



Town of Gorham
November 3, 2008
PLANNING BOARD MINUTES

LOCATION: Municipal Center Council Chambers, 75 South Street, Gorham, Maine

Members Present:

SUSAN ROBIE, CHAIRWOMAN
DOUGLAS BOYCE
THOMAS FICKETT
MICHAEL PARKER
MARK STELMACK
EDWARD ZELMANOW

Staff Present:

DEBORAH FOSSUM, Dir. of Planning & Zoning
THOMAS POIRIER, Assistant Planner
BARBARA SKINNER, Clerk of the Board

Members Absent:

THOMAS HUGHES

The Chairwoman called the meeting to order at 7:00 and read the Agenda. The Clerk called the roll, noting that Thomas Hughes was absent.

1. APPROVAL OF THE OCTOBER 6 and OCTOBER 20, 2008 MINUTES

Thomas Fickett MOVED and Michael Parker SECONDED a motion to accept the minutes of October 6, 2008 as written and distributed. Motion CARRIED, 5 ayes (Thomas Hughes absent, Edward Zelmanow abstaining as not having been present at the October 6, 2008 meeting).

Michael Parker MOVED and Thomas Fickett SECONDED a motion to postpone acceptance of the minutes of October 20, 2008. Motion CARRIED, 6 ayes (Thomas Hughes absent).

2. COMMITTEE REPORTS

A. Ordinance Review Committee – Ms. Robie reported that the Town Council’s Ordinance Committee reviewed the language proposed by the Planning Board for the noise ordinance and made a number of changes regarding the list of exceptions during daylight hours in Chapter II, making those items less stringent. For that reason, the ordinance will not return before the Planning Board. The Ordinance Committee also voted to propose that the Town Council not include the restriction that requires the replacement of an existing business with a new business to be subjected to any noise concerns. The Town Council will review their original language, the language the Planning Board proposed, the language as modified to which they agreed, and some further proposed revisions made by the Town’s consultant, Charles Wallace. Unless the Town Council makes a change that is more restrictive, the proposed ordinance will not have to come back before the Planning Board.

She said that the second item to report concerns the first draft of a bed and breakfast ordinance. There have been two subcommittee meetings, the first to develop the list of items which must be included such as parking and buffering in a bed and breakfast ordinance, and the second meeting was to review draft language. The next step is for the Planner to talk to some bed and breakfast owners.

B. Sign Ordinance Sub-Committee – Ms. Robie reported that a meeting was held with Mark Eyerman, the Town’s consultant on the ordinance, the Code Officer, Assistant Code Officer and the Sub-Committee to discuss the new ordinance and its implementation. There will be another meeting in three months to determine how the Code Enforcement Office is dealing with the new ordinance.

C. Streets and Ways Sub-Committee – In Mr. Hughes’s absence, Mr. Parker reported that a meeting was held with the Fire Chief and Public Works Director, and although the discussions were good, it was

decided not to proceed in any particular way with any changes at the moment. Mr. Parker said there are no plans to meet again in the immediate future.

At Ms. Robie's request, Mr. Poirier reported that staff has been in contact with Scott Collins, representing Plan-It Recycling, who said they have received a report from Macleod Structural Engineers, regarding the installation of poles to support the proposed privacy fencing, but Mr. Collins said he has not had a change to review that report as yet. Mr. Collins said when he has completed his review, he will make changes to the plan and make a resubmission and include the Macleod report.

Ms. Robie commented that the Macleod report dealt with an issue of concern to the Board and abutters and is an enforcement action, and said she did not believe it is desirable to have this drag on. Mr. Parker suggested that staff encourage the applicant's engineer to have the resubmission ready for the next meeting or the matter will be referred back to the Code Office. Mr. Stelmack concurred, as did Mr. Zelmanow and Mr. Boyce. Mr. Fickett asked if the Macleod report would be sent out to peer review. Ms. Fossum said it would be easy to send the report out for peer review; Mr. Fickett noted that in that instance the one month given the applicant to return to the Board might not be sufficient time but he would like the option to see a second opinion if it is necessary. Ms. Fossum said staff can certainly advise the applicant's engineer that the Board would like to see the report on the December agenda and at the same time contract with a peer reviewer to look at the report.

Mr. Parker said he would be satisfied with a certified engineer signing off on the report. Mr. Stelmack said he believes that this is a simple engineering exercise and a peer review is not necessary; however, he could go either way, and given the abutters' concerns, a peer review could go a long way toward making the applicant's report more credible.

Ms. Robie asked that the applicant be advised to have the report and revised plan in the Planning office within the next ten days so that staff can decide or poll the Board on the members' opinions to get the structural peer review done in time for the next meeting. Ms. Fossum said she would be more comfortable with staff deciding if the report needs some sort of peer review rather than polling the Board on that kind of issue, and said that the engineer already reviewing projects now could possibly take a look at the Macleod report. Ms. Robie suggested that the item should be put on the December meeting agenda for discussion; if the revised plan and report are not ready for that meeting, the issue goes back to the Code Enforcement Officer. The Board concurred with Ms. Robie's suggestion.

3. MINOR SITE PLAN REPORTS

Ms. Fossum reported that within a week the "minor site plans" will officially be known as "Administrative Review Projects," based on recent revisions to the Code adopted by the Town Council in October. There have been two recent approvals: Biodiversity Research Institute received approval for a parking lot expansion on October 31; and IB Properties LLC received approval on October 29 for amendments to a site plan involving a lot split of a property on New Portland Road. Two more projects are about to be approved: Dwayne St. Ours is the applicant for a laundromat in Little Falls on the corner of the Gray Road and Towpath Road; and White Rock Outboard seeks approval of a small storage shed on site. One new submission has recently been received from S.D. Warren for a parking area on Mallison Street, associated with canoe portage at the dam as part of relicensing requirements. Staff is awaiting resubmission on a project by JCB Properties to convert a residential structure on Main Street to an office building; the property was originally proposed as a daycare center by Childhood Adventures, which will not be pursued, and now the property is under review as a conversion to an office building. Finally, Ms. Fossum reported that staff is awaiting a formal letter withdrawing the application by TNT Quickstop for an ATM facility on their site.

Ms. Fossum said that the Code Enforcement Office and the Planning Department have forwarded a memo to the Town Council through the Town Manager's office suggesting an amendment to the Land Use Code

“Administrative Review Ordinance” to exempt new structures and additions to buildings that are less than 250 square feet in all districts except the Village Center and the Urban Commercial District, which utilize village design standards. It is believed that it would make sense in many cases to permit the Code Enforcement Officer to review storage sheds or very small additions as part of the building permit application process. She said it does not seem practical to require a business owner or property owner to go through site plan review expense and planned development that is required for a structure less than 250 square feet.

4. CONSENT AGENDA:

A. Street Acceptance Report – “Jennifer Way & the extension of Boulder Drive” in Tall Pines Subdivision – off Spiller Road by Gilbert Homes.

Request for street acceptance for Jennifer Way and the extension of Boulder Drive by Gilbert Homes. Zoned Suburban Residential; M77.

B. Street Acceptance Report – “Gerry’s Way” in the Gerry Estates Subdivision – off South Street by Leo J. Kiley

Request for street acceptance for Gerry’s Way by Leo Kiley. Zoned Rural, M5.

C. Subdivision Amendment # 3 – former Reinhard Property – off Wescott Road – by Dennis Morton.

Requesting preliminary and final subdivision approval to modify building window limits on Lot 6 through clarification of actual streams from drainage ways. Zoned SR-MH (M87/L9)

Mr. Zelmanow commented that Item C will require two motions by the Board: one to waive the procedures leading up to final subdivision approval and one to grant preliminary and final approval.

Mr. Zelmanow MOVED and Douglas Boyce SECONDED a motion to remove Item C from the Consent Agenda. Motion CARRIED, 6 ayes (Thomas Hughes absent). [7:25 p.m.]

None of the Board members and no one from the public wished to remove either Item A or Item B from the Consent Agenda. Ms. Fossum said there are no conditions of approval involved with the street acceptances.

Michael Parker MOVED and Douglas Boyce SECONDED a motion to approve Items A and B on the Consent Agenda.

Discussion: Mr. Zelmanow suggested an amendment to the motion that the approval is with the proposed conditions of approval provided to the applicants prior to tonight’s meeting. The movant and the seconder agreed to the amendment to the motion.

Motion CARRIED, 6 ayes (Thomas Hughes absent). [7:28 p.m.]

Ms. Robie confirmed with Mr. Zelmanow that the reason for taking Item C off the Consent Agenda is not to discuss the item but to make the proper motions.

Edward Zelmanow MOVED and Michael Parker SECONDED a motion to waive the rules leading up to subdivision approval. Motion CARRIED, 6 ayes (Thomas Hughes absent). [7:29 p.m.]

Edward Zelmanow MOVED and Michael Parker SECONDED a motion to grant preliminary and final subdivision approval for Subdivision Amendment #3 of the former Reinhard property off Wescott Road with the proposed conditions of approval provided to the applicant and discussed here this evening. Motion CARRIED, 6 ayes (Thomas Hughes absent). [7:30 p.m.]

5. PUBLIC HEARING: Proposed amendments to the Land Use and Development Code, Chapter VII, Impact Fees, Section III, Recreational Facilities and Open Space Impact Fee #2, effective July 1, 2009.

Proposed amendment to Chapter VII, Impact Fees, to eliminate Section III, Recreational Facilities and Open Space Impact Fee #2 effective July 1, 2009 and to allow the Planning Board to consider alternate fees on subdivisions.

Ms. Robie noted that a public hearing would be held on this item and, after comments by the Board, a workshop will be scheduled to identify what the Board would recommend back to the Town Council.

In response to a query from Ms. Robie about the meaning of the phrase "... to allow the Planning Board to consider alternate fees on subdivisions," Ms. Fossum said that the Town Attorney has advised that there cannot be a return to any past fee "in lieu" methodology which was found to be illegal by the Court. She said that it appeared that several members of the Town Council felt there might some other alternative to this fee, and they are clearly asking the Planning Board to look for such alternatives. Ms. Fossum said that the proposal to remove the impact fee is slated to become effective in July of 2009, or after the close of the current fiscal year. Ms. Robie suggested that staff look into what other communities use as a starting point for the Board in its workshop deliberations. Mr. Zelmanow suggested that the Town Attorney be present at the workshop to assist the Board with the legalities involved in coming up with alternatives. Mr. Parker said he believes that the Council's focus is to make certain that the impact fee is paying for an impact from which the payer will benefit.

PUBLIC COMMENT PERIOD OPENED: None offered.
PUBLIC COMMENT PERIOD ENDED.

Ms. Robie suggested that the following correspondence from Cindy Hazelton, the Town's Recreation Director be incorporated by reference into the record. Ms. Fossum explained that Ms. Hazelton is not present this evening is because she is a member of MSAD #6 School Board and is attending the meeting of that Board tonight. Mr. Zelmanow requested that the letter from Cindy Hazelton dated November 3, 2008, be made part of the public record and incorporated into the minutes by reference.

"November 3, 2008

Deb Fossum, Gorham Town Planner
Gorham Planning Board Members

Dear Gorham Planning Board:

I am unable to be at your public hearing this evening due to another commitment. I am a member of the MSAD #6 School Board and tonight is our regular meeting of that Board.

I do, however, wish to share some thoughts with you regarding your discussions this evening about the Town of Gorham Impact Fees. In particular, I would like to address the Recreation and Open Space Impact Fee.

As you may recall, the Gorham Town Council has received and accepted a report from the firm of PDT, Architects, outlining the number of playing fields the town has as well as their current 'turf conditions.' In that study, it was determined that the town is short 16 playing fields. In order to address the current population and participation numbers in field sports throughout the town, we need to construct 16 fields to meet current demand, not to mention future growth potential. As for the condition of the current spaces, the majority of them are in poor condition requiring considerable turf work to get them up to standard.

On that list and currently coming to a close of construction was the Gorham Middle School multipurpose field and softball field. In fact, the very first use of the funds accumulated to date from the Recreation and Open Space Impact Fee is this new construction at the Middle School. I am excited to report that the 'list' of deficiencies of playing fields has been effectively reduced by one! Only 15 more to go! Without the Recreation

and Open Space Impact Fee funds collected to date, this project would never have been started, let alone completed!

It is with this forecast of field deficiencies as reported, and preservation of open space in Gorham yet to be determined, that I encourage you to consider recommending to the Town Council that the Recreation and Open Space Impact Fee remain as it is currently written.

I have been the Recreation Director in Gorham for 18 years. We have not seen field projects come to the Council for funding through the Capital Projects program. The projects and needs have been there for quite some time, but the amount of needs the town has: from transportation, to public safety, to public works, to schools, is very extensive. These field and open space projects just don't make the grade when it comes to amount of funds available versus amount of project needs. I don't think anyone thinks these needs aren't real, but rather there is only so much Capital available annually.

The Recreation and Open Space Impact Fee is, finally, one funding mechanism to begin to address the deficiencies we are experiencing due primarily to our community's growth over the last 15 years.

The Town of Gorham's growth is what has contributed to the deficiencies in field spaces. If we were still a community of 8,500 people, our numbers of fields existing would probably be much closer to being adequate. When we jump to 15,000+ people in our town, it is clear that our facilities fall short and Impact Fees are one viable way to begin to fund the deficiencies.

I do not believe that our population will begin to decline any time soon. In fact, the need for the Impact Fee is as great now as it has ever been. In this current economic slow down, the amount of money to be collected will likely be at a slower pace. Getting to the next project on the remaining list of 15 fields will be slowed by both time to collect enough funds as well as rising costs to meet the needs. This does not begin to address the open space needs we currently have and will continue to have as we move forward.

Thank you for your forward thinking when you first worked to outline the Recreation and Open Space Impact Fee. As a result of that vision, the first new playing surfaces in Gorham utilizing the fees collected has been completed. I am available to discuss the Recreation and Open Space Impact Fee further and would welcome the opportunity to provide any additional information you may need.

Sincerely,

Cindy Hazelton CPRP, Director
Gorham Recreation Department"

Edward Zelmanow MOVED and Mark Stelmack SECONDED a motion to postpone the public hearing until after the Planning Board has had the opportunity to meet in workshop. Motion CARRIED, 6 ayes (Thomas Hughes absent). [7:35 p.m.]

6. PUBLIC HEARING: Proposed amendment to the Land Use and Development Code, Chapter VII, Impact Fees, Section II, Middle School Facilities Impact Fee #1, effective July 1, 2009.

Proposed amendment to Chapter VII, Impact Fees, to eliminate Section II, Middle School Facilities Impact Fee #1 effective July 1, 2009.

PUBLIC COMMENT PERIOD OPENED: None offered.
PUBLIC COMMENT PERIOD ENDED.

Douglas Boyce MOVED and Edward Zelmanow SECONDED a motion to postpone the public hearing until after the Planning Board has had the opportunity to meet in workshop. Motion CARRIED, 6 ayes (Thomas Hughes absent). [7:40 p.m.]

Ms. Robie asked staff to provide prior to the workshop the notes and minutes from past workshops and meetings when these impact fees (Item 5 and Item 6) were initially discussed by the Planning Board.

- 7. PUBLIC HEARING: Proposed amendments to the Land Use and Development Code, Chapter II, General Standards of Performance, Section V. Minimum Standards for the Design and Construction of Streets and Ways, Subsection E. Acceptance of Streets and Ways, Paragraphs a), b), and g).**
Proposed amendments to Chapter II, Section V. Minimum Standards for the Design and Construction of Streets and Ways, Subsection E. Acceptance of Streets and Ways, paragraphs a) and b), removing the requirement for a Planning Board recommendation on street acceptance and paragraph g) removing the provision that allows for street acceptance prior to the placement of the final paving.

Ms. Fossum explained that the proposed amendment will remove the Planning Board from the street acceptance process by eliminating the requirement for a Planning Board recommendation to the Town Council whenever a road is brought forward for acceptance as a public street. At times a request for street acceptance is slowed down because it must wait to go on a Planning Board agenda, and then it must wait for the subsequent Town Council meeting a month later. She said that the same review will be done by staff, but the recommendation will be made directly to the Town Council.

The other item, paragraph g), is to remove a provision that allows a developer to offer a street for acceptance prior to the placement of final paving. In a change effected around 2000 or 2001, rather than placing the final paving on the street, the developer was allowed to put up a sum of money equal to 150% of the cost of that final paving. Under that provision, the Town would accept the road, plow it, and in a subsequent year would utilize the funds to place the final paving, with any unexpended funds at the end of the project returned to the developer. By removing that provision, the developer will be required to complete the road before it is offered for street acceptance, which takes the Town out of the business of project management by the Public Works Department. Ms. Fossum told Mr. Stelmack that the Public Works Director is in support of removing paragraph g).

Mr. Parker suggested removal of the word “such” before “report” in Paragraph E 4) b) and the words “Public Works Director’s” be substituted. Ms. Fossum told Mr. Parker that information about core sample deficiencies would be provided to the applicant/developer through the inspection process.

PUBLIC COMMENT PERIOD OPENED: None offered.
PUBLIC COMMENT PERIOD ENDED.

Mark Stelmack MOVED and Douglas Boyce SECONDED a motion to recommend adoption of the proposed amendments to Chapter II, Section V, E. Acceptance of Streets and Ways, Paragraphs a), b), and g) as referred by the Town Council. Motion CARRIED, 6 ayes (Thomas Hughes absent). [7:55 p.m.]

- 8. Preliminary Subdivision and Private Way – “Wildlife Drive and Subdivision” – by Richard Pednault**
Request for preliminary plan approval of a 5 lot subdivision and 750’ private way (“Wildlife Drive and Subdivision”) by Richard Pednault, located off 129 Ossipee Trail. Zoned R (M60/L1 and 1.003).

Les Berry, BH2M Engineers, appeared on behalf of the applicant and described the project as a 5 lot subdivision with a 750 foot private way on 13.05 acres on Route 25. He said the lots vary in size from 62,000 to 150,000

square feet, and will be served by underground utilities, on-site septic systems and private wells. The private way will be developed to the 2 to 6 lot standard, with the primary issue being the sight distance going into the site. He said they have measured the sight distance at 550 feet, but the State measured it at 500 feet with a requirement of 840 feet for a road on to a major arterial except for five or less lots. As this project is for five lots, the State has waived its 840 foot requirement.

Mr. Berry said they are requesting a waiver from the requirement of high intensity soils mapping, and a waiver from the nitrate plume analysis. Mr. Berry indicated they would extend the right of way continuation to undeveloped adjoining property.

Mr. Poirier gave the staff comments, noting that the applicant is requesting a waiver of the nitrate plume analysis, which is a requirement under preliminary plan review that the proposed septic systems “Will not result in undue pollution of air, or surficial or ground waters, either on or off the site. The Planning Board shall consider at least: the nature, location and course of all potential contaminants to the air or water; and particularly in respect to pollution of water, the elevation of the proposed development above bodies of water in the vicinity, the extent of flood plains, the nature of soil and subsoil both in their function as aquifers and in their ability to adequately support waste disposal; the topography of the land and its relation to the movement and disposal of effluents, and the availability, adequacy and suitability of streams for the disposal of effluents.” Mr. Poirier said that two of the septic systems are currently in place and there will be an additional three for the new lots to be created by the private way.

In regard to the sight distance issue, staff’s concern deals with the row of pines and steep slopes, and recommends a 25 foot clearing easement for the length of the western property line of lot 2 to allow the homeowners’ association to increase and/or maintain the existing sight distance looking south on Route 25.

Mr. Poirier said that regarding the applicant’s request for a waiver of the high intensity soils survey, the Code allows the Planning Board to waive requirements not relevant or not of substantial import to the applicant’s proposal. However, the proposal is in the Rural District, which requires completion of a net residential calculations to determine the number of lots allowed in the subdivision. The Code does not provide a waiver from any steps in the net residential density calculations; and #9 states that “Areas with very poorly drained soils areas, as measured from a high-intensity soils map prepared by a certified soil scientist in accordance with the National Cooperative Soil Survey Classification.”

Ms. Fossum said she contacted the Town Attorney to discuss the Planning Board granting waivers, and determined that the Planning Board is allowed to grant waivers where the ordinance specifically describes the situations where that can be done. The high-intensity soils mapping requirement is related to the zoning requirement space standards in the Rural District, which requires that the applicant develop a minimum lot area per dwelling unit for residential subdivisions or multi family housing using the net acreage and the net residential density calculations, and very specifically requires the high-intensity soils mapping. The Town Attorney confirmed that as this is a zoning question versus a site plan or a subdivision issue, only the Zoning Board of Appeals can grant a waiver or variance. There is no language that permits the Planning Board to grant a waiver in this instance. Ms. Fossum answered a question from Mr. Stelmack that any waivers of the high intensity soils mapping done in the past were not tied to net residential calculations, but involved a separate set of criteria in other districts.

The Board concurred that the high-intensity soils survey cannot be waived.

Mr. Berry and Mr. Stelmack discussed the effort and costs involved in performing a nitrate plume analysis. Mr. Parker said he believed that the Board could waive the nitrate plume analysis due to the size and configurations of the 3 lots remaining that would need the analysis.

Michael Parker MOVED and Thomas Fickett SECONDED a motion to waive the nitrate plume analysis requirement.

Discussion: Mr. Stelmack confirmed that the analysis being waived is for lots 3, 4 and 5, and said that the Board's rationale for granting the nitrate plume waiver is best described in page 2 of the letter dated September 10, 2008 from the applicant under Item 6, stating five reasons why the nitrate plume analysis should be waived.

Motion CARRIED, 6 ayes (Thomas Hughes absent). [8:19 p.m.]

Mr. Berry confirmed to Mr. Parker that the State has given permission for a road opening for five lots; however, 6 lots would require the full sight distance. Mr. Berry said a note will be added to the plan to that effect.

Ms. Robie asked about vernal pool analysis; Mr. Poirier said that Mark Hampton certified that there are no vernal pools on site. Mr. Berry confirmed to Mr. Stelmack that they would put in the 25 foot clearing easement.

Mr. Poirier asked what the Board felt about granting preliminary and final subdivision approval at the same meeting. Ms. Robie and Mr. Parker said they did not believe tonight was the night to answer that question.

The Board concurred that preliminary approval cannot be granted tonight because the submission requirements have not been met, i.e., the high intensity soils survey must be done and the right of way to adjoining undeveloped property must be put on the plan. [8:25 p.m.]

9. SCHEDULE OPTIONAL MEETING – None needed.

10. ADJOURNMENT

Douglas Boyce MOVED and Michael Parker SECONDED a motion to adjourn. Motion carried, 6 ayes (Thomas Hughes absent). [8:25 p.m.]

Respectfully submitted,

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

4. CONSENT AGENDA

C. Subdivision Amendment # 3 – former Reinhard Property – off Wescott Road – by Dennis Morton.

Approved
Conditions of Approval

1. That this approval is limited to the specific amendment proposed and is dependent upon, and limited to, the proposals and plans contained in this application and supporting documents submitted and affirmed by the applicant and that any variation from the plans, proposals and supporting documents is subject to review and approval by the Planning Board, except for minor changes which the Director of Planning may approve;
2. That all other applicable conditions of approval attached to the original subdivision plan shall remain fully in effect; and
3. That the amended subdivision plan and these conditions of approval shall be recorded at the Cumberland County Registry of Deeds within thirty (30) days of the date of written notice of approval by the Planning Board, and a dated copy of the recorded Decision Document shall be returned to the Town Planner.