

Sandown Planning Board
Minutes
May 18, 2010

Date: May 18, 2010

Place: Sandown Town Hall

Members Present: Donna Green, Chairman, Marilyn Cormier, Matt Russell, Ed Mencis, Steve Meisner and Nelson Rheume, Ex-Officio.

Also present: Bette Patterson, Administrative Assistant and Town Engineer Steven Keach

Absent: Fred Daley, Alternate, Mark Traeger, Vice Chairman and Ernie Brown, Alternate.

Opening: Chairman Green opened the meeting at 7:12 p.m. Chairman Green stated that the correspondence and approval of minutes would be moved to the end of the agenda.

7:15 p.m. Theresa Walker – Rockingham Planning Commission

Theresa Walker met with the planning board to review the CTAP Community Planning roadmap for the Town of Sandown. The development of this Community Planning Road Map is part of the I-93 Community Technical Assistance Program (CTAP). The CTAP program is a New Hampshire Department of Transportation (NHDOT) 5 year initiative to assist 27 communities that will be affected by the rebuilding and expansion of Interstate 93.

The purpose of CTAP is to promote beneficial patterns of growth among all 27 communities to minimize the negative effects of growth on community services, open space, school systems, traffic, environmental quality, and existing residential and commercial development.

The CTAP Community Planning Road Map is designed to engage communities in evaluating how they can achieve their planning goals using the planning products, resources and services made available to them through the CTAP program.

Ms. Walker explained that Sandown received funding from the two previous rounds of grants. The third grant round has not been announced as yet. Year One of the CTAP program is completed and Year Two will conclude in August 2010. The purpose of this meeting is to assist the board in identifying priority actions and recommendations that will guide the town's current and future participation in the CTAP program.

Currently, the Sandown CTAP program is moving into the *Visioning and Planning and Implementation* stages via the *CTAP Community Planning Road Map*.

Ms. Walker stated that the development of the CTAP Community Planning Road Map consists of a three step process.

1. Initial Community Engagement Meeting

This meeting is held in each community to: (1) reintroduce CTAP to community officials; (2) evaluate CTAP products that have been developed for each community to date; and (3)

47 develop a prioritized action plan for the community.

48

49 2. *Road Map Planning Process*

50 Communities select either the “Plan A” or “Plan B” planning process.

51 ▪ Plan A: Consists of a pre-meeting review and screening of the Community Planning
52 Assessment; facilitating a public workshop to evaluate recommendations; and
53 developing an action plan.

54 ▪ Plan B: Consists of an internal review process in which town officials, planning board
55 members, the regional planning commission, CTAP representatives and planning
56 commissioners meet to complete a Road Map Plan for the community.

57

58 *Sandown selected Plan B to complete the planning process.*

59

60 3. *Concluding Presentation*

61 The purpose of the concluding presentation is to present the CTAP Community
62 Road Map to the public at a meeting with elected officials, the planning board, conservation
63 commission and other stakeholders to describe the development and contents of the plan and
64 how the plan can be implemented.

65

66 Ms. Walker reviewed with the board the planning diagram which serves to summarize the results
67 of the *Visioning and Planning* stage of the STAP program.

68

69 Please note: A copy of the completed planning diagram is attached to this set of minutes.

70

71 After completing the planning diagram with the assistance of Ms. Walker, the board agreed to
72 schedule the concluding presentation for adoption on June 1st.

73

74 **8:15 p.m. Richard Drowne – Discussion – Hersey Highlands**

75

76 Mr. Drowne met with the board and requested an extension to condition number 9. (Conditions
77 No. 1 through No. 8 shall be fulfilled prior to signature and recording of the final plat and within
78 one year of the date of conditional final approval) He stated that he is in the process of securing
79 the required easement.

80

81

82 Steve Keach stated that there is no harm in granting the requested extension.

83

84 MOTION: Nelson Rheaume made a motion to grant an extension to the original conditions as
85 shown on the Notice of Decisions dated February 17, 2009 and May 19, 2009 granting
86 conditional approval for the plan of a major subdivision, Tax Map 7, Lot 19, Tax Map 8, Lot 14
87 and Tax Map 11, Lot 13, located off Odell Road. This is a proposed 142 unit elderly subdivision
88 to be known as “Hersey Highlands”. The property is owned by Hersey Road Development
89 Group. This motion is to extend the deadline as referenced in condition 9, shown below, to May
90 19th, 2012.

91

92

93 9. Conditions No. 1 through No. 8 shall be fulfilled prior to signature and
94 recording of the final plat and within one year of the date of conditional
95 final approval.

96
97 Ed Mencis seconded. Voted unanimously in the affirmative.

98
99 Please note the Planning Board took a 5 minutes recess at 8:25 p.m. and returned to session at
100 8:30 p.m.

101

102 **Correspondence:**

103

104 • **University of New Hampshire Cooperative Extension brochure on identifying and**
105 **protecting Vernal Pools**

106 • **Letter from George Stokinger, Business Administrator, School Administrative**
107 **Unit 55.** This letter is a reply to the board's inquiry regarding the disposition of impact
108 fees. Mr. Stokinger sent a record of the payments, (Sandown impact fee money) that
109 were made to the bond principle and interest. Chairman Green stated that the impact fee
110 money has been used in accordance with the RSA.

111 • **Letter from Timothy Peloquin, Promise Land Survey, regarding Monumentation –**
112 **Mill Pine village, Woodbury Lane – All monuments have been set for Woodbury**
113 **Lane.** Steve Keach stated that Woodbury Lane is adjacent to Mill Pine Road.

114 Woodbury Lane was reconstructed and is 100% completed. Now that the monuments
115 have been set, the Board of Selectmen can accept the road. The owner of the road,
116 Richard Drowne, needs to make a formal request to the Planning Board for road
117 acceptance. Once that request is made, the planning board can then forward a
118 recommendation to the Board of Selectmen. It was agreed that the Administrative
119 Assistant would contact Mr. Drowne to inform him of this process.

120 • **Letter from Montana Realty Trust** – This is a request to release the Irrevocable Letter
121 of Credit No. 83012982 dated January 7, 2008 in the amount of \$100,000.00 regarding
122 Riverbend Estates, recreation building. Steve Keach stated that condition 10 of the
123 approval for Riverbend Estates was the donation of the recreation building. That
124 condition has been completed and the surety is no longer needed. Mr. Keach also stated
125 that this surety should have been released when the recreation building was transferred to
126 the Town. Mr. Keach will research the status of this.

127

128

129 **Work Session**

130 • **Surety Holdings – Continued Discussion**

131

132 Planning Board members reviewed the following letter from Steve Keach regarding surety
133 holdings.

134

135

136

137

138

139 *May 18, 2010*

140

141

142 *Ms. Donna Green, Chair*

143 *Sandown Planning Board*

144 *Post Office Box 1756*

145 *Sandown, New Hampshire 03873*

146

147

148 *Subject: **Performance Guarantee Status - Various Land Development Projects***
149 ***Sandown, New Hampshire***

150

151

152 *Dear Ms. Green:*

153

154

155 *At the request of your Board, we have attempted to check the current status of the series of*
156 *performance guarantees given to the Town of Sandown over the past several years by the owners*
157 *of presently incomplete land development projects pursuant to the requirements of Section 9.20*
158 *of the Sandown Land Subdivision Control Regulations. In order to accomplish this task, we*
159 *inspected surety records on file with the Town Treasurer in order to determine the amount and*
160 *form of each applicable surety; and in those instances where the surety provided was in the form*
161 *of a letter of credit from a bank or other financial institution, we contacted each surety provider*
162 *for the purposes of verifying the Treasurer's records matched those of each applicable bank or*
163 *financial institution. Lastly, we compared the present value of each surety currently in place*
164 *with records maintained by this office on behalf of your Board. Based upon this level of*
165 *examination, we offer the following on a project by project basis:*

166

167 ***Avalon Estates (Surety expired on August 22, 2005)***

168

169 *This ten lot residential subdivision of land then owned by Mary Boland was approved by the*
170 *Planning Board on May 21, 2003 and involved the construction of approximately 1,275-feet of*
171 *Glastombury Drive, commencing at Hampstead Road. Condition of Approval No. 3, as specified*
172 *in a Notice of Decision issued on May 23, 2003 required the applicant to "build or bond all road*
173 *shoulder improvements and road construction. Bond amount to be approved by the Town*
174 *Engineer...". Irrevocable Standby Letter of Credit (LOC) No. 3437, in the amount of*
175 *\$354,430.00 was issued by Sovereign Bank on August 26, 2004 on behalf of Mary Boland and*
176 *Anthony Silva. Subdivision Plat was recorded at the RCRD on September 13, 2004 (see Plan*
177 *No. D-31962) and road construction commenced soon thereafter, culminating in the installation*
178 *of the base course of pavement on June 05, 2005. On June 20, 2005 Sovereign Bank notified the*
179 *Town of Sandown (Attn: Planning Board) of its intent not to renew LOC No. 3437 and its*
180 *corresponding expiration date of August 22, 2005. Pursuant to the terms of the LOC, the LOC*
181 *expired due to the fact that no action to "call" the LOC was taken by the Town between June 05*
182 *and August 22, 2005. On August 17, 2005 all ten lots as well as Glastombury Drive were*

183

184 conveyed to Michael J. Clare Property Management, LLC (See Bk. 4532; Pg. 2960). Mr. Clare
185 conveyed two lots to third parties between his date of acquisition and March 04, 2009, at which
186 time he conveyed the eight remaining lots to the Bank of New England (See Bk. 5093; Pg. 1856).
187 None of the conveyances made by Mr. Clare appeared to have transferred title to the platted
188 Glastombury Drive right-of-way to third parties. Since acquisition, the Bank of New England
189 has conveyed three lots to Trendezza, LLC (See Bk. 5093; Pg. 1859, Bk. 5102; Pg. 2295, & Bk.
190 5102; Pg. 2297).

191

192 Based upon a site inspection made by this office on January 17, 2008, an estimated \$36,724.75
193 worth of public improvements remained to be completed as of that date. To the best of our
194 knowledge, there has been no surety in place guaranteeing completion of this work since August
195 22, 2005.

196

197 **Glastombury Drive**

198

199 The final plat depicting this sixteen lot residential subdivision was recorded at the RCRD on
200 February 10, 2005 as Plan No. D-32405. Irrevocable Standby Letter of Credit No. 83017700
201 (now identified as LOC No. 20001085) in the amount of \$511,982.21 was issued by TD-
202 Banknorth, N.A. on May 26, 2005 on behalf of J.H. Chase, LLC. Since that date, the Sandown
203 Planning Board has approved a number of partial surety releases, the most recent of which
204 occurred on October 18, 2005, leaving a required minimum surety value of \$205,027.20. On
205 May 07, 2010 this writer spoke with Mr. Thomas Maslin of TD Bank, who confirmed a valid
206 LOC in the amount of \$205,027.20 is in place and shall remain in effect through June 30, 2010.

207

208 **Hillside Estates**

209

210 Final plats depicting Phases III and IV of this large multi-phase subdivision, as well as a
211 Phasing Plan and corresponding Development Agreement were recorded at the RCRD on May
212 17, 2006 (See Plan No. 's D-33777, D-33778 & D-33779 and Bk. 4656; Pg. 0784). Of note in the
213 Phasing Plan (Plan No. D-33777) and Development Agreement (Bk. 4656; Pg. 0784), which
214 effectively split Phase IV into three sub-phases identified as Phases IV-A through IV-C.
215 Irrevocable Standby Letter of Credit No. 0478982-9001 in the amount of \$1,422,813.92 was
216 issued by TD Banknorth, N.A. on May 16, 2006 on behalf of Montana Realty Trust. Since that
217 date, the Sandown Planning Board has approved a number of partial surety releases, the most
218 recent of which occurred on September 19, 2006, leaving a required minimum surety value of
219 \$337,495.79. On May 07, 2010 this writer spoke with Mr. Thomas Maslin of TD Bank, who
220 confirmed a valid LOC in the amount of \$337,495.79 is in place and shall remain in effect
221 through June 30, 2010.

222

223 **MCC Northwoods Subdivision – Valerie Way**

224

225 This eight lot subdivision of land situated in the Business District was conditionally approved by
226 the Sandown Planning Board on January 15, 2002. The minutes of a public hearing conducted
227 on that date indicate one condition of approval required "bonding of the construction of Valerie
228 Way". The final subdivision plat was recorded at the RCRD as Plan No. D-30575 on April 02,
229 2003. Neither our files nor the Treasurer's records yield any evidence a surety of any kind was

230 *ever posted in regard to this application. Construction of Valerie Way proceeded on and off*
231 *through 2006; however, in the opinion of this office, remaining work (including application of*
232 *the wearing course of hot bituminous pavement) remains to be completed as of this date.*
233 *Further, our recollections and records show a record of poor workmanship and cooperation by*
234 *and with the owner and his contractor(s). To that end, on November 15, 2006 the Planning*
235 *Board notified Mr. Jack Owens, Esq. of MCC Northwoods, LLC, in writing, of a May 11, 2007*
236 *deadline for satisfactorily completing all remaining work. Within that correspondence, the*
237 *Board Chairman noted “should you fail to comply with the request, the Planning Board will be*
238 *forced to pursue those remedies available under New Hampshire law to cause the completion of*
239 *Valerie Way, including, but not limited to, the seizure of your remaining performance guarantee*
240 *monies which the Town currently holds”. To the best of our know, no further action on the part*
241 *of either MCC Northwoods, LLC or the Town of Sandown regarding this matter has occurred*
242 *since the date of that correspondence.*

243

244 ***Phillips Pond Estates***

245

246 *A final plat depicting this residential subdivision was recorded at the RCRD as Plan No. D-*
247 *34521 on February 13, 2007. Irrevocable Letter of Credit No. 5519386772 in the amount of*
248 *\$1,096,981.06 was issued by River Bank on behalf of Peter Holmes and Sandra Marchetti on*
249 *February 05, 2007. Subsequently, construction proceeded and the Planning Board approved a*
250 *series of partial releases of surety, the most recent of which occurred on March 12, 2008,*
251 *leaving a required minimum surety value of \$227,638.06. On May 07, 2010 this writer spoke*
252 *with a representative of the River Bank who confirmed a valid LOC in the amount of*
253 *\$227,638.06 remains in effect.*

254

255 ***Riverbend Estates***

256

257 *This large multi-phased 86-lot residential subdivision was conditionally approved by the*
258 *Sandown Planning Board on February 19, 2002. As specified in a Notice of Decision dated*
259 *February 22, 2002, Conditions of Approval No. 10 and No. 16 respectively required: (10)*
260 *“Recreation bond to be established in the amount of \$100,000”; and (16) “Bonding of all*
261 *construction. Bond amount to be approved by Town Engineer. Bonding instrument to be*
262 *reviewed by Town Counsel ...”. On January 07, 2003 Banknorth, N.A. issued Irrevocable*
263 *Letters of Credit No. 's 83012982 and 83012983 in the amounts of \$100,000.00 and \$172,112.69*
264 *on behalf of Montana Realty Trust. On February 13, 2003 the final subdivision plat, as well as*
265 *an executed Development Agreement were recorded at the RCRD as Plan No. D-30464 and at*
266 *Bk. 3953; Pg. 1324 respectively. On May 07, 2010 this writer spoke with Mr. Thomas Maslin of*
267 *TD Bank who advised that both LOC's previously given expired on January 07, 2007 due to the*
268 *fact that certified mailings, forwarded to the Chairmen of both the Sandown Board of Selectmen*
269 *and Planning Board on or before November 15, 2006, advising of the pending expiration date*
270 *went unanswered. Upon request of this writer, Mr. Maslin agreed to provide this office with*
271 *copies of those mailings, receipts, etc. Mr. Maslin later advised this writer that it would likely be*
272 *several days before he could furnish the requested “back up” information due to the fact that the*
273 *files question are now stored at an off-site location and would need to be recalled. We will*
274 *forward any further information received from TD Bank regarding the subject LOC's to your*
275 *Board upon receipt.*

276
277 *Interestingly, on May 17, 2010 Ms. Patterson forwarded this office a copy of correspondence*
278 *addressed to your Board and prepared by Montana Realty Trust on May 14, 2010 requesting*
279 *release of LOC No. 83012982 in the amount of \$100,000.00. This is the same LOC that Mr.*
280 *Maslin advised us that expired on January 07, 2007.*

281
282 ***Tammy Estates***

283
284 *A final plat depicting this residential subdivision was recorded at the RCRD on July 08, 2005 as*
285 *Plan No. D-32835. On June 30, 2005 TD Banknorth issued Irrevocable Standby Letter of Credit*
286 *No. 20002881 in the amount of \$233,530.88 on behalf of JH Chase, LLC. In August 2005, the*
287 *Planning Board approved a partial release of surety, leaving a required minimum surety value*
288 *of \$34,693.92. On May 07, 2010, Mr. Thomas Maslin of TD Bank advised this writer that a*
289 *valid LOC in the amount of \$34,693.92 is currently in place and shall remain in effect through*
290 *June 30, 2010.*

291
292 ***Waterford Village Estates***

293
294 *A final plat depicting this residential subdivision was recorded at the RCRD on March 10, 2005*
295 *as Plan No. D-32459. On February 07, 2005 the Sovereign Bank issued Irrevocable Standby*
296 *Letter of Credit No. 3753 in the amount of \$574,010.06 on behalf of Ten Powder Realty, LLC.*
297 *Since that date, the Sandown Planning Board has approved a series of partial releases of surety,*
298 *the most recent on November 14, 2006, leaving a required minimum surety value of \$186,752.80*
299 *for all three phases of the subdivision. On May 06, 2010, Mr. Arthur Weinstein of Sovereign*
300 *Bank advised this writer that a valid LOC in the amount of \$186,752.80 is currently in place.*

301
302 *As described in detail above, it appears the Town of Sandown may not presently enjoy valid*
303 *performance guarantees for the Avalon Estates, Riverbend Estates, or MCC Northwoods, LLC*
304 *subdivisions. As such, we recommend your Board seek the advise of Town Counsel in regard to*
305 *each of these matters in order to pursue remedies that may be available under New Hampshire*
306 *law to either cause adequate sureties to be reinstated for each of these projects, or better yet, all*
307 *remaining work to be satisfactorily completed in timely fashion.*

308
309 *Further, based upon the examination of relevant Town records required to complete this*
310 *assignment, we feel compelled to offer our opinion regarding the condition and manner in which*
311 *these records appear to have been maintained could best be described as a "disaster". Given*
312 *this belief, we would appreciate an opportunity to discuss ways to improve future maintenance of*
313 *performance sureties as soon as practical.*

314
315
316 *Sincerely:*

317
318
319 *Steven B. Keach, P.E.*
320 *President*
321 *Keach-Nordstrom Associates, Inc.*

322

323 Board members agreed to notify the developers immediately of the lack of surety on the above
324 referenced projects and invite them to meet with the board. It was also agreed that the building
325 inspector would be notified to make sure that lots will not be built on without surety being
326 posted.

327

328 Steve Keach stated that it is important to work to put safe guards in place so that this does not
329 happen again.

330

331 Matt Russell suggest that the board only accept a self perpetuating bond.

332

333 Mr. Keach stated that it may be difficult to only accept self perpetuating bonds because there are
334 other forms of surety, such as cash, that are also acceptable.

335

336 Chairman Green noted that the expired sureties occurred prior to Mrs. Patterson becoming our
337 Administrative Assistant.

338

339 It was agreed that a letter would be sent to the Treasurer to set up a meeting with staff to
340 determine the best course of action for tracking sureties.

341

342 Mr. Keach stated that building permits have been pulled for Avalon Estates and possibly for the
343 other developments as well and there are homes currently under construction. Mr. Keach stated
344 that those homeowners, and possibly the builders, have no idea that these homes are being
345 constructed without surety. He recommended that the board only stop building permits from
346 being issued from this date on and the homes currently under construction could be completed.
347 He stated that the people with homes under construction are innocent parties in this situation.

348

349 Board members discussed this recommendation. Steve Meisner, Ed Mencis and Nelson
350 Rheahume agreed that the homes under construction should be allowed to be completed. Mr.
351 Russell, Mrs. Cormier and Mrs. Green did not think that certificates of occupancy should be
352 issued and that all building permits be stopped.

353

354 Chairman Green took the following poll of the board:

355

356 ***Those in favor of pulling building permits:*** Matt Russell, Ed Mencis, Steve Meisner, Marilyn
357 Cormier, Nelson Rheahume and Donna Green.

358

359 ***Those in favor of issuing certificates of occupancy to homes that are currently under***
360 ***construction:*** Ed Mencis, Steve Meisner and Nelson Rheahume

361

362 ***Those in favor of NOT issuing certificates of occupancy to homes that are currently under***
363 ***construction:*** Matt Russell, Marilyn Cormier and Donna Green

364

365 Mr. Keach stated if contractors are stopped from doing their work, it could cause a real
366 economic hardship to everyone involved.

367

368 Mr. Meisner stated that it is unfair not to allow the construction to continue because the people
369 involved are unaware of the lack of surety.

370
371 Mr. Russell and Mrs. Cormier stated they would reverse their decision and now favor issuing
372 certificates of occupancy to homes that are currently under construction.

373
374 Chairman Green stated that it is the decision of the planning board that no more building permits
375 be issued for these three developments. The letters will be sent immediately and the building
376 inspector will be notified tomorrow morning.

377
378 **Budget Report – Nelson Rheaume**

379
380 Mr. Rheaume reviewed the budget with the board and reported that the only line used in the last
381 month was under consultant. This was used to pay the fees for the Rockingham Planning
382 Commission.

383
384 **Other Business:**

385
386 **Inspection reports:** Steve Keach explained that inspection reports were sent two weeks ago and
387 he will follow up with his associate Mr. Chabot on the progress being made.

388
389 **CIP Meeting:** This has been scheduled for June 14th in the Town Hall at 7:00 p.m.

390
391 **Permit Software:** A letter will be sent to the permit software company requesting addition
392 information and a demonstration.

393 Chairman Green stated that due to the lateness of the evening, the following items will be placed
394 on the next agenda:

- 395
396
 - **Discussion of raising Planning Board fees/Site Plan Review and**
 - **Subdivision**
 - **Discussion of raising current school impact fees.**
 - **Approval of Minutes**

400
401 **Adjournment**

402 MOTION: Matt Russell made a motion to adjourn. Ed Mencis seconded. Voted unanimously
403 in the affirmative. MEETING ADJOURNED AT 9:55 p.m.

404
405 Respectfully submitted,

406
407
408
409 Bette Patterson, Administrative Assistant

410