



Town of Gorham
August 24, 2009
PLANNING BOARD MINUTES

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

Members Present:

SUSAN ROBIE, CHAIRWOMAN
DOUGLAS BOYCE, Vice Chairman
THOMAS FICKETT
THOMAS HUGHES
MICHAEL PARKER
MARK STELMACK

Members Absent:

EDWARD ZELMANOW

Staff Present:

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

The Chairwoman called the meeting to order at 7:02p.m. and read the two-item agenda. The Clerk called the roll, noting that Mr. Zelmanow was absent.

1. APPROVAL OF THE AUGUST 10, 2009 MINUTES

Michael Parker MOVED and Douglas Boyce SECONDED a motion to approve the minutes of August 10, 2009, as written and distributed. Motion CARRIED, 5 ayes (Thomas Hughes abstaining, Edward Zelmanow absent). [7:04 p.m.]

2. SUBDIVISION PLAN – HAWKES FARM CONDOMINIUMS – BY DESIGN DWELLINGS, INC.

Request for preliminary approval on a proposal for 44 detached single-family residential condominium units on 13.05 acres off Main Street. Zoned Office Residential; Map 26 / Lots 13 and 13.002

Shawn Frank, Sebago Technics, spoke of the applicant's success in negotiating with an abutting landowner to obtain an agreement to permit the development's roadway to be extended to New Portland Parkway, with the condition that the Board prepare a finding of fact associated with the approval of the subdivision acknowledging the abutting property owner's right to access his land from New Portland Parkway both now and in the future in association with any potential development. As a result of this agreement, the plans have been revised to include a connection from the development's roadway to New Portland Parkway, with the roadway being proposed as an urban access road based upon the two access points, with the cul-de-sac and possibly a stop sign to discourage through traffic.

Mr. Frank said the applicant would like to remove the traffic analysis requirement, particularly in light of the proposed second access into the site. Mr. Frank referred to staff's comments about adding sidewalks either along New Portland Road or along the southern side of Main Street, noting that sidewalks along New Portland would require the addition of curbing, associated drainage and outletting for that drainage. Mr. Frank said that perpendicular parking was initially proposed in response to the Board's request for additional parking, but this option is not viewed favorably by the Public Works Director. Therefore, in order to avoid wider areas in the roadway to accommodate parallel parking spaces, it is being proposed that in addition to a one-car garage for each unit, the driveways be widened by three additional feet from 15 to 18 feet, which would provide two parking spaces within each driveway, plus the parking space in the garage itself. Mr. Frank said he believes that with the 24-foot wide, curb to curb, roadway being proposed, there would be adequate parking for large gatherings.

Mr. Frank said the applicant has agreed to perform the regional drainage analysis; he said that the previous analysis performed by BH2M has been provided to Sebago Technics and is being redesigned and updated at this

time. He explained that the Meadowbrook abutters' main concern has been where the drainage outfall from this site would be directed, and the outfalls of the treatment/detention basin are depicted at the locations requested at the meeting with those abutters.

Concerning the proposed second access to New Portland Parkway, Mr. Frank explained in further detail the abutters' concerns that their existing gravel access, which would be about 125 feet from the center of this development's proposed access, could be limited in the future should they wish to develop their property because of the required separation distance between roads. Ms. Robie said she believes it is within the Board's purview to reduce the separation distance between roads so long as state requirements are not impacted so a note could be put on the plan that this road does not preclude the other road. Ms. Fossum said that the Board cannot guarantee into the future, and said that Mr. Poirier contacted the Town Attorney on this issue. Mr. Poirier said that the existing gravel driveway could certainly be pointed out on the plan. However, Mr. Poirier said that the Town Attorney has advised that this Board cannot place restrictions on what future Planning Boards will do. Mr. Frank said there could be a plethora of other reasons why a future Planning Board would not want the drive to be used for; however, they would like it to be made clear that from this Planning Board's perspective, the distance between the two roads would not be a reason for denial. If this assurance is not forthcoming, the applicant stated that there would be no access into New Portland Road for this project.

After considerable discussion among the Board, the applicant and Mr. Frank, it was agreed that staff will explore with the Town Attorney to determine what the Board can do as opposed to what the Board cannot do. Ms. Fossum noted that this Planning Board can make decisions about this applicant's property, but not the property of the abutters.

Mr. Boyce confirmed with the applicant that the gravel drive of Gary and Cynthia Hawkes will remain in its present location with an easement.

The Board and Mr. Frank discussed the implications, costs and attendant difficulties of a sidewalk along New Portland Parkway. Ms. Duchaine said she is not opposed to installing sidewalks on Main Street. Mr. Hughes commented that sidewalks along Main Street are more practical for the Town.

The Board discussed the issue of on-street parking with Mr. Frank and Ms. Duchaine, with one suggestion being additional parking on one side of the cul-de-sac if the cul-de-sac carries one-way traffic only. Mr. Parker, Mr. Hughes, Mr. Fickett, Mr. Boyce and Mr. Stelmack concurred that this option, if agreed to by the Public Works Director, along with the widening of the driveways, would provide sufficient parking. Mr. Frank agreed to follow up with the Public Works Director.

Mr. Frank confirmed that the regional drainage analysis would be provided in their next submission.

Mr. Poirier gave the staff comments, noting that with a second entrance/exit being proposed, staff supports the applicant's request for removing the requirement of a traffic analysis as potential traffic impacts to Main Street will be significantly reduced with the New Portland Parkway access. The Board should discuss removal of the traffic analysis with the applicant to insure that the application meets preliminary subdivision plan review requirement 2)b) of "Will not cause congestion or unsafe conditions with respect to use of the highways..." Mr. Poirier briefly discussed the Code requirements for sidewalk connections, noting that the cost estimates have been prepared by the Public Works Director. Mr. Frank said that a figure of \$100 or more is more reasonable than \$50 per foot for storm drainage installation, catch basins and curbing. Mr. Poirier stated that the 14 perpendicular on-street parking spaces initially proposed are not permitted, and suggested bump-out parallel parking such as that to be provided in Risbara Brothers' Wagner Farms Subdivision. Mr. Poirier noted that the regional drainage analysis is to be provided in the next submission. Finally, Mr. Poirier referred to the staff Review Memo of August 18 and the numerous modifications and requests for additional information by staff and the Portland Water District. He said that the applicant has made significant progress in the application, but staff

feels that preliminary plan approval is premature at this time until staff has an opportunity to review the next submission.

Mr. Fickett and Mr. Frank discussed the issue of the easement for the pumping station that will be extended to the property of Shaw Brothers as part of the access to New Portland Road agreement with them. Mr. Fickett confirmed with the applicant that access will be given to the barn behind the original house.

Mr. Hughes commented that the applicant is making a connection to New Portland Road, he agrees that no traffic analysis is required, a sidewalk connection on Main Street has ostensibly been agreed to, the issue of on-street parking is in his opinion not required, and asked if all that is holding up preliminary approval is the regional drainage analysis. Mr. Poirier said there are substantial review comments from the Portland Water District that still remain to be addressed to identify the preliminary plan requirements that the project will have sufficient water available for present and future needs as reasonably foreseeable, the Water District needs to sign off on the design of the system, and the Water District has requested more information on the sewage design that require plan changes. In addition, the Town's third party review engineer comments about stormwater need to be addressed. Mr. Frank said they understand they need to work with the Water District and staff to address the engineering concerns and hopes that can be done between preliminary and final approval.

Ms. Duchaine said that this project is under DEP stormwater permit approval and does not know how much involvement staff or a third party review needs to have. Mr. Parker noted that it is a major concern of the Town and the Board will not completely defer to DEP. He and Mr. Frank discussed a comment by the third party reviewer about surcharging of the storm drain system.

PUBLIC COMMENT PERIOD OPENED: Susan Marcet, 14 Elizabeth Street, directly opposite the proposed entrance to this development, asked for confirmation that this is a permitted use and asked why the traffic study is being waived, expressing concern about the impact traffic will have on Main Street and the development in which she lives. Ms. Robie confirmed that it is a permitted use, and explained that the thinking behind a proposed waiver is that there will be an outlet for traffic on the New Portland Road, as well on as Main Street, so the impact on Main Street will be about half. Ms. Marcet expressed concern about the aesthetic impact of the development and asked about any proposed buffering, air quality and noise.

Joanne Romano, 25 Elizabeth Street, expressed similar traffic concerns, a need for a traffic analysis, drainage impacts, and asked when the Town will stop congesting Gorham.

PUBLIC COMMENT PERIOD ENDED.

Mr. Frank replied that the traffic issues on Main Street are already there, and with 44 houses having split access to both Main Street and New Portland Parkway, this will result in 22 peak hour trips at each entrance, which is a minor impact on the existing traffic. A traffic analysis would provide no new information. Ms. Duchaine commented that there is landscaping planned to buffer certain abutters and two trees are proposed to be added for every lot. She said that her answer to when does development stop is never, that as long as people own property, they should have a right to develop it.

Ms. Fossum commented that the Town's Comprehensive Plan calls for development to occur in the areas around the Village where they can be serviced with public infrastructure, within what the State and the Town call the "growth area." This allows for the more rural areas of the Town to remain less developed. She said the area where this project is located has been deemed suited for a higher density of development; it is not only permitted, it is encouraged in this area.

Ms. Robie asked the Board if a waiver from the traffic study is to be granted, and should it be conditional on whether the second entrance/exit on New Portland can be achieved. Mr. Stelmack said in his opinion one of the key words in the Code for the traffic study to be done is whether the development will "cause" congestion; he

does not believe the incremental increase in existing traffic congestion from this development will “cause” congestion, and therefore he does not believe a traffic analysis is necessary. Mr. Hughes concurred with Mr. Stelmack, saying that even without the second entrance/exit on New Portland Road, he does not believe a traffic analysis is warranted. However, Mr. Hughes stressed the desirability of the second entrance. Mr. Boyce said that a development this size is not going to trigger any mitigation to the existing roadways, and that in his opinion it is not worth investing the applicant’s money in a traffic study that would produce no meaningful results. Mr. Boyce said that the addition of a second entrance is key to his support of the project. Mr. Parker agreed, and noted that the traffic impact will not stop the development. Mr. Fickett also concurred. Ms. Robie thanked the speakers who made public comments, and noted that this is an approved use for this parcel, and according to the Comprehensive Plan is the best use for the property. Ms. Robie summarized that all six of the Planning Board members present agree to waive the traffic study requirement, but also very much desire to work out the issue of the New Portland Road connection.

All six members of the Board agree to having sidewalks installed on Main Street.

A discussion of on-site parking resulted in all the Board members except Ms. Robie being agreeable with the developer’s suggestion of widening the driveways from 15 to 18 feet. Ms. Robie said she believes the driveways can be left at 15 feet because Cape Cod curbing is being proposed and parking along the roads will be easier. Further, it was agreed that Mr. Frank will work with the Public Works Director to determine if parking can be permitted on one side of the cul-de-sac, if one-way traffic is imposed. With these measures, the Board members expressed their satisfaction with the proposals to accommodate additional parking.

The Board then discussed whether to wait for DEP approval before considering final approval. Mr. Frank said that DEP is looking at stormwater treatment and detention and by meeting DEP requirements he believes that Town requirements have been met for the control of runoff for the site. Mr. Parker said that because stormwater has been such an issue, he does not believe this application should be approved until DEP approval has been obtained. Mr. Poirier pointed out that the Town looks at more than DEP does on stormwater, such as catch basins meeting Town standards, maintenance of outfall pipes, and other issues, particularly where the Town will be asked to accept the roads. Ms. Fossum said the reviews are on an equal footing, and the applicant must meet all of the Town’s ordinances and requirements, independent of what has to be done to meet the DEP’s requirements. Mr. Frank agreed that the Town looks at much more detail associated with the infrastructure than the DEP does. Mr. Hughes confirmed that final approval will not be granted until the DEP permit is in hand. Ms. Duchaine asked if that must be in writing or will a verbal approval be accepted. Ms. Robie said that the Board needs to see what is written by the DEP, especially as the abutters’ major concern deals with possible runoff from this project. Representing a majority of the Board, Mr. Parker, Mr. Boyce, Mr. Fickett, and Ms. Robie would like to see the DEP permit in hand before granting final approval. Ms. Robie indicated that a special meeting could be scheduled if necessary after DEP approval has been secured.

Mr. Stelmack confirmed that the 3rd party review engineer still has comments that need to be addressed in order to be satisfied with the applicant’s stormwater modeling. Ms. Robie asked that the applicant consider making some recommendations relative to the maintenance of the box culvert to be acted on by all of the associations affected by the proper functioning of the culvert. Ms. Fossum said that the developments currently contributing to some of the culvert drainage problems predate the DEP’s current reporting requirements.

Mr. Poirier said that before recommending preliminary approval, staff would like the opportunity to review the applicant’s responses to the review comments. Ms. Fossum said that under the Code requirements for preliminary approval, the engineering should be 99% complete, the sidewalk engineering along Main Street should be reviewed by staff, staff is still awaiting DEP’s acceptance of the stormwater management details and the regional stormwater analysis, and the Portland Water District still requires additional information to determine that the sewage treatment plant is to their standards, not just an agreement with the concept.

Ms. Robie read the Code requirements for preliminary plan review as follows:

“C. PRELIMINARY PLAN REVIEW

- 1) The Planning Board shall review the Preliminary Plan of the proposed development as submitted. It shall verify the provision of all information as required under the preceding subsection B, and shall accept or deny any waivers requested as listed by the developer at its discretion. It may require the developer to undertake further studies as it deems necessary to ascertain that the public convenience, safety, health and welfare are protected, that the Town will not in the future incur extraordinary expense as a result of the development, either on or off the site, and that the environment will not be harmed unduly.
- 2) The Planning Board shall include in its review the following general and specific requirements that the development as proposed for approval:
 - a) Shall be in conformance with the Comprehensive Plan of the Town, and with all pertinent State and local codes and ordinances, including the Performance Standards related to specific types of development which are stipulated in Chapter II.
 - b) Will not cause congestion or unsafe conditions with respect to use of the highways or public roads, existing or proposed on or off the site.
 - c) Will not place an unreasonable burden by either direct cause or subsequent effect on the ability of the Town to provide municipal services including utilities, waste removal, adequate roads, fire and police protection, school facilities and transportation, recreational facilities, and others.
 - d) Has sufficient water supply available for present and future needs as reasonably foreseeable.
 - e) Will provide for adequate solid and sewage waste disposal for present and future needs as reasonably foreseeable.
 - f) 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.
 - g) Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.
 - h) Will not affect the shoreline of any body of water in consideration of pollution, erosion, flooding, destruction of natural features and change of ground water table so that a dangerous or unhealthy condition may result.
 - i) Will respect fully the scenic or natural beauty of the area, trees, vistas, topography, historic sites and rare or irreplaceable natural or manmade assets.
- 3) Every subdivision shall be responsible for providing open space and recreational

land and facilities to meet the additional demands created by the residents of the subdivision. This requirement shall be met by the payment of a Recreational Facilities and Open Space Impact Fee in accordance with Chapter VII.

4) The requirements of this paragraph shall apply if an applicant chooses to create open space and/or recreational land and facilities within the subdivision in addition to paying the impact fee. The reserved land shall remain private property owned in common by a homeowners association and must be of suitable dimension, topography and general character for the proposed-use and must be reasonably accessible and open to use by residents of the development and may, at the applicant's option, be open to the residents of the Town.

a) Land Improvements: The applicant shall improve the land according to the proposed use of the land and the requirements of the Planning Board.

b) Owners Association: The Planning Board shall require as a condition of approval for any subdivision with common recreational land and facilities and/or open space, that the lot owners form a homeowners association by written agreement to provide for the perpetual care of the recreation land and shall specify the rights and responsibilities of each lot owner with respect to the repair and maintenance of the land reserved for recreational or open space purposes. The homeowner's association agreement shall be in a form acceptable to the town attorney and, upon approval by the Planning Board, shall be recorded in the Cumberland County Registry of Deeds within ninety (90) days of the date of subdivision approval by the Planning Board. The agreement shall also contain a provision that allows the Town, at its option, to repair and maintain this land and charge the costs to the lot owners through the homeowners association in the event that the association fails to maintain the property as agreed, after the Town has first provided reasonable notice and an opportunity to cure.

5) The Planning Board shall decide on the acceptability of the Preliminary Plan and shall issue its approval, conditional approval, or denial. It shall note all specific aspects which do not meet with its approval either in specifically satisfying the criteria listed in Subsections B and C above, in meeting the Performance Standards stipulated in Chapter II, or in generally providing for the protection and preservation of the public's health, safety and welfare. The Planning Board may grant its conditional approval of any or all aspects of the Preliminary Plan pending any changes required in order to bring it into conformance with its approval, or pending the results of further studies required of the developers as provided for in Subsection C:1 above.

6) The Planning Board shall issue a written notice through its minutes or otherwise, of its decision within sixty days after complete application for a proposed development has been submitted. By mutual agreement between the Planning Board and the applicant, this period may be extended as necessary to permit the developer to seek an appeal on land use from the Zoning Board of Appeals."

Ms. Robie noted that under C. 5) the Board may grant conditional preliminary approval, contingent on the review comments to which the applicant has received but to which they have not responded. Mr. Hughes concurred with granting conditional approval, as did Mr. Stelmack.

Thomas Hughes MOVED and Douglas Boyce SECONDED a motion to grant conditional preliminary approval pending receipt of responses addressing the review comments issued August 18, 2009, preliminary engineering for the Main Street sidewalks is provided, and a satisfactory resolution of the New Portland Road entrance has been achieved.

Discussion: Mr. Parker asked for an explanation of the difference between preliminary approval and "conditional" preliminary approval and said he does not believe that the application is ready. Mr.

Stelmack replied that he believes the Board is acknowledging that some of these issues must be addressed. Ms. Robie said that when they are addressed, the applicant will have preliminary approval before returning before the Board. Ms. Fossum expressed concern that too much was being delegated to staff review to determine if these issues were being satisfactorily addressed, and further commented that the application could come back before the Board should staff decide that it does not satisfactorily meet the conditions expressed in the motion. Mr. Stelmack asked the applicant to show the minimum height and caliper of the proposed trees in the landscaping plan.

MOTION CARRIED, 5 ayes and 1 nay (Michael Parker) (Edward Zelmanow absent).

3. SCHEDULE NEXT MEETING – SEPTEMBER 14, 2009

4. ADJOURNMENT.

Douglas Boyce MOVED and Thomas Fickett SECONDED a motion to adjourn. Motion CARRIED, 6 ayes (Edward Zelmanow absent). [9:00 p.m.]

Respectfully submitted,

Barbara C. Skinner, Clerk of the Board
_____, 2009