

# DRAFT MINUTES

## NEW DURHAM

### PLANNING BOARD

#### JUNE 5, 2007

Chairperson Cathy Orlowicz called the meeting to order at 7:05 PM.

Selectman Ron Gehl conducted the swearing in for Paul Raslavicus as an alternate.

**Roll Call:** Cathy Orlowicz (Chair), Bob Craycraft (Vice-Chair), Don Voltz, Ron Gehl) Selectmen's Alternate, George Gale (Alternate), Paul Raslavicus (Alternate), Peter Rhoades (Selectmen's Representative)—8:09 PM.

**Others Present:** Bill Straub (CMA Engineering), Mark Fuller (Road Agent), David Lindberg (Building Inspector), Don Rhodes (Norway Plains), Malcolm McNeill (xx), Cynthia M. Balcius (New Hampshire Soils), Brian ??, Paul Gelinas, Jr., MC Gudbrandsen, Ken Hynes, Margaret Hynes, Marcia Clark, Jason Pohopek, Madeline Auger, Paul Auger, Peter Varney (Deputy Fire Chief), April Whitaker (Town Administrator), Mark Foynes

**Public Input:** Chair Cathy Orlowicz asked if there was any public input. There was none.

**Kodiak Subdivision:** Continued Public Hearing. Continued Public Hearing on an application submitted by Donald A. Voltz of Lindon Design Associates, on behalf of applicant True Value Land and Homes, LLC of Rochester NH, for a 27-lot Open Space Subdivision on property located on Birch Hill Road (Tax Map 16, Lot #22) in New Durham.

Cathy Orlowicz announced she would recuse herself as a legal abutter and handed the chair to Bob Craycraft, Vice-Chair. Don Voltz recused himself to present the application. Ron Gehl sat as the Selectmen's Representative.

Bob Craycraft reviewed the status of the Kodiak application. He identified materials that had come in to the Planning Board since the May 1 meeting, including a written cul de sac waiver request, an identification of threshold issues from CMA engineering

on behalf of the Town, a preliminary environmental review from West Environmental on behalf of the Town, correspondence from Malcolm McNeill, a letter from the New Durham Parks and Recreation Director. Craycraft noted there had been a second site walk on May 12. He identified x issues he hoped would be addressed in tonight's meeting including the yield plan, the status of requested corrections to the plans, the road extension, the cul de sac, a 65 day extension of the review period, and the escrow account for CMA engineering.

Malcolm McNeill opened for the applicant with several comments. He said the applicants also wanted to extend the review period an additional 65 days. He noted that the applicant had only just received the written 3<sup>rd</sup> party reviews and had not yet had time to fully analyze them. He said he had concerns that the scope of services with CMA engineering which he had expressed in a letter to David Allen. McNeill feels the scope is asking CMA to comment in areas that are not its expertise and to comment on issues not covered by law, ordinance or regulation. In regard to the length of the cul de sac McNeill said he would want to hear if the Fire Chief had concerns about the road length and he pointed out that Don Voltz had told him that he (Voltz) had discussed the cul de sac length last year with both the fire chief and the road agent and both had told him they did not have problems with it.

**Ron Gehl moved to approve a 65 day extension of the end of the review period from June 10, 2007 to August 14, 2007. George Gale seconded. Unanimous.**

Mr. Gehl clarified that the Town was asking CMA for engineering information which would help the Board make decisions about legal and fiscal matters; it was not asking CMA to provide legal or fiscal advice. David Allen said he had reviewed Mr. McNeill's concerns with counsel and felt they could be resolved fairly quickly by staff. Board members agreed by consensus that Mr. Allen redraft the scope and send it to McNeill to see if the redraft met his concerns.

Acting Chair Craycraft asked Earle Chase, a wetlands scientist with West Environmental Inc. to share his analysis of the Kodiak yield plan. Chase noted that was working from a yield plan dated 8/1/06 prepared by Lindon Design Associates. He emphasized that his review was not fully completed. Based on the work to date he felt very strongly that it would not be feasible to get approval from New Hampshire Department of Environmental Services for a conventional subdivision with 29 lots as proposed.

Chase said his calculations indicated the plan had more than 51,000 square feet of wetlands impact which would bring it under the more stringent "major project" guidelines. He pointed out that the regulations require applicants first to avoid wetlands impact, then to minimize it and finally to mitigate any impacts. With 5 road crossings and 5 driveway crossings the 8/1/06 yield plan would not be considered acceptable in terms of either avoiding or minimizing, and there is no indication on

the plan as to how the impacts would be mitigated.

A wetlands impact application needs to respond to 20 different questions for each of the 10 crossing points and it would be impossible to persuade DES that each proposed crossing was unavoidable and had been minimized as much as possible. Based on his experience as a wetlands reviewer for DES and as an applicant, he estimated DES would want mitigation efforts that required an additional several acres of land.

In addition, the applicant's wildlife summary indicated that one rare and one endangered species of plant had been found on the property, those being trailing arbutus and wild ginseng. The DES would need to determine how these species would need to be protected and that would require additional land.

Taking all factors in consideration he felt NHDES might approve 21-24 lots at the very most.

Malcolm McNeill introduced Cindy Balcius a wetlands scientist from New Hampshire Soils. He said Balcius was filling in for Tracey Tarr who is on maternity leave.

Ms. Balcius vigorously defended the applicant's plans. She said Mr. Chase's analysis was at a disadvantage because the applicants had refined their plans since 8/1/06. They would be proposing shared driveways in a number of locations to reduce the wetlands impact. They planned to do their mitigation off site at another location so that it would not take away from the space they could use for lots on this site. She said that Ms. Tarr had found ginseng on the site, but not wild ginseng. Wild ginseng was a typographical error on the part of the New Hampshire Soils typist. Because ginseng is not an endangered species no additional land would be needed for that purpose.

Earle Chase said he strongly doubted that off site mitigation would be allowed with this site. He noted that he had been involved with hundreds of applications and that DES had consistently looked at off-site mitigation as a last resort. The type of application that might trigger acceptance of off site would be something like a large retail building on a smaller location of perhaps 3 acres.

Bill Straub, an engineer with CMA engineering summarized his analysis of the proposal. He said that in addition to the yield plan there were several other "threshold issues" that might lead to significant redesign of the plan. Therefore he had not spent time looking at detail issues in the design.

1. Straub noted that the town ordinance limits a cul de sac to 1000' and the applicants are requesting almost 3000'. Based on public safety concerns there would need to be very good reasons to allow such a large deviation from the

- limit; and there would need to be accompanying plans to minimize the dangers created by such a long cul de sac, such as fire safety cisterns.
2. Straub expressed concerns about the calculations for allowable density. He said he was especially concerned about the density of septic and water, particularly given the shallowness of the water table and the widespread wetlands. It might be necessary for the development to have a public (shared) water system.
  3. Straub questioned whether all aspects of the ordinance, especially the requirement that 50% of buildable space be protected as open space, had been properly considered in the yield plan calculations.
  4. The road and bridge design uses conventional bridges. There are state of the art arch and box structures that can be used for the bridges which significantly reduce the wetland impact.

Mark Fuller, Road Agent told the Planning Board that when the concept for the subdivision was first presented he was open to the idea of the longer cul de sac. As he has looked at it more closely he has significant concerns about the difficulties involved for the town in maintaining the long cul de sac. Some of the engineering proposals from CMA have also persuaded him that a loop road would be a better option. Fuller also said the road widths were too narrow as proposed.

Peter Varney, Deputy Fire Chief told the Board that New Durham Fire trucks carry 1000' of hose. The significant elevation change from wetlands to the uplands means they probably would not have the pumping power to go 1000' in some parts of the subdivision. Thus they would need a relay pumper to reach many houses in the proposed subdivision which would significantly slow down fire fighting efforts. And given the narrow roads any problem with a stuck or disabled vehicle could entirely block access to an emergency. A loop road would be much safer, and fire cisterns would be required.

Don Voltz and Cindy Balcus challenged many of Mr. Straub's suggestions. They said a loop road would increase wetlands impact and require more road to maintain and more cost for the developer in building it. Voltz said the box structure proposed by Straub were impractical in this setting. He also said the development team had given some consideration to two cisterns.

Bob Craycraft said it looked as though the Kodiak Road intersection with Birch Hill Road had been changed back so that it was pointed directly at Mr. Foyne's living room across the street. Don Voltz said it was still the design that moved headlights away from the abutter.

Acting Chair Craycraft opened the issue to public hearing at 9:45 PM. Mark Foyne

said he was concerned about the property value of his house. He would have 5% of the town's population directly across the street. He will not want to live there and no one will want to buy there. Ron Gehl asked if the change in the entrance design was helpful. Foynes said it helped some. The possibility of buying a lot in Coburn Woods was suggested so that the entrance could be moved there. Voltz said that lot had a lot of wetlands which it would be hard to work with and the traffic would just move to another house.

Don Voltz responded to the questions that Bob Craycraft had raised earlier in the meeting about the plan documents.

Bob Craycraft closed the public hearing at 8:54 PM.

**Ron Gehl moved to continue the public hearing to the next Planning Board business meeting on July 10, and to authorize the town 3<sup>rd</sup> party experts and David Allen to meet with the applicant's experts for the purpose of narrowing the areas of disagreement starting with the yield plan. George Gale seconded. Unanimous.**

Cathy Orlowicz and Don Voltz returned to the Board. Peter Rhoades resumed sitting as the Board of Selectmen's Representative.

**McKay Excavation Permit:** Public Hearing. Public Hearing on an application submitted by Gelinas Site Design on behalf of applicant Charles McKay, P.O. Box 175, New Durham to renew the excavation permit for property located on Pine Point Road (Tax Map 21, Lots 44 & 45) in New Durham.

Chair Orlowicz asked Mr. Gelinas to present the proposal. Paul Gelinas told the board that Mr. McKay returns each two years to renew his excavation permit. Sometimes they are planning to open a new section of the pit, but not this year.

Varney Engineering prepared their storm water plan which has been submitted to the state and approved. This document is primarily to provide direction to the applicant; after approval it goes to the superintendent on site who is responsible for carrying it out. Bob Craycraft said that two years ago they did a site walk and it appeared as though the problem was less with the pit and more with the road. David Lindberg, Building Inspector, said he had been to the site very recently and there were no signs of problems.

Craycraft also asked about the escrow account and the loam resources for reclamation. After discussion **Don Voltz moved to approve the application with the conditions that the applicant adds a note on the plan indicating:**

- 1. the volume of loam that is stored on the property as of this date; and**
- 2. the estimated cost of doing the reclamation, as of this date.**

**Peter Rhoades seconded. The motion passed on a vote of 3-1.**

**DeLong Subdivision:** Acceptance and Public Hearing on an application submitted by Long Ridge Construction, LLC c/o Thomas DeLong, 148 Swain Road, Barrington, NH 03825, for a 3 lot subdivision on property located on Quaker Road (Tax Map 5, Lot 29-2) in New Durham.

Don Voltz announced that he was recusing himself because he flagged the wetlands on the property. George Gale announced that he was recusing himself because he served with co-applicant Ernie Vachon on a town committee. Chair Orlowicz appointed Paul Raslavicus to sit for Don Voltz.

Cathy Orlowicz stated that the public hearing had been noticed in the Baysider on 5/24/2007. She said the plans were missing information including the width and class of existing roads, proposed driveway locations, municipal and non-municipal utility poles, and a written waiver request for 2' contours on the balance of the parcel. Bob Craycraft added the need to show the soil boundaries and the lot size calculations on the plan, and to add a vicinity map.

**Bob Craycraft moved to proceed with the application in design review because application materials are missing that are needed to proceed with it as a completed formal application. Peter Rhoades seconded. Unanimous.**

Jason Pahopek presented the plan. Two of the lots are 5.0 acres in size with 200' of road frontage. The Zoning Ordinance shows that from 80,000 square feet to 5 acres 200' of frontage is required, and from 5 acres to 10 acres 250' is needed. He wondered if 200' is adequate if the size of the lot is exactly 5.0 acres. He suggested to Mr. DeLong that he reduce the lot sizes to 4.99 acres, but Mr. Long pointed out that at 5.0 acres the lots no longer require state septic approval. The issue was left unresolved.

Mark Fuller, Road Agent, told the Planning Board he had talked a year ago with Mr. DeLong about the road improvements he would like to see. Fuller said there were a lot of storm water problems in this area. Storm water on the east side of the ridge runs off toward Quaker Road. He would like to see the road widened out and the stone walls moved further away from the road. Then the drainage ditches can be set back and deepened. He would also like to see a drainage swale behind the stone wall to help divert water before it reaches the ditches.

Mr. DeLong said he was quite willing to do "his share" but that doing all the things that Mr. Fuller listed "seemed excessive".

Ken Hynes introduced himself as "the guy who gets all the water". He said it was a serious mess during heavy rains, as the culverts cannot handle all the water and it goes over the road and washes road materials into his yard.

The Board scheduled a site walk for 7:30 AM on Saturday, June 16.

**New Durham Master Plan, Vision Statement.**

**Bob Craycraft moved to amend the vision statement in the New Durham Master Plan to read as follows:**

**“The Master Plan envisions a New Durham in 2020 that**

- has a vibrant, welcoming and caring sense of community;**
- has maintained and protected its small town atmosphere, historic and rural character, rich natural resources and wildlife, while growing larger and more diverse in population;**
- has broadened its tax base with businesses that reflect a small town look and feel.”**

**Peter Rhoades seconded.**

Chair Orlowicz opened the issue for public hearing. Ron Gehl spoke in support of the amendment. There was no other public input. Cathy closed the public hearing and called for the vote. **The change was unanimously agreed to.**

**Home Occupation Application.** Acceptance and Public Hearing on an Application for a Home Occupation Permit submitted by Anthony Esposito, 165 Old Bay Road. He is asking to operate a business doing custom archery work set up and toning, and Winchester Rifle restoration.

This item was postponed because the application was missing some materials.

**New / Old Business**

**Contract for Impact Fee Assistance: Bob Craycraft moved to sign the contract with Bruce Mayberry dated June 4, 2007.** The contract provides for consulting assistance to develop an impact fee ordinance. Don Voltz seconded. The Board voted 3-0 to adopt. Peter Rhoades abstained. Mr. Mayberry will meet with the Board on July 17.

**Additions to Subdivision Checklist:** Don Voltz suggested that David Allen integrate the proposed updates based on the water quality ordinance and bring it to the board to review at its June 19 workshop. He suggested the Board meet at 6:30 PM so that it would have time to do this before the workshop with Julie LaBranche.

**Subdivision Regulations:** Don Voltz said he had some concerns about the proposed change in application phases. David Allen asked him to send him an email

listing his concerns and he (Allen) would address them at the next meeting. Voltz agreed.

**Capital Improvement Subcommittee:** George Gale said that he would be willing to serve if he were a member of the Board. There were no other volunteers or suggestions. The issue was continued to the next meeting.

**Strafford Regional Planning Commission:** Bob Craycraft moved to request the New Durham board of Selectmen appoint David Allen to serve as one of New Durham's representatives to the Strafford Regional Planning commission. Two seats are allotted to the town. Peter Rhoades seconded. Unanimous.

**Minutes:** George Gale moved to approve the minutes of the April 21 Kodiak site walk. Ron Gehl seconded. Unanimous.

Ron Gehl moved to approve the minutes of the May 12 Kodiak site walk as amended. George Gale seconded. Unanimous.

Bob Craycraft moved to approve the April 3 business meeting minutes as amended. Don Voltz seconded. Unanimous.

Bob Craycraft moved to approve the May 15 workshop meeting minutes as amended. Don Voltz seconded. Unanimous.

**Board Vacancy:** Peter Rhoades asked what the next step would be in filling the vacant Board position. He noted that at the last meeting Chair Orlowicz had said she wanted to keep the position open so new applicants could step forward.

Cathy Orlowicz reminded the Board that at the last meeting the Board had discussed who could vote to fill a vacancy. She noted that David Allen had put in writing to Paul Sanderson, Local Government Center Attorney, the question he had posed to Mr. Sanderson verbally before the last meeting. Cathy herself had sent a letter describing how she had handled the issue at the last meeting. She read the letter Mr. Sanderson had sent in reply. This letter verified that only regular members of the Board could vote on the replacement to fill the vacancy of an elected member.

David Allen told the Board that Mr. Sanderson had acknowledged verbally, as well as in writing in the letter, that he may have erred in the information he gave Mr. Allen verbally before the last Board meeting which was the information Allen had passed on to the Board.

Allen said he was not sure how Mr. Sanderson could have misheard his questions. Allen said he reiterated the questions to Sanderson in a couple of different ways because the answer that Sanderson gave was not what Allen had expected.

Chair Orlowicz said that she was aware of two candidates who had expressed interest

in serving on the Board. Orlowicz said that Christopher LaPierre had said he was willing to be elected to the vacant regular board position. And she noted that Dennis Gagne had been at the May board meeting and had indicated he was interested in being an alternate.

Peter Rhoades asked why Mr. LaPierre was not present. Orlowicz said she had talked with him that morning and he had said he would come to the meeting. She did not know why he was not present but perhaps he had been detained by the stormy weather.

Peter Rhoades moved to elect George Gale as a full member. Bob Craycraft pointed out that under the rules for reconsideration a motion to reconsider can only be made by a person who is changing their vote. Rhoades withdrew his motion.

Rhoades and Craycraft noted that LaPierre had been an alternate for a couple of years and barely attended any meetings. Orlowicz said LaPierre had misunderstood his responsibility: he thought he would be called when he was needed at a meeting.

There was extensive discussion of the vacancy and related issues

The meeting was adjourned at 12:45 AM

Respectfully submitted,

David Allen