



Town of Carrabassett Valley
1001 Carriage Road
Carrabassett Valley, Maine 04947
207-235-2645

Carrabassett Valley Planning Board

Thursday, March 23, 2023 at 4:30 P.M.

****Meeting to be held at the Town Office****

Guests may join remotely with **Zoom ID** [898 4174 3125](https://us02web.zoom.us/j/89841743125) & Passcode of **04947** or:

<https://us02web.zoom.us/j/89841743125?pwd=RzVpRjJGRU80YStsLzBtak1ESHITdz09>

To use a traditional phone to call 1-929-205-6099 and follow prompts for Meeting ID and Access Code listed above. Please announce yourself and then remain quiet/muted while you listen.

Agenda

1. Call to Order, Board Member Attendance & Voting Quorum
2. Review the Minutes of the February 16, 2022 PB Meeting.
3. Review PB Bylaws
4. Establish Chair & Vice Chair
5. Workshop
 - a. Shoreland Zoning – refer to color mark-up
 - b. Contract Zoning – draft document enclosed for further development.
 - c. Other items? Suggestion of Sign Ordinance, Parking Space Size, anything in the Subdivision Application process???
6. Other Business?
7. Adjourn

Town of Carrabassett Valley
Minutes of the Planning Board Meeting
February 16, 2023

Location: Begin room, Carrabassett Valley Public Library

Time: 4:30-6:20

Topic: Contract Zoning

Board Present: Brian Demshar, Tom Bird, Roddy Ehrlenbach, Tim Flight, John Slagle, Al Sleight, Scott Stoutamyer. Alternates Present: Tim Gerencer, Jim Benoit

Others Present: Chris Parks, Mark Green, Susan Davis, Gail Blackburn, John Johnson, Beth Strout, Richard Hawkes, Clay Tranten, Dave Cota, Karen Campbell, Lloyd Cuttler, Bob Luce, Tom Hildreth, Chris Walters, Bill Casey, Pat Willihan

Remote/Zoom: Durwood Parkinson, Billy Gilmore, Jeff Aceto, Paul Peck, Joan Crane, Jed Whiting, Justin Steele, Susan Walters, Fred Ehrlenbach

Chair Brian Demshar opened the Thursday, February 16, Carrabassett Valley Planning Board meeting at 4:30 p.m. in the Begin Room at the Carrabassett Valley Public Library. After declaring a quorum, Scott Stoutamyer moved approval of the minutes, seconded by Tim Gerencer. Tim Flight clarified that the Board expressed support to learn more about Contract Zoning, not support for the idea itself as noted on the 2nd page. The Board accepted striking the second half of sentence. The minutes then passed unanimously.

Contract Zoning discussion

Mark Green, Executive Director of the regional Workforce Housing Coalition, introduced Durwood Parkinson from Kennebunk, a lawyer with whom he had worked as Town Manager of York. The WHC has money in its budget to provide legal advice about Contract Zoning. In advance, Green had sent Parkinson questions posed by the Kingfield and Carrabassett Valley Planning Boards about Contract Zoning.

Parkinson introduced himself as a municipal attorney, noting that his town of Kennebunk was also a resort town with significant and similar challenges to those in the Sugarloaf area.

Municipalities, developers, and concerned citizens represent the 3-sided mix to address zoning issues. Contract Zoning is enabled by Maine statute to allow an agreement by municipalities in exchange for a set of agreements with the developer. The statute itself is only about 20 lines long. It doesn't not have a ton of case law but there are lots of successful uses of it in Maine. Case law in Maine appears to be centered in Saco. In all cases Parkinson cited, the towns have won.

Statute requirements

- 1) Contract Zoning has to comply with the town's Comprehensive Plan. Parkinson has reviewed Kingfield's and Carrabassett Valley's plans, both of which recognize the need for employee housing, which puts them in compliance with their plans in that regard. Most importantly, Contract Zoning has to provide a public benefit and is not legalized spot zoning.

- 2) Contract Zoning has to be consistent with existing and permitted uses. There is a lot of flexibility in what that means.
- 3) Contract Zoning only includes restrictions that relate to specific uses of the property.

Parkinson referred to Richard Hawkes's use of Dayton's Contract Zoning as Hawkes's primary model, noting that approval ended with the Select Board. Parkinson corrected that, noting that State law requires Contract Zoning be approved by the governing body, which for the Town Manager/Select Board form of government is Town Meeting, the citizens of the town whereas in the Town Council form of government, the Council has final approval.

In responding to questions of exposure in cases of Contract Zoning, Parkinson referred to towns' sovereign immunity and other protections for financial liability. The only possibility of liability comes from inadequate documentation of public benefit. Compliance is laid out in a thorough vetting of Findings of Fact. In judicial actions, courts do not second guess municipalities unless an action is clearly unconstitutional or illegal.

Contract Zoning does not cover all possibilities but is rather a process. It's the developer's responsibility to present the concept and the uses proposed. Correspondingly, planning board approval of Contract Zoning is highly discretionary and not precedent setting: because one project is approved does not allow another to claim unfair treatment if it can't get the same deal.

WHC Vice Chair Paul Peck asked Parkinson if a town can limit Contract Zoning for one use only, as for housing. Parkinson has not seen that done. Richard Hawkes's matrix of 10 towns using Contract Zoning shows as many as 10 other potential uses of Contract Zoning, including expansion of a car dealer's footprint and creation of a transportation facility. Carrabassett's consulting engineer Jeff Aceto described his own example of Contract Zoning in a conversion of a motel to a high-tech hub at the University of Maine in Orono.

Peck also asked if a Town could make distinctions and limitations on a development, such as for employment within the community. Noting that the developer sets such distinctions and limitations, as in age or work location, Parkinson advised against arbitrary or capricious limitations, which could set up a legal challenge.

Carrabassett Valley Planning board member John Slagle asked about the difference between "workforce" and "affordable." Peck noted that there were not a lot of definitions available other than when complying with Federal and State programs that set limits based on "average median income" (AMI). These forms of housing are definitely not "Section 8," or subsidized housing for the elderly, disabled, etc.

Kingfield's interim code enforcement officer Billy Gilmore asked about employment definitions for workforce housing, for example if independent contractors would be considered. Peck responded that such housing is determined by AMI, that developers can't dictate where people work when and if the project has federal or state funding. When the Planning Board was asked about a specific housing proposal on the public lot/Outdoor Center, Tim Flight reminded the audience that the Planning Board was trying to understand Contract Zoning, that no specific case was the issue.

Parkinson brought the discussion back to the primary effect of Contract Zoning, that the challenge is writing the contract for the project, to envision and understand what the developer is proposing and the standards that are appropriate. The bigger the project, the more challenging.

Parkinson noted that a Town should have its own engineer, at the developers expense, to evaluate and oversee the project. It's all a lot of work.

When asked if there were any examples of bad Contract Zoning, Parkinson responded that it was all determined by how thoroughly thought through and planned the project was.

Carrabassett Valley Planning Board member Al Sleight asked about projects failing and consequent potential enforcement. Once approved by the governing body—citizens at Town Meeting or the Town Council, depending on the form of government—follow-through was in the hands of the CEO and Select Board, not the Planning Board although the Planning Board still fulfills the process of any required site plan or subdivision approval relative to compliance with local laws and the usual performance bond for roads, etc., through all Findings of Fact. If there is anything with which the project does not satisfy such requirements, an amendment would be required.

Richard Hawkes then asked if appeal boards played a role in Contract Zoning. Parkinson responded that Contract Zoning is between the contractor and the governing body and is therefore not appeal-able—he's seen no appeals board action on this. He stressed that mandatory zoning such as shoreland and subdivision ordinances are still in full force and effect. The legislature established Contract Zoning to allow flexibility. Hawkes noted that it seemed like a great tool to achieve the goals of a town's comprehensive plan.

Carrabassett Valley Select Board and Workforce Housing Coalition board member Lloyd Cuttler asked about Contract Zoning carrying over to a subsequent owner. Parkinson explained that such zoning runs with the land permanently, even if a shovel never went into the ground. Although it can be transferred in this way, a following owner still needs site plan approval from the Planning Board.

Gilmore asked if voters could petition a contract zone. Parkinson has never seen that happen although he has seen voters petitioning for a zone change.

In response to a question from Cuttler, Parkinson noted that anything that needs DEP approval cannot take effect until all permitting is in place. A developer cannot get around state environmental laws, no matter what the zoning.

CV Property Owner Fred Ehrlenbach commented on the Town of Trenton's successful use of Contract Zoning and agreed to send it to the Carrabassett Valley Planning Board, or the Board could visit that Town's webpage for Ordinance information.

There being no other business, chair Brian Demshar declared the meeting adjourned at 6:20.

Respectfully submitted,

Susan Davis, Secretary