

A public hearing was held by the Town Board of the Town of Ballston on Tuesday, January 26, 2016 at 6:10 p.m. at the Town Hall, Charlton Road, Ballston Spa.

PRESENT: Tim Szczepaniak Supervisor
John Antoski Councilman
Chuck Curtiss Councilman
Bill Goslin Councilman
Kelly Stewart Councilwoman
Carol Gumienny Town Clerk
James Walsh Town Attorney

Supervisor Szczepaniak opened the public hearing at 6:10 p.m.

The Town Clerk read the following legal ad for the public hearing:

TOWN OF BALLSTON NOTICE OF PUBLIC HEARING
REGARDING LOCAL LAW 3 OF 2016

PLEASE TAKE NOTICE that pursuant to the Town Code of the Town of Ballston, Subdivision of Land, §107; §10 of the Municipal Home Rule Law; and the New York State Town Law §§ 276, the Town Board of the Town of Ballston will conduct a public hearing on January 26, 2016 at 6:10 p.m., Ballston Town Hall, 323 Charlton Road, Ballston Spa, New York 12020 to consider the change to the Zoning Subdivision of Local Town Code with respect to removing the Density Bonus from the Ballston Lake Residential District. All persons are welcome to offer their oral and/or written comments at the above time and place.

By order of the Town Board of the Town of Ballston dated December 8, 2015. For further information, please contact Timothy Szczepaniak, Supervisor, at (518) 885-8502 Ext. 13.

Carol A. Gumienny
Town of Ballston Town Clerk
PO Box 67, Burnt Hills, NY 12027
Dated: January 12, 2016

Andy Brick, Attorney for New York Development Group, had a number of concerns after reviewing the proposed local law. He feels that eliminating this particular section will not achieve the purpose you want to achieve. Any zoning amendments have to conform to the comprehensive plan. The Density bonus that exists is currently in comprehensive plan; by eliminating this you move further away from the comprehensive plan language. If you are going to go in this direction, the comprehensive plan needs to be amended first. Projects that are too dense in the Ballston Lake Residential District are better addressed with the Planning Board. The Density Bonus in the Code is an allowance governed and regulated by the Planning Board. Density Bonus isn't something that has to be applied for; it's just another tool to use. According to SEQRA, amending zoning that affects more than 25 acres, which in this case applies, constitutes a Type I Action which involves an Environmental Impact Statement. We propose that instead of taking action now, let's sit down, slow down, and convene with all parties involved: Town Board, Planning Board, developers, residents, to acknowledge everyone's concerns and find better ways to address the issue. We ask the Board to take our comments into consideration.

David Pierce, of Lake Road, requested the following email be entered into the public hearing minutes:

Dave, per my earlier transmittal regarding BLIA position statement, the attached information might be useful (note - I understated the community benefit that CP exacts)

Bill, I am including you since the provisions of the CP code to exact community benefit are very simple compared to more complicated versions of TDR programs. CP cleverly called it something other than TDR since that seems to scare people - basically they say: if you want more than the base density, the town board can consider that, but you must pay in the form of land or money for each additional development right (~EDU). Since Ballston has an open space capital fund (thank you for that), you have a place to put the money right away while the town wrangles over how money get allocated from the open space fund (e.g. how are farmland and other open space resources ranked and funded).

Clifton Parks Amenity Zoning provisions are in Article V-B of the Clifton Park Code Chapter 208; Also known as the Clifton Park Zoning Law
The enabling section is Section 208- 43.25

I have attached the core element in the attached word document. The basic monetary equivalence is about \$30000 per development unit. It is my understanding from CP planners that this level has not met even modest resistance. I estimated some time ago, at this rate, the town gave away almost \$150 M dollars in community benefit assuming about 1500 acres developed at 4 per acre compared to 0.5 per acre prior to 2006. Even the developments under construction now (Stonebridge, Chapel Hill, Timber Creek) probably amount to about 10 to 20 million lost opportunity at CP rates.

Sincerely,

Scott Miller

Attachment:

Where Incentive A (increase in single-family residential density) is sought, the Town Board shall only receive amenities per the following conditions:

(1) The incentive granted will be in a one-to-one proportion to the development potential of the unconstrained land, as described in the table below and determined by the Town Board at the time of application.

Determination of Amenity Required for Single-Family Dwelling Unit Incentive

| Development | Density Increase | Amenity Required |
|---------------------------|------------------|-------------------------------|
| Single-family residential | 1 unit | 3 acres of unconstrained land |
| OR | | |
| Single-family residential | 1 unit | \$30,000 |

(2) Residential unit density increases will be granted in increments, according to the table above, of double the original base density, or in other words, not to exceed an increase of 100% of the original base density for the incentive site.

C. Where Incentive B (increase in commercial, two-family, and/or semidetached residential density) is sought,

the Town Board may only receive amenities per the following conditions:

[Amended 9-20-2010 by L.L. No. 7-2010]

(1) Determination of incentive.

(a) The incentive granted will be in proportion to the development potential of the conservation site provided in terms of unconstrained land, as outlined in the table below and determined by the Town Board at the time of application.

Determination of Amenity Land Required for Commercial, Two-Family, and Semidetached Dwelling Incentives

| Development | Density Increase | Amenity Required |
|---|---------------------------------|---|
| Office | 1,000 gross square feet | 1 acre of unconstrained land or \$20,000 (\$20/gross square foot) |
| Retail | 1,000 gross square feet | 1.5 acres of unconstrained |
| Two family Semi-detached, and apartments over Commercial or retail ground floor space | One equivalent dwelling unit | 2 acres of unconstrained land or \$20,000 |

(b) For example, a project that is seeking a density increase of 2,000 square feet of office, 2,000 square feet of retail space, and two residential units beyond the base density would be required to provide nine acres of unconstrained land as a conservation site. Alternatively, \$140,000 could be paid to the Town's open space fund

David Pierce, of Lake Road, submitted the following letter regarding Density Bonus from the Ballston Lake Improvement Association.

JAN 12, 2016

dwelling per two acres. This change should be viewed as a first step in creating a more rational zoning plan that captures the vision of the 2006 master plan, without incurring the inconvenience and cost of a moratorium.

BLIA supports the 2006 comprehensive plan vision of protecting the rural character and quality of life in Ballston by protection of open space and farmland. While the 2006 zoning concept was well intentioned, subsequent experience shows that the high density development allowed in the Ballston Lake East residential zone has not worked as intended:

- 1) No community benefit for the increased density has been realized in terms of open space and farmland protection. Clifton Park, for instance, assesses \$10000 per additional dwelling unit above the base to be used for open space protection.
- 2) Subdivision design has not been sensitive to watershed and open space factors, following traditional designs that do not set aside open space.
- 3) TND designation has been used only for increased residential density, not, as envisioned, to create traditional hamlet mixed use (business and residential) areas surrounded by open space.
- 4) TND type development should be integrated over multiple parcels, but site planning is done only on project by project basis, negating many of the benefits of TND: for instance, pedestrian and multiuse trail planning is non-existent.

In addition, BLIA believes that recommendations of the 2006 comprehensive plan need to be implemented fully before any zoning changes can be properly implemented.

- 1) In subdivisions (such as conservation subdivisions), open space priorities should be set by the official town Lands of Conservation interest maps. Set aside lands should not be up to the developer and planning board.
- 2) The lands of conservation interest lands must include all open space resources: farmland, water resource, wildlife, and scenic. The master plan calls for protection of open space and farmland, not just farmland.
- 3) Conservation subdivision plans that have been executed in town are weak on protection, and partition the open space elements making for ineffective use and administration of these lands. Multiple partitions should be strongly discouraged. Open space resources that are protected and must coordinate with lands of conservation interest on adjoining sites.

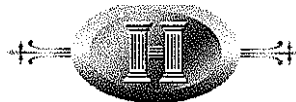
BLIA supports the developing a Transfer of Development Rights (TDR) program, but only if applied to all open space resources. While the eastern part of the town is an appropriate sending zone for some high density development, it also contains some critical scenic, wildlife, recreation and water resource lands. These lands should be eligible for TDR protection, and under no circumstances, should they be sacrificed for land protection elsewhere in town.

DAVID PIERCE
BLIA Board of Directors

Dr. Pierce also stated after five years of going to Planning and Zoning Board meetings, the Planning Board's hands are tied with current zoning. The developers come to these Boards and state this is what they can do according to the zoning; therefore, the Planning Board has no means to talk to developers, with laws behind them, to present to the developers.

Geoff Brooks, Develop submitted and review the following letter:

HERITAGE



BUILDERS GROUP, LLC

PO Box 1123 Clifton Park, New York 12065

Ph: 518.348.0931 Fax: 518.373.2848

January 26, 2016

Town of Ballston Town Board
Ballston Town Hall
323 Charlton Road
Ballston Spa, NY 12020

ATTN: Tim Szczepaniak, Supervisor

RE: Proposed Local Law 4 of 2016

Dear Supervisor Szczepaniak and Members of the Town Board:

We are writing to express our concerns for the record of the Town Board regarding the proposed adoption of Local Law 4 of 2016 (Local Law) intended to "remove the density bonus in the Ballston Lake Residential District (BLRD)." Section 3 of the Local Law appears to state the Town Board has "concerns" about previously approved residential development in the Town. Specifically, and, apparently only in the Ballston Lake Residential District,¹ that 1) the "Density Bonus could allow for a much higher density" in the Town than the "Town Board feels is appropriate in consideration of the Comprehensive Plan"; and 2) TND's that have been previously approved "since the beginning of the program have not addressed the TND aspects of development as envisioned by the Town Board, specifically the mixed use provision have been missing in the proposals put forth."

Section 4 of the Local Law proposes to delete §138-21.2.3 of the Zoning Law. §138-21.2.3 authorizes the Planning Board to apply a density bonus to subdivisions during subdivision review. The density bonus (called "incentive bonus" in the subdivision regulations) authorizes 6 single family dwellings per net acre and 12 multifamily units per net acre as part of a TND design. Finally, Section V of the Local Law vaguely states that "all other local laws and ordinances of the Town of Ballston that are inconsistent with the provisions of this local law are hereby repealed."

As a developer in the Town of Ballston who has received approvals from the Town Board and Planning Board for projects in the BLRD, this concerns us and has the potential to severely damage our business operations and investments.

¹The Zoning Law also provides for the same "Density Bonus" within the Hamlet Residential District which apparently is not affected by this Local Law. See Article V; §138-8.3. Why isn't the Town considering deleting this provision as well as part of this process?

Elimination of the Density Bonus provision is contrary to the Town's Comprehensive Plan. We have always understood that New York State law requires that zoning regulations must be in compliance with a comprehensive plan. The Town's Comprehensive Plan explicitly set forth its vision for the area of land to the east of Ballston Lake. It states: "This particular area of Ballston, located east of Ballston Lake is more conducive to higher density residential development given its access to infrastructure and proximity to the Northway." Town Comprehensive Plan, §3.4.

During the 2005-2006 simultaneous environmental review process for the Comprehensive Plan, and the zoning and subdivision amendments proposed in furtherance of the Plan, the Town Board found that the Comprehensive Plan outlines action to achieve the shared vision and establishes a framework for community-wide efforts on plan implementation. See, DGEIS Section 4 Potential Environmental Impacts and Mitigation Measures. Appendix B to the DGEIS contained the proposed zoning and subdivision amendments which included the same Density Bonus provisions at issue here. In other words, the Density Bonus provisions were adopted as being consistent with and in furtherance of the vision of the Town as set forth in the Comprehensive Plan. In fact, the DGEIS stated that no adverse impacts were identified and positive impacts were expected as a result.

Accordingly, the Local Law is contrary to the Comprehensive Plan and the Town may not amend the Zoning Law to delete this provision without first amending the Comprehensive Plan. The Town also must follow the procedural requirements to do so. It is our position that adopting the proposed Local Law, would undermine the integrity of the existing Comprehensive Plan and the Zoning Law and subdivision regulations adopted pursuant to it. When a zoning amendment is in derogation of the Comprehensive Plan, it is not in the public interest or in furtherance of the general community goals as a whole and would be invalid.

The proposed Local Law describes the "concern" and "feeling" of the Town Board. However, elimination of a provision in the Zoning Law that was expressly adopted in furtherance of the Comprehensive Plan cannot be eliminated on a whim without first a detailed analysis and amendment of the Town's Comprehensive Plan. To eliminate the Density Bonus provision in the BLRD based on "feelings" of the Town Board and without hard facts and analysis would violate New York State Law. Moreover, the Town Board does not specify which TND's that have been approved which it feels are not consistent with "TND" aspects. Nor does it address why or how such projects were approved in the first instance. As a

developer in the Town, due to the vagueness of this Local Law, combined with the automatic repeal of inconsistent local laws, this causes us great concern.

Recently, on January 20, 2016, after nearly a one year review process, our project, the Abele Woods Residential Subdivision, received preliminary plat approval from the Planning Board. As you will recall, the Town Board approved the rezoning for this project from Ballston Lake Residential District to the Abele Woods PUD in 2014. Accordingly, although we have been assured in our discussions with the Town that the Local Law will have no impact on our projects, we are concerned that the proposed Local Law due to its vagueness might inadvertently adversely impact our approved PUD without actually saying so. If this happens, the Town should be on notice that we are able and willing to protect our property rights.

We are also concerned that the Town has not properly followed the SEQRA process. Amending the Zoning Law to delete Density Bonus in the BLRD is a rezoning action that will impact over 25 acres of land. Accordingly, this is a Type 1 action and, at minimum, a full environmental assessment form is required to be prepared. However, it is more likely that a supplement to the prior DGEIS is legally required. Has the Town Board classified the action yet? Where is the EAF or supplemental EIS? As of the date of this letter neither document has been posted on the Town's website as required. How can a citizen properly comment without this basic and essential information being made available in a transparent manner? In fact, it is our understanding that a properly completed EAF would require the lead agency to consider whether or not the proposed action is consistent with the Comprehensive Plan. Why is the Town segmenting the review of this proposed zoning amendment from a full review together with the required amendment of the Comprehensive Plan?

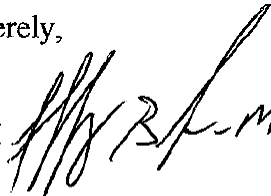
Has the proposed zoning amendment been referred to the Saratoga County Planning Board for a recommendation pursuant to General Municipal Law 239-m? We do not see how a proper referral of all the necessary materials could have possibly occurred yet to constitute a proper referral. No action may be taken by the Town Board until the County Planning Board has issued its recommendation.

Additionally, it does not appear that the Town Board is following its own procedures to amend the Zoning Law. Specifically, §138-96 of the Zoning Law requires that the Town Board, prior to any zoning amendment obtain a report from the Town Zoning Board. Specifically, it states: "Every such proposed amendment shall be referred to the Zoning Board of Appeals (ZBA) for report prior to public hearing thereon." The Town Board may not take action until this procedural step occurs. We understand that the Town's ZBA undertook some type of zoning review (and possibly action) in its' January 6, 2016 meeting, but as of the date of this letter no records are available to the public for review as to exactly what was done.

Finally, at the December 8, 2015 Town Board meeting, the prior Town Board adopted a resolution to set a public hearing to consider Local Law 3 of 2016 "Removal of the Density Bonus". Since the current Town Board did not take office until January 1, 2016, it is odd that the prior Board could set such a public hearing for the new Board. Moreover, adding to the confusion is that the old 2015 resolution set a public hearing for local law 3, while it is apparently now listed a local law 4. Which is it? Are there two different laws? Are there differences? Has any Local Law pertaining to removal of the density bonus been properly introduced by the newly currently constituted Town Board in 2016 so that it might be considered at a regular meeting and then possibly a public hearing be set to consider it? The public has a right to know what is being proposed.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

BY:  Member

Geoffrey Brooks
Member
Heritage Builders Group, LLC.

Ms. Pierce, of Lake Road, stated after hearing tonight's comments, if the Board feels they have to amend the Comprehensive Plan, please consider a moratorium to take the time needed to address the zoning issues.

Mr. Gibson, of Eastline Road, echoes what Dr. Pierce had stated and strongly encourages the Board to move forward with this local law.

The public hearing was closed at 6:28 p.m.

Respectfully submitted,

Carol A. Gumienny
Town Clerk