

Targeted Review of Proposed PUD Ordinance Amendments Town of Londonderry, NH

By Resident Gregory Carson

This memorandum addresses five substantive areas in the proposed Planned Unit Development (PUD) ordinance that warrant closer examination before adoption. The goal is not to oppose the ordinance's direction, which is generally sound, but to ensure it is administrable, internally consistent, and defensible if challenged.

1. Community Benefit: Sufficiency of Definition and Risk of Arbitrary Application

Standard

Under New Hampshire land use law, discretionary decisions must be guided by sufficiently clear standards to avoid arbitrary or capricious application. While planning boards are afforded broad discretion, that discretion must be anchored in objective or at least reasonably ascertainable criteria.

Application

The proposed ordinance conditions density bonuses and regulatory flexibility on the provision of "community benefit." The ordinance usefully provides examples, such as affordable housing, open space, infrastructure improvements, and public amenities. However, the term remains broadly framed and non-exhaustive, and the ordinance does not establish:

- A prioritization or weighting among benefits
- Minimum thresholds (except in limited cases such as affordability)
- A consistent method for evaluating equivalency between different types of benefits

As a result, two similarly situated applications could produce materially different outcomes depending on how the Planning Board values particular benefits in a given case.

Implications

This creates three practical risks:

First, inconsistent application across projects, which undermines predictability for applicants and the public.

Second, increased exposure to appeal based on claims of unequal or arbitrary treatment.

Third, difficulty for the Board in defending approvals or denials where the benefit determination is largely qualitative.

Recommendation

The ordinance would benefit from adding a structured framework, such as:

- A non-exclusive but ranked list of community benefits
- Minimum thresholds or benchmarks for certain categories
- A requirement that findings explicitly compare proposed benefits to baseline zoning outcomes

Even modest calibration, such as requiring the Board to identify the “primary” and

2. Density Bonus Framework: Calibration and Practical Effect

Standard

Density incentives must be rationally related to legitimate public purposes and structured in a way that is both achievable and proportional. If thresholds are too high, the incentive will not be used. If too low, the Town risks granting density without commensurate benefit.

Application

The proposed ordinance allows up to a 25 percent density increase above the six-unit-per-acre baseline, with eligibility tied to categories such as affordable housing, open space, sustainability, and mixed-use integration.

The affordable housing provision is the most clearly defined, requiring a minimum percentage of units at or below 80 percent of area median income with long-term restrictions. Other categories are less quantified.

Two calibration issues arise:

- It is unclear whether the economic value of the density bonus is sufficient to offset the cost of compliance, particularly for affordable housing components.
- The ordinance does not clearly state whether bonuses may be combined, capped per category, or subject to diminishing returns.

Implications

If the thresholds are too stringent relative to market conditions, applicants may simply default to the base density, rendering the incentive framework largely ineffective.

Conversely, if loosely administered, the Town risks granting additional density without receiving proportionate public benefit.

Recommendation

The Board should consider:

- Clarifying whether density bonuses are cumulative and, if so, how they are capped
- Providing at least general guidance on proportionality between benefit and bonus
- Evaluating, through staff or consultant input, whether the affordable housing requirement is economically feasible under current market conditions

A modest refinement here will determine whether the incentive system functions as intended or becomes largely theoretical.

3. Two-Year Expiration Period: Practicality for Large-Scale Development

Standard

Vesting and expiration provisions must strike a balance between preventing speculative approvals and recognizing the realities of development timelines, particularly for large, phased projects.

Application

The proposed ordinance reduces the default expiration period from four years to two years unless otherwise specified in the approval.

For PUDs of 100 acres or more, typical pre-construction timelines often include:

- Engineering and final design
- State and federal permitting
- Financing and market positioning
- Infrastructure planning

These steps alone can approach or exceed two years, particularly in fluctuating economic conditions.

Implications

A rigid two-year expiration period may:

- Discourage otherwise viable large-scale proposals

- Force premature or inefficient project sequencing
- Result in repeated requests for extensions, shifting the burden back to the Board

Recommendation

The ordinance would be improved by:

- Establishing a longer default period for large-scale or phased PUDs (for example, three to five years)
- Alternatively, tying expiration to phasing milestones rather than a single fixed date
- Clarifying extension criteria to ensure predictable administration

The goal should be to prevent land banking without penalizing legitimate development timelines.

4. Phasing Provisions: Clarity and Enforceability

Standard

Conditions of approval must be clear, internally consistent, and capable of objective enforcement. Ambiguous sequencing requirements are difficult to administer and may be vulnerable to challenge.

Application

The proposed ordinance introduces phasing requirements intended to ensure balanced development, particularly between residential and non-residential components. However, the language governing sequencing is unclear and, in at least one instance, internally inconsistent.

Specifically, the provision appears to require that a substantial portion of a commercial component be underway before certain other development phases proceed, but the phrasing creates uncertainty as to what is being restricted and when.

Implications

Ambiguity in phasing provisions creates several risks:

- Difficulty in determining compliance at the permitting stage
- Inconsistent interpretation across projects
- Increased likelihood of dispute between applicants and the Town

Recommendation

This section should be revised for clarity by:

- Clearly defining triggering events (for example, issuance of building permits, completion of infrastructure, or issuance of certificates of occupancy)
- Explicitly stating which phases are dependent on others
- Ensuring internal consistency in terminology

As written, this is the single area most in need of technical correction before adoption.

5. Scope of Planning Board Discretion: Quasi-Legislative Concerns

Standard

While planning boards exercise both administrative and quasi-judicial functions, zoning ordinances themselves are legislative in nature. Ordinances should not delegate policy-making authority without clear standards.

Application

The proposed ordinance requires the Planning Board to make detailed findings on:

- Consistency with ordinance purposes and objectives
- Adequacy of infrastructure and environmental protections
- Justification for density bonuses and waivers

This is generally appropriate and strengthens the record. However, when combined with broadly defined terms such as “community benefit,” the ordinance may effectively shift policy determinations from the legislative body (Town Council) to the Planning Board.

Implications

This raises two concerns:

First, it may blur the line between legislative policy-setting and administrative application.

Second, it increases the likelihood that different Boards, or the same Board over time, apply materially different standards.

Recommendation

To preserve the proper balance, the ordinance should:

- Provide clearer baseline standards for key determinations, particularly community benefit and density bonuses
- Require findings to reference specific ordinance criteria, not just general objectives
- Avoid reliance on purely subjective or open-ended standards

This does not require reducing Board discretion, but rather anchoring it more firmly in the ordinance itself.

Conclusion

The proposed PUD ordinance is a substantial and generally positive modernization. It improves structure, transparency, and alignment with planning goals. However, several areas would benefit from targeted refinement to ensure the ordinance is predictable, enforceable, and legally defensible.

The most immediate areas for revision are the phasing provisions and the calibration of the density bonus framework. The definition and application of “community benefit” and the two-year expiration period also merit adjustment to avoid unintended consequences.

With these refinements, the ordinance will be better positioned to achieve its stated objectives while providing clear guidance to applicants, the Planning Board, and the public.