

MINUTES

NEW DURHAM PLANNING BOARD

AUGUST 7, 2007

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

Roll Call: Cathy Orlowicz (Chair), Bob Craycraft (Vice-Chair), Don Voltz, Peter Rhoades (Selectmen's Representative), Ron Gehl) Selectmen's Alternate, Duane Armstrong, George Gale (Alternate), Paul Raslavicus (Alternate), Paul Gelinis, Jr. (Alternate) **Excused Absence:** George Gale **Unexcused Absence:** Christopher LaPierre, (Alternate)

Others Present: Malcolm McNeill, David Bickford, Earle Chase, Bill Straub, Daniel Nebesky, Marcia Clark, Sarah Foynes, Madeleine Auger, Paul Auger, Brian Crossan, Cynthia Balcius, Thomas Beeeler

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

Kodiak: Chair Orlowicz announced that the next agenda item was the Kodiak Woods Subdivision proposal, and that she would be recusing herself because she is a legal abutter and passing the gavel to Bob Craycraft, Vice-Chair. Don Voltz stepped down to represent the applicant.

Bob Craycraft summarized the issues the Board was working on relative to the application:

- the yield plan to determine the allowable number of lots,
- the escrow accounts for third party assistance,
- he noted that the applicant would need a special exception from the ZBA for wetlands crossings; and
- the length of the dead end section of the road which will require a waiver of the 1000' maximum in the ordinance.

Malcolm McNeill began the presentation for the applicant. He showed graphs and charts that showed how the numbers of lots in both the yield plan and the actual application have decreased since the first discussions with the Board last year. He commented on portions of the town zoning ordinance and noted that it does not

specify the yield plan must be approved by the NHDES. He noted that the 24 lots they are proposing is less than the 27 that were in the subdivision plan for which DES has already approved a wetlands permit. He said it was unfortunate that Mr. Allen had declined to schedule a third meeting of the parties before this Board meeting to examine their latest yield plan proposal.

Cindy Balcius presented examples of recently approved subdivisions in other towns that have a greater wetlands impact than their plan. She emphasized that the last plan submitted by the applicant eliminated one of the driveway crossings in the previous plan.

Don Rhoades noted that in their current proposal the dead end section of the road is 1350 feet long, and Don Voltz added that they are planning to install 2 fire safety cisterns.

Ron Gehl noted that the Board had been focusing on Section D.4 of the ordinance which states that the total number of lots shall not exceed the number that would be allowed in a conventional subdivision. He understood that the town's third party experts were saying they were concerned that a subdivision design with 12,000 square feet of wetlands impact might not be approved by DES, and therefore could not be approvable under the town's ordinance.

David Allen explained the guidance he had been given by the Board in relation to meetings of the experts and noted that the reason he declined a 3rd meeting was the wetlands impact of the newest Kodiak yield plan proposal was only 37 square feet less than the 12,063 square feet impact of the previous plan and that was not enough of a change for the town to reconsider.

Vice-Chair Craycraft emphasized the limits on the Board's power to act contrary to town ordinance. He noted that if the applicant felt it should be able to go forward with a larger wetlands impact they had the option of submitting their yield plan to NHDES for an actual decision, or applying to the Town's Zoning Board for a variance from the parameters set in the ordinance.

Bill Straub said that the Town was basing its action on a couple of key facts. 10,000 square feet of wetlands impact is an important threshold for DES approval. Anything above that requires a more detailed application. The feedback from DES indicated that something less than that would very probably be approved and anything more than that would receive much greater scrutiny. The Town's consultant felt that the yield plan should consist of 22 lots and remain under the 10,000 square feet threshold regarding wetlands impact.

Earle Chase said that the 10,000 square foot level was noted by DES staff in the conversation that he had with Ms. Dori Wiggins. He went on to say that in the focus on the yield plan there were some other wildlife and wetlands issues that had not received attention. He said the 125' buffer between the deer wintering area and the lot lines would not be adequate—it should be closer to 250'. He also suggested that a portion of the highest value sections of wetland should have more protection and a 125' buffer would be reasonable. And he pointed out a small excavated pond just to the south of the subdivision entrance had important vernal pool species such as spotted salamander and wood frogs. He also noted that mayflower or trailing arbutus was in the area and warranted additional protection. This pond is not technically a vernal pool but there should be some additional effort to minimize potential impact on it.

Vice Chair Craycraft opened the issue for public comment at 8:42 PM. Sarah Foyne introduced herself as the abutter across Birch Hill Road from the subdivision entrance. She told the Board the subdivision would negatively impact her family's quality of life and the value of their property. The Public Comment was closed at 8:46 PM.

Malcolm McNeill said that the applicants did not intend to reduce their total lots from 24 to 22. He referred to a recent NH Supreme Court decision involving the Town of Greenland in which, he said DES and some environmentalists were trying to expand the scope of DES authority regarding wetlands and the Court had turned them down. He told the Board not to place the applicants in the place of doing a conventional subdivision instead of a conservation design.

Ron Gehl said Planning Board members were all conscientious board members working with the constraints of their Town Ordinance and he did not appreciate what sounds like a threat from the applicant to switch to a conventional design if the Board does not allow them a certain number of lots. He noted that in addition to the yield plan, there were still questions about other parts of the applicant's design. He was open to some flexibility on the dead end road length, but 350' more than the maximum allowable of 1000' seemed a bit much for him. He suggested a plan with a shorter road length and 1 or 2 fewer lots. He noted that a couple of lots were so oddly shaped that they could not pass the "straight face" test. Bill Straub said the applicant needed to provide a clear justification for the longer road length, in addition to wanting to have more lots.

Ron Gehl asked if other Board members had comments. Duane Armstrong said he was not so concerned about the road length but he was concerned about the number of lots. Paul Raslavicus said that cul de sacs of any length concerned him because of the public safety dangers and the difficulty in maintaining them. Bob Craycraft said

he had concerns about the cul de sac also. It was important to have cisterns available. He was still concerned about the number of lots. Bill Straub pointed out that Section D.9 of the ordinance says there shall be bicycle and pedestrian paths and that should also be in the next proposal.

Malcolm McNeill said the Board's collective opinion was clear and the applicant's team needed time to talk about it. He noted that the time period for review needed an extension; he suggested a month at a time.

Ron Gehl moved to extend the review period from August 15 to September 15. Duane Armstrong seconded. Unanimous with no abstentions.

Ron Gehl moved to extend continue the application to September 4, 2007. Duane Armstrong seconded. Unanimous with no abstentions.

Chair Cathy Orlowicz and Don Voltz returned to the Board. Ms. Orlowicz called a recess at 9:21 PM. The Board reconvened at 9:30 PM.

DeLong: Don Voltz recused himself because he did some work on the application. Cathy Orlowicz appointed Paul Raslavicus to sit for Mr. Voltz. Jason Pahopek, representing the applicant, walked through the subdivision checklist with the Board. He noted that the application had been amended so that all three lots had at least 250' of road frontage, and he brought the Board's attention to the Water Quality Ordinance setbacks that were on the plat. Bob Craycraft noted that the buffers were not needed on the 10 acre lot because the ordinance only applies to lots under 10 acres; and he said the no cut buffer would need to have markers.

Peter Rhoades moved to grant a waiver from the 2' contour requirement for the back sections of the lots because they are distant from the area of development. Paul Raslavicus seconded. Unanimous with no abstentions.

Bob Craycraft moved to accept the application as complete, conditional on the marking of wetlands buffers on the properties. Craycraft pointed out that Town Counsel had cautioned the board against conditionally accepting plans, but he felt the marking of the wetlands was an administrative issue. Peter Rhoades seconded. Unanimous with no abstentions.

Mr. Pahopek described the proposal as a 3 lot conventional road frontage subdivision. Peter Rhoades asked Mr. DeLong, the applicant, if he was aware of and comfortable with the Road Agent's requests for work to manage drainage so there is no increase in water runoff onto the road. Mr. DeLong said he had not met with the Road Agent. He was aware of the proposals, comfortable with some and not others.

He would prefer to make a cash payment to the Town and have the Town do the work.

Chair Orlowicz opened the issue for public hearing at 10:15 PM. Paul & Madeline Auger said they lived uphill from the development and would not be impacted on his property but the drainage problem was really bad on the road and the lots below the road. Ken Hynes asked the Town to do whatever it can to keep the water on the other side of the road. Public Hearing closed at 10:20 PM.

Peter Rhoades moved to continue the application to September 4 and asked the applicant to meet with the Road Agent and try to work out an agreement before then. Bob Craycraft seconded. Unanimous with no abstentions.

Ellen Brock: Dan Nebesky presented a request for a special exception to put a driveway across a poorly drained soil area on behalf of the owner, Ellen Brock. He said the crossing would be at the narrowest point of the poorly drained soil and that without it the owner would not be able to use the property. The Board agreed by consensus to send comment to the Zoning Board that they have no objection as long as the applicant demonstrates that the crossing is at the least impacting point.

Alton Subdivision: The Board agreed that the proposed 2 lot subdivision did not rise to the level of regional impact and the staff should write a thank you note to the Alton planner in appreciation for bringing the proposal to the attention of the new Durham Planning Board.

Minutes: Cathy Orlowicz suggested holding action on minutes to the next meeting because of the late hour of 10:55 PM.

David Allen reported no progress on subdivision and site plan checklists because of lack of time. Bob Craycraft reported briefly on the CIP Subcommittee meeting. Paul Raslavicus shared pictures of trailers on Merrymeeting Lake lots and said perhaps what was needed was enforcement, not an additional requirement. The Board agreed to add the trailer/recreational vehicle issue to the September 18 agenda.

Peter Rhoades moved to adjourn at 11:10 PM. Don Voltz seconded. Unanimous with no abstentions.

Respectfully submitted,

David Allen

Minutes Approved September 18, 2007