

JOEL RUSSELL

25 Kensington Avenue, Northampton, Massachusetts 01060. (413) 584-7228

joelrusl@gmail.com

September 22, 2010

To the Northampton Planning Board:

I write this letter to the Northampton Planning Board, as the body that appointed the Zoning Revisions Committee, of which I served as Chair until September 8, 2010 and to which the ZRC is accountable. I thought it appropriate to offer you a fuller explanation of my reasons for resigning. At the time, I gave health as the reason for my resignation. Although this was certainly true, and was the most immediate reason for the timing of my decision, it was not the only reason. I now feel well enough to give a fuller explanation.

First of all, it was a privilege to be asked to serve my community and I embraced the challenge with enthusiasm and hard work. Other members of the Committee also served with dedication and hard work. This position was awkward for me, however, as I had offered to do as a volunteer what I have done professionally for over 30 years for dozens of communities, i.e. revise zoning ordinances to enable communities to develop in a more sustainable way. This is something I know how to do and for which I have gained a national reputation as an expert. (My website at www.joelrussell.com has more information.) This is not easy work, nor work that I have ever seen done very successfully by volunteer committees without assistance from a qualified professional consultant. The difficulties are of two types, technical and political, and I have always served as the technical expert and let my local clients deal with the political minefields inevitably generated by meaningful zoning revision.

This brings me to my two major reasons for resigning, other than my personal health and the need to find time to do my professional work: (1) my professional opinion that the zoning revision process in Northampton should not be done in a piecemeal fashion and (2) conflict of interest concerns that I believe have undermined the integrity of the ZRC's process.

1. **The need for comprehensive zoning revision.** As a consultant I always start a project with a review of the existing zoning ordinance and any relevant community plans. In Northampton's case, the City had recently adopted the Sustainable Northampton Comprehensive Plan, which serves as the basic guidance document for reviewing and revising the zoning. My review of Northampton's zoning ordinance, done with the able assistance of two professional volunteer colleagues on the ZRC, led me to the conclusion that a comprehensive revision of the frequently incomprehensible Northampton zoning ordinance was needed, and that a piecemeal revision would not work because of the highly interrelated nature of many sections of the document. I arrived at this conclusion not only from my own analysis and that of my colleagues, but also

from interviewing some of the most knowledgeable professionals in the community who have tried to understand and work with Northampton's highly obscure zoning code. (Interestingly, the recently formed Charter Commission reached the same conclusion about the City Charter.) I reported this conclusion to the ZRC early on. The ZRC concurred with the first part of my conclusion (i.e. that a comprehensive revision was necessary) but disagreed with my second conclusion that it was not advisable to try to work on the zoning in a piecemeal fashion. The Planning staff also thought that the piecemeal approach was appropriate and stated that it had worked in the past. We respectfully disagreed on this point.

I thought that many of the problems with the current zoning ordinance were caused, at least in part, by this piecemeal approach, involving incremental changes to a fundamentally flawed document. The current zoning was adopted in the days when promoting suburban sprawl was the main objective of land use regulation. Adding layers of more regulation and exceptions to exceptions made the document more complicated, incomprehensible, contradictory, and opaque. I had observed exactly the same problem with incremental zoning revision in every other community I advised as a professional consultant. Having been down this road several times before, I could see what was coming. When a community did not want to face up to the need to do a comprehensive revision and struggled, often for years or even decades, to patch what was essentially a broken document, it finally realized that a comprehensive overhaul was necessary. In many cases, I was retained because of a community's frustration with trying to do the task piecemeal. I was generally able to give them a viable working draft of a completely revised zoning ordinance within 4 -6 months. This draft then became the starting point for a revision process which varied in length, but solved a whole range of problems all at once, and sometimes in as little as two years.

As it happens, my concern about piecemeal revision was inconsistent with the charge to the ZRC, which was essentially to look at the zoning section by section, in a piecemeal fashion. In hindsight, I see that I should have resigned at that point, when I realized that my own professional judgment about how to go about the task conflicted with the explicit charge to the Committee from the Planning Board and with the majority sentiment of the Committee itself. Instead, I thought I should do my best to fulfill the committee's charge as written, despite my misgivings about the approach.

- 2. Conflict of interest and the integrity of the process.** Part of the problem with piecemeal revision is that it makes the committee more vulnerable to lobbying from interest groups with a specific and limited agenda. This is as likely to come from neighborhood groups with a bias against infill development as it is from business groups pushing a particular development agenda. A balanced and comprehensive zoning revision puts all of the pieces out on the table at once and reassembles them in a balanced way, attempting to be fair to all groups and to balance the interests of various parties, with the overriding goal of achieving clarity, readability, fairness, economic feasibility, and sustainability. When the

Chamber of Commerce proposed putting together a working group to look at King Street to make recommendations on zoning changes there, this proposal fit into the piecemeal approach the ZRC had adopted. The Chamber subcommittee worked hard over many months and submitted a thoughtful report. Up to that point, I had no problem, other than my general concern that King Street, like everything else, should be seen in a city-wide context and not as a stand-alone proposition.

When the Chamber's report was submitted to the Planning Board and ZRC in June 2010, the Planning Board referred it to the ZRC with a request to have its review, including public comment, completed by September. Several ZRC members objected to the short time frame, given that it was an important and complex proposal and that we received it in the beginning of the summer. Some Planning Board members concurred that this was an unreasonable request. We asked for more time and to wait until we had a chance to read the report before even considering a deadline for making recommendations to the Planning Board.

When it came time to determine how to present this issue to the public, most of the ZRC members thought that we should present a ZRC proposal for public comment, using the Chamber's report as a starting point for our own discussion. However, due to the accelerated time frame and internal disagreement on the ZRC (mostly between the Chamber representatives and other committee members), the ZRC realized that it would need more time to prepare a presentation to a public forum that reflected ZRC deliberations. In the interest of expediting the process but keeping it fair, I suggested that the ZRC allow the Chamber to present its proposal and that ZRC members with expertise on the issues offer the public some ideas about alternative approaches to certain of the Chamber's recommendations. (I am submitting with this letter a set of comments I made to the ZRC after I resigned that outline what such an alternative might look like.) This suggestion was adamantly opposed by the Chamber's main representative on the Committee who essentially said that we had no choice but to put up the Chamber's proposal for public review with no presentation of alternative ideas. The influence exercised by the one individual who both wrote the Chamber's report and was now evaluating it as a member of the ZRC struck me as inappropriate, compromising the integrity of the ZRC's public outreach process. This increased my discomfort with leading the ZRC's efforts any further.

A way forward

I write this letter to the Planning Board both to offer a fuller explanation of my reasons for resigning from the ZRC and to suggest that the Board may want to revisit its charge to the ZRC in light of the experiences of the past 18 months. The ZRC in its current form will exist only until April 2011, when the Planning Board must decide whether to let it "sunset," renew its existence, or possibly ask the City Council to modify its charge and/or composition. An ambitious workplan for the ZRC has been largely unfulfilled for various reasons, including the sheer

magnitude of the challenge for a volunteer committee and the amount of time devoted to considering just the King Street proposal.

As a consultant to at least 30 different zoning revision committees over the years, I have found that such committees work best when they provide general policy direction to an outside consultant and provide critical review and comment on that consultant's work. This is a two-way educational process with the ZRC learning about zoning options and issues from the consultant and the consultant learning about the community from the ZRC. Planning staff can be very helpful to both a consultant and a committee, but they generally do not have the time or expertise to overhaul an entire zoning ordinance. Therefore, I would recommend that the City seriously consider putting together funding to retain a qualified consultant and issue a Request for Qualifications (RFQ) to find such a consultant to work with the ZRC, or its successor, on a comprehensive zoning revision. This would be a good investment in the City's economic future, because a zoning ordinance that is clear and user-friendly, with a direct and streamlined path to approval for desirable projects, will attract the kind of development that the City wants and needs.

Another advantage of retaining an outside consultant is that it tends to insulate ZRC members from potential conflict of interest problems. All members are free to make comments on any proposal the ZRC considers (with proper disclosure of any potential conflicts), but the actual crafting of proposals is done by the consultant, who should be independent and not connected with any local interest group. That consultant is free to work with any and all stakeholders, but should of course represent none of them.

Committees generally do not work well as drafters, especially when their members have no experience drafting zoning ordinances. The best ZRCs in my experience are composed of people with real expertise in zoning matters, who represent different viewpoints but can work together cooperatively, are not intimidated by reading a zoning ordinance, and can comment cogently on proposed zoning language. The City may wish to consider changing the composition of the ZRC so that more of its members have zoning expertise. The ZRCs I have worked with most successfully were appointed by and reported directly to the City Council or other legislative body, because they were preparing legislation that would ultimately be adopted by the Council. They normally have included one or more Planning Board members, as well as other public officials with knowledge of zoning.

My comments above about piecemeal zoning changes were not meant to suggest that the City should not consider individual zoning changes during the period a zoning code is being overhauled. Opportunities for beneficial and sustainable development should not be lost just because the zoning is outdated and the community is in the process of revising its ordinance. Rather, proposed zoning changes should be entertained, but they should be carefully screened using criteria

derived from the Sustainability Plan. The ZRC has developed such criteria in the course of its work, which may be one of its most important achievements. Rezoning proposals that pass muster under these criteria should be recommended for approval, bearing in mind two things: (1) that a zoning overhaul is in progress and should take account of these changes; and (2) that any proposed changes should not add further confusion to the existing zoning ordinance.

For example, any proposed site-specific rezoning to allow a mixed-use walkable development on King, Pleasant, or Conz Streets should be seriously considered, as this type of development is exactly what the Sustainability Plan promotes. The Planning Board has been considering changes to the site plan review section and the use tables. This can still proceed in some fashion, with the ZRC or its successor providing input on these changes because they affect implementation of the Sustainability Plan. The Chamber's proposal for rezoning King Street south of the bikepath crossing might be suitable for such consideration, as the ZRC appears to agree that this proposal is generally consistent with the Sustainability Plan. The ZRC has been working on its own suggested revisions to the dimensional regulations for certain residential districts. These could be entertained as well, although the ZRC's workload should not grow to the point that it ends up trying to do too much and ends up accomplishing very little. Any or all of these efforts could be more effectively folded into a comprehensive revision, which might take no longer to adopt than any one of such proposals individually. Indeed, I have seen communities spend two or three years on one small zoning change and then revise the entire ordinance in two years.

Thank you for considering these comments. I hope that they are helpful in informing the Planning Board about how to proceed constructively in the months and years ahead. Northampton has the potential to be a leader in sustainable development, and it has many talented professionals who can help fulfill this potential. If you would like me to attend a Planning Board meeting to discuss any of these suggestions, I would be pleased to do so.

Sincerely yours,

Joel Russell, Former Chair
Zoning Revisions Committee

Attachment: Comments to the ZRC on the King Street proposal
cc. City Council
Mayor Higgins
Zoning Revisions Committee