

DRAFT MINUTES

NEW DURHAM PLANNING BOARD

NOVEMBER 16, 2010

(Please note: These are draft minutes prepared by staff from notes taken at the meeting. They have not been reviewed by the Board for accuracy, and should not be relied upon for accuracy. Reviewed, corrected, and approved minutes will be available at Town Hall and on the Town's website following the next scheduled Board meeting.)

Chairman Paul Raslavicus called the meeting to order at 7:00 PM.

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

Others Present: Mary McHale, David Allen, Cathy Orlowicz, Husband Orlowicz

Public Input: Chair Raslavicus asked if there was any public input. Cathy Orlowicz asked to speak in her role of Office Manager for the Highway Department. She delivered a letter to the Board from Road Agent Mark Fuller with his concerns regarding the proposed Valley Road subdivision (Map 261-037).

Kodiak Woods: Chair Raslavicus explained that the Planning Board had scheduled this hearing because it gave the Kodiak Woods Subdivision on Birch Hill Road (Map 239, Lot 001) conditional approval in April 2008 and two and a half years later some of the conditions were still unmet. David Allen reviewed the list of conditions precedent and indicated which ones remained unmet. He noted that the Board's concern was heightened by the fact that the applicant had 3 times contacted the town and expressed the intent of meeting with the Town to discuss the conditions, but at no point had they followed through on their expression of interest.

Attorney Malcolm McNeill spoke for the applicant. He began by noting the dramatic change in the economic conditions since the application was originally filed. He argued that the applicant had been very responsible about meeting the conditions of approval, with the exception of the bonding requirement, which he spoke about in more detail later. Of the five conditions precedent he said two had been met, he had delivered the

third (signed copies of legal documents), and referred to the bonding as the fourth item. He said the fifth item, a special exception from the Zoning Board of Adjustment to allow construction of roads or driveways across wetlands was a minor issue because the state had already given approval for that purpose and he felt the Town should follow the example of the state. He said the applicant would be able to start that process in February 2011.

Mr. McNeill went on to discuss the issue of bonding. The Conditional Approval of the Subdivision requires the applicant to establish a \$697,000 bond as a condition of final approval of the subdivision. The dollar amount was based on cost estimates made by the Town's engineer for the cost of all roads, stormwater management facilities, and other infrastructure. The applicant agreed to this requirement and the amount at the time of conditional approval in April 2008.

Mr. McNeill argued that it was not necessary for the town's security to require payment of the bond for the entire project as a condition of final approval. He said the town would be just as well protected if security were made prior to starting actual construction. He suggested that bonding was not necessary to protect the town: the town could withhold Certificates of Occupancy until the roads and infrastructure was completed. Later in the conversation, he modified this proposal to suggest that the applicant could bond for phases of the project as each phase is started. This would require a significantly smaller bond that would be re-established each time a new phase was initiated.

There was extensive discussion amongst board members and the applicants about the potential terms of an agreement. Several Board members said they were open to negotiating the applicant's concerns in combination with the applicant negotiating some concerns of the board, potentially including a partial payment toward the impact fee or a firm start date for construction. One board member noted that the town had no legal or moral obligation to change the terms of the bonding. Another suggested the Planning Board should either accept or deny the applicant's request, but not try to negotiate a reciprocal benefit for the Town.

Eventually all parties agreed that a negotiated agreement in which the applicant's concerns about the bad economy were recognized and some adjustment was made by the town to the bonding requirement; and the applicant agreed to some level of concession to the town. Neither side wanted to make commitments at this particular time.

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Chair Raslavicus opened the issue for public comment at 7:58 PM. Catherine Orlowicz, a legal abutter, asked for an opportunity to speak. She said she was not overjoyed at the prospect of a new subdivision in her back yard. She added that the applicants concerns were reasonable given the change in the economy. Board had made its agreement in 2008 and should not try to renegotiate its terms at this point. Mr. Raslavicus closed the public hearing at 8:04 PM.

Bob Craycraft moved to continue the public hearing to December 21 at 7 PM at the Fire Station. Scott Drummey seconded. Approved unanimously with no abstentions.

Building Regulations: Chair Raslavicus noted that the board had had several discussions with the Building Inspector, Arthur Capello, regarding his desire to shorten and clarify the Town's Building Regulations. Mr. Capello had said it was not necessary for the Town Regulations to repeat requirements that are part of the International Building Code, which the Town has adopted as its primary construction guidelines.

Chair Raslavicus asked if any Board members had comments. A couple of Board members agreed that the Board had had the opportunity to review fully the proposed changes. The chair opened the issue for public comment at 8:15 PM. There was no public comment. The chair closed the public comment period at 8:16 PM.

Bob Craycraft moved to approve the November, 2010 amendments to the Town of New Durham Building Regulations as distributed at this meeting. Dot Veisel seconded. Approved unanimously with no abstentions.

Design Review: Bob Craycraft presented a proposed amendment to the Zoning Ordinance that would give the Planning Board the authority to require a subdivision applicant to participate in the non-binding design review process under certain conditions. The Board discussed the possible trigger conditions that Mr. Craycraft had suggested and made some changes. The Board agreed to continue discussion at its next meeting.

Stormwater Ordinance Conformity: At the time Appledore Engineering worked with the Planning Board to develop the Stormwater Management Ordinance (2009) they gave the Board a list of items in various parts of the Zoning Ordinance that should be modified so that all parts of the Zoning Ordinance would conform to the guidelines established in the new Stormwater Management Ordinance. Bob Craycraft shared a draft of edits to the Zoning Ordinance that would implement the suggestions from

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Appledore. These are not substantive changes to the Zoning Ordinance, but more housekeeping and editorial for the purpose of consistency throughout the ordinance.

Stormwater Management Regulations: The board reviewed edits that Mr. Allen had made to the proposed regulations based on Board input at its October 19 meeting. Chair Raslavicus asked Board members to review sections 4D through 4F in preparation for the next meeting.

Subdivision Regulations: Mr. Allen reported that he had had no time to do additional editing of the proposed changes to the Subdivision Regulations. This triggered a board discussion about his time and the kinds of support that would be most helpful. Mr. Allen said that clerical/secretarial support would free up time to work on more support for board legislative and planning work, and that some planning work would be beyond his abilities and would require specialized expertise.

Minutes: Scott Drummey moved acceptance of the minutes of 11/2/2010 with minor edits. Bob Craycraft seconded. Approved unanimously with no abstentions.

Dot Veisel moved to adjourn at 9:45 PM. Scott Drummey seconded. Approved unanimously with no abstentions.

Respectfully submitted,

David Allen
Land Use Administrative Assistant

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