



Town of Gorham
PLANNING BOARD WORKSHOP NOTES
March 3, 2008

A workshop meeting of the Gorham Planning Board was held on Monday, March 3, 2008, in the Municipal Center Council Chambers, 75 South Street, Gorham, Maine, following the regularly scheduled Planning Board meeting which adjourned at 7:55 p.m.

In attendance were Susan Robie, Douglas Boyce, Thomas Fickett, Thomas Hughes, Michael Parker, Mark Stelmack and Edward Zelmanow. Also present were Town Planner Deborah Fossum, Assistant Planner Thomas Poirier, and Clerk of the Board, Barbara Skinner.

1. Review and Approval of the February 4, 2008 Workshop Meeting Notes.

There were no comments or corrections to the February 4, 2008 Workshop Meeting Notes.

Mr. Parker said that he no longer wishes to receive hard copies of minutes once they have been approved. Mr. Hughes said he agrees with Mr. Parker and said he does not want to receive duplications via email and regular mail. After discussion, Ms. Fossum summarized that the Board will receive agendas in the mail, and in the packet the Board will receive the draft minutes and another copy of the agenda, and following that the Board can go on line for anything they wish to download and print. The Board commended the Planning Department Administrative Assistant for the packet organization.

2. Chairman's Report.

There were no outstanding items discussed in the Monthly Status Report.

Ms. Robie commented that the Planning Board rules are attached for informational purposes. Mr. Fickett suggested that a provision be added on how to deal with email messages or hard mail received from the public.

Ms. Robie noted that there are two draft letters being proposed to be sent to the Town Council. She suggested that the first letter dealing with street acceptances and street ordinances be discussed at some future meeting, and that tonight the Board deal with the second letter.

Mr. Boyce read the second letter, having draft dates of January 27, 2008, February 13, 2007 and February 24, 2008, into the record as follows:

“Dear Mr. Loveitt:

The Gorham Planning Board is recommending changes listed in this letter to the Land Use & development Code of the Town of Gorham. The planning board is specifically requesting permission to develop specific ordinance language to accomplish the changes listed below.

The Planning Board Ordinance Committee has been working on a series of recommended changes to the ordinance for approximately one year. The changes contained in this letter apply only to the condition for expiration of plan approvals. Additional recommendations on other aspects of the code will be conveyed by separate letters.

The criteria used by the Planning Board for recommending changes are:

- 1) safety is adversely impacted by the current code as written or the code is silent on a safety issue
- 2) the changes do not impact growth patterns
- 3) the changes streamline the review process for the developer, planning staff and the planning board, or

- 4) the change reduces difficulty or cost for the developer
- 5) the change clarifies the ordinance or
- 6) the change protects the people and town of Gorham

The changes listed below are recommended by the entire Planning Board

Expiration of Applications before the Planning Board

- 1) **Applications accepted for review by the Planning Board will expire 12 months from the date of the last revision the applicant submits to the planning office. This shall be a clearly stated requirement of application and no notification is required.**
- 2) **The applicant may apply for a single extension which may be granted by the planning board. The extension may be granted for 6 months pending payment of an extension fee of \$100.**
- 3) **Any unused monies set aside in an escrow account will be returned when an application expires.**

Expiration of Approved Plans

- 1) **Site plans approved by the planning board shall expire unless initiated within 2(?) years. A plan note to this effect shall be attached to all site plans. No notification is required.**
- 2) **The approval of Special Exception Criteria shall expire if the plan for which they are required is not initiated within two years of approval, no notification is required.**
- 3) **If the road is not built within two years of approval of a Private Way plan the application must come back to the Planning Board for a new approval of construction requirements, which have to comply with any new standards that may have been adopted, with the exception of the approved right of way width. A plan note to this effect shall be attached to all approved plans. No notification is required.**
- 4) **Performance guarantees accepted and approved by the Planning Board are valid for one year; a plan note to this effect shall be attached to all plans.**
- 5) **Subdivision plans will not be released for recording at the Registry of Deeds until Performance Guarantees approved by the Planning Board are provided in a manner acceptable to the Town Manager and the Town Attorney. Performance guarantees are valid for one year and may be extended only with approval of the Planning Board.**
- 6) **Subdivision plans approved with an 'in lieu conditional agreement' must be initiated within 'X' months of being recorded at the Registry of Deeds.**
 - a) **Any such subdivision plan that is not initiated within 'X' months must come before the Planning Board for a subdivision amendment changing the Performance Guarantee to a non-conditional form.**
 - b) **Any approved subdivision plan offered for sale with an 'in lieu conditional agreement' must be converted, by subdivision amendment, to a non conditional form of performance agreement prior to a new owner recording the deed.**

The reasons for the above recommendation are as follows:

Active application may take more than a year to approve, however review and revision activity is normally pursued during this time that demonstrates continued effort on the part of the developer.

If no activity occurs within a year there is a lack of continuity for the Planning Board and Planning staff. Site walks often have to be repeated.

Ordinance provisions may change and since existing applications are often grandfathered review standards may no longer be viewed as being in the Town's best interests.

Further it has become common for approved plans to be 'bought and sold.' The initial estimation of financial capacity has to be re-established without review of the actual plans. Constraint of new owners to follow conditions of approval becomes increasingly difficult as plans change hands and as implementation is delayed.

Currently there are 5 or 6 applications that would be deemed expired on the Planning Board application list. There are also two or three approved subdivisions that have changed hands with conditional approvals that are transferred automatically to the new owners

Conditional approvals with 'in lieu' language were meant to be approved for specific individuals under specific circumstances.

Respectfully submitted,

Susan P. Robie
Chairman, Gorham Planning Board"

Ms. Robie said that the Town Attorney noted that the Board's earlier suggestion of giving an applicant three months before an application expires is illegal, but saying something has expired means it has expired. Ms. Fossum said if there is a plan note saying that the plan will expire on an established date if certain steps are not taken, it is on notice at the Registry for everyone to read and it eliminates a need for tracking the status. Mr. Zelmanow suggested adding the word "automatically" to #1 under Expiration of Applications, so that the sentence reads "1) Applications accepted for review by the Planning Board will automatically expire 12 months from the date of the last revision the applicant submits to the planning office. This shall be a clearly stated requirement of application and no notification is required," which releases the staff from all notice requirements. Mr. Zelmanow also said that the word "automatically" should be inserted in #1 under Expiration of Approved Plans, as follows: "1) Site plans approved by the planning board shall automatically expire unless initiated within 2(?) years. A plan note to this effect shall be attached to all site plans. No notification is required."

Also in #1 under Expiration of Approved Plans, Mr. Parker suggested that the word substantially should be inserted before the word *initiated*, so that it would read as follows: "1) Site plans approved by the planning board shall automatically expire unless substantially initiated within 2(?) years. A plan note to this effect shall be attached to all site plans. No notification is required." Mr. Parker suggested adding substantially to #2 in this section as well, to wit: "2) The approval of Special Exception Criteria shall expire if the plan for which they are required is not substantially initiated within two years of approval, no notification is required."

Ms. Robie said that the Town Attorney said that most towns control subdivision initiation by refusing to release a mylar for recording until a performance guarantee has been provided, but because Gorham has the "in lieu" language, this can't be done. Ms. Robie said that the "in lieu" language appears on plans and asked if the Board wants to consider granting approval for it. Ms. Fossum referred the Board to sections of the code that outline the Board's role in performance guarantee matters, which the staff has previously processed administratively, and the only time the Board would see the proposed performance guarantee is in the application form and on subdivision plans when the developer proposes to use the conditional agreement, also sometimes called the "in lieu" language. Ms. Fossum said she does not believe there has been discussion by the Board on the merits of whether or not a developer should or should not be permitted to use the conditional agreement; however, most of the developers propose it and most of the developers utilize it.

Ms. Robie summarized the two different kinds of improvements: one involves improvements to the public infrastructure, which are not allowed to have the “in lieu” agreement, and the “in lieu” agreement is for the infrastructure related to the actual subdivision. The conditional agreement was created to allow individual developers to build enough of the infrastructure so that lots could be sold to establish a performance guarantee. Ms. Robie noted that the conditional agreement was supposed to be the exception to the rule, this is an item for Planning Board awareness, and the Board needs to decide if it wants to pay more attention to the conditional agreements in the future.

Ms. Robie commented that the Board can, without changing the ordinance, place conditions on the conditional agreements, such as limiting how long they can remain in place and prohibiting their transfer. Ms. Fossum said that when a transfer of ownership is proposed for a subdivision, the new owner is required, under state subdivision law, to come back to the Planning Board, when the Board is required to look at the new applicant’s financial and technical capacity. At this point there is potentially the opportunity to discuss the “in lieu” agreement with the new developer; however, in the past, that language is a plan note so it seems to be conveyed along with the plan of the subdivision right. Ms. Fossum explained that if the conditional language is on the subdivision plan, the developer is able to start construction, after a pre-construction meeting, without posting any sort of bond, any cash at all, but if the developer wants to pull a building permit, the developer will then offer to post a bond or a letter of credit or cash. The developer will give staff the list of improvements that remain to be done and post bond for those items, and then he can pull his building permit. She said there are many tracking issues for staff to deal with, whereas many other communities require the developer to make all improvements before any building permits can be pulled, which effectively guarantees that the developers have to have the financial capacity to make the improvements to build a road, etc. The conditional agreement allows a developer to make the improvements “on credit” and not necessarily have all the financing he needs to make the improvements up front. Ms. Fossum called the Board’s attention to Chapter III, Subdivision, Section IV, Final Plan, Section C, Improvement Guarantee, 3)d), entitled Subdivision Improvement Guarantee, “The Conditional Agreement, if acceptable in lieu of a Performance Guarantee, shall be endorsed by the Planning Board on the Final Plan, and shall provide that no lot or parcel of land may be conveyed, and that no permit may be issued by the Building Inspector for any building on any portion of the development until the completion of all streets, utilities, and other public or quasi-public improvements.”

The Board concluded its workshop with a discussion of the role of the Town Engineer.

Respectfully submitted,

Barbara C. Skinner, Clerk of the Board
_____, 2008