Town of New Scotland
Public Hearing
05/09/2018

The following Town Officials were in attendance:

	Supervisor:	Douglas LaGrange
	Councilperson:	Patricia Snyder
		Adam Greenberg
		Daniel Leinung
	Engineer:	Garret Frueh
	Town Attorney:	Michael Naughton
	Town Clerk	Diane Deschenes
Absent:	Councilperson:	William Hennessy

1. Call to Order

Supervisor LaGrange called the hearing to order at 6:00 p.m. regarding proposed Local Law F of 2017. This has been a long process and we've had a lot of public comment. This hearing will be open until 7 P.M. We've heard comments and we've had written comments. Yesterday we received a packet from Stockli Slevin, LLP. The Board has had it since this morning to review it, so almost everybody has read it. Our attorney has gone through it and he himself has gone through everything. We will enter that into the public record too. He asked that comments be kept to the specifics of the law to give everyone a chance to speak.

Attorney Naughton added that we will consider any comments from prior public hearings as part of the record. We had a public hearing on an earlier draft of the law on February 14, 2018. We also had a workshop meeting with the landowners and business owners that we sometimes call the stakeholders on February 27, 2018. We will consider those comments and the written comments we received in connection with those prior hearings and workshop sessions as part of the record for this version of Local Law F. There also is on the website, and has been for some time, a memo that discusses what the changes were from the prior hearing. If anyone needs to review that again he could talk about what it was but he thought we had gone over that in prior meetings. The idea is that there is no reason to repeat comments that have already been made. If it's something new that's come up, that's the best use of time.

Supervisor LaGrange added that this is not a question and answer time. This is the Board listening and getting comments. Some people might be happy with the law. Whatever it might be, we appreciate the comments, but again this is not a back and forth.

He wanted to mention that Councilperson Hennessy was taken out of town for work and he will hopefully be back sometime between now and 7:30 PM. It was kind of an emergency situation for work.

If you would state your name for the record, we can get started.

John Stockli with Stockli Slevin, LLP, representing 306 Maple Road, LLC, which is the owner of the property located at the intersection of Routes 85 and 85A. As the supervisor mentioned, he submitted a letter that was delivered yesterday to everybody. It's been introduced into the record. He didn't reread the letter or go into it in great detail, but he did want to mention the key points that they think should be considered. The first is the Comprehensive Plan requirement. We really do believe, upon looking at past history of both the Comprehensive Plan which is currently in place and currently being amended, that this law doesn't comply with the Comprehensive Plan. They feel that there were other things cited as a basis for this law where it didn't include all the findings of some of the reports; that would include the Behan Report which proposed that you retain a PUD (Planned Unit Development) in the Hamlet District, that would include the 2012 law regarding cap size which also within it talked about maintaining a way to have commercial development in the commercial zone though the PUD. Now we see that nowhere in the Hamlet District is it permissible. That contravenes a whole long list of prior proceedings and prior holdings also in the Comprehensive Plan. We think that's a problem. We think that the law is drafted and fails to follow that and would be invalid if adopted.

We also think that if you look at the law in total including all of the density, open space setback, landscaping, public use exactions, circulation, and architectural infrastructure requirement what you're basically doing here with regard to the property of their client is rendering it valueless for any kind of development. First of all even to ascertain what your buildable space is virtually impossible given the law because there are things that are undefined, drainage areas and buffers on the

drainages areas, and then the three-foot strip around all the border of the zone. When you try to calculate that altogether what we come up with is very little buildable area. In one area you talk about wetlands and another area you say non-buildable is wetlands and buffering areas so you just keep chipping away at where you can build. You throw onto that say a 100-foot setback from Routes 85/85A. We don't understand why you would have a 100-foot setback. Is that supposed to be for some kind of visual? It's not a critical environmental area. It's not being protected like the view shed for the Helderbergs because we're looking in the other direction, yet in other areas of the town people don't have those kinds of restrictions and they can see things of more prominence aesthetically. When we put all of these together we have a constitutional taking. In takings cases, people often say they are very difficult, but we think in total this just may be enough to constitute that because we feel that there are so many restrictions and so many costs added regarding the type of architecture. If you want to build on a parcel of property you have to go out and count every tree that's over 6 feet in diameter regardless of whether or not you are anywhere near the trees. There are little pieces step of the way, and it's very clear from looking at the law that what the town really wants is the land. The town wants this land as a park. They want it for use for all the residents of the town. I think it's pretty clear as you read through it that that's constantly the theory and constantly the push of public common areas, using for the town, having areas where we are going to retrofit a bike path along Routes 85/85A. If we have to we'll take private land to do it. We just think all of these things together do constitute a taking under the various tests. Part of that is that we also think it's kind of reverse spot zoning where a few parcels are being really focused on to benefit the entire town but a great detriment to them. We went through that in the letter and cited a case so he wasn't going to reiterate that but we think it's an undue and unlawful burden on the few parcels that are subjected to this.

The Town Law §262 has a uniformity requirement regarding how property is treated within a distinct zone. We think that the entire framework from the subzones violates that. The local law states that it is in fact one zone and then there are subzones. The subzones get different treatment and property owners within get different treatment and yet it's part of a single zone. We think it's more troubling when you have that concept of being able to amend the boundaries of the subzone at the Town Board's sole discretion, but in the manner that it's not done the same as amending local law in other parts of the town code and not with the same standards. It has these preset standards of how that may be done and we think it could cause misuse in two directions. Someone who would be looking for some relief from a boundary of a zone now has to satisfy certain tests that are not necessarily to be required to be satisfied in a rezone and yet now have been codified. We are also concerned that it can be used the other way where people could just come in and get the boundary subzone modified. We think that's why you have the uniformity required in §262. We really ask that you take a look at that. Frankly as a result, not just of these comments but other comments, we hope that you spend some time and go through these issues and not just adopt a law tonight and this short public hearing. There have been a lot of proceedings in the past, but these are issues we really think deserve some attention. We just obtained a long-form EAF of the expanded language. It wasn't attached as part of the new proposed law on the website.

One thing that we would point out, not having the ability to review the whole thing, is a Type-1 action which is presumed to have a significant effect. We are rezoning hundreds of acres of property and by definition that is going to trigger conflict with existing community plans and goals especially since they are changing. Yet we do have a Comprehensive Plan that is being looked at right now and so in an odd way, while Comprehensive Plans are not necessarily used as a formal document, you actually have in place where you are treating it as a formal document. You've had some ad hoc changes along the way including the size cap in 2012 and some other reports but we're not following all of those reports and some of the reports, as we state in the letter, aren't really committee reports. We think that certainly you are looking to bring wide-scale public usage to the property that really is the hamlet center and there has not been any kind of analysis of what that will mean for traffic impacts coming from other parts of the town coming into the site, internal traffic, and things of that nature. Certainly given the low standard for requiring an EIS, we believe one should have been required.

There are a few items of particular concern regarding any kind of usage of land. One is this concept that we're going to try to push the landowners to allow public access. We're going to require open space be held, and the Planning Board basically gets to approve who gets to hold. One of the selections would be that the town takes the ownership of open space. Given a 60% open space requirement, again, that goes into this whole concept. It really seems like the town wants the land

but doesn't want to buy the land so they're going to squeeze it out or make it such that the plans and architectural requirements and infrastructure requirements and road width are going to be so detrimental to any kind of development that it's not feasible. Ultimately then the landowners are stuck holding land that they're paying taxes on year after year and sooner or later they are just going to be inclined to give in to some kind of cheap purchase or a land trust deal that they don't want to do, but they've been frustrated with these kinds of tight restrictions in this new urbanism concept, and we think that's a real problem.

We are concerned with figure 13 of that proposed law: Stream, drainage ways, wetlands, and ponds. It's a very unspecific map. There is not a lot of indication of what the boundaries are of all of these things, yet they really drive a lot of what reportedly the landowner will be able to accomplish. We don't know really the genesis of it, but it's certainly too big a diagram to us to try to extrapolate what the set backs are and things of that nature. The limit on the gross leasable area for the retail use, especially in conjunction with this very unusual subdivision restriction, would affect their clients' property significantly. First of all, you have to go back to 2012 to establish what the lots were. If there's 50,000 square feet retail, that's all you get on that whole lot. Now we have 147 lots where we can put 1.3 acres of retail space and that just seemed incredibly restrictive, especially since you don't allow subdivision of that property in order to maybe do another area of individually improved retail. We don't know where the 50,000 feet came from because in 2012 we had that size cap and it was 100,000. It also said that people don't worry about losing commercial development opportunities forever because you can always do that PUD, but now that's been taken away. As things change over time, there may be a desire to have some commercial base, and yet now with this law you've taken away even that ability. The ability to just say okay in the future if something comes up is more appropriate in a PUD. You can at least do it in this zone but now you've just taken that away with no explanation of why. That's changed since the Behan Report, and it was suggested in the size cap law.

Finally we are really concerned with a lot of the language of what "shall" be done or "possibly." Who defines what's possible? "We shall make open space available to the general public to the greatest extent possible." Who defines that? These are words that mean a lot and yet this is complete with those kinds of words and it just leaves you with the indication that if you really want to get anything done here, be ready to say yes we're going to open things up to the general public. It's consistent with all of the lanes and trails within the property that have already been laid out. There hasn't even been a project proposed, and yet the law shows where roads and trails are supposed to be. In order to satisfy zoning, especially in the areas of extractions for public use, you have to see whether the proposal actually has any kind of a nexus to the public use extraction that an improving body will seek to impose. Here we are doing it all in the opposite direction. Where saying you better be ready to make property available to the greatest extent you can if you are going to do anything. Again, we believe it another burden on development.

There is a portion of the landscaping in addition to having to inventory every tree over 6 inches in diameter and the cost that goes along with what stays. Trees and other features will be treated as a fixture (he is paraphrasing) and not something that's malleable and can be moved for the benefit of the developer for developments. He doesn't know exactly what that means, but again that throws more discretion yet again. Now, every tree has a statutory right to not be moved or disturbed, not one that's invested in the discretion of the Planning Board who actually has a plan in front of them that you can try to apply to recent conditions.

Again, we're concerned that when you apply everything within this law what's left will virtually leave no real buildable space and certainly when you take the pure land restrictions and the open space requirements that doesn't include several categories that are really frankly ill-defined at this time. We don't know and we can't tell within the contents of the law. When you add on the architectural requirement for how buildings will look and what kind of windows they'll have and the width of the streets including the boulevards, it will then take up even more land and impose even more costs for a potential developer. We think that what we're really getting here, with regard to our parcel certainly, is a piece of land that's going to be virtually impossible to develop and again that renders it valueless. We know that there have been a lot of proceedings here, and it looks like you're getting ready to take a vote tonight, so what we are asking is that you not do that, and step back, and consider some of these comments to try and come up with something that's a little more fair and acceptable to people. As the Behan Report said at one point, you have to keep some parity or viability and equity for the landowners instead of just putting the burden on some.

Supervisor LaGrange asked Mr. Stockli how long he has represented the Bender Mellon farm. Attorney Stockli said that he's represented them since the last meeting, in that timeframe.

Cynthia Elliott said that she would be specific on the law because that's what Attorney Naughton has asked. As a surveyor and person who had a Christmas tree farm, she's planted trees and cut trees on and off her whole life. If you take an area 100 x 100 on the Bender Mellon Farm, you could have 500 trees that are over 6 inches in caliber. The better plan would not have it say "shall locate all of those" because "shall" is a mandate. It means you'll do it that way. It doesn't mean shall we dance or shall we have tea. It means that you will hire a landscape architect, you won't have enough time in your life to locate all of those trees, and it is a cost-prohibitive item. If you want to do it, it would be better to say the outline of the trees shall be located. That's not a problem in many towns on large projects. That's point number one. She thinks that should be removed. She thinks that is really a deal breaker for anybody. Number 2, is that she looks at the potential of the trails that went through private land. Attorney Naughton discussed that it's really just a conceptual thought. If it's just a thought, take it out of the law because not only is she a surveyor, she is also a retailer and she asked her broker, "Now that we've put this in as a law, do I have to disclose this to anybody?" He said yes because you're affecting the property value because we have a thought that in the future we might want to put a trail through private land to which we have no easements and no liability set up, yet she would have to disclose that. There is case law that shows that on those rail trails, not just the other trails that are proposed or have thoughts for, we're not all happy with these items. Municipalities have been sued and paid out money in terms of putting those trails through. So even though they are only a thought, she would take that away. It also shows, as you look through those trails, a center in the middle of the HDCC area. That area shows a green area with trail going around it. She has trouble with that because she looks at the HDCC area and she ran all of the parcels under the EAF mapper. That HCC area as she understands it is to be the center and have a great deal of buildings as it only has a 25% open space. It's in the 100-year flood plain. So, she's not seeing how that works real well if that's the center and she's supposed to be able to do less open space when it's quite frankly a little bit wet. This is why when you pump your gas at Stewart's the cattails are over her head. That's why it's a little wet and that's probably why they built the barns on the Bender Mellon Farm where they are. They didn't build them at the intersection of the two farm-to-market roads because right down on Route 85 it is quite wet and in the 100-year flood zone. Part of the HDE expansion area is, as well. She would think that it's a bit capricious if that's where you want the center to be. She also finds that as she looks at the 116 acres of the Bender Mellon Farm in terms of the HDD area, she is perplexed as to the stream areas and exactly how much it is that would be allowed to be built on. That's a bit scary. As she also looks back at the trails on that figure, and she would turn to you Mr. Stockli when you said the word malleable because she likes to make the laws fit the land, not the other way around. When she looks at the trails, the trails don't go down one of the main roads of the Bender Mellon Farm. It cuts though. Why does it do that when in fact you have all of these reasonable trees on a tree line? That would be the roadway for a boulevard that I would think would be kind of grand. So, specifically, the 6-inch trees, the flood zone on the center, and the trails that are in essence in the future will put us in trouble, and she would urge you to take those out of the law.

Michael Bashant said that he just moved here from Glenmont and are on Upper Flat Rock Road. He just wanted to say how wonderful it is to be here by way of Voorheesville. They appreciate that it is open, it's got rural charm, and great character. He was in Glenmont for 30 years, and part of the reason they moved from Glenmont was the large-scale development. He is very happy here in the town where every corner doesn't look the same. Anybody that is avidly interested in large-scale development just has to sit in traffic on Feura Bush Road or Elsmere Avenue or anywhere from Panera down to Beacon Road in Glenmont to appreciate how as we step along the way every change we make severely impacts. A traffic study can tell you that everything is going to be wonderful, but when you add everything up it's really changed the town's character. He hopes that people keep that in mind as they plan for New Scotland.

Maura Mottolese said that her comments are really more questions, and she has two questions. Attorney Naughton mentioned the minutes from the workshop meeting after February 14th. Were there actually minutes taken at that meeting? Attorney Naughton said that what she mentioned was a one-page memo that explains the difference between the law that was the subject of the first hearing and the current draft of the law under consideration tonight. Mrs. Mottolese asked if there were minutes from that meeting. Attorney Naughton said that he didn't know what the answer to

that was. Town Clerk Deschenes said that if it was a Town Board meeting there should be minutes. Mrs. Mottolese said that this was a meeting that Mr. Olsen had requested for the stakeholders at the Community Center, and the Town Clerk was not there. Her other comment is that part of the difficulty of trying to analyze all of the different restrictions on all of the different subdistricts is that on the maps, or at least the maps that are online, it is very difficult to see exactly what the dimensions are. It's difficult for us, the untrained eye, so she can't imagine a developer trying to look at these and figure out exactly where these boundaries are. That's something that's incredibly unclear, and once you take all the roads, all the buffers, the 75-foot boulevards, the parks, the trails, and the 12-foot-wide bike paths, there is very little left over minus the 60% that affects basically just their property. She would ask the Board once again to take a hard look at this before you move forward. We're happy to talk.

2. Adjourn

Councilperson Snyder made a motion to adjourn, seconded by Councilperson Greenberg. The hearing adjourned at 6:32 PM.

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Diane R. Deschenes, Town Clerk