



Town of Carlisle

MASSACHUSETTS 01741

Office of
PLANNING BOARD

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DRAFT

MINUTES

Special Meeting

October 6, 1996

Discussion of Growth Management Initiatives

Acting Chair LaLiberte called the meeting to order at 4:00 p.m. Duscha, Epstein, LaLiberte, Tice and Yanofsky were present. Colman and Hengeveld were absent. Also present were Planning Administrator Mansfield and John Dalton. *LTCRC*

This meeting was called and properly posted 72 hours in advance, at the request of Yanofsky and Colman, for the sole purpose of continuing the discussion begun at the meeting of September 30 of the proposal to submit a growth management bylaw for consideration at Fall Town Meeting. The members who requested the meeting recognized that the warrant will close on October 9, and the next regularly scheduled meeting of the Planning Board is not until October 10. In addition, members LaLiberte and Epstein were absent from the September 30 meeting, where Hengeveld's motion to submit a growth management bylaw article was approved.

LaLiberte asked Yanofsky to bring the members up to date. She reported that she had called Town Counsel Kopelman and Paige and explained what the members had proposed at the September 30 meeting. She said that, although Attorney Betsy Lane was not aware that Fall Town Meeting had been scheduled, the Board's proposal was met with a very positive response. ~~Yanofsky reported that Lane had said, "we can do what we want in establishing a building moratorium; its legality is all in the packaging."~~

Yanofsky added that she has called other towns that have successfully imposed moratoriums, and has gathered information on the form such a bylaw should take. She suggested that a moratorium be imposed only through the Spring 1997 Town Meeting, and cautioned that such a step will not delay development of any grandfathered parcels, including 55 lots in the Tall Pines and Pine Meadows subdivisions.

Duscha asked for further explanation of the process and effects of establishing a moratorium, saying that she felt she had little information on the subject. Tice also expressed some caution, noting that he believed the main focus of discussion of growth management at the last meeting had been on establishing an annual cap on building

permits, not imposing a moratorium. Yanofsky responded that most towns have imposed a moratorium before establishing a building cap. Doing so creates a period for the Planning Board and other town officials involved to fully and openly consider and discuss the options and propose revisions to the bylaws and rules and regs. without forcing landowners and developers to take precipitous action in response to that discussion and those proposals. During this period, she added, both the Board of Health and the Conservation Commission are also expecting to begin studies of septic systems and water quality issues.

LaLiberte said that if the purpose of a moratorium is to create breathing room to adopt bylaws that will better control development, then he could support it.

Mansfield cautioned the Board that the grandfathering provisions of Chap. 40A, Sec. 6, are quite pervasive and protect from any moratorium or building cap not only all currently approved parcels, but also any land for which preliminary subdivision or ANR plans are filed prior to the Town Meeting vote. Yanofsky responded that we have to consider whether it is desirable to protect the town from unwanted development for the next two years or beyond that time. What will occur during the next two years, she said is basically set now and can't be affected. But shouldn't we be looking further into the future?

Epstein asked if the legal justification for a moratorium is based on anything more than a nine year old advisory memo from Town Counsel that was available at the meeting (and is attached to these minutes). Mansfield reported that he had asked Lane this question, and she had said that this advice was still current.

Dalton cited the recent Edgartown case on this issue, and offered to make copies available to the Board. LaLiberte replied that this is not a final decision, since it is being appealed to the SJC.

Epstein suggested that members consider the shortness of the time until Town Meeting in reaching a decision on whether to go ahead with this proposal. He also cited the Amherst bylaw, illustrating that exemptions to a moratorium can be granted. He posed several questions to be addressed by Town Counsel, including the length of time for which a moratorium can be established, its relationship to the development of a master plan, and whether we can justify that we have a true emergency, and how. Mansfield said that Lane has been asked to attend the meeting of October 10 to discuss these and other questions.

Epstein noted that, in his opinion, what is going to take place during the period of the moratorium is of crucial importance in justifying it. While what the Planning Board alone may be doing during the next six or seven months may not be comprehensive, if other boards are committed to work on the issues, that would help. LaLiberte replied that, to some extent, other boards have already positioned themselves for such action. He cited the school link expansion as an example, noting that Lenny Johnson told him that

Dalton
~~*Amherst*~~

this building is based on a forecast of 30 new housing units per year, which may be too low.

Yanofsky reported that the Amherst planner did not indicate that the threat to water resources in that town was any greater than in Carlisle, although it was used as a key element to justify the moratorium. He said the danger was really to the community's character, but water supply was a good excuse. In general, she said impacts on school enrollments are not considered by the courts as justifiable threats; rather one should rely upon impacts on public safety, such as sewer and water needs.

and health

She then focused the discussion on specific threats to currently undeveloped parcels, noting that since the Open Space Plan was published in 1994, several priority parcels have already been developed. ~~Among endangered parcels, members mentioned Sorli's old chicken farm on Westford Rd., the O'Rourke property next to the Greenough land on Maple St., the Bisbee woods, and the Benfield property.~~

Duscha asked whether a moratorium until next Spring is long enough to accomplish anything. Yanofsky replied that a longer time could be unfair to landowners. Epstein added that the amount of time should be tied to what we are planning to do; if we are considering a water resources analysis, seven months may not be long enough. He went on to say that, assuming that a consultant is funded by the Town, the Planning Board should be able to present an open space bylaw in the spring.

Tice asked how much time Amherst debated the proposal before they put their two-year moratorium into effect. Yanofsky replied that there wasn't much lead time and that the Selectmen were kept in the dark. She noted, however, that Lane has already told our Town Administrator about the Planning Board's proposal. LaLiberte said that if we make a decision to go ahead, we can't count on other Boards to make changes under a moratorium. Tice said that, all in all, this does not sound like a strong needs argument.

Yanofsky replied that the justification for a moratorium would not be primarily to adopt a building cap and an open space development bylaw, but is based in the prospect of the development that might otherwise occur. She added that it is crucial to seek the support of the other boards. LaLiberte said that he thought the Finance Committee would support this proposal.

Epstein asked that an opinion be sought from Town Counsel that such a bylaw can be upheld, and suggested that confirmation also be sought from EOCD (now DHCD). Yanofsky replied that she had a call in to Don Schmidt at EOCD, but he was out of the office until Monday. Amherst did get EOCD support, she said, but she would also like to get a second legal opinion from Amherst's town counsel, which has been offered. LaLiberte cautioned against this approach.

Dalton suggested that Mark Green's opinion on this proposal be sought. Yanofsky replied that the Bylaw Review Committee, on which he serves, will be asked to comment.

Epstein asked if a moratorium would prohibit all building. Duscha noted again that Amherst included numerous exemptions. She said that she is particularly worried about the development trend that is leading to only "palaces" being built in Carlisle. Mansfield suggested that a size exemption could be a part of the moratorium and/or permit cap. But LaLiberte said that he did not want to get into this, because he couldn't justify it.

Epstein asked what risks there might be to imposing a moratorium. LaLiberte suggested that there would be little chance of litigation because of the short time frame. Tice suggested that if this article failed to pass Town Meeting, then the chances to adopt a building cap would be lessened. But Dalton suggested that a short-term moratorium would anger fewer people than would a cap. Yanofsky said that the people she has talked to would support this, including Bob Koning, who is also a landowner. LaLiberte said that he thought people would be supportive, if they are educated about it. Tice suggested that a term other than "moratorium" be used to identify the proposal, but members could not think of an alternative.

Yanofsky suggested that members present take an informal straw poll of their support for a moratorium article.

LaLiberte said that he thinks a majority of the town will support a short moratorium, but if it is defeated, the Planning Board may lose credibility. Duscha asked if other issues would bring people to Town Meeting. Dalton said that this article would assure a quorum.

Tice said that he, too, thinks people will support this. If it fails, the Board will have made no progress, but we will have identified a bigger issue of why the town does not support such a form of growth control, which should be resolved before any other initiatives are pursued.

Epstein admitted that he is not really comfortable with just proposing a building cap, which he thinks would be complicated to put in shape before Fall Town Meeting. But, he added, he feels that it is his and the Board's job to take some initiative to manage growth. Yanofsky agreed, suggesting that this was a logical step in the Board's responsibilities following the forums and the adoption of a master plan. Epstein went on to say that there are risks to the ~~Town~~ ^{Town} people if ~~they~~ ^{they} don't support this measure, and we have to accept that. Yanofsky said we should push ahead also for symbolic reasons. Duscha said that she knows that people may want this, but she doesn't feel a sense of emergency. However, she added, it should be longer than through next April.

Dalton suggested that if the filing of this article elicits a number of preliminary plans, that in itself support an argument for an emergency.

During the remainder of the meeting, members discussed who were the key people to contact to seek support for this article. Yanofsky stressed the importance of getting Vivian Chaput's support, including for her influence on the Town Moderator, Pete Simonds, who is also a large landowner. Dalton agreed, and said each Selectman should be approached. Yanofsky said that Alan Deary (sp.?) had offered to approach Michael Fitzgerald. LaLiberte said he would make the argument to Chaput, and Epstein suggested that she be asked to approach the other Selectmen. Yanofsky suggested that George Foote be invited to be involved in the development of a phasing (cap) bylaw, and she also offered to approach Ken Ernstoff. She said that she will also inform Hengeveld, who could be instrumental in reaching out to other Boards. There was further discussion of contacting other Boards, but no specific plans were made.

It was agreed by consensus that a draft article be submitted for the October 9 warrant deadline, with general language as voted September 30, but with the intent that the growth management tool to be employed is a short moratorium.

The meeting was adjourned at 5:30 p.m.

Respectfully submitted,

George E. Mansfield
Planning Administrator