved for public access. The Berry subdivision resulted in no permanent open space preservation, and payment of an impact fee, which is not that much.

Ms. O'Meara showed that 38% of development in the last 10 years occurred in the rural areas. 61% of new development happened in new subdivisions. Even with a goal for growth to be infill, the bulk of new development will probably continue to be in new subdivisions. Individual lot development does not protect open space. With 18% of new development from old subdivision lots, there may not be a lot of infill lots left to absorb new development. Mr. Curry asked for examples of infill lots and 69 Beach Bluff Terrace(rear) and 8 Aster Ln were given.

Most of the development in the last 10 ten years has been single family homes, and that will not change. There was also some diversity in housing types with some condos and multi-family housing, which was a recommendation of the last comprehensive plan. Multi-family housing also uses less land.

An estimate of 120 units is suggested for the next planning period. This does not include teardowns, which replace existing homes and do not need to be considered "growth." One concern with the projected growth is where it will occur. If 38% of development in the next 10 years locates in the rural areas, an

estimated 200 acres of land will be developed, compared to 74 acres in the growth areas.

Mrs. Lennon questioned the assumption that future growth will look like the last ten years. Ms. O'Meara pointed to the experience of the last 2 10-year periods as an indicator. The next ten years may be different. If you don't make any changes, there may be even more pressure to develop in the rural areas because the growth areas have little capacity left. More than 38% of new growth may locate in the rural areas and more than 200 acres may be developed in the rural areas, which would have an outsized impact on community character.

Mr. Curry asked if we could apply mandatory clustering to the RA as well. Ms. O'Meara said that could be a response. You could also move a few parcels into the RB where they could absorb much more development. This analysis is concerning. The committee may decide to make some adjustments or you may find it acceptable.

Mrs. Lennon is uncomfortable with predictions and does not want to make changes for something that is unknown. The last plan predicted more growth than occurred. Ms. O'Meara noted that we did have a serious recession and still had 160 new dwelling units constructed. Mrs. Volent said she would like to be prepared for possible growth. With multiplex development, we acquire 45% for open space and trails. Developers want land, want to be in Cape. How can we accommodate that without letting them develop our rural areas?

Mr. Curry asked about the 200 acre number. Ms. O'Meara said these are big picture analyses, but to estimate acres that will be developed, an efficiency ratio is used because parcels cannot be perfectly divided into lots. The lower the density, the greater the inefficiency. The last plan used a 50% efficiency, so that was used again, plus land is set aside as open space. The relative ratio is reasonable, but the actual number is a rough estimate.

Mr. Thompson noted that, just the lot size alone, the RA lot size is 4 times the size of the growth areas. Mrs. Volent noted the rezoning of Turkey Hill Farm from RB to RA. Ms. O'Meara explained that a conservation easement had been placed on the farm, so it wasn't really removing land from the RB.

Mr. Thompson asked what we can recommend that will encourage open space, and encourage development in a certain part of town and not encourage development in our more rural part of town? What can be added that's not in the current comprehensive plan.

Ms. O'Meara suggested that the committee participate in a build-out exercise which may help it decide if it wants changes. The committee decides where the 120 units would best be placed. Then, we do a rough comparison of the exercise results with what the current zoning allows. The committee then decides if tinkering with some zoning amendments is appropriate.

Mrs. Lennon asked if making zoning changes will promote growth. Ms. O'Meara said this was asked before as well. Even with the changes made from the last comprehensive plan, we still had much less growth than predicted.

Mr. Curry said that we speculate how it may be, but we don't control what will happen because it is market driven. Should we hear from some market experts, like a realtor, developer, or banker? Mrs. Volent said they basically run numbers, and do not have a planning perspective. Mrs. Hubbs said this chapter is where all the others come together. We don't look to others, we tweak. This is the most important chapter. We know where our town is headed, what's important to us, so that is the compass.

Mr. Curry does not want to be in our information silo and hearing from other industries would be valuable, and broaden perspective. The committee consensus was not to invite speakers to provide another perspective. The committee agreed to have the build-out exercise at the next meeting.

Mrs. Volent provided key trends. The growth map needs some fine-tuning. The committee did not have any comments regarding commercial development. Ms. O'Meara said the growth driver in Cape is housing.

The committee voted to accept the first draft.

Future Land Use Chapter

Some of the prior discussion covered this chapter.

Mrs. Volent worked on some CIP recommendations for the chapter. She recommends

- Extend public sewer to the southern end of the Ocean House Rd BA District.
- Extend the pedestrian network in the Business A District.
- Extend the pedestrian network on Fowler Rd and Mitchell Rd.
- Protect the wetlands abutting Great Pond and abutting neighborhoods by transitioning private subsurface wastewater disposal systems to public sewer.

For next time, Mrs. Lennon wants this chapter to be reworked to be more aspirational and ambitious to reflect all the surveys, FOSP report, and hear from everyone that what people want is more open space, trails, and recreation. The survey says people highly rate and protect town open spaces. We all agreed we would listen closely to what residents said and build a plan that reflects their desires. We need language that puts teeth into abiding by residents' wishes, much like the last plan. Much of this has been done, but then reversed like land acquisition fund. There are ways to do this, that will not compromise development.

Mr. Rosenfeld said that what he's heard, is not just open space, but also support for affordable housing and sidewalks. We need balance. We have to write this to bring in all these issues and compromise between the development we have to do and need and also have open space. We can't throw one out to get the other. This chapter isn't just about open space.

Mrs. Lennon referenced the public opinion survey. You can't ignore the 98% and then sidewalks is 46%.

Mr. Rosenfeld said we have to be careful. The survey said 70% of residents want more commercial development, but also said they don't want more land zoned commercial. We can't go off in one direction and say open space is paramount. It is important, but there are other important things that need to be built into this.

Mrs. Lennon said the commercial is dealt with in another chapter. Ms. O'Meara pointed out that there is a Recreation and Open Space chapter that includes everything just referenced. The state has requirements for the future land use chapter.

Mr. Rosenfeld said this chapter really does bring everything together. Everybody has what is important to them, and we have to balance what we've heard. The comprehensive plan coordinates that.

Mr. Thompson said in his and other community presentations, the feedback for the current plan and town management/land use planning is very positive. Development has been careful. Open space has been set aside. There is not a lot of tweaking needed. We should not be significantly re-engineering what we have been doing. If the next 10 years look like the last years, we had 16 builds annually, and we are not predicting that, we are predicting 12.

Mrs. Lennon said that what was in the last plan should be incorporated into this plan. The land acquisition fund is a huge tool, based on her perspective on the Town Council, but is underfunded. We didn't fund it because the

recommendation from the last comp plan worked for a year or two, and then it didn't continue. Mr. Thompson pointed out the Town Council has a funding mechanism.

Mrs. Lennon said it was funded for a few years, and then the new Town Council said let's not add a penny, or it's good as it is. It's inadequate now. We never have a third to donate. Mrs. Volent suggested that is a Town Council decision. This is land use. No ordinance changed. That's not a land use issue.

Mrs. Lennon said encouraging language needs to be continued, to compel the governing body to continue funding. Mrs. Hubbs said we should keep open space as an ongoing recommendation. Ultimately, the Town Council can reject it, but shouldn't ignore it.

Recommendations to fund open space are already in the Open Space chapter. Mrs. Lennon wants to add a goal to strive to partner with CELT at one-third whenever possible. We haven't contributed one-third in the last 3-4 land acquisitions.

Mrs. Volent asked where the money is coming from? Mrs. Lennon said the land acquisition fund, which is tax dollars. Mrs. Volent asked how much is in there now? Mrs. Lennon said zero and keeps being drained out. Mrs. Volent asked how can we make a promise to do one-third?

Mrs. Lennon agrees that we should meet state requirements, should be balanced, but based on the surveys, the plan should have language with teeth that encourages whoever implements this plan to understand the passion of the citizens.

Mr. Thompson said that Mrs. Lennon and Ms. Jordan had a unique perspective as Town Councilors. You had to, in a difficult budget time, consider a request from the land trust to contribute to an open space purchase, a request higher than what was in the land acquisition fund. The school needed funding, public works needed funding and the town needed a new fire truck. How much do you want the comp plan to tie your hands to make it any more mandatory?

Mrs. Lennon advocates a systematic approach, saving a little every year, like how families budget. We're in this situation because we didn't add a penny every year. If we did, we would have had plenty of money. Ms. O'Meara explained that the town has been adding a penny every year. It's just not enough money.

Mrs. Lennon said the Town Council is systematic about capital funding every year, but the land acquisition fund doesn't make it to that level of consistency.

Mrs. Volent said it's not a land use issue, it's a budgeting issue.

Mrs. Lennon wants to put a little teeth into our recommendation to recognize the public values open space.

Mr. Curry said the land use fund is a tool. It doesn't equate to the survey data. Everybody in town loves open space, we have a lot, beautifully maintained, but the survey data does not show support for more open space purchase funding. Funding the land acquisition fund is not a goal needed in this comp plan going forward. To say everyone loves open space does not mean we should heavily fund the land acquisition fund.

Mr. Rosenfeld concurred that residents value open space, but it is up to the Town Council to pay for it, just like you pay for a fire truck. It's not up to this committee. The first line in the community vision statement is about open space, so it is prioritized. We should get as much as we can in here to help the Town Council prioritize everyone's needs. We are adequately covering open space.

Mrs. Volent asked Mrs. Lennon to suggest changes to the chapter. Mrs. Lennon said she is happy with what is in the chapter, but does not think it captures the spirit of the public opinion survey.

Mrs. Volent said the chapter does describe rural and growth areas. It describes zoning as a tool to preserve open space when development is proposed. For example, Maxwell Woods is private property, so the property owner was able to sell the land, we got housing that we desperately need and we also have open space and trails for people to use. What should be changed.

Mrs. Lennon suggested incorporating Mr. Seidman's comments about how often development was mentioned. Ms. O'Meara said that you must discuss future land use and this is the chapter where that was supposed to be. The Open Space chapter includes open space preservation recommendations. Mrs. Volent asked for specific edits to be identified.

Mrs. Lennon said even the last comprehensive plan did a better job of conveying the balance of growth and preservation in this chapter. Ms. O'Meara noted that the state comprehensive plan rules have changed since the last plan was written. The future land use plan chapter is not done. The committee needs to have a conversation about your overarching goals before the chapter is completed. Your goals have to talk about development, because that is what the future land use chapter is about.

Mr. Thompson said we also have to talk about the CIP. Ms. O'Meara concurred that has not been done, because she does not want to get ahead of the committee. She encouraged the committee to look at the state comprehensive plan rule because that is what has to be in this chapter. When the town submits the plan to the state, it must include a checklist showing where in the comprehensive plan all the required elements are located.

Mr. Thompson asked everyone to come in with thoughts on the CIP. Mrs. Lennon suggested that the town already has the CIP done. Ms. O'Meara pointed out the CIP is supposed to align with growth/rural goals and the CIP has to be submitted to the state.

Public Participation

The committee reviewed the keypad polling results from the June 6th public forum. There was strong support for a 10 million new investment in capital improvements.

Mr. Thompson thanked Mrs. Lennon for bringing snacks to the forum.

The committee reviewed a schedule for the last 6 months. It decided to move the public forum to October and get the summary insert of recommendations done before the public forum, in September.

Public Comment

Becky Fernald, 313 Mitchell Rd - The town should be careful about the kind of open space that is preserved with new development, which is not what people are looking for. The town should allow more public input into the open space to be preserved earlier in the development review process. The Conservation Committee, CELT and residents should be involved.

Paul Seidman, 21 Oakview Dr - The meeting was instructive. He agrees this is a broad picture with all the pieces, featuring the public opinion survey. We spend a lot of time talking about housing. We need creative thinking on open space. Maxwell Woods does not meet the FOSP definition of open space.

Next meeting

The next meeting is Thursday, August 2nd.

Ms. O'Meara thanked everyone for advance notice when they cannot attend a meeting. The meeting adjourned at 9:46 p.m.

