

Minutes

New Durham Planning Board

March 6, 2012

Chairperson Bob Craycraft called the meeting to order at 7:05 PM.

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

Others Present: Beth Meyer (videographer), David Allen (staff), John Michaud, and Ed Neister

Public Input: Chair Bob Craycraft asked if there was any public input. There was none.

Conceptual Discussion: Ed Neister described his potential plan to subdivide lot 243-003. The lot is about 48 acres. The state snowmobile trail bisects the lot. He is thinking of setting aside 15+/- acres in conservation easement, and dividing the balance into 7-9 lots of 3-5 acres each. Most of the lots would go to family members and two or three would be sold to cover the costs of development, including building a road to access the lots and create frontage.

He described some of the natural features of the lot. There is an intermittent seasonal stream along the southeast boundary of the lot which dissipates into the neighboring woods. A southern section of the lot has considerable steep slopes. There are a number of wet areas on the lot. From past experience as a member of the Planning Board he understands the subdivision process very well.

Mr. Neister added that he wanted the developed lots to have a value that would pay their fair share of taxes. To ensure this he plans to add deed restrictions regarding the minimum size of the house, and other factors. He also expects to design the lots in ways that hide the houses and yards from the road.

Board members discussed potential issues that would need to be addressed in the planning. One of the most significant is the 1000' limitation on the length of a cul de sac. His plans require a road that goes much further into the lot. Mr. Neister said he was open to creating a loop in the road so that the cul de sac length would be limited to the distance from the road to the intersection of the road loops. Board members were

unclear on how the length of a cul de sac is measured. Mr. Allen will check into that and get the information to Mr. Neister.

Bob Craycraft noted that with the number of lots involved Mr. Neister would need to install a cistern to meet Fire Department regulations, and suggested he meet with Chief Peter Varney in regard to that.

Mr. Neister said he still had considerable planning to do and it would be a few months before he submitted a design review plan.

Minutes of February 7, 2012. Dot Veisel moved to accept the minutes of February 7, 2012 as amended. Scott Drummey seconded. Approved 4-0 with Paul Raslavicus abstaining as he was excused from the meeting.

Minutes of February 21, 2012. Scott Drummey moved to accept the minutes of February 21, 2012 as amended. Paul Raslavicus seconded. Approved 3-0 with Bob Craycraft and Dot Veisel abstaining as they were excused from the meeting.

Legal Questions: David Allen shared with the board the response from Attorney Paul Sanderson of the Local Government Center to several questions raised by board members during recent meetings. A copy of Mr. Allen's summary is attached to these minutes.

New Site Plan Regulations during Subdivision: Mr. Sanderson's response on this question mirrored the discussion that had already occurred amongst board members: If the subdivision has an impact on the site plan then a new site plan should be required. Board members continued their earlier discussion about the triggers that would indicate the subdivision has an impact. They agreed that any change that would make area standards non-conforming or more non-conforming than before should trigger a new site plan.

They agreed that some factors affecting health, safety, or environmental protections should also require a new site plan. A consensus seemed to emerge that it would be too difficult to define these changes in advance in a way that would cover all possible circumstances. Therefore the Planning Board would need to make a decision in each separate case. David Allen suggested language along the lines of "in cases where there are changes that impact the health, safety, or environmental protections the Planning Board may require a new site plan". The board asked him to draft an amendment to the site plan regulations incorporating these concepts."

Third Party Fees: In response to two recent situations in which applicants have failed to pay third party fees, Attorney Sanderson recommended that both the Planning and Zoning Boards amend their Rules of Procedure to state that when either Board determines the need for third party review, all review of the application will stop until the applicant has deposited an escrow account adequate to cover all third party costs. Board members asked Mr. Allen to draft such language.

Master Planning Process: David Allen outlined the process he was thinking about for updating the Master Plan. Scott Drummey said he agreed with the idea of a “short & sweet” Executive Summary. Paul Raslavicus suggested getting more people involved in the process by having subcommittees for the various components of the Plan required or suggested by state law. He also stated strongly that the Board should understand the research that went into the current Master Plan before deciding what additional research is needed. He pointed out that considerable progress had been made on the 2005 plan and the progress as well as the items not completed should be acknowledged in the new Master Plan.

The Board began a discussion about the geographic, community, and service separation between the northeastern and southern sections of the town and the need for the Town to decide on a long term direction for resolving the issues raised by that separation.

Dot Veisel asked if the Board agreed with the Plan to use the Town’s 250th birthday celebration as a time to collect input from town citizens for the Master Plan revision. All members agreed this was a great opportunity and should be fully utilized.

New/Old Business: David Allen reported a property owner had inquired about the possibility and process for subdividing a lot currently classified as wood lot that is located on a private road that that does not fully meet Class V standards. He noted there are 3 separate steps involved:

1. Changing a woodlot to a buildable lot which requires frontage on a road built to Class 5 standards;
2. Permission to build on a private road which can only be granted by the Board of Selectmen; and
3. The actual subdivision itself which also requires road frontage. Bob Craycraft noted that there also appear to be steep slopes on much of the lot which could significantly limit its subdivision.

The Board asked Mr. Allen to try to sort out the specific steps and the order in which the applicant must address them to get to a final decision.

Adjournment: Scott Drummey moved to adjourn at 9:50 PM. Dot Veisel seconded. Approved unanimously.

Respectfully submitted,

David Allen
Land Use Administrative Assistant

Town of New Durham



TOWN OF NEW DURHAM

PLANNING BOARD

March 6, 2012

TO: Planning Board

RE: Legal advice from LGC attorney Paul Sanderson

As requested by the Board I submitted several questions to Paul Sanderson, attorney with the Local Government Center. Here are the questions and his answers:

Q: Does the subdivision of a lot that has an approved site plan for a business or other purpose require a new site plan?

A: If the subdivision in any way impacts the section of the lot for which the site plan was granted, then a new site plan is appropriate. If there is no overlap of the new property division on the site plan or the required setbacks for the site plan, a new plan is not needed. The board may want to add a section to both the subdivision and the site plan regulations to address this.

Q: Does the Planning Board have the authority to delegate full responsibility for home occupancy permits to the Code Enforcement Officer or is a change to the ordinance required?

A: Because the New Durham ordinance specifically states that the application shall be submitted to the Planning Board, and defines a specific role for the Planning Board in the process the delegation should be done by an amendment to the ordinance. Mr. Sanderson noted that many towns have been struggling to define the difference between a "Type 1" home occupation and a "Type 2" occupation. The New Durham ordinance seems to him primarily focused on the "Type 1" occupations which he defined as those in which there is only minimal evidence outside that a business is in operation.

Q: Should the Planning Board require applicants to submit a copy of a new deed when a Planning Board decision requires conditions or language be added to the deed?

A: It is the Code Enforcement Officer's responsibility to assure compliance with Planning Board decisions. If the Planning Board decision creates new buildable lots, this can be done as part of the application for a building permit. If the decision does not create new buildable lots, as for example a lot line adjustment between two existing developed lots, the Planning Board can set a time limit for the deeds to be delivered to the Code Enforcement Officer, with the decision being undone if the condition is not met.

Q: We have two situations in which applicants have refused to pay third party fees. What can we do?

A: In the Nelson/Healey case nothing unless the Healey's make an application in the future. They can be charged the fee at that time before a new application is accepted. In the Kodiak situation, no building permit should be issued until the back fee is paid.

Both the Planning Board and the ZBA should change their rules of procedure to state that at the time either board determines the need for third party review; all proceedings shall stop until an adequate fund is placed in escrow.