

**SOUTH BERWICK CONTRACT ZONING FORUM RESULTS**  
**Report from the South Berwick Public Forum, May 31, 2007**

*Overview of Meeting Process*

On May 31, 2007, an informational Contract Zoning Forum was held at Marshwood Middle School from 6:45 – 9:00 PM. Approximately fifty citizens attended the forum. It began with an overview of contract zoning, presented by Alan Holt, an architect and town planner from Holt & Lachman Architects + Planners in Portland.

The presentation was followed by small group discussions—the participants broke into six groups, each led by two student facilitators from the Muskie School of Public Service. In separate rooms, the groups brainstormed their questions and concerns about contract zoning, with the neutral facilitators writing their ideas on flipchart sheets. After brainstorming, citizens were each given six color dots in order to prioritize their key thoughts. Three dots could be placed on the flipchart list of brainstormed questions, and three dots could be placed on the list of brainstormed concerns. The facilitators counted the dots and circled the questions and concerns that received the most dots. These questions and concerns were written on a fresh flipchart sheet, and became the Final Report for the group. Next, the group chose a citizen to present the Final Report to the larger assembly.

At the conclusion of small group discussions, all participants reassembled in the auditorium, and the six Final Reports were presented to the large group. A panel was on hand to address as many key questions and concerns for the citizens as time allowed. The panel was composed of Chris Vaniotis, an attorney at Bernstein Shur who wrote the contract zoning ordinance for South Berwick; Bob Hamblen, a city planner in Saco, where contract zoning has been in place since 1992; and Diane Doyle, a developer in Saco who has gone through the contract zoning process many times.

This report on the following pages begins with the questions and answers from this panel response session. It also includes the raw data gathered from the small group discussions. Finally, the members of the community who participated in this forum are listed at the end of the document.

## PANEL SESSION

**Note:** Answers from panel members are paraphrased.

**Question:** Will / how will contract zoning differ from the current variance process?

**Answer by Chris Vaniotis:** A variance in South Berwick is only a waiver from dimensional requirements, not land use requirements. Variances are administrative – granted by appointed Board of Appeals. Contract zoning is granted by elected officials, and it is a change in the zoning of the property. Variances are very hard to get (only in cases of hardship). In terms of contract zoning giving too much power, I will say that the same power existing in re-zoning difference between contract zoning affecting abutters and a re-zoning in the entire zone.

**Answer by Bob Hamblen:** Since contract zoning was passed in Saco in 1992, 26 contract zones have been approved. Most proposed have been approved.

**Answer by Diane Doyle:** What is proposed may change dramatically by the time it is approved—the process can be lengthy and difficult.

**Question:** Can you explain F2? How can something be “consistent within allowed uses” but at the same time not allowed under current zoning?

**Answer by Chris Vaniotis:** The language here reflects the state statute which says that development does not have to be identical to that which is present in the area, but compatible, or consistent with.

**Question:** How can people express their disapproval and make their voices heard?

**Answer by Chris Vaniotis:** The process involves negotiation – people can provide their input, and if the developer wants to continue with the proposal, they must make the changes. Abutters can share input at the Planning Board level, and the PB will not approve the plan if not satisfied. Saco does not have a Contract Zoning Committee, but South Berwick will.

Same recourse – contract zoning is subject to referendum vote. Also, grievances re: development can be challenged in court.

**Concern:** Too much power in the hands of too few people.

**Response by Bob Hamblen:** It is true that the final decision is made by a few people. In general, citizens have a chance to voice their concerns during the process, but no final power. But one example is of a 150-year-old house on Main St. in Saco that was falling into disrepair – proposal was to turn it into a hair salon. Neighbors did not like the idea, and said so at meetings. The Planning Board gave a negative recommendation, but the Council approved it. Neighbors disapproved, and brought it to court. Mediation and negotiation resolved the problem.

**Response by Chris Vaniotis:** The concentration of power that is the case today has nothing to do with contract zoning. Not a change the legislative power has been given to the Council. Existing state of the law. The Town Council has proposed with original contract zoning should

go on to Contract Zoning Committee. The review process has an extra step.. This is a policy of the Council and not part of the ordinance itself.

**Question:** How effective is contract zoning in promoting economic development?

**Answer by Bob Hamblen:** A diocese sold property to the Saco and Biddeford Country Club. The zoning wasn't right for a senior housing project, so developer asked for contract zone. Planning Board approved so they could have more control over development. Now there are cottage-style senior condos on the site, and a great deal of tax revenue.

**Answer by Chris Vaniotis:** A big sporting goods store came to Scarborough through contract zoning and that provided economic development.

**Question:** Is contract zoning always about raising revenue?

**Answer by Diane Doyle:** It can be about economic development, but it is not always about economic gain—there is a big concern with the preservation of open space and contract zoning can provide an opportunity to preserve it. I had a project in the C1 zone with 17 houses on 15 acres, and 150 acres are in permanent preserve. There are trails and bird watching and vernal pools. And it involved a process of working with neighbors and cutting down the number of houses and the use of lighting and buffers. It was over two years of neighborhood meetings, Planning Board recommendations, going back to the public, working with everyone because all people have to be satisfied. Negotiations at the Planning Board level alone can last for months.

**Question:** What is the referendum process?

**Answer:** Appeal in Saco – once council makes a decision, 30 days to appeal.

**Question:** If I am an abutter does it cost me to object?

**Answer:** It does not cost anything to attend meetings and hearings, and you will be notified of these through the mail.

**Question:** What happens to contract zoning when property changes ownership?

**Answer by Chris Vaniotis:** It depends upon the terms of the contract. You can craft a contract zone not to transfer, or to transfer only with review, or to have an expiration date. Contract zoning, once approved, does not automatically go to someone else if the property is sold. Also, if it does transfer, the development will still be governed by the same negotiation.

**Question:** Isn't cluster zoning already allowed?

**Answer by Diane Doyle:** No, it isn't.

**Question:** Can City Council alter the charter?

**Answer by Chris Vaniotis:** The Council can amend the charter, but citizens must vote.

**Concern:** Diminished property values of residential housing / abutters, property rights.

**Response by Chris Vaniotis:** Abutters can make their voices heard at meetings, so abutters do have their property rights protected. The law states that no one has any zoning rights. Legally, there are no vested property rights. My experience is that the development proposals that are bad don't bother going through the long process of approval, and the good ones are willing to be in for the long haul. I have never seen a truly horrible development proposal go through.

**Response by Bob Hamblen:** The property values in Saco, in general have not gone down. Direct abutters overlooking development may have experienced their property values go down, but as long as there are good buffers, which can be part of the contract, property values should not go down.

**Question:** Will there be impacts on infrastructure?

**Answer by Bob Hamblen:** Once contract zoning has gone through process and been approved, it then goes back to Planning Board and Planning Review Board for site plan standards / subdivision review, etc.

**Answer by Diane Doyle:** It's very possible to be approved for contract zoning but not sure that the Planning Board will approve of development. You're not out of the woods yet, it is not a done deal.

**Question:** In the case of the development proposal that was not approved, how was it stopped, and by whom?

**Answer by Bob Hamblen:** The 7 member City Council did not approve it because citizens voiced their concern.

## **RAW DATA**

This section is the transcription of all the flipchart sheets from the six small discussion groups. Nothing has been edited or condensed. Questions and Concerns with an asterisk were part of the group's Final Report. The number in parentheses indicates the number of color dots each Question and Concern received.

### **GROUP 1 / 2 DATA (10 group members)**

#### **QUESTIONS**

- \*Will / how will contract zoning differ from the current variance process? (12)
- \*Clarification of F2? What is consistent within allowed uses but at the same time not allowed under current zoning? (6)
- \*What role does Planning Board play in Town Council decisions? (5)
- Can there be a use not formerly permitted in residential areas? (2)
- Will there be a difference with respect to contract zoning between existing Comp. Plan and new Comp Plan? (2)
- How often is contract zoning used once in force? (1)
- Referring to A. Holt's presentation, what made it not feasible to have clustering / more open space without contract zoning? (1)
- What is the next step once a decision is seen as adversely affecting an entity? (1)
- Will there be a difference in contract zoning with the existing Comp Plan and updated Comp Plan?
- Will it increase workload of PB/Council?

#### **CONCERNS**

- \*Too much power in too few hands (Town Council) (19)
- \*Loss of property rights (7)
- \*Contract zoning may not stabilize tax rate (4)
- Length of process

**GROUP 3 / 4 DATA (7 group members)**

**QUESTIONS**

- \*Have abutters expressed concerns about commercial development devaluing their land/home? (5)
- \*In other towns, has contract zoning increased the tax base? (4)
- \*What are the down sides of contract zoning? (3)
- \*Has contract zoning been removed after it's been in place? Examples? (3)
- How many towns in Maine have contract zoning? (1)
- What are the tax implications? (1)
- Who does contract zoning apply to? What types of land uses? (1)
- Why is it illegal in other places? (1)
- What is the difference between contract zoning and conditional zoning? (1)
- Has contract zoning increased legal expenses for town? (1)
- Does contract zoning affect density?
- What is the purpose of contract zoning?
- Can a contract zone be amended?

**CONCERNS**

- \*Diminished property values of residential housing / abutters (5)
- \*Development tool to be used outside of growth areas (currently town wide) (4)
- \*Concentrates power of three councilors to decide contract zoning (4)
- \*Concerned about words "but not limited to" (3)
- \*Will not provide tax relief as promoted (3)
- No legal recourse locally (1)
- Value of property and quality of life might change (1)

**GROUP 5 / 6 DATA (5 voting group members)**

**QUESTIONS**

- \*Are there provisions for if future development gets out of hand? (5)
- \*Is it true that every \$1 raised with contract zoning will reduce state funding for schools? (3)
- \*Is contract zoning all about raising revenue? (3)
- Does the old/current provision allow citizens a choice? (2)
- Are variances decided only by city council members? (1)
- When “town” is referred to, does it mean citizens or town management/Council? (1)
- Do citizens have a voice in the final say?
- Is contract zoning an alternative to current variance?
- Will citizens have access to absentee ballots and receive answers to their concerns?
- Is contract zoning a way to speed up the process and bring it to the council?

**CONCERNS**

- \*Citizens do not have a voice (5)
- \*Town is starting to head in a management rather than a town-run operation (5)
- \*Town Council may not represent all citizens’ concerns (2)
- \*South Berwick won’t stay the same (2)
- Town ordinances are complicated, not as comprehensible to lay people (1)
- Town decisions being politicized, not made by independent citizens

**GROUP 7 / 8 DATA (7 group members)**

**QUESTIONS**

- \*How do the people overturn a contract zoning decision? What is the appeals process? (7)
- \*How will the town enforce contract zoning conditions? (4)
- \*What is “not limited to” doing in Section B – Authorization? (3)
- \*How complicated would it be to create a clause that any contract would be put to a referendum vote? (3)
- What is the difference between a variance and contract zoning? (2)
- Why doesn't the town want to try out contract zoning in a limited area first? (2)
- How does contract zoning compare with eminent domain? (1)
- Would an outside consultant come to town and help with contract zoning? (1)
- Are there any current zones that don't allow home businesses?
- What is the status of the Comp Plan? Is it up to date?
- Will the neighborhood have a voice?
- Will surrounding landowners know about a contract zoning decision in their neighborhood?

**CONCERNS**

- \*Council vote independent of town people's choice (10)
- \*Procedure followed correctly with Council and PB (due diligence) (8)
- Accessibility of appeals process
- Bad examples of contract zoning happening
- Contract zoning being very similar to eminent domain

**GROUP 9 / 10 DATA (9 group members)**

**QUESTIONS**

- \*How can citizens respond to a contract that they disagree with? (5)
- \*How will development impact water and sewer? (4)
- \*If property is under contract zoning and is sold, does contract zoning still apply? What happens to contract zoning when property changes ownership? (3)
- \*What does town do to encourage businesses to come into town OTHER than contract zoning? (3)
- How will contract zoning impact property owners' rights? (3)
- If proposal is defeated, are there other ways to accommodate small businesses in residential areas? (2)
- What is the process for getting the contract approved? (2)
- Will contract zoning be more of a political process as opposed to a planning process? (2)
- How will contract zoning change tax base? (2)
- Who makes decisions about proposed contracts? (1)
- Does contract zoning require owner/developer to provide infrastructure/ off-site improvements?
- How much public input is allowed?

**CONCERNS**

- \*Kind of business allowed (ex. auto repair shop) might have a negative impact on neighborhood and/or property values (15)
- \*This meeting will not affect the contract zoning proposal being voted on June 12 (6)
- \*Contract zoning will fail and economic development will not happen (4)
- Definition of contract zoning on the ballot does not state that a zoning change is required (2)

**GROUP 11 / 12 DATA (8 group members)**

**QUESTIONS**

- \*Why can't we make current zoning explicit enough? (5)
- \*What redress (in a reasonable and inexpensive manner) do property owners have if decisions are made that they disapprove of? (5)
- \*What expertise do the final decision-makers (the town councilors) have? (2)
- Are there examples of the negative impact of contract zoning? (2)
- Is the intent of contract zoning to provide eventual tax relief? (1)
- Are current zoning regulations prohibitive to business/industry? (1)
- Why do it? (1)
- Have any communities rescinded contract zoning and why? (1)
- How would you quantify how contract zoning could provide tax relief? (1)
- Is contract zoning used/successful in other states? (1)
- Are there developers waiting for this to be approved? (1)
- How does the existing Comprehensive Plan acknowledge contract zoning? (1)
- How does process discount existing role of the Planning Board? (1)
- Is there a process to reverse a contract decision? (1)
- What assurances are there to avoid conflict of interest?
- Would there be any defined standards that all applicants have to meet?
- After the referendum, how soon would contract zoning be implemented if approved?
- Where has existing zoning failed?
- How long has contract zoning been in use in Maine?
- Are there specific areas of town designated for contract zoning?
- How would you ensure the result of contract zoning decisions would not be at the whims of a 3-of-5 majority?
- How frequently has contract zoning been implemented in other communities?

**CONCERNS**

- \*We need to provide a consistent area for commercial uses and industry (5)
- Cost associated with redressing any decisions made (4)
- \*Contract zoning may allow for scattered development (4)
- \*Contract zoning will be exploited for uses contrary to the town's interest (common good) (3)
- Concern about civility of discussion (2)
- Contract zoning can expand (geographical) that the Comp Plan does not designate (2)
- Contract zoning may be premature because 2006 Comp Plan has not been approved (2)
- Contract zoning may allow for business opportunities out of the immediate business area (1)
- Tax relief has been overstated (1)
- Traffic (1)
- Vesting decision-making in 5 individuals instead of review boards
- Costs of infrastructure

## **APPENDIX**

### **APPENDIX I. Group Members**

#### **Group 1 / 2**

Rachel Schumacher  
Bruce Wilson  
Liz Wilson  
David Surette  
Clifford Cleary  
Dennis Schaefer  
Bonnie Gould  
Norma Tuteliau  
John Webster  
Bob Gagne  
Joel Polichronopoulos

#### **Group 3 / 4**

(No data found for names)

#### **Group 5 / 6**

Vicky Whitney  
Sue Roberge, City Councilor  
Genie Jennings  
Floyd Beavers  
Dennis Riendeau  
Juan Rijo

#### **Group 7 / 8**

(No data found for names)

#### **Group 9 / 10**

Arthur Thorner  
Dave Burke  
George Muller  
Ruth Boston  
Marion Glomp-Mueller  
Richard Clough  
Harvey Barr

South Berwick Contract Zoning Forum Results

Page 12 of 12

Gary R. Sparkley  
Cheryl Haillou

**Group 11 / 12**

Douglas Letellier  
Brad Christo  
Rita Barr  
Eric Mundell  
Al Whitaker  
Jean Whitaker  
Loraida Rijo  
Marc D. Hiller