

Legislative Testimony LD 772

My name is William Cullen, but everyone calls me Bill. I was born in Maine and have lived in Southern Maine most of my life. Right now, that means Kittery. For over 40 years my (late) wife Cathy and I have developed real estate across Maine, and other New England states.

Our mission statement for every one of our projects is that **“The project must be in the best interest of the community and surrounding towns.”** This has allowed us to locate, permit, and develop projects that can comfortably move forward because we so heavily take into account input of neighbors, town planning staff, other town and regional committees. Our goal is to build projects that *really* suit the local needs of the community.

But Maine is uniquely challenging.

Dissatisfied residents in Maine (particularly well-heeled neighbors who may or may not live in a town full-time) have the capacity to change land use, zoning, and permitting *after the fact* – even when all permits have been issued and the financing bound.

You read that right. In Maine, even after full permitting and approval, a development can be skuttled by retroactively changing zoning laws, effectively pulling the rug out from under a project that may have otherwise been fully compliant, permitted, and ready for construction.

This scenario is the story of our project, Dennett Landing, in Kittery. We purchased some 82-or-so acres in the TIF-qualified MU-Neighborhood just North of I-95, between Exits 1 & 2, accessible via 236 or Dennett Road. This zoning – MU Neighborhood – is at the heart of this story.

To understand what happened, you have to understand the zoning within which Dennett landing was proposed. This area used to be zoned just “Business Park.” The Business Park designation allowed for (even encouraged) industrial uses alongside conventional business space. However, the Town recognized the value of this area to future growth, given it’s quick access to the highway, and to the shipyard, and to public infrastructure like water and sewer. The Town of Kittery undertook a massive review and solicitation of input on what to do with that area.

And so, the MU-Neighborhood zone was collaboratively created over the span of seven-plus years. The process involved substantive input from Kittery residents, town planners, planning board members, regional planners, the US Navy, the State of Maine, the US Government generally, and others. Of particular importance was a (JLUS) Joint Land Use Study was initiated as a planning collaborative undertaken by state and local government in partnership with the Portsmouth Naval Shipyard with a focus on the Shipyard, traffic issues, affordable housing, and off-site parking with shuttle services while still maintaining military readiness. Creation of the MU-Neighborhood zone was unanimously approved by the council, and overwhelmingly approved by the voters of Kittery.

With this new zoning in place, and after months of negotiation, we purchased an 82-acre tract of land between Dennett Road and Rt. 236, with frontage on both roads. We didn’t lock the land up with an option contract (which is contingent on approval before closing – and is the norm), but rather, bought the land outright because we believed deeply in this project. Throughout

2021, we worked closely with the town planner and certain planning board members to develop a comprehensive master plan for the acreage – one which addressed development of market rate housing at various income levels and in varying styles (from free-standing homes to condos – and including an offer to build up to 10% affordable, despite no requirement at the time to do so), along with a daycare center, assisted living housing, a downtown area with shops, restaurants, and retail locations, a brewery, a medical offices, potential commercial space, an open downtown common area plus miles of walking and biking trails. The project was designed to be pedestrian and bike friendly, with sidewalks throughout. The project would have resulted in ~900 housing units over some a decade-long buildout, in addition to all the other public amenities.

After months of work and nearly a million dollars in costs born by me personally, we submitted the proposed master plan to the Planning board in early 2022. The application was complete. The plan was to move ahead to sketch plan review (rather like preliminary review).

While in that review process however, one rather notorious former select board member started a petition to kill the development. When it became clear that the development met the town's (quite robust) planning requirements, this individual began a campaign to unwind the zoning. A petition signed by 10% of the residents of Kittery was enough to create a referendum on the issue of unwinding the zoning. Faced with either organizing a public referendum vote, or having a joint meeting of the select and planning boards hosting a joint meeting – the Town's elected officials chose the latter. Rather than send the issue to voters – who had previously approved the zoning by a margin of 3 to 1 – the council and planning board voted to unwind the zoning.

Seven years of local, regional, state, and national planning was wiped away as a result.

Through this process, and after consulting various attorneys, I learned that under current state law, the zoning can be changed – as in Kittery – for up to 45 days *after* final approval.

The ultimate irony is that in reverting to Business Park zoning, we could have built industrial warehouses or heavy industrial storage facilities – but couldn't develop the housing that everyone from the Navy to the state, to the local voters of Kittery agreed was needed.

In a town like Kittery – my town – where so much time and care was given to planning for this particular zone on this particular parcel of land, it is galling that a small fraction of the town's residents could retroactively unwind zoning requirements and all the potential social and economic good they would have brought. It is easy to see why both larger developers from out of state, and local developers like myself, are leery of trying to build in Maine on any sort of meaningful scale. This deterrent effect is no doubt impacting the State's ability to create housing – and will continue to do so for years unless changed.

Simply put, with this type of law on the books, why would anyone desire to move forward with any project in Maine if the rules can be changed, and the zoning unwound any time until 45 days after final approval?

Best regards,

Bill Cullen, Kittery, ME