

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT**

Hillsborough Superior Court Northern District  
300 Chestnut Street  
Manchester NH 03101

Telephone: 1-855-212-1234  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>

**SUMMONS IN A CIVIL ACTION**



**Case Name: Town of Peterborough v David Bonacci, et al**  
**Case Number: 216-2019-CV-00759**

**Date Complaint Filed: August 21, 2019**

A Complaint has been filed against David Bonacci; Loretta Laurenitis In this Court. A copy of the Complaint is attached.

**The Court ORDERS that ON OR BEFORE:**

<b>October 10, 2019</b>	Town of Peterborough shall have this Summons and the attached Complaint served upon David Bonacci; Loretta Laurenitis by in hand or by leaving a copy at his/her abode, or by such other service as is allowed by law.
<b>October 31, 2019</b>	Town of Peterborough shall electronically file the return(s) of service with this Court. Failure to do so may result in this action being dismissed without further notice.
<b>30 days after Defendant is served</b>	David Bonacci; Loretta Laurenitis must electronically file an Appearance and Answer or other responsive pleading form with this Court. A copy of the Appearance and Answer or other responsive pleading must be sent electronically to the party/parties listed below.

**Notice to David Bonacci; Loretta Laurenitis:** If you do not comply with these requirements you will be considered in default and the Court may issue orders that affect you without your input.

**Send copies to:**

John J. Ratigan, ESQ

David Bonacci  
Loretta Laurenitis

Donahue Tucker & Ciandella PLLC 16 Windsor Ln PO Box 630  
Exeter NH 03833  
104 Four Winds Farm Road Peterborough NH 03458  
104 Four Winds Farm Road Peterborough NH 03458

**BY ORDER OF THE COURT**

**August 26, 2019**  
**(126987)**

**W. Michael Scanlon**  
Clerk of Court

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT**

Hillsborough Superior Court Northern District  
300 Chestnut Street  
Manchester NH 03101

Telephone: 1-855-212-1234  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>

**NOTICE TO DEFENDANT**

Case Name: **Town of Peterborough v David Bonacci, et al**  
Case Number: **216-2019-CV-00759**

You have been served with a Complaint which serves as notice that this legal action has been filed against you in the **Hillsborough Superior Court Northern District**. Review the Complaint to see the basis for the Plaintiff's claim.

Each Defendant is required to electronically file an Appearance and Answer 30 days after service. You may register and respond on any private or public computer. For your convenience, there is also a computer available in the courthouse lobby.

If you are working with an attorney, they will guide you on the next steps. If you are going to represent yourself in this action, go to the court's website: [www.courts.state.nh.us](http://www.courts.state.nh.us), select the Electronic Services icon and then select the option for a self-represented party.

1. Complete the registration/log in process. Click Register and follow the prompts.
2. After you register, click Start Now. Select **Hillsborough Superior Court Northern District** as the location.
3. Select "I am filing into an existing case". Enter **216-2019-CV-00759** and click Next.
4. When you find the case, click on the link and follow the instructions on the screen. On the "What would you like to file?" screen, select "File a Response to Civil Complaint". Follow the instructions to complete your filing.
5. Review your Response before submitting it to the court.

**IMPORTANT:** After receiving your response and other filings the court will send notifications and court orders electronically to the email address you provide.

A person who is filing or defending against a Civil Complaint will want to be familiar with the Rules of the Superior Court, which are available on the court's website: [www.courts.state.nh.us](http://www.courts.state.nh.us).

Once you have registered and responded to the summons, you can access documents electronically filed by going to <https://odypa.nhecourt.us/portal> and following the instructions in the User Guide. In that process you will register, validate your email, request access and approval to view your case. After your information is validated by the court, you will be able to view case information and documents filed in your case.

If you have questions regarding this process, please contact the court at 1-855-212-1234.

**THE STATE OF NEW HAMPSHIRE**

**HILLSBOROUGH, SS.  
NORTHERN DISTRICT**

**SUPERIOR COURT**

**Town of Peterborough  
1 Grove Street  
Peterborough, NH 03458**

**v.**

**David Bonacci & Loretta Laurenitis  
104 Four Winds Farm Road  
Peterborough, NH 03458**

**Docket No. 216-2019-CV-00759**

**PETITION FOR DECLARATORY JUDGMENT REGARDING VALIDITY OF ZONING  
ORDINANCE PROVISION**

NOW COMES the Plaintiff, Town of Peterborough ("the Town"), a New Hampshire municipal corporation organized under the laws of the State of New Hampshire, having a principal business address of 1 Grove Street, Peterborough, Hillsborough County, New Hampshire, 03458, and complains against the Defendants, David Bonacci & Loretta Laurenitis, 104 Four Winds Farm Road, Peterborough, Hillsborough County, New Hampshire, 03458, and states that:

1. The Town has adopted a zoning ordinance in accordance with the grant of power contained in RSA 674:16.

2. That Article II of the 2019 Town of Peterborough Town Meeting Warrant including 15 proposed zoning ordinance amendments. Each of which was voted upon separately by the Town Meeting voters.

3. That Article II, Zoning Amendment 15 was submitted for inclusion on the 2019 Town Meeting warrant by the petition of twenty-five or more voters, as is authorized by RSA 675:4.

4. That the Respondents were signatories to the petition warrant article that was submitted to place Zoning Amendment 15 on the Town Meeting warrant.

5. That Zoning Amendment 15 (see, Exhibit 1, attached) proposed amendments to two separate zoning districts: the repeal and deletion in its entirety of the Traditional Neighborhood Overlay Zone II district (TNOZ II), the repeal of which would have resulted in altering the allowed uses in the district, the residential density, and a number of lot dimensions, setback, size and frontage requirements; and, an amendment that proposed minor adjustments to the Traditional Neighborhood Overlay Zone I district (TNOZ I), including lot frontage, size and setback requirements.

6. That Zoning Amendment 15 on its face sets forth changes to two separate zoning districts., one set of changes is to TNOZ II and the other set of changes is to TNOZ I.

7. That in the instance when it is the Planning Board that determines the final form of an ordinance, amendment or amendments, the Court in Handley v. Hooksett, 147 N.H. 184 (2001) determined that the "single subject" rule is applicable to RSA 675:3 and that the Court would give deference to the proposed zoning amendment changes advanced by the Planning

Board provided that "the sections sought to be changed are reasonably germane to the subject of the amendment." Id. at 190.

8. That by statute, the Planning Board has no authority under RSA 675:4, which authorizes the presentation of "an amendment to the zoning ordinance" to voters at an annual town meeting by the petition of 25 or more voters, to modify or break out into separate zoning ballot question articles a petition zoning amendment. A petition zoning amendment must be presented to town meeting voters as submitted, whether or not it presents multiple amendments to the ordinance in compliance with the single subject rule.

9. That an RSA 675:5 protest petition was timely submitted to the Selectmen prior to the 2019 Town Meeting with respect to Zoning Amendment 15. The protest petition was subsequently validated by the Selectmen. Zoning Amendment 15 was not adopted by the 2019 Peterborough Town Meeting, as it did not obtain the required 2/3rd vote to achieve adoption, as required when a valid protest petition has been presented to the Town Meeting per RSA 675:5. The validity of the protest petition is presently being contested in the matter Bonacci et al. v. Town of Peterborough, Docket No. 216-2019-CV-00511.

10. That the combination of the TNOZ II and TNOZ I zoning amendments in the same petition zoning amendment article, which affect different land areas in adjacent zoning districts, impermissibly combines multiple zoning amendments that effect properties in different zoning districts, in differing ways, into a single ballot question, in violation of the single subject rule.

11. That the property owners in the TNOZ II and TNOZ I districts were deprived the opportunity of being able to exercise their statutory right under RSA 675:5 to assemble and submit a protest petition that addressed the proposed ordinance changes in their particular zoning district because of the fact that the amendments effecting these separate districts were combined into a single petition warrant article.

12. That New Hampshire Supreme Court has repeatedly recognized that the purpose behind the protest petition statute is to confer added protections to landowners from hastily conceived or ill-advised changes in the zoning ordinance.

13. That the facts of this case support the conclusion that if all of the signatories to the protest petition were considered for the TNOZ I and TNOZ II districts separately, the petition would have met the twenty percent (20%) representation requirement of either RSA 675:5, I-a(a) or I-a(b).

14. That the application of the single subject rule should be construed to take into account whether or not the Planning Board has the authority to determine the final form of the zoning amendment article to be presented to the voters, and where, in the instance of a petition zoning amendment, the Planning Board lacks such authority, the level of scrutiny about whether there is indeed a single subject should be heightened, and consideration should be given to whether or not the combination of amendments has the effect of diminishing the rights to voters to consider such amendments separately, and whether the combination of such zoning amendments has diminished the rights of property owners to exercise their right to file a protest petition due to the combination of differing subjects or zoning districts into one article.

15. The Selectmen have the responsibility to enforce the Peterborough zoning ordinance, and have upheld the validity of the amendment's protest petition, and this zoning amendment has not been adopted by Town Meeting due to a lack of a 2/3rds meeting vote in favor.

16. The property owners in Peterborough have the right to enjoy the protections of the single subject rule and the protections afforded by protest petitions that can be assembled and submitted with regard to zoning amendments that address a single, distinct subject matter.

17. The Respondents assert claims that are adverse to the current Peterborough zoning ordinance.

18. That the parties have progressed far enough in their dispute, also taking into consideration the filing of the Bonacci et al. v. Peterborough, Docket No. 216-2019-CV-0051 matter, such that a judicial decision may be expected to resolve this issue.

19. As there are a number of engaged Peterborough citizens that have promoted the petition warrant article and others that have opposed the article by the filing of the protest petition, and given the Selectman's responsibility to enforce the Peterborough zoning ordinance, the Town has no adequate means of settling this matter, and a declaratory judgment pursuant to RSA 491:22 is an appropriate means to resolve this dispute. Faulkner v. Keene, 85 N.H. 147 (1931).

WHEREFORE, the Town prays that this Honorable Court:

- A. Declare that zoning amendment 15 violated the single subject rule and thus was invalid either on its face and as applied; and,
- B. Grant such other relief as may be fair and just.

Dated this 21<sup>st</sup> day of August, 2019.

Respectfully submitted,

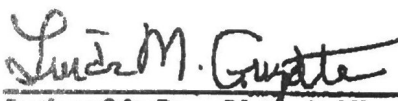
TOWN OF PETERBOROUGH

By:   
Rodney Bartlett, Town Administrator  
Duly Authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF Hillsborough

On this 21<sup>st</sup> day of August, 2019, before me, personally appeared Rodney Bartlett, Town Administrator of the Town of Peterborough, known to me (or satisfactorily proven to be) the person whose name is subscribed to the foregoing instrument and made oath that the facts contained in the foregoing Petition are true to the best of his knowledge, information and belief.

Before me,

  
Justice of the Peace/Notary Public  
My Commission Expires:

LINDA M GUYETTE, NOTARY PUBLIC  
MY COMMISSION EXPIRES JUNE 10, 2024



Respectfully submitted,

TOWN OF PETERBOROUGH

By and through its attorneys,

DONAHUE, TUCKER & CIANDELLA, PLLC

Dated this 21<sup>st</sup> day of August, 2019.

By: /s/ John J. Ratigan, Esquire

John J. Ratigan, Esquire

NHB #4849

16 Acadia Lane, P.O. Box 630

Exeter, NH 03833-4936

(603) 778-0686

jjratigan@dtclawyers.com

## **EXHIBIT 1**

**Zoning Amendment 15 – Proposed by Citizen Petition**

Are you in favor of the adoption of Amendment No.15 as submitted by petition for the Town of Peterborough Zoning Ordinance, as follows:

- A. Repeal Section 245-15.4 Traditional Neighborhood Overlay Zone II in its entirety and delete any reference to it appearing throughout the zoning ordinance.
- B. Amend Section 245-15.3 Traditional Neighborhood Overlay Zone I, Paragraph E.3. and E.4 by deleting the words shown in strikethrough and adding the words in italic/underline to read as follows:
3. Lot and Yard Standards. The following minimum lot and yard standards apply to subdivisions or the addition of dwelling units that do not involve subdivision. If a subdivision is proposed, each lot must meet these minimum standards. If no subdivision is proposed, the existing lot must meet these minimum standards before any additional dwelling units could be approved.

	<u>Family District</u>	<u>General Residence District</u>	
a. Frontage:	75 feet	<del>50 feet</del>	<u>75 feet</u>
b. Lot Size:			
i. Single Family:	10,000 square feet	<del>5,000 square feet</del>	<u>7,500 square feet</u>
ii. Two-Family:	10,000 square feet	7,500 square feet	7,500 square feet
iii. Multi-Family:	NA	<del>5,000 square feet plus 2500 square feet for each unit</del>	<u>6000 square feet each unit</u>

4. Setback Requirements: The front building setbacks shall be determined by taking the average of existing developed residential lots located on either side of the project parcel, on the same side of the street, based on the most recent Town mapping, as measured along the adjacent street frontage from the lot proposed for development. In no instance shall the front setback be less than ~~fifteen (15) feet~~ twenty (20) feet nor greater than fifty (50) feet. Minimum side and rear setback requirements shall not be less than ~~ten (10) feet~~ twenty (20) feet, and may be greater if the Planning Board finds that unusual characteristics exist and a greater setback would be more in keeping with the character of the neighborhood and streetscape.

*The Planning Board does not support this petition amendment.*