

**MINUTES
NEW DURHAM PLANNING BOARD
3 JUNE 2014**

Acting Chair Drummey called the meeting to order at 7:02 pm.

Roll call: Scott Drummey (Acting Chair), Paul Raslavicus, Bob Craycraft, Dot Veisel, David Swenson (Selectmen's Representative), Terry Chabot (Alternate), Recording Secretary (Amy Smith).

Excused: Craig Groom

Others Present: Videographer Vaughn Morgan, Conservation Commission member Ron Gehl, Stephanie Kearns, Curtis Richard, Tom Varney, PE, Heather & Dale Hagar, Thomas Ross, Keith Babb, Paul Zuzgo, LLS, Soil Scientist Cynthia Balcius, Pamela Anderson, Edmund Becker, Lorna Hardy, Ellen & Thomas Mason, James Hardy.

Public Input: There was no public input.

**ACCEPTANCE & PUBLIC HEARING – Green Oak Realty Development-Excavation
Permit-Kings Highway-Map 219 Lot 5**

Acting Chair Drummey stated the applicant's Engineer was present but the applicant had not yet arrived so he would take up another item on the agenda.

Thompson Conservation Easement

Acting-Chair Drummey stated he asked for this item to be placed on the agenda after he found out the \$5,000 donation the Conservation Commission voted to contribute to Moose Mountain Regional Greenways for the Thompson easement had to be returned to the Town. Acting Chair Drummey asked Conservation Commission Acting Chair Ron Gehl if he would like to speak on the issue. Mr. Gehl gave a brief history of the project and noted the Conservation Commission had been discussing the Thompson project since late summer/early fall of 2013. Mr. Gehl noted the Conservation Commission voted to donate \$5,000 to Moose Mountain Regional Greenways for 'future stewardship cost of the Thompson Easement'. Mr. Gehl explained after an easement is in place there is on-going support that is needed. Mr. Gehl stated it was the Conservation Commission's belief it was in their purview to contribute funds for future stewardship costs of the project.

Mr. Gehl stated after the Conservation Commission donated the money to MMRG the Board of Selectmen sought the advice of the legal department at the New Hampshire Municipal Association (NHMA). The NHMA Attorney felt that even though the Town of New Durham was not actually acquiring an interest in the property, the funds would be used by MMRG to 'facilitate interest in property'. Mr. Gehl continued to state that the Attorney's opinion was since the Town had not voted to enact RSA 36-A:4-a the transaction was unauthorized. Mr. Gehl

continued to state the Selectmen, after advice from the NHMA Attorney, voted to send a letter to Moose Mountain Regional Greenways requesting the return of the \$5,000 donation. Mr. Gehl noted MMRG has already returned the money to the Town.

Mr. Gehl stated an inquiry was sent to the NHMA legal Department today asking whether the Conservation Commission can make the donation for future stewardship costs once Moose Mountain has already acquired the easement, then there is no question that any of New Durham's funds were used to contribute to purchase the property or to facilitate its purchase. Mr. Gehl stated the other option is for the Conservation Commission to accept an executory interest. Mr. Gehl stated MMRG would be the primary easement holder and noted the Town of Farmington is also a secondary easement holder. Mr. Gehl stated the Commission plans on holding a public hearing on 24 June 2014. Mr. Gehl stated in addition to a public hearing the Board of Selectmen must also approve the acquisition of a secondary executory interest in the easement and have the Town Attorney review the document to ensure the easement is not putting the Town at risk. Mr. Swenson stated he cannot speak for the Board of Selectmen as a whole but he does not have a problem with the Conservation Commission forwarding easement language to the Town Attorney for review. Ms. Veisel and Acting-Chair Drummey agreed the preservation of the Thompson property was a good idea.

**ACCEPTANCE & PUBLIC HEARING – Green Oak Realty Development-Excavation
Permit-Kings Highway-Map 219 Lot 5**

At 7:15 pm Acting Chair Drummey opened the acceptance and public hearing for Green Oak Realty Development for an Excavation Permit for property located on Kings Highway, Map 219 Lot 5. Present for the hearing was applicant Keith Babb, applicant's agent Tom Varney, PE, abutters Dale & Heather Hagar and Thomas Ross. Mr. Varney stepped forward and gave the Board and audience members a brief history of the pit noting Mr. Babb's permit expired in 2011 and the pit has been inactive since that time. Mr. Babb stated not a lot of material was left in the pit but he wanted to excavate the remaining material, reclaim the area, and sell the lot as a house lot. Ms. Veisel asked Mr. Babb if he would have sufficient loam to reclaim the area. Mr. Babb stated he would.

Mr. Varney presented and explained an existing conditions plan, an operation plan, and a reclamation plan for Board members and the public. Acting Chair Drummey stated Mr. Babb would need to submit a new reclamation bond as the previous one was no longer valid. Acting Chair Drummey also questioned if the value of the previous bond, \$2,500, was sufficient. Mr. Babb stated \$10,000 was probably a more accurate figure. Acting Chair Drummey suggested the Town Engineer review the plan to come up with a bond amount. Acting Chair Drummey noted a water quality analysis needed to be done on the brook. Mr. Varney stated a water quality analysis had been done and submitted the lab report for the Board's review. Acting Chair Drummey stated Mr. Babb needed to submit information showing the excavation would not cause diminution to surrounding property values. Mr. Babb noted the gravel pit is an existing pit and felt cleaning it up and creating a house lot would improve the area. Mr. Babb asked if a letter from a real estate agent stating there is no diminution to surrounding property areas is sufficient. Board members agreed it was.

Mr. Raslavicus noted per State regulation a gravel pit must be reclaimed within 12 months of ceasing the excavation and in this case it was not if Mr. Babb's pit was not active since 2011. Ms. Veisel asked Mr. Babb if any part of the area has been reclaimed. Mr. Babb stated the area around the cemetery has been reclaimed and pretty much everything other than the area to be worked on has already been reclaimed. Mr. Craycraft suggested additional water quality tests consisting of total suspended solids, total phosphorous, and turbidity. Mr. Craycraft suggested having the tests done during a dry period, during a rain event, and a post rain event. Mr. Babb questioned when the tests should be completed. Board members agreed one set should be done prior to permit issuance and the others within two months of permit issuance. Mr. Raslavicus questioned the need for a wetlands permit. Mr. Varney stated the wetland in question is a manmade wetland and he is waiting for a determination from the State to see if a permit will be required.

Board members reviewed the items still needed for the project: State excavation permit, bond after amount is determined by the Town Engineer, a realtor's opinion regarding the diminution of surrounding property, additional water quality test, wetlands permit or determination from the State a wetlands permit isn't necessary.

Mr. Craycraft made a motion to accept the application of Green Oak Realty Development for an Excavation Permit for property located on Kings Highway, Map 219 Lot 5 contingent upon a State excavation permit, bond after amount is determined by the Town Engineer, a realtor's opinion regarding the diminution of surrounding property, additional water quality test, wetlands permit or determination from the State a wetlands permit isn't necessary.

Mr. Raslavicus questioned the process of conditionally accepting the application. Board members briefly discussed conditions subsequent and conditions precedent.

Mr. Swenson made a motion to accept the application of Green Oak Realty Development for an Excavation Permit for property located on Kings Highway, Map 219 Lot 5 as complete with conditions subsequent as specified: a State excavation permit, bond after amount is determined by the Town Engineer, a realtor's opinion regarding the diminution of surrounding property, additional water quality test, wetlands permit or determination from the State a wetlands permit isn't necessary. Ms. Veisel seconded the motion.

Mr. Raslavicus made a motion to amend the motion to clarify conditions subsequent to the acceptance of the application must be completed prior to any action on the permit. Mr. Swenson seconded the motion. The amendment was unanimously approved.

A vote was taken on the motion as amended. The amended motion was unanimously approved.

Acting Chair Drummey opened the public input portion of the hearing. Dale Hagar stated he is not opposed to the excavation but would like reassurance that if something should go wrong it will be completely taken care of. Mr. Hagar stated there are still temporary sand bags along his property that have been there for quite some time. Mr. Hagar noted they have been there since he purchased the property over a year ago. Mr. Babb stated he would remove the sand bags. Mr.

Hagar stated he didn't want the sandbags removed as it would disturb the surrounding vegetation that has grown around them. Mr. Hagar stated the sand bags themselves are not the issue he just wants reassurance that should something go wrong all evidence of it is corrected and things are restored to their current condition. Mr. Babb stated there would be no more disturbance on the Hagar's side of the pit and noted that area has already been reclaimed. Mr. Ross asked how many houses would be put in once the area is reclaimed. Mr. Babb stated one. Mr. Ross asked the hours of operation. Acting Chair Drummey stated the Town's Excavation Regulations allows hours of operation of 7 am – 6 pm Monday through Friday and 8 am – noon on Saturday. Mr. Ross asked if there would be blasting. Mr. Babb stated there would be and he would give notice to the neighbors as he had done previously. Acting Chair Drummey asked if there was any other public input. There was none. Acting Chair Drummey closed the public input portion of the hearing.

Board members discussed a site walk of the property. Board members agreed since the majority of Board members had previously walked the site another site walk wasn't necessary. Mr. Swenson stated he felt it was important to address Mr. Hagar's concern regarding returning abutting property to its current condition if there is any disturbance. Mr. Babb stated there would be no more disturbance on Mr. & Mrs. Hagar's side of the pit as that portion has already been reclaimed.

Mr. Varney asked the Board if it would be okay if he were to come up with a figure for the reclamation bond and have Ms. Smith submit his figure to the Town Engineer for review. Board members agreed this was fine.

Mr. Craycraft made a motion to recess the Public Hearing of Green Oak Realty Development for an Excavation Permit for property located on Kings Highway, Map 219 Lot 5 until 1 July 2014 at 7 pm at the Town Hall. Mr. Raslavicus seconded the motion. The motion was unanimously approved.

ACCEPTANCE & PUBLIC HEARING – Andrew & Pamela Anderson – conditional use permit-to allow the disturbance of 4,763 square feet in order to demolish an existing house and build a new house – 320 South Shore Road – Map 113 Lot 35

At 8:07 pm Acting Chair Drummey opened the acceptance and public hearing for Andrew & Pamela Anderson for a conditional use permit to allow the disturbance of 4,763 square feet in order to demolish an existing house and build a new house for property located at 320 South Shore Road , Map 113 Lot 35. Present for the hearing was applicant Pamela Anderson, applicant's agent Paul Zuzgo, LLS, and abutter Edmund Becker. Board members reviewed plans submitted by Mr. Zuzgo. Mr. Zuzgo noted there is no change in impervious surface and also noted the 30 foot slope areas are manmade and created when the driveway was put in. Acting Chair Drummey asked Mr. Zuzgo if he received the State Shoreland permit. Mr. Zuzgo stated he has applied for the permit and it is currently pending. Acting Chair Drummey noted both boundary information and surveyor stamp should be shown on the plan. Mr. Craycraft referred to Article XIV of the Zoning Ordinance and stated the Stormwater Management section of the ordinance applies. Mr. Craycraft noted an Operation and Maintenance plan is required under that

section of the ordinance. Mr. Raslavicus referred to Article XVII 'Non-Conforming Buildings, Land or Uses'. Mr. Raslavicus referred to Article XVII Section F-2-d which states "No more than a total of twenty (20) percent of the lot area shall be covered by all impervious surfaces". Mr. Zuzgo stated the footprint is existing and the Andersons are not increasing the amount of impervious surface. Mr. Raslavicus stated that may satisfy the State regulation but not the Town Ordinance. Mr. Raslavicus continued by reading Article XVII Section F-2-b which states, "No new building, except for water related structures, shall be located in a flood hazard area, or less than 50 feet from any water body or river course." Mr. Raslavicus stated in his opinion the new dwelling must be located outside the 50 foot lake buffer. Mr. Raslavicus continued to state the applicant could apply to the Zoning Board of Adjustment for a variance. Ms. Smith read Article XVII Section B of the ordinance which states "Any and all non-conforming property which is partially or totally destroyed by reason of obsolescence, fire, or other acts of God may be restored, remodeled and operated if done within two (2) years; providing, however, that proximity to a lot line or right of way may be no nearer than the lesser of the original building". Board members discussed 'obsolescence'. Ms. Veisel asked Mrs. Anderson if the structure is habitable. Mrs. Anderson stated it is habitable then proceeded to describe to the Board many structural and wiring issues the house has. Board members again discussed 'obsolescence' and who determines whether a structure is obsolete. Board members suggested getting a statement from an architect or other qualifying resource that the house is obsolete. Mr. Zuzgo asked if a letter from the Building Inspector would be acceptable. Board members agreed it would. Board members next discussed the 'squaring off' of the deck and whether the 'new' area added to square off the deck affected the impervious surface and setbacks. Mr. Zuzgo stated the structure is not getting any closer to the water because of the deck and the total impervious surface is not increasing as another area of the deck is being decreased. Board members reviewed Article XVII Section E which allows an open deck 'a maximum of twelve (12) feet towards the normal highwater' for any existing building less than 50' from the normal high water.

Mr. Craycraft made a motion the Board not accept the application of Andrew & Pamela Anderson for a conditional use permit to allow the disturbance of 4,763 square feet in order to demolish an existing house and build a new house for property located at 320 South Shore Road , Map 113 Lot 35 as complete due to lack of adequate information regarding stormwater management as required in Article XIV of the Zoning Ordinance - 'Stormwater Management and Erosion Control'. Ms. Veisel seconded the motion. The motion was approved with four affirmative votes (Swenson, Craycraft, Veisel, Drummey) and one abstention (Raslavicus).

Acting Chair Drummey informed the audience that since the application was not accepted as complete the Board would not be taking public input.

Mr. Raslavicus made a motion to recess the acceptance and public hearing of Andrew & Pamela Anderson for a conditional use permit to allow the disturbance of 4,763 square feet in order to demolish an existing house and build a new house for property located at 320 South Shore Road, Map 113 Lot 35 until 1 July 2014 at 7:45 pm at the Town Hall. Mr. Swenson seconded the motion. The motion was unanimously approved.

Board members agreed to schedule a site walk of the property 13 June 2014 at 6:30 pm at the site.

ACCEPTANCE & PUBLIC HEARING – Lorna F. Hardy – 2 lot subdivision – 222 Old Bay Road – Map 253 Lot 3

At 8:50 pm Acting Chair Drummey opened the acceptance and public hearing for Lorna F. Hardy for a two lot subdivision of property located at 222 Old Bay Road, Map 253 Lot 3. Present for the hearing was applicant Lorna Hardy, applicant's agent Paul Zuzgo, LLS, Soil Scientist Cynthia Balcius, abutters Ellen & Thomas Mason, and James Hardy. Mr. Craycraft informed Board members that he ran into Mr. Mason (Mrs. Hardy's son-in-law) at a track meet and the subdivision was mentioned. Mr. Craycraft stated no specifics about the application were discussed but he wanted to disclose to the Board the discussion took place and he would step down if the Board wished. Neither Mrs. Hardy nor the other Board members had an issue with Mr. Craycraft remaining on the Board for the application. Board members reviewed the plans submitted by Mr. Zuzgo. Mr. Raslavicus noted Mr. Zuzgo needed to show the remaining 27 acres is buildable. Mr. Zuzgo stated he had requested waivers for existing conditions and natural features of the remaining parcel. Board members agreed partial waivers may be acceptable but Mr. Zuzgo would need to show a buildable area where a well, septic, and home could be placed. Mr. Mason questioned the taxing of the lot. Mr. Raslavicus noted the lot could be placed in current use which would give Mrs. Hardy a break on her taxes but there is a penalty if and when the lot comes out of current use. Acting Chair Drummey noted if Mrs. Hardy wishes to put her property in current use that is up to her but it is not a function of the Planning Board.

Soil Scientist Cynthia Balcius stepped forward and noted in creating the minimum lot size for the 1.82 acre she used soils that are not listed in Appendix A of the Zoning Ordinance - 'Minimum Lot Size by Soil Type'. Ms. Balcius stated the State revised the soil typing in 2002 and then again in 2003. Ms. Balcius noted she is bound to use the State approved soil types. Mr. Craycraft suggested Ms. Balcius submit a letter stating she used the State approved soil types and listing what they compare to in the Town's Zoning Ordinance Appendix A. Ms. Balcius stated she would submit a letter to the Board. Ms. Balcius submitted a book entitled "Soil Based Lot Sizing" – September 2003 edition for the Board's review.

Mr. Craycraft made a motion the Planning Board not accept the application for Lorna F. Hardy for a two lot subdivision of property located at 222 Old Bay Road, Map 253 Lot 3 as the applicant needs site specific information to prove the 27.03 acre lot is a buildable lot and a statement from the soil scientist stating the deficiencies in the Town's Zoning Ordinance – Appendix A and the comparable, current State approved soil types. Ms. Veisel seconded the motion. The motion was unanimously approved.

Mr. Swenson made a motion to recess the acceptance and public hearing for Lorna F. Hardy for a two lot subdivision of property located at 222 Old Bay Road, Map 253 Lot 3 until 1 July 2014 at 8 pm at the Town Hall. Mr. Craycraft seconded the motion. The motion was unanimously approved.

Board members schedule a site walk of the property on 21 June 2014 at 9:30 am at the site.

Review of Minutes

Board members reviewed the minutes of 20 May 2014. Mr. Craycraft noted a typo on Page 1, second sentence under the heading ‘Public Hearing – Christopher Maynard’, ‘Dept’ should be corrected to ‘Depot’. Mr. Raslavicus suggested on Page 2, first paragraph, 4th line from the bottom, inserting the word “only” between the words ‘members’ and ‘agreed’. **Mr. Craycraft made a motion to approve the minutes of 20 May 2014 as amended. Mr. Swenson seconded the motion. The motion was unanimously approved.**

Review of Mail

There was no mail.

Follow-Up

Chair Craycraft asked Ms. Smith if Atty. Hoover submitted the corrected Easement Deed for the Maynard application. Ms. Smith stated not yet. Mr. Craycraft asked Ms. Smith to contact Atty. Hoover and remind him the Board needed the revised deed.

Contracted Services

Board members reviewed a contract between the Planning Board and Elaine Planchet for edits to the Zoning and Land Use Ordinance. **Mr. Craycraft made a motion to accept the contract with Elaine Planchet for edits to the Zoning and Land Use Ordinance. Ms. Veisel seconded the motion.**

Acting Chair Drummey suggested including dates of completion prior to signing and accepting the contract. Board members agreed this was a good idea. Board members agreed to enter the date of 1 August 2014 after ‘step 4’, the date of 15 September 2014 after ‘step 9’, and the date of 1 November 2014 after ‘step 10’.

Mr. Raslavicus made a motion to amend the motion to accept the contract to include the date of 1 August 2014 after ‘step 4’, the date of 15 September 2014 after ‘step 9’, and the date of 1 November 2014 after ‘step 10’. Mr. Craycraft seconded the motion. The amendment was unanimously approved.

The amended motion was unanimously approved.

Two copies of the contract were signed by Bob Craycraft as Chair, Scott Drummey as Vice-Chair and Dorothy Veisel as Secretary.

CIP Appointment

Ms. Smith stated she received an e-mail today from Town Administrator Jeremy Bourgeois requesting the Board appoint a representative for the CIP Committee. Acting Chair Drummey stated he is not interested in serving as the Planning Board's representative to the CIP Committee this year. Ms. Veisel stated she would be interested in serving. **Acting Chair Drummey nominated Ms. Veisel to be the Planning Board representative to the CIP Committee. Mr. Craycraft seconded the motion. The motion was unanimously approved.**

At 10:27 pm Mr. Craycraft made a motion to adjourn. Mr. Raslavicus seconded the motion. The motion was unanimously approved.

Respectfully submitted,

Amy Smith
Recording Secretary