

ARTICLE V

CHANGES AND AMENDMENTS

Part I. General Use District Map Amendments (Rezoning) and Text Amendments

5.1 Changes and Amendments

The Board of Commissioners may, on its own motion, upon recommendation of the Planning Board, or upon petition by any interested person, amend, supplement, change, modify or repeal the regulations or district boundaries established by this Ordinance. A petition by an interested person shall be submitted to the Board of Commissioners through and reviewed by the Planning Board and the Board of Adjustment, in cases affecting watershed protection rules, which shall consider the merit of the proposed change and make a recommendation to the Board of Commissioners. In no case shall the final action by the Board of Commissioners be taken on amending, changing, supplementing, modifying or repealing the regulations or district boundaries hereby established until a public hearing has been held by the Board of Commissioners, at which parties in interest and citizens shall have an opportunity to be heard.

5.2 Action by the Applicant

**A.** Initiation of Amendments

(1) A request to amend this ordinance may be initiated by:

(a) The Taylortown Board of Commissioners, upon its own motion;

(b) The Taylortown Planning Board, or any other duly appointed Town body;

(c) Any property owner or agent thereof, upon submittal of application to the Town; or

(d) Any other person.

(2) Down-Zoning. No amendment to zoning regulations or a zoning map that down-zones property shall be initiated, nor is it enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the Town. For purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways:

(a) By decreasing the development density of the land to be less dense than was allowed under its previous usage.

(b) By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.

(3) Property may be placed in a conditional zoning district only in response to a petition by all owners of the property to be included.

(4) All requests and applications for amendments to the zoning ordinance shall be acted upon as provided by this article.

**B.** Application

An application for any change or amendment shall contain a description and/or

statement of the present and proposed zoning regulation or district boundary, and the names and addresses of the owner or owners of the property involved. Such application shall be filed not later than two weeks prior to the meeting of the Planning Board at which the application is to be considered.

C. Fees

A nonrefundable fee, according to the schedule available at the Town Hall, shall be paid to the Town of Taylortown for each application for an amendment, to cover costs of advertising and other administrative expenses involved.

5.3 Acceptance of Request

(a) Any request initiated as provided herein shall be referred to the Zoning Administrator and Town Attorney, the planning board and any other appropriate board for their consideration. Such request shall be heard in public hearings and acted upon in accordance with the procedures of this article.

(b) The Zoning Administrator shall prescribe the form(s) upon which applications will be made, as well as any other materials or information deemed necessary including, to but not limited to the items listed below.

(1) The alleged error in this ordinance, if any, which would be remedied by the proposed amendment.

(2) The changed or changing conditions, if any, of neighborhoods or areas in the town which make the proposed amendment reasonably necessary in order to promote the public health, safety and general welfare.

(3) The manner in which the proposed development will carry out the purposes of the adopted Land Use Plan.

(4) All other circumstances, factors and reasons which applicant offers in support of the proposed amendment.

(5) Any other information required on the form.

5.4 Recommendation Analysis

Upon receipt of an amendment request or completed application, the Zoning Administrator and Town Attorney shall cause an analysis to be made of the request or application to determine conformity with the intent of this article and based on their findings, shall prepare a written report. Such a report shall be made available no later than seven (7) days prior to the public hearing.

5.5 Review and Recommendations of the Planning Board

(a) At its next regular meeting and before the public hearing, the planning board will consider the recommendation, written public comment and information presented during the meeting. Public participation shall be in the Chair's discretion.

(b) Initial zoning. In order to exercise zoning powers conferred by Article 7 of Chapter 160D for the first time, the Town shall create or designate a planning board under the provisions of Article 7 of Chapter 160D or of a special act of the General Assembly. The planning board shall prepare or shall review and comment upon a proposed zoning regulation, including the full text of such regulation and maps showing proposed district boundaries. The planning board may hold public meetings and legislative hearings in the course of preparing the regulation. Upon completion, the planning board shall make a written recommendation regarding adoption of the regulation to the governing board. The governing board shall not hold its required hearing or take action until it has received a recommendation regarding the regulation

from the planning board. Following its required hearing, the governing board may refer the regulation back to the planning board for any further recommendations that the board may wish to make prior to final action by the governing board in adopting, modifying and adopting, or rejecting the regulation

(c) Zoning amendments. Subsequent to initial adoption of a zoning regulation, all proposed amendments to the zoning regulation or zoning map shall be submitted to the planning board for review and comment. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the governing board may act on the amendment without the planning board report. The governing board is not bound by the recommendations, if any, of the planning board.

(d) Plan consistency. When conducting a review of proposed zoning text or map amendments pursuant to this section, the planning board shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.

(e) If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the planning board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made.

(f) Separate board required. Notwithstanding the authority to assign duties of the planning board to the governing board as provided by Chapter 160D, the review and comment required by this section shall not be assigned to the governing board and must be performed by a separate board.

#### 5.6 Public Hearings

(a) Public Hearing. The town board shall hold a public hearing on the requests and applications in order to receive comments, testimony, and exhibits pertaining to the amendment. A notice of the hearing shall be given once a week for two (2) successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than ten (10) days nor more than twenty-five (25) days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(b) Notice of Hearing on Proposed Zoning Map Amendments.

(1) Mailed Notice. The owner of affected parcels of land and the owners of all parcels of land abutting that parcel of land, shall be mailed a notice of the hearing on a proposed zoning map amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. For the purpose of this section, properties are "abutting" even if separated by a street, railroad, or other transportation corridor. This notice must be deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the date of the hearing.

(2) Option to mailed notice for large-scale zoning map amendments. The first class mail notice required under subsection (a) of this section is not required if the zoning map amendment proposes to change the zoning designation of more than 50 properties, owned by at least 50 different property owners, and the Town elects to use the expanded published notice provided for in this subsection. In this instance, the Town may elect to make the mailed notice provided for in subsection (a) of this section, or as an alternative, elect to publish notice of the hearing as required by G.S. 160D-601, provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement is effective only for property owners who reside in the area of general circulation of the newspaper that publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property,

shall be notified according to the provisions of subsection (a) of this section.

(3) Posted notice. When a zoning map amendment is proposed, the Town shall prominently post a notice of the hearing on the site proposed for the amendment or on an adjacent public street or highway right-of-way. The notice shall be posted within the same time period specified for mailed notices of the hearing. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the Town shall post sufficient notices to provide reasonable notice to interested persons.

(4) Communication with Neighboring Property Owners or Residents. When a zoning map amendment is proposed, the person proposing the map amendment shall report on any communication with neighboring property owners and residents.

#### 5.7 Town Board Action

(a) The Board of Commissioners will approve, deny, or table each request or application for amendment of this ordinance. The Board will consider the planning board's recommendation, written public comment, testimony, and evidence presented during the public hearing, and the Zoning Administrator and Town Attorney's recommendations, in its decision. Additional testimony, not presented at the public hearing, will be considered at the Mayor's discretion.

(b) Plan Consistency. When adopting or rejecting any zoning text or map amendment, the governing board shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the governing board that at the time of action on the amendment the governing board was aware of and considered the planning board's recommendations and any relevant portions of an adopted comprehensive plan. If the amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land use map in the approved plan and no additional request or application for a plan amendment shall be required. A plan amendment and a zoning amendment may be considered concurrently. The plan consistency statement is not subject to judicial review. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the governing board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.

(c) Statement of Reasonableness. When adopting or rejecting any petition for a zoning text or map amendment, a brief statement explaining the reasonableness of the proposed rezoning shall be approved by the governing board. The statement of reasonableness may consider, among other factors:

(1) the size, physical conditions, and other attributes of any area proposed to be rezoned;

(2) the benefits and detriments to the landowners, the neighbors, and the surrounding community;

(3) the relationship between the current actual and permissible development and the development permissible under the proposed amendment;

(4) why the action taken is in the public interest; and

(5) any changed conditions warranting the amendment.

If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the governing board statement on reasonableness may address the overall rezoning.

(d) Single Statement Permissible. The statement of reasonableness and the plan

consistency statement required by this section may be approved as a single statement.

(e) Ordinance Required. A development regulation adopted pursuant to Chapter 160D shall be adopted by ordinance.

(f) Declaratory Judgments. Challenges of legislative decisions of the Town Board, including the validity or constitutionality of development regulations adopted pursuant to this Chapter, and actions authorized by G.S. 160D-108(h) or (i) and G.S. 160D-1403.1 may be brought pursuant to Article 26 of Chapter 1 of the General Statutes. The Town Board shall be named a party to the action.

(g) Statutes of Limitation

(1) Zoning Map Adoption or Amendments. A cause of action as to the validity of any regulation adopting or amending a zoning map adopted under Chapter 160D or other applicable law or a development agreement adopted under Article 10 of Chapter 160D accrues upon adoption of the ordinance and shall be brought within sixty (60) days as provided in G.S. 1-54.1.

(2) Text Adoption or Amendment. Except as otherwise provided in subsection (1) of this section, an action challenging the validity of a development regulation adopted under Chapter 160D or other applicable law shall be brought within one (1) year of the accrual of such action. Such an action accrues when the party bringing such action first has standing to challenge the ordinance. A challenge to an ordinance on the basis of an alleged defect in the adoption process shall be brought within three (3) years after the adoption of the ordinance.

#### 5.7A Effect of Denial or Withdrawal on Subsequent Applications.

When the town board shall have denied an application for an amendment or the application shall have been withdrawn by the applicant by written notice after the publication of the first public hearing required, the Town Planner shall not accept another application for the same or similar amendment affecting the same property or portion thereof, until the expiration of a twelve (12) month period extending from the date of denial or withdrawal as appropriate. Nothing in this section, however, shall prohibit the Town Board or Planning Board from initiating an amendment for any property at any time.

#### 5.8 Citizen Comments

(a) Subject to the limitations of Chapter 160D, zoning regulations may from time to time be amended, supplemented, changed, modified, or repealed. If any resident or property owner in the Town submits a written statement regarding a proposed amendment, modification, or repeal to a zoning regulation, including a text or map amendment that has been properly initiated as provided in G.S. 160D-601, to the clerk to the board at least two (2) business days prior to the proposed vote on such change, the clerk to the board shall deliver such written statement to the Town Board.

(b) If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160D-705, or any other statute, the clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the board shall not disqualify any member of the board from voting.

#### 5.9 Comprehensive Plan

(a) Requirements for Zoning.

(1) As a condition of adopting and applying zoning regulations under Chapter 160D, the Town shall adopt and reasonably maintain a comprehensive plan or land-use plan by July 1, 2022.

(2) A comprehensive plan sets forth goals, policies, and programs intended to guide the present and future physical, social, and economic development of the jurisdiction. A land-use plan uses text and maps to designate the future use or reuse of land.

(3) A comprehensive or land-use plan is intended to guide coordinated, efficient, and orderly development within the planning and development regulation jurisdiction based on an analysis of present and future needs.

(4) Planning analysis may address inventories of existing conditions and assess future trends regarding demographics, economic, environmental, and cultural factors.

(5) The planning process shall include opportunities for citizen engagement in plan preparation and adoption.

(6) The Town may prepare and adopt other plans as deemed appropriate. This may include, but is not limited to, small area plans, neighborhood plans, hazard mitigation plans, transportation plans, housing plans, and recreation and open space plans.

(b) Comprehensive Plan Contents. A comprehensive plan may, among other topics, address any of the following as determined by the Town:

(1) Issues and opportunities facing the Town, including consideration of trends, the values expressed by citizens, community vision, and guiding principles for growth, and development;

(2) The pattern of desired growth and development and civic design, including the location, distribution, and characteristics of future land uses, urban form, utilities, and transportation networks;

(3) Employment opportunities, economic development, and community development;

(4) Acceptable levels of public services and infrastructure to support development, including water, waste disposal, utilities, emergency services, transportation, education, recreation, community facilities, and other public services, including plans and policies for provision of and financing for public infrastructure;

(5) Housing with a range of types and affordability to accommodate persons and households of all types and income levels;

(6) Recreation and open spaces;

(7) Mitigation of natural hazards such as flooding, winds, wildfires, and unstable lands;

(8) Protection of the environment and natural resources, including agricultural resources, mineral resources, and water and air quality;

(9) Protection of significant architectural, scenic, cultural, historical, or archaeological resources; and

(10) Analysis and evaluation of implementation measures, including regulations, public investments, and educational programs.

(c) Adoption and effect of plans.

(1) Plans shall be adopted by the governing board with the advice and consultation of the planning board.

(2) Adoption and amendment of a comprehensive or land-use plan is a legislative decision and shall follow the process mandated for zoning text amendments set by G.S. 160D-601.

(3) Plans adopted under Chapter 160D may be undertaken and adopted as part of or in conjunction with plans required under other statutes, including but not limited to the plans required by G.S. 113A-110.

(4) Plans adopted under Chapter 160D shall be advisory in nature without independent regulatory effect.

(5) Plans adopted under Chapter 160D do not expand, diminish, or alter the scope of authority for development regulations adopted under Chapter 160D.

(6) Plans adopted under this section shall be considered by the planning board and governing board when considering proposed amendments to zoning regulations as required by G.S. 160D604 and 160D-605.

(7) If a plan is deemed amended by G.S. 160D-605 by virtue of adoption of a zoning amendment that is inconsistent with the plan, that amendment shall be noted in the plan. However, if the plan is one that requires review and approval subject to G.S. 113A-110, the plan amendment shall not be effective until that review and approval is completed.

(d) The Town may undertake any of the planning activities authorized by Article 5 of Chapter 160D in coordination with other local governments, state agencies, or regional agencies created under Article 19 of Chapter 153A or Article 20 of Chapter 160A.

5.10 Development Agreements. (See Appendix)

#### 5.11 Moratoria

a) Authority. The Town may adopt temporary moratoria on any development approval required by law, except for the purpose of developing and adopting new or amended plans or development regulations governing residential uses. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions.

(b) Hearing required. Except in cases of imminent and substantial threat to public health or safety, before adopting a development regulation imposing a development moratorium with a duration of 60 days or any shorter period, the governing board shall hold a legislative hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 160D-601.

(c) Exempt projects. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section does not apply to any project for which a valid building permit issued pursuant to G.S. 160D-1108 is outstanding, to any project for which a special use permit application has been accepted as complete, to development set forth in a site-specific vesting plan approved pursuant to G.S. 160D-108.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid development approval, or to preliminary or final subdivision plats that have been accepted for review by the Town prior to the call for a hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the Town prior to the call for a hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium. Notwithstanding the foregoing, if a complete application for a development approval has been submitted prior to the effective date of a moratorium, G.S. 160D-108(b) applies when permit processing resumes.

(d) Required statements. Any development regulation establishing a development moratorium must include at the time of adoption each of the following:

(1) A statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the Town and why those alternative courses of action were not deemed adequate.

(2) A statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.

(3) A date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

(4) A statement of the actions, and the schedule for those actions, proposed to be taken by the Town during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

e) Limit on renewal or extension. No moratorium may be subsequently renewed or extended for any additional period unless the Town has taken all reasonable and feasible steps proposed to be taken in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must include, at the time of adoption, the findings set forth in 160D-107(d), including what new facts or conditions warrant the extension.

(f) Expedited judicial review. Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the General Court of Justice for an order enjoining the enforcement of the moratorium. Actions brought pursuant to this section shall be scheduled for expedited hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In such actions, the Town has the burden of showing compliance with the procedural requirements of 160D-107.