

MINUTES

PLANNING BOARD MEETING OF

OCTOBER 5, 2010

Chair Paul Raslavicus called the meeting to order at 7:02 PM.

Roll Call: Paul Raslavicus (Chair), Bob Craycraft (Vice-Chair), David Bickford (Selectmen's Representative), Dot Veisel, Scott Drummey, Jeff Kratovil (Alternate)

Public Input: Chair Raslavicus asked if there was any public input on issues that are not on the agenda. There was none.

Others Present: Chris Berry, Jeff Hertel, Tom Varney, Luanne Varney, Paul Surette, Ken Edwards, Arthur Capello, David Allen, Mary McHale

Hertel Subdivision: Chris Berry distributed copies of the revised plan, showing items the Board had requested at the last meeting and some changes the applicant had made to improve the plan. Mr. Berry also delivered the Storm Water Report. He said the storm water analysis showed that the current runoff from the lot is 2.07 cubic inches per minute and under their proposed plan, it will be only slightly higher at 2.14 cubic inches per minute. Mr. Berry said most of the water in any storm would go out through an existing culvert into Jones Pond on the Merrymeeting River. Mr. Berry said that if the water level in Jones Pond rises in a flood some of the water could back into the culvert, however, the storm water flattener they have designed would absorb that water so there is no flow onto Merrymeeting Road from the subdivision in case of flooding.

Board members reviewed the new plans and asked a number of questions.

Q: Is there an operations and maintenance plan for the stormwater management devices?

A: Yes

Q: Will there be any increase in silt leaving the property and entering Merrymeeting River?

A: The before and after water flow is estimated by a formula that is easily available in a software form. Slopes, soils, and other information can be fed into the computer and it uses the formula to calculate. The federal government developed this formula

and software. There is no equivalent formula for estimating before and after silt. However, the purpose of our stormwater management devices is to slow the water down. When it slows down silt falls to the bottom out of the water flow. For this reason, we believe there will be no noticeable increase in silt runoff.

Q: Are the storm water measurements you have shared for the entire lot or for the main/largest mini-watershed?

A: For the primary mini-watershed, because that is where there will be the most disturbance. Information on the other mini-watersheds is provided in the study,

Q: Are the storm water management devices designed to work together for the entire subdivision or are they designed separately for each lot.

A: Separately for each lot.

Chair Raslavicus said the Board would not be able to act on the application at this meeting because the new material was just delivered to them at this meeting, instead of 5 days in advance as required by the town's subdivision regulations. He listed several items the Board would need from the applicant in advance of the November 3 meeting:

1. Names of the roads, dimensions, and elevations;
2. Coloration or other means to designate the 15-30% slopes and the >30% slopes;
3. Number of square feet and percentage of the entire lot that is in each slope category;
4. Estimated square feet of impervious surface for each lot after it is built out and the percentage of the lot that represents;
5. Suggestions from the applicant for terms of adequate progress for vesting purposes;
6. Bob Craycraft asked for the 100 year storm data.

Chris Berry said he was not sure that the Strafford County Registry would accept a plan showing the designation of slopes because it might make the plan too full and difficult to read. He also said that since this is a road front subdivision, i.e. all lots have frontage on an existing road, that there is no requirement for adequate progress.

Chair Raslavicus asked David Allen to get definitive information on these questions before the next meeting.

Mr. Berry suggested that it would be wise to specify the period of time for which the conditional use permit is valid; perhaps until such time as a building permits requested, or until the Town adopts new ordinances that could change the requirements. Jeff Hertel asked if the Town of New Durham considered this a minor

or major subdivision. Bob Craycraft said that since one of the lots was large enough to be further subdivided it is a major subdivision.

Bob Craycraft moved to continue the application of Van Hertel for a 3 lot subdivision with accompanying storm water and steep slopes conditional use permits, located at 30 Merrymeeting Road (Tax Map 233, Lot 008) until November 3 at 7 pm at the public library. David Bickford seconded. Approved unanimously with no abstentions.

Surette: Tom Varney presented the application of Paul Surette for a Storm water and Steep Slope Conditional Use permit. Mr. Surette owns a decades old cottage at ~~xxx~~ 292 South Shore Drive with an old septic system, and crumbling foundation and retaining walls. His family is planning to install a modern septic system, build a new foundation under the house, and repair and strengthen the retaining walls. In addition they will be removing approximately 200~~xxx~~ square feet of patio pavement and installing a dry well to improve the storm water management on the lot. A total of ~~xxx~~5020 square feet will be disturbed in the process. The project is designed to handle storm water from a 100-year storm event. Mr. Varney told the Board that the project would be a significant environmental upgrade on this lot on Merrymeeting Lake.

Bob Craycraft moved to approve a Storm Water and Steep Slopes Conditional Use Permit for Paul Surette, 292 South Shore Road, Tax Map 113-013 with two conditions:

1. That the Operation and Maintenance Plan submitted with the application is followed, recorded, and reported to the Town as requested for the life span of the Storm Water Management Devices; and
2. That construction begins within six months of this date of approval, (October 5, 2010).

Edwards: Tom Varney presented the application of Ken Edwards for a Storm Water Management and Steep Slopes conditional use permit in order to construct a new house on the lot that is currently undeveloped. Mr. Varney noted that Mr. Edwards would also submit a request for a variance from the impervious surface limitation of 20% of the area of a lot; because their plan requires slightly more than 20% impervious surface.

Bob Craycraft added that the applicant would need a variance to allow construction within the Town's 75' shore front setback. Mr. Varney said the Zoning Ordinance establishes the setback at 50' for nonconforming lots that this is, so he does not believe a variance is necessary. Chair Raslavicus asked Mr. Allen to clarify that question before the variance request goes to the Zoning Board of Adjustment.

Bob Craycraft moved to approve the application of Kenneth Edwards for a

Storm Water Management and Steep Slopes Conditional Use Permit for 398 South Shore Road, Tax Map 114-043, with three conditions:

- 1. Approval of necessary variances by the Zoning Board of Adjustment;**
- 2. That the Operation and Maintenance Plan submitted with the application is followed, recorded, and reported to the Town as requested for the life span of the Storm Water Management Devices; and**
- 3. That construction begins within six months of this date of Zoning Board approval.**

David Bickford seconded. Approved unanimously with no abstentions.

Kodiak Woods: Chair Raslavicus reported to the Board that the Kodiak Woods subdivision was given conditional approval in May 2008 and the conditions have not yet been met. He acknowledged the Board had made a mistake by not setting a time limit on meeting the conditions of approval, and noted that Town Counsel had suggested that the Board still had the authority to expect and require completion of the conditions within a “reasonable time”.

The Board discussed this request and made no formal decision. Paul Raslavicus shared several sections of the bulletin published in 2009 by the Local Government Center titled “When the Building Stops”. This summary of one of the LGC’s Municipal Law Lectures emphasizes the need for Planning Boards to establish a time limit and to define active and substantial progress.

David Allen reported that he had received a phone call from Malcolm McNeill, the applicant’s attorney saying that the applicant wanted to ask the board to reconsider the timing of one condition. The decision requires that the applicant submit a \$700,000 bond to cover the cost of all roads and storm water management construction before receiving final approval. Mr. McNeill told Mr. Allen that it would be impossible to get a bank or other source to issue such a bond in this economy.

The Board discussed this request and made no formal decision. Paul Raslavicus shared several sections of the booklet published in 2009 by the Local Government Center titled “What to do When the Building Stops”. This summary of one of the LGC’s Municipal Law Lectures emphasizes the need for Planning Boards to include specific intentions for the time allowed to complete conditions precedent to final approval, the time allowed to complete conditions subsequent, and the specific expectations for “acceptable progress” in developing the subdivision. Mr. Raslavicus also read the section that instructs Planning Boards to have formal vote that acknowledges conditions precedent have been satisfied and final approval is granted.

There was extensive discussion amongst Board members about what a “reasonable

time" might be, given that it is now 2 ½ years since the conditional approval was granted. The Board agreed by consensus that 12 months from the date of this meeting is a reasonable time and that the Board should send a letter to the applicant to that effect.

Scott Drummey moved to instruct staff to draft a letter to Mr. Brian Crossan, applicant for the Kodiak Woods Subdivision, Tax Map 239, Lot 001, stating that the applicant has had 2 ½ years since conditional approval was given by the Planning Board for the subdivision and several conditions have not yet been met. The letter shall additionally state the sense of the Board that an additional twelve months, for a total of 3 ½ years, constitutes a reasonable time period for the completion of conditions precedent, and giving the applicant notice that if all conditions are not met by that time, the Board will consider the subdivision to be abandoned. Staff shall have the letter reviewed by Town Counsel for the signature of the Chair of the Board.

Dot Veisel seconded. Approved unanimously without abstention.

Non-Public Session: Bob Craycraft moved to enter into non-public session under the terms of RSA 91.A:3.II.a and 91.A:3.II.b. Scott Drummey seconded. Roll Call: Craycraft: yes; Raslavicus: yes; Drummey: yes; Bickford: yes; Veisel: yes. Approved unanimously.

The Board returned from non-public session.

Dot Veisel moved to endorse the proposed 2011 Planning Board budget prepared by staff, including the request for 8 hours of clerical/secretarial support time in the Land Use Budget for the Land Use Department. Scott Drummey seconded. Approved 4-0. David Bickford abstained because he will have to decide on the entire budget.

Dot Veisel moved to forward the endorsed budget as presented to the Budget Committee, including the separate line items, and the explanatory materials, and recommend they adopt the budget as proposed. Scott Drummey seconded. Approved 4-0. David Bickford abstained because he will have to decide on the entire budget.

Red Oak: Paul Raslavicus read a letter sent from Malcolm McNeill, on behalf of his client Red Oak LLC to John Teague, attorney for the Town. The letter said that Red Oak needed payment of \$4,000,000 for the property. Since that will not be possible under current economic conditions they are withdrawing from the effort to find a conservation solution for the site. Mr. McNeill had met with the Board and Town Counsel in a non-public meeting about two weeks earlier and had signaled at that time that the Town could expect such a letter.

David Bickford moved to end the Design Review Phase of the application for a 216 unit subdivision on Birch Hill submitted by Red Oak, LLC, and to instruct staff to draft a letter to be sent by Town Counsel to Mr. McNeill. The letter shall acknowledge receipt of Mr. McNeill's letter withdrawing from the effort to find a conservation solution. It shall inform him of the Board's action to end design review. And it shall note that under the terms of the contract between Red Oak LLC and the Town of New Durham Planning Board the applicant may file a completed subdivision application consistent with the designs submitted in November, 2007 that meets the terms of all Ordinances and Regulations in effect in New Durham on November 6, 2007 at any time between now and October 5, 2011 which will be 12 months from the end of the Design Review phase. Any subdivision concept, proposal, or application filed after that date shall meet the terms of all Ordinances and Regulations in effect in New Durham at the time of such submittal.

Dot Veisel seconded the motion. The motion was approved by unanimous vote of 5-0 with no abstentions.

Conceptual Consultation for Traditional Subdivisions: Bob Craycraft will draft preliminary language for a Zoning Ordinance amendment that will address this issue.

Conference: Mr. Craycraft has been invited to make a presentation at a professional water quality conference regarding the town's new Stormwater Management Ordinance. Board members agreed by consensus that they would like him to make the presentation as a representative of the Planning Board.

Natural Resources Inventory: The grant funded Natural Resources Inventory will kick off on October 27 with a presentation by Fergus Engineers, the professionals who will be conducting the inventory. Planning Board and Conservation Commission members are urged to attend. Mr. Craycraft will prepare a press release for the Baysider, inviting the public.

Minutes of August 17, 2010: Scott Drummey moved to accept the minutes of August 17, 2010 as amended. Bob Craycraft seconded. Approved unanimously with no abstentions.

Minutes of August 24, 2010: Scott Drummey moved to accept the minutes of August 24 as written. David Bickford seconded. Dot Veisel and Bob Craycraft abstained as they were not at the meeting. Accepted by a vote of 3-0.

Minutes of September 7, 2010: Scott Drummey moved to accept the minutes of September 7 as amended. Paul Raslavicus seconded. Dot Veisel abstained as she was not present. Accepted by vote of 4-0.

Minutes of September 21, 2010: Scott Drummey moved to accept the minutes

of September 21 as amended. Bob Craycraft seconded. Approved unanimously with no abstentions.

Scott Drummey moved to adjourn at 10:58 PM. Bob Craycraft seconded. Approved unanimously with no abstentions.

Respectfully Submitted

David Allen,
Land Use Administrative Assistant

Minutes Approved October 19, 2010

Town of New Durham