

1 **Ashland Planning Board Meeting**  
2 **November 21, 2016**  
3 **Board of Selectmen Meeting Room, Second Floor of Town Hall**

4  
5 **Members in Attendance: Preston Crow, Dale Buchanan, Joseph Rubertone**

6  
7 Mr. Crow called the meeting to order at 7:20PM

8  
9 **Announcement of Pond St. (Rt. 126) Renewal Committee**

10  
11 Mr. Ed Bates announced that there will be a MassDOT public hearing on the project to rebuild  
12 Pond St. on December 6, 2016 at 7:00 PM at the Warren School.

13  
14 **Public Hearing on Discussion on Zoning Bylaw – Downtown Height Restriction**

15  
16 Mr. Crow read the full legal notice (a copy of the proposed bylaw) that was run in the paper,  
17 after noting a small change in the number of the bylaw, which was a simple misprint. Mr. Crow  
18 then explained the proposal in “laymen’s terms.”

19  
20 Mr. Michael Herbert, Ashland Town Manager, gave the town administration’s point of view. This  
21 point of view was that because the bylaw limited the number of stories, not the number of feet,  
22 the town needed to amend the bylaw. The new maximum height in the CD District would be 38’,  
23 which is the height of the new 21 Main St. construction, or 45’, the height of Town Hall, with a  
24 Special Permit. The building would have to conform to the Form-Based Code.

25  
26 Mr. Buchanan asked if there is a map online that would have the district where this law would  
27 take effect, to which Mr. Herbert responded that the district is on the town zoning map, which is  
28 online.

29  
30 Sara Hines of Eliot St. approached the podium asked that if there is no parking required  
31 downtown, how would the board measure parking as part of the special permit process. She  
32 also remarked that she is working on a project downtown and that this bylaw would negatively  
33 affect that project. Ms. Hines then went on to explain that she felt that the problem with the  
34 proposed bylaw is that it would impact application to HUD financing for mixed use buildings.  
35 She also said that she felt that as we do not have a vision for downtown we shouldn’t be  
36 capping the heights allowed without a coherent plan for the downtown. She also had a concern  
37 that as the town only has 750 acres not zoned residential we should not be limiting what  
38 developers can do, and that the proposed bylaw might also apply to Rt. 126.

39  
40 Mr. Buchanan asked to clarify the project that Ms. Hines is working on. Ms. Hines replied that  
41 because the project she was working on was in an old mill building with 15’ ceilings, she might  
42 run into problems with her design. Mr. Buchanan and Ms. Hines had a discussion on the  
43 problems she may have with her specific project.

44  
45 Mr. Crow then responded to Ms. Hines that the feedback from the town is that they do not want  
46 the current downtown buildings to be dwarfed by anything drastically larger than what is  
47 currently there.

48  
49 Joel Arbeitman of Woodridge Ln. came to the podium and expressed his concern that he would  
50 have rather had the planning board meeting been held prior to the deadline to get an amended  
51 bylaw to town meeting. Mr. Arbeitman then stated that he was happy that the board was

1 thinking of having a specific limit in feet, and then asked if the board had used the financial  
2 impact tool to see if the board had imputed the bylaw into that tool to see the effect of the  
3 potential bylaw. He also stated that he thought the article should be pulled because the bylaw  
4 needs more study. He lastly asked the board if they had the authority to deny a special permit  
5 for any reason or do they have to have a specific justification for the denial.  
6

7 Mr. Crow replied that the board had broad powers to deny a permit, but they couldn't just deny  
8 for any reason, but must had a logical reason, even if that reason is vague, such as "it doesn't fit  
9 with the neighborhood."  
10

11 Lisa Mead, Town Council, interjected that there are 6 specific criteria in bylaw 9.3.2 that the  
12 board must consider as written in the bylaw, to which Mr. Crow agreed, but added that the  
13 criteria are somewhat vague. Ms. Mead stated that the standard on appeal is whether or not the  
14 board's decision is reasonably debatable.  
15

16 Mr. Arbietman stated again that he thought the bylaw was premature due to the reasons Mr.  
17 Crow was just referring to and that people had said that they do not want a downtown that looks  
18 like downtown Framingham, and that there are only three members of the public in attendance  
19 so the bylaw cannot be adequately debated.  
20

21 Mr. Rubertone responded that this is an attempt to protect the downtown. The current rules are  
22 unclear and could leaving the town open to projects we do not like.  
23

24 Mr. Crow responded that the financial impact tool cited by Mr. Arbeitman was for evaluating the  
25 impact of specific projects and not good for hypothetical projects.  
26

27 Ms. Hines returned to the podium and stated that she did not know this was coming up and that  
28 was too sudden. She also mentioned that project set behind buildings or off the street may be  
29 OK over the 45' limit and this does not allow for that. She then stated that she agreed with Mr.  
30 Arbeitman's comments about the timing of the article.  
31

32 Mr. Crow that there was a meeting on this and other zoning articles in September that was well  
33 attended.  
34

35 Mark Dassoni of Hawthorn Rd. took the podium and spoke in support of the bylaw amendment  
36 and where he thought the opposition was from.  
37

38 Mr. Crow asked if there were any more comments, to which Mr. Rubertone wanted clarification  
39 on the process.  
40

41 Mr. Crow then spoke to the scheduling of the meeting and the lateness of the date in which the  
42 hearing was scheduled. He also spoke in favor of the proposed bylaw.  
43

44 After Mr. Crow explained how the board can vote, Mr. Crow asked if there was a motion to close  
45 the hearing on this article. Mr. Rubertone made the motion, which was seconded by Mr.  
46 Buchanan. The vote was 3-0 to close the public hearing.  
47

48 Mr. Crow asked if there was a motion to recommend that the town take action and what that  
49 action should be.  
50

1 Mr. Buchanan put forward a motion to recommend that the town pass the bylaw amendment,  
2 which was seconded by Mr. Rubertone. The motion passed 3-0.

3  
4 Mr. Crow then stated that while the board voted in opposition to two of the people who lobbied  
5 against the bylaw, he did appreciate them coming and voicing their opinions.

### 6 7 **Public Hearing on the Marijuana Moratorium**

8  
9 At 7:58 PM Mr. Crow read the text of the proposed bylaw and then stated that the bylaw does  
10 not apply to growing marijuana in the home, and that this was just related to zoning.

11  
12 Mr. Herbert again gave the town administration's point of view. This was that with the passing of  
13 Question 4 in the Commonwealth that there was still confusion in what the town can do and that  
14 this would give the town "room to breathe" and give the town time to come up with appropriate  
15 zoning bylaws.

16  
17 Mr. Crow explained the point of view of the board, which was that because the bylaws do not  
18 restrict the placement of the possible retailers, it could be placed anywhere. He also stated that  
19 the fear was that someone would try to get the permit process started before the town would be  
20 able to get any zoning on the books, and that the town just wanted to get the time to get some  
21 zoning on the books. He also stated his opinion that he hoped that if and when the zoning would  
22 be passed, the moratorium would be repealed.

23  
24 After asking if there were any public comments, Mr. Arbeitman came to the podium. Mr.  
25 Arbeitman pointed out a couple of "Scribner's errors" at the start of his comments. Secondly, he  
26 asked for clarification with regards to repealing laws after they went to the Attorney General. Mr.  
27 Crow responded that once the zoning bylaws are in place and passed by the Attorney General's  
28 office, the moratorium would no longer be needed and could be lifted, just like the moratorium  
29 for medical marijuana.

30  
31 Mr. Arbeitman then asked for clarification on it would be the planning board that would regulate  
32 the smoking of marijuana in those establishments. Mr. Crow deferred to Town Council who  
33 responded that the Commonwealth's law would treat sale and consumption differently, but the  
34 law is currently unclear.

35  
36 Mr. Arbeitman asked what would happen if the town took no action by the end date of the  
37 moratorium. Ms. Mead responded that in that case marijuana retail establishment could go  
38 wherever retail establishment can go right now. There was also a conversation on having  
39 licenses, such like a liquor license, but the state has to work that out.

40  
41 Ms. Hines came to the podium and asked if the existing meal tax apply to liquor and would it  
42 apply to marijuana. Mr. Crow replied that the act passed by the state allows for a local tax to be  
43 put in place by the town.

44  
45 Mr. Crow asked the board if they had any comments, to which Mr. Buchanan stated that seeing  
46 all the questions reaffirmed that the town needs some time to work all of this out.

47  
48 Mr. Crow then asked if there was a motion to close the public hearing. Mr. Buchanan moved to  
49 close the public hearing with Mr. Rubertone seconding. The board voted 3-0 to close the public  
50 hearing. Mr. Buchanan then made a motion to recommend that the town vote to approve the  
51 moratorium, Mr. Rubertone seconded and the motion passed 3-0.

1  
2 **Public Hearing on Rate of Development Bylaw**  
3

4 Mr. Crow read the proposed bylaw after explaining a small number of “Scribner’s errors” in the  
5 numbers of the bylaws.  
6

7 Mr. Herbert gave the town’s point of view, that the town has faced considerable strain on  
8 municipal services, and that this bylaw is as conservative can be while still being legally  
9 defensible. After 4 years, the town will be in a much better place to manage future growth and  
10 the impact that growth will have on the town and the town’s services.  
11

12 Mr. Buchanan asked if the process of figuring out how to the town was going to handle the  
13 growth, to which Mr. Herbert responded that they had and that they would hope to be done with  
14 that project by 2018. Mr. Herbert also explained what happens when the law would expire, i.e.  
15 what would happen if a project comes in year three in a four year law, and that project lasts over  
16 the life of the bylaw.  
17

18 Mr. Rubertone asked for clarification on what the bylaw actually says, to which Mr. Herbert  
19 explained the finer points of the proposed bylaw and the challenges the proposed bylaw might  
20 face.  
21

22 Mr. Crow stated that this might prevent projects getting completed quickly. However, developers  
23 may just wait until the bylaw expires to build larger projects. Mr. Buchanan and Mr. Crow  
24 discussed some of the town’s projects are being completed. Mr. Herbert added that there are  
25 rules in place to require roads and the like be completed within a given time frame and that this  
26 proposed bylaw would not affect that.  
27

28 Mr. Crow asked if there were any questions from the public, and Ms. Hines returned to the  
29 podium. Ms. Hines asked if there would be any effect on 40B developments, to which Town  
30 Council and the Chair said that it would not. Ms. Hines also stated that with all of the recent  
31 permitting “the horse is already out of the barn,” questioned the reasons for the proposed bylaw,  
32 and the ability to finance projects that are stretched out in this way. Mr. Crow corrected Ms.  
33 Hines on a couple of minor points in her understanding of the law, and she and the Board had a  
34 conversation on the timing and the effect of the bylaw.  
35

36 Mr. Arbeitman approached the podium and called out a specific point 9.7.4, saying that with the  
37 planning board had the ability to give permits to bypass this bylaw, this gave him concerns, and  
38 given the severity of the problems, that this “escape hatch” would exist, and asked for  
39 justification of the necessity of the loophole in question. Town Council responded that the courts  
40 require a “relief valve” to allow for discretion in special circumstances. Mr. Arbeitman asked  
41 what these special circumstances should be. Mr. Rubertone responded that the bylaw had to be  
42 defensible and that was a driver in creating the proposed bylaw. Mr. Crow stated he would look  
43 at the project in a larger sense and see what effect each project would have on the town (water,  
44 sewer, and schools were mentioned).  
45

46 Mr. Dassoni approached the podium and spoke in support of the rate of development proposed  
47 bylaw. He had a couple of procedural questions, which were answered by the Chair.  
48

49 Mr. Arbeitman returned to the podium with an additional question of has there been thought of  
50 the implication of what will happen in year 5, after the proposed bylaw expires, and a possible

1 "rush" of permits that were put off by the proposed bylaw. He also asked if a phase-out of the  
2 bylaw would be possible or advised.

3  
4 Ms. Mead replied that the longer the bylaw goes the less defensible it is. She also replied that  
5 there have been no phase-outs.

6  
7 Mr. Rubertone asked if there have been any open ended bylaws, to which Ms. Mead responded  
8 that there was not. Also, he asked if there were any tools the board could use to manage the  
9 backside of the bylaw in year 5. The board discussed this, and that there were no examples.

10  
11 Ms. Hines asked the implications of this proposed bylaw on the reconstruction on Rt. 126 (Pond  
12 St.). The board and Ms. Hines discussed this point and the possible complications to builders  
13 looking to build on Pond St.

14  
15 Mr. Rubertone asked how the proposed bylaw would connect to mixed-use projects. The board  
16 and Ms. Hines discussed this point and how developments would be effected.

17  
18 With no more public comments, Mr. Crow asked if there was a motion to close the public  
19 hearing. Mr. Buchanan put forward a motion to close the hearing, Mr. Rubertone seconded the  
20 motion and the motion passed 3-0. Mr. Crow asked if there was a motion to move forward a  
21 recommendation to the town meeting. Mr. Rubertone put forward a motion to recommend that  
22 town pass the article, which was seconded by Mr. Buchanan. The motion passed 3-0.

#### 23 24 **Announcements**

25  
26 Mr. Herbert announced that Sheila Page had accepted the job of Town Planner. Her start date  
27 will be December 12<sup>th</sup>.

28  
29 At 9:10 Mr. Rubertone put forward a motion to close the meeting which was seconded by Mr.  
30 Buchanan. The board voted 3-0 to close the meeting.