

CONWAY PLANNING BOARD

MINUTES

AUGUST 24, 2023

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CONWAY PLANNING BOARD

MINUTES

AUGUST 24, 2023

A meeting of the Conway Planning Board was held on Thursday, August 24, 2023, beginning at 6:01 pm at the Conway Town Office, Conway, NH. Those present were: Chair, Benjamin Colbath; Selectmen's Representative, Steve Porter; Vice Chair, Ailie Byers; Secretary, Erik Corbett; Eliza Grant; Bill Barbin; Mark Hounsell; Town Planner, Ryan O'Connor; and Planning Assistant, Holly Whitelaw. Alternate Debra Haynes was in attendance.

WORK SESSION

Mount Washington Valley Housing Coalition Zoning Atlas Presentation: Jen Burkett, Executive Director of Mount Washington Valley Housing Coalition and Tim Kershner of Memorial Hospital appeared before the Board.

Max Latona, Emily Hamilton, Violet Victoria, and Ben Frost appeared via Zoom and gave a demonstration on the atlas tool.

Chair Colbath called a five-minute recess.

Chair Colbath suggested taking the agenda items out of order out of respect for the members of the public present for the food truck discussion.

Ms. Grant made a motion, seconded by Mr. Corbett, to take the agenda items out of order and address the food truck issue first. Motion carried, with Mr. Hounsell present.

Food Trucks:

Mr. O'Connor presented a draft ordinance created as a discussion piece regarding approval of food trucks. The Planning Board could approve permanent food truck locations at existing commercial facilities in specific zones. Food truck operators could apply for a permit and any permitted food trucks could operate at these approved locations. It does not include the North Conway Village Commercial zone, to push business out of the more impacted commercial districts.

Chair Colbath asked for Board comment.

Mr. Porter said the North Conway Village Commercial District should be included, as it is a primary commercial district and will be impacted the most. Mr. Hounsell agreed.

Chair Colbath noted that the property should provide bathroom facilities. He clarified that a temporary food truck event permit would be separate from a special event permit.

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Ms. Byers verified that signage on the food truck is not included. She asked about approved seating locations and Mr. O'Connor clarified that seating is approved in a parking lot as long as it is not in the travel way.

Mr. O'Connor asked if the Planning Board would like to approve proposed food truck locations, or if it should be administrative or through a permit. Mr. Hounsell said the staff should not have to handle this. He believes this should go through the Planning Board and the Select Board. He is concerned about the special exemption provision, as he would rather not have the ZBA be involved in this process.

Ms. Byers asked if permanent food truck location approvals would be time limited. Mr. O'Connor said the intent was that once a location was approved, it could be utilized at the property owner's discretion.

Mr. Porter supports the idea of the requests going through the Planning Board instead of the ZBA, due to their perspective of the entire commercial area. He agrees with granted permits being open-ended. Mr. O'Connor clarified the goal was to keep the process from being overly burdensome and not involve multiple boards. He suggested the location be approved by the Planning Board and the food truck permit be an administrative approval.

Ms. Grant said she believes the Board should consider resurrecting a minor site plan approval process. Chair Colbath agreed. Ms. Whitelaw clarified the minor site plan review does not require a survey.

Ms. Byers verified that the business location would undergo site plan approval, not the food truck, and Mr. O'Connor agreed. Ms. Byers noted some businesses might not be willing to undergo the site plan review process.

Mr. Hounsell suggested there should be a size restriction on the food trucks.

Ms. Byers noted her concern that an open-ended approval is different than an annual review and approval of a location.

Mr. Hounsell asked if there was an expectation that abutters would be notified of the presence of a food truck. Mr. O'Connor pointed out this would occur with a site plan review.

Chair Colbath asked for public comment.

Brian Roach clarified that a permitted lot would not be governed by the 14-day rule and Mr. O'Connor agreed. Mr. Roach said it is difficult to get in touch with the owners of larger properties to request that they go through the site plan review process. He clarified that if the property owner does not want to allow food truck customers to use their bathroom facilities, the food truck must apply for a permit to have a Porta Potty onsite and Chair Colbath agreed. Ms. Grant suggested a permit for a Porta Potty be included in a permit to operate a food truck.

Shawn Flynn, operator of Wings Food Truck, asked what permit would be necessary to access a campground. Mr. Roach noted campgrounds are private property and not accessible to the public.

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Mr. Hounsell would like to see strong language that the Board is not interested in regulating or overseeing food trucks on private property. Ms. Grant said a distinction needs to be made regarding private events. Mr. Flynn asked if food truck festivals would be allowed and Ms. Whitelaw said this is usually approved via a special event permit. Mr. Porter clarified the Board has been asked to come up with a regulation to deal with food trucks at commercial businesses.

Michael Mitchrone, general manager of Settlers Green, said larger business owners should be willing to go through the site plan review process. He suggested businesses be allowed to indicate more than one food truck location, for reasons such as snow storage and the availability to shift locations based on events occurring.

Lloyd Metcalf, owner of Dragon Wagon Food Cart, suggested adding a question to the special event permit application asking if a food truck will be present.

Mr. Roach said his is one of the only food trucks open all year long, so they will run out of locations under the current 14-day restriction.

A food truck operator asked if any of the Board members have utilized a food truck and many members said they had. She expressed her frustration with the 14-day limit. Mr. Porter expressed his support of food trucks.

Chair Colbath thanked the public for attending and said there will be a follow-up meeting once the ordinance is finalized.

Chair Colbath closed public comment.

Murals:

Mr. O'Connor said a public art ordinance is needed that addresses murals, but could include sculptures, street art, performance art, etc., in the future. He presented a proposed ordinance, reviewed the definitions of murals, and noted that it distinguishes murals from signs.

Chair Colbath asked for Board comment.

Ms. Byers asked about a mural not covering the exterior surface of a building. Mr. O'Connor clarified that this applies to not blocking egress.

Chair Colbath stressed the importance of delineating the difference between murals and signs and believes there is verbiage in this ordinance that covers this.

Mr. Hounsell noted the need to maintain a mural. Mr. O'Connor said the ordinance will state that maintenance is the responsibility of the property owner and that code enforcement will have an enforceable ordinance.

Chair Colbath asked for public comment.

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Mr. Mitchronev complimented Mr. O'Connor on the first draft of this ordinance. He asked why the mural should not be located on the façade of a building. The Board discussed the definition of a façade and agreed murals should not be located on the front of a building. Mr. O'Connor will rewrite this portion to indicate the primary entrance of a building instead of a façade.

Mr. Mitchronev asked for clarification of the area that a mural can cover. The Board discussed where murals should be located and how much of a wall they should cover. Mr. Mitchronev asked if windows, doors, and awnings would be included in the square footage of a wall.

The Board agreed that murals and public art should be clearly defined.

Mr. Hounsell said no limitations should be placed on murals on side walls, as this restricts an artist's ability to create art.

Ms. Whitelaw asked if more than one mural was installed, would that be considered to meet the 25% restriction. The Board agreed this would be the case. The Board discussed removing the percentage requirement. Mr. Mitchronev supported this idea, saying murals are a draw to the town and modernizes the town. Some buildings in town would be beautified by applying a mural. He said there are a lot of unique structures in town and restricting murals on front façades is difficult. Flexibility on where the mural can be located would be preferable.

Chair Colbath closed public comment.

Kennel Definition:

Mr. O'Connor presented a definition of a kennel. He reviewed the proposed ordinance.

Ms. Grant suggested changes to the definition of a kennel in the proposed ordinance and said that it should be reoriented to address noise buffers.

Chair Colbath asked for public comment; there was none.

Extension of Moratorium:

Mr. O'Connor said the justification for the moratorium needs to be revisited. He introduced innovative land use control to the Board, which must be mentioned in the Master Plan. This gives the Board the ability to explore different things regarding housing and requires commercial developments to contribute more to the public infrastructure. He listed a number of factors that should be addressed in the Master Plan.

Chair Colbath asked for Board comment.

After discussions regarding impervious surfaces, the zero rental vacancy rate, and water quality, the Board agreed time is needed to continue to discuss this issue.

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Mr. Hounsell made a motion, seconded by Mr. Barbin, to prepare a warrant article for the committee to review on September 28th for a public hearing on October 12th. Motion carried unanimously.

Other Business

Parkway

Chair Colbath said the Board was engaged in an accidental quorum via email regarding the property potentially available from the state on the North-South Road. He noted the emails must be available for the minutes.

Mr. Porter said the Board of Selectmen is dealing with this issue. He explained there are two parcels, the vacant condos by Settlers Green and five acres along the North-South Road that the state DOT has referenced the town as potential interest. The Board of Selectmen is waiting for more information from the state.

Chair Colbath said he spoke with Joe Kenney regarding potential avenues forward, as the Board wants to protect this area. Mr. Kenney mentioned looking into federal opportunities to purchase the land from the state. Chair Colbath spoke with Mr. O'Connor, as he would like to have writing in place, should something of this nature come about.

Ms. Grant agreed this area should be protected. She would like to see a clear plan in place to pursue this. Mr. Porter stressed that this issue is in the Board of Selectmen's purview at this time. Chair Colbath said he feels there is no harm for the Boards to work in tandem on this issue. Mr. Porter recommended the Planning Board let the Board of Selectmen pursue this issue.

Mr. Hounsell made a motion, seconded by Mr. Colbath, that the Planning Board authorize the chairman to appoint three members to a subcommittee to research the definition of the overlay layout of the North-South Parkway and recommend protections. Mr. Hounsell said the parkway is identified as a parkway in the Master Plan. It was voted to be a parkway by the Board of Selectmen in 2005. This came about as the federal government said a bypass was needed and it was part of this project. However, the bypass and parkway were done away with. He said this property is very vulnerable to development. He said the Planning Board is empowered under state law to be the planners for the Town. He said it is time for the Board to save the parkway.
Motion carried, with Mr. Porter present.

Chair Colbath, Mr. Porter, and Ms. Grant volunteered for this subcommittee. Chair Colbath appointed Ms. Grant to be the chairman of the subcommittee.

Facilities Use Committee

Chair Colbath reported Mike DiGregorio said the School Board has decided to give the Planning Board a non-voting member position on the Facilities Use Committee. **Chair Colbath made a motion, seconded by Mr. Hounsell, to appoint Mr. Barbin to this position.** Mr. Barbin said he was not interested. The Board discussed the purpose of appointing a non-voting member to a committee. **Chair Colbath rescinded the motion. Mr. Hounsell rescinded the second.**

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Mr. Hounsell made a motion, seconded by Ms. Byers, to appoint Mr. Corbett as a member of the Facilities Use Committee. Motion carried, with Mr. Corbett abstaining from voting.

September 28th Work Session:

Waterway protection
Moratorium language
Outdoor dining
Parkway
Site Plan Amendments

Ms. Grant requested the old minor site plan review information be sent to the Board.

Chair Colbath opened public comment.

Tom Eastman of the Conway Daily Sun said he was present at the School Board meeting where the Planning Board was said to have a "closed mind" regarding closing the school. He said the meeting wasn't a work session; it was the Master Plan committee. He said Mr. Hounsell made a motion for a straw poll; it was not a formal vote.

Chair Colbath closed public comment.

Chair Colbath adjourned the meeting at 9:12 pm.

Respectfully submitted,
Beth Haggeli



TOWN OF CONWAY

23 MAIN STREET • P.O. BOX 2680 • CONWAY, NEW HAMPSHIRE 03818

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MEMO

To: Planning Board
From: Planning Staff
Date: August 11, 2023
Re: Proposed Food Truck Ordinance

Following our discussion on Food Trucks, the draft language below has been created to give a starting point to work toward the ordinance update.

The strategy of draft was to separate the approval of Food Truck locations, which would be the prevue of the Planning Board, and the approval of the Food Trucks themselves which would be a permit approved by the Select Board.

This language would allow the Planning Board to approve permanent Food Truck locations within certain zones on existing commercial properties, these operations would be considered an accessory use. A current permit, approved by the Select Board, would also be required for any Truck operating within the Town of Conway. Any Food Truck with a current permit could then operate in any approved location at the discretion of the property owner.

The Ordinance would also offer the option for a Temporary Permit to be issued for those looking to operate in a location for a maximum of fourteen (14) days. This would give an allowance for Food Trucks during special events on both public and private property. If the language was to be adopted a Food Truck permit would also need to be created, permits would be renewed yearly.

Draft Amendments to Chapter 170 to include Food Trucks

170.10 Food Trucks

170.11 Applicability

Any Food Truck operating within the Town of Conway shall be responsible for obtaining a permit pursuant to this chapter and shall complying with these regulations and any additional terms of the permit.

170.12 Definitions:

FOOD TRUCK A food service establishment mounted on wheels or otherwise designed to be immediately moveable.

SIGN Any device, fixture, placard, structure or attachment thereto that uses color, form, graphic, illumination, symbol, or writing to advertise, announce the purpose of, or identify the purpose of any person or entity, or to communicate information of any kind to the public, whether commercial or noncommercial. Any portion of any awning, either freestanding or attached to a structure, decorated with any sign element, either attached or part thereof, shall be considered a wall sign.

TEMPORARY EVENT An event whose occurrence is limited to not more than 14 days per calendar year.

170.13 Location

- (A) Site Plan approval is required to establish a permanent Food Truck Location.
- (B) Food Trucks are permitted within the following zones on lots with an existing commercial use.
 - a. Highway Commercial, Recreational Resort, Center Conway Village Commercial, Conway Village Commercial, Conway Village Residential, Center Conway Village Residential, Industrial One & Two.
- (C) Any Food Truck with a current permit may operate in an approved location. All locations of operation must be identified in the submittal of a Food Truck permit with associated property owner authorization.
- (D) One Food Truck is permitted per lot. Additional Food Trucks may be allowed by Special Exception. This restriction does not apply to Temporary Events.

170.14 Standards

- (A) Site Plan approval is required to establish a permanent Food Truck Location.
- (B) Site Plan applications must address the following:
 - a. **Parking.** Sites must maintain required parking for all operations as per site Plan Regulations 110-20.
 - b. **Garbage.** Adequate garbage receptacles must be provided.
 - c. **Pedestrian Safety.** Standing, waiting, or any pedestrian interaction with the Food Truck must be outside of any travel way.
 - d. All businesses are required to make themselves accessible to people with disabilities under the Americans with Disabilities Act (ADA) Title III guidelines.
 - e. No seating area is permitted within the travel way or parking lot.
 - f. The Select Board may revoke any approved Food Truck location due to noncompliance or incompatibility with the property.
- (C) Temporary Permits

- a. A Temporary Event permit is required for any Food Truck to operate in a location without Site Plan approval and shall not remain in a location for greater than 14 days or as specified in a permit decision.
- b. Any Food Truck operating as a Temporary Event shall also possess a current Food Truck permit.
- c. Food Trucks operating with a Temporary Event permit are required to meet standards set by 170.14 of this chapter.

170.15 Permit Required

- (A) Any Food Truck operating in the Town of Conway shall have a current permit.
- (B) Food Truck operators shall have in their possession a valid Mobile Food Unit permit from the New Hampshire Department of Health and Human Services unless a State exemption applies.
- (C) Signage.
 - a. Approved Food Truck operations are permitted one A-Frame sign not to be placed within any public Right-of-Way and shall meet the following requirements:
 - i. Placement must provide a minimum 6-foot clear path of travel between the edge of the A-frame signage and any obstruction in the sidewalk, such as light poles, and fire hydrants.
 - ii. Signage shall not be used for general advertising, but only to identify business name and business information (e.g. operating hours, menu, slogan).
 - iii. Signs may not be secured to facilities or buildings; they shall be removable at all times.
 - iv. Additional signage shall require a sign permit.

Thank you,

Ryan OConnor
Town Planner



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MEMO

To: Planning Board
From: Planning Staff
Date: August 11, 2023
Re: Proposed Public Art Ordinance

In an effort to address Murals within our Zoning Ordinance, please see the included draft language for consideration. The proposal includes several new definitions for Murals, Historic Wall Graphics, and Vandalism; note that the definition for a Sign has not been modified.

The Ordinance regulates design standards, permit requirements, Mural maintenance, and enforcement. Specific content cannot be regulated by the Town but the Ordinance attempts to separate a what is a Mural or a Sign and restricts Murals containing any type of defamation, incitement obscenity, or other illegal content.

The following is not included in the proposed language but may be points for the Boards consideration:

- Should Murals be restricted to commercial properties? As a reference, our Ordinance does not permit signs on properties without a commercial operation.
- Should future language include other types of public art like sculptures or street art?
- If public art is something the Board would like to encourage, Site Plan Regulations could be amended to require a certain percentage of public art be included with commercial applications.

Draft Public Art Ordinance

196 Murals

196.1 Intent:

The regulations for murals were formulated to maintain a quality visual aesthetic while allowing for creative expression in appropriate locations. The established review criteria provide guidance concerning the compatibility and appropriateness of theme, location, design, placement, massing, scale, and materials of mural art with no intrusion into the artistic expression or the content of work.

196.2 Definitions:

HISTORIC WALL GRAPHICS Includes any graphic shown to be at least 60 years old that is recognized as distinctly important in the social science of history that records, studies, and explains the character and significance of past human activities in Rochester.

MURAL Any permitted art painted or applied directly on a building, structure, fence, or object within the public view that is located on public or private property.

SIGN Any device, fixture, placard, structure or attachment thereto that uses color, form, graphic, illumination, symbol, or writing to advertise, announce the purpose of, or identify the purpose of any person or entity, or to communicate information of any kind to the public, whether commercial or noncommercial. Any portion of any awning, either freestanding or attached to a structure, decorated with any sign element, either attached or part thereof, shall be considered a wall sign.

VANDALISM Any unpermitted writings, drawings, or other material posted on a public or private property. Typically, this is unlawfully placed on property not owned by the person posting the material.

196.3 Design Standards:

- (A) The scale of the mural is appropriate for the building. Murals located on the primary street facade shall not exceed more than 25% of the area of facade of which the mural is located.
- (B) The mural enhances the surrounding neighborhood.
- (C) The mural must not detract or cover significant character defining architectural features.
- (D) The mural does not cover the exterior surfaces of any building opening such as windows, doors and vents.
- (E) The name, logo, or other indicator of the sponsor of the mural or the mural artist shall be discreetly displayed and shall not exceed 2% of the overall design.
- (F) Materials are of superior quality and intended for exterior use.
- (G) Use of reflective, neon, or fluorescent paints is prohibited.
- (H) Permanent installations have a weatherproof and vandalism-resistant coating.
- (I) Murals shall not be an undue hazard or distraction to motorist.

- (J) The use of local artist, historians, or other community resources is highly encouraged in the design and installation.

196.4 Mural Content:

- (A) Murals that include trademarks, service marks, or other markings, colors, or patterns identifying or associated with business, profession, trade, occupation, may be permitted only if verified as a Historic Wall Graphic. Otherwise, such will be considered commercial applications and shall be considered signs.
- (B) Murals must not contain defamation, incitement, obscenity, or illegal content. Obscene matter is that which the average resident, would find, taken as a whole, appeals to a prurient interest and lacks serious literary, artistic, political, or scientific value.

196.5 Permit Required:

A permit is required prior to painting, installation, or execution of a Mural. Applications shall be reviewed by the Zoning Administrator for applicability and referred to the Select Board for approval. Mural proposals must be considered at public hearing and are subject to the following requirements:

- (A) A long-term plan for periodic maintenance or repainting is required with submission.
- (B) Rotating murals (in which an applicant plans to apply more than one mural to the same wall within a year period) requires approval for each design.
- (C) Any mural without approval will be considered vandalism or a sign and enforced accordingly.
- (D) The Select Board may revoke any approval due to lack of maintenance or any regulation noncompliance.

196.6 Mural Maintenance:

- (A) The mural must be properly maintained to ensure that material failure, such as peeling paint, is corrected and vandalism is removed promptly.
- (B) The maintenance of the mural is the responsibility of the property owner.

196.7 Enforcement

- (A) When an official interpretation is deemed necessary, the Zoning Administrator will determine if a proposal is a Mural or Sign. This decision may be appealed to the Zoning Board of Adjustment.

(B) Removal of vandalism is the responsibility of the property owner and shall be removed within seven (7) days.

Thank you,

Ryan O'Connor
Town Planner



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MEMO

To: Planning Board
From: Planning Staff
Date: August 15, 2023
Re: Proposed Amendments to Kennel Definition & Requirements

Please see the recommendations below following our discussion regarding a “Kennel” definition and potential changes to the Zoning Ordinance to ensure continuity between Kennel operations and the community. The definition is new but current restrictions have been expanded to further separate a Kennel from abutting properties and ensure adequate sound mitigation is in place.

Proposed Definition

Kennel – A commercial establishment which houses dogs, cats, or other household pets, and/or engages in grooming, breeding, boarding, training, or selling of (5) or more animals. Kennels are subject to the provisions found in RSA 466:6, Group Licenses.

Current Standards

(11) Kennels. A special exception may be granted to permit kennels for transient (fewer than 30 days) housing of domestic animals or commercial breeding facilities for domestic animals, provided that:

(a) Minimum lot size is ~~two~~ five acres.

(b) Animal housing areas, if indoors, shall be set back ~~40~~50 feet from side and rear property lines and 60 feet from rights-of-way. Pastures/Outdoor exercise areas shall be set back 15 feet from any property line or 100 feet from any existing Residential use or 100 feet from any existing Residential use.

(c) A written plan for the disposal/removal of animal waste must be submitted along with the application requesting the special exception from the Zoning Board of Adjustment. This plan must be approved by the Board as a condition of the special exception approval, if granted.

(d) All animals shall be kept in an indoor area between the hours of 6:00 p.m. and 8:00 a.m.

(e) The applicant has the burden of proof to show any proposed Kennel will not create a Nuisance and adequate sound barriers or buffers are in place.

(f) Kennels require Site Plan Review.

Thank you,

Ryan O'Connor
Town Planner



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MEMO

To: Planning Board
From: Planning Staff
Date: August 14, 2023
Re: Proposed Continuation of Building Moratorium

The proposed continuation of the building moratorium of hotels, motels, resort hotels, and commercial structures greater than or equal to 50,000 square feet for an additional twelve (12) months requires review of the circumstances for which the ordinance is being adopted.

State Statute (RSA 674:23) allows for a continuation of such ordinance based on new evidence that moratorium is essential to provide adequate services and develop regulations to control growth which best fits our community.

Our role in bringing the ordinance forward will be to reexamine the justification and outline any new evidence to support the pause in approvals. The previous justification is attached to this memo, all of the circumstances may still apply but the Board will need work to further support those claims.

Below are several factors to consider as we develop the ordinance justification:

- The growth of commercial development continues to exceed the growth of services. Conway has not had the opportunity to adopt Innovative Land Use Controls due to the development process of the Master Plan. These regulations will enable controlled growth which requires adequate public infrastructure be constructed to support development.
- Development continues to place significant pressure on infrastructure, traffic patterns, provision of services, housing, stewardship of greenspace, workforce availability, and the natural resources. These impacts have been highlighted by development of the Master Plan. The needs of housing and infrastructure far exceed the capacity of the Town and regulations are not in place to protect the Town's vital resources and long-term economic growth.
- Large scale developments continue to be reviewed as projects with a regional impact. Conway significantly supports commercial development within the Mount Washington Valley. Housing, education, and jobs function as a regional resource. The community is at risk without these controls in place and must ensure infrastructure supports development.

- In an effort to create regulations which are proactive and anticipate the needs of the community require significant time of staff and the Boards. The proposed moratorium is necessary to allow for development of thoughtful and supported regulation to ensure healthy growth of the community.
- The strain on our natural resources continues to be highlighted through our Master Plan development and contributions of local stewardship organizations. The resources of Conway are strained with the level of use, increased flooding, and severe storms which have further burdened these environments. Natural resources are essential to our economy and the safety of this community. The Town does not have the strength in our ordinance to balance large scale development with the protection of natural resources.

With the continuation of the moratorium, the Board will also need to propose a recommended course of action to put the needed regulations in place. The following may be points to consider; completion of the Master Plan and a comprehensive review of our Ordinance to include, Innovative Land Use Controls, workforce housing requirements, development of public infrastructure, and natural resource protections.

Thank you for your consideration,

Ryan O'Connor
Town Planner