

Sandown Planning Board
Minutes
August 17, 2010

Date: August 17, 2010

Place: Sandown Town Hall

Members Present: Donna Green, Chairman, Mark Traeger, Vice Chairman, Matt Russell, Marilyn Cormier, Nelson Rheaume, Ex-Officio, Ed Mencis and Alternate Ernie Brown.

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

Absent: Steven Meisner and Alternate Fred Daley.

Opening: Chairman Green opened the meeting at 7:03 p.m. Chairman Green announced that Alternate Ernie Brown would be serving on the board in Mr. Meisner's absence.

Approval of Minutes:

August 3, 2010

MOTION: Marilyn Cormier made a motion to approve the minutes of August 3rd, 2010 as amended. Matt Russell seconded. Ed Mencis, Mark Traeger and Nelson Rheaume abstained.

Donna Green, Matt Russell, Marilyn Cormier and Ernie Brown voted in favor of the motion.

MOTION PASSED.

Chairman Green requested the June 1st 2010 minutes be revisited to add one note.

June 1, 2010

MOTION: Donna Green made a motion to revisit the minutes of June 1, 2010 to indicate letter from Attorney Ratigan was attached to the original set of minutes on file in the Town Clerk's office. Matt Russell seconded. Voted unanimously in the affirmative. MOTION PASSED.

MOTION: Ed Mencis made a motion to approve the minutes of the June 1, 2010 minutes as amended. Mark Traeger seconded. Voted unanimously in the affirmative. MOTION PASSED.

Correspondence:

- **Letter from Rockingham Planning Commission regarding Sustainable communities Initiative Grant Application** – RPC is requesting a letter of support that will be a part of the grant application. Nashua Regional Planning Commission/Metropolitan Planning Organization is the lead applicant for the application.
MOTION: Mark Traeger made a motion to send a letter of support for the Sustainable Communities Initiative Grant Application. The letter will be sent to Rockingham

43 Planning Commission and they will provide the information to the Nashua Regional
44 Planning Commission. Ed Mencis seconded. Matt Russell voted against the motion.
45 Donna Green, Mark Traeger, Marilyn Cormier, Nelson Rheaume, Ed Mencis and
46 Alternate Ernie Brown voted in favor of the motion. MOTION PASSED.

- 47
- 48 • **Reply to planning board letter (dated July 22, 2010-inquiring if the selectmen**
49 **required a CUP under the Cease and Desist Order) from Sandown Board of**
50 **Selectmen regarding Cease and Desist order for the Sarkozy property, Map 14, Lot**
51 **19-70, 9 Montana Drive, Sandown – Please note: A copy of this letter is attached to**
52 **the original set of minutes dated 8/17/10 on file in the Town Clerk’s Office.**

53

54 The Board of Selectmen letter stated *“After discussion and careful review, the Board of*
55 *Selectmen is in agreement that a Conditional Use Permit (CUP) is not required in this*
56 *situation, in view of the fact that a CUP was not a condition of the cease and desist order.*
57 *NHDES has inspected the area and given their approval. The current cease and desist*
58 *order remains in effect until such time the conditions set forth in such cease and desist*
59 *order are met, and a favorable report is received from Keach, Nordstrom and*
60 *Associates.”*

61

62 Matt Russell stated that with all due respect to the selectmen, the cease and desist
63 specifically refers to Article 1, Part B of the zoning ordinance. Under this section, it is
64 clear that a Conditional Use Permit is needed. If the selectmen lift the cease and desist
65 order without a CUP the selectmen would be going against the Sandown Zoning
66 Ordinance. The original agreement with the developer was that the bridge would be
67 installed, an action that would not have required a CUP, however, the developer chose
68 not to install the bridge and the wetlands were damaged. When the wetlands violation
69 occurred, the developer was then required to obtain a CUP. Mr. Russell stated that it’s
70 the same requirement for every single development.

71

72 Nelson Rheaume stated that the cease and desist order was prepared by counsel. The
73 process has taken a long time and it is finally getting finished. The state has reviewed
74 and approved the project as well.

75

76 Marilyn Cormier stated that if someone is in violation of Article 1, Part B of the Sandown
77 zoning Ordinance, then they are required to apply for a CUP. The Board of Selectmen
78 cannot grant a waiver to the zoning ordinance. The developer would have to apply for a
79 variance with the Zoning Board of Adjustment for relief from this requirement.

80

81 Steven Keach, Town Engineer, stated that Article I, Part B of the zoning ordinance deals
82 with enforcement. The board of Selectmen are charged with enforcing the ordinance and
83 as a result issued a cease and desist order. NH RSA 676:17A I defines the contents of a
84 cease and desist order. He stated that he is discussing not what should have happened but
85 rather what did happen. The cease and desist requirements have been successfully

86 reviewed by the State. If a CUP was required, then it should have been stated in the
87 cease and desist order.

88

89 Mark Traeger asked Mr. Villella, who was present at this meeting, if the bridge had been
90 installed. Mr. Villella indicated no.

91

92 Matt Russell asked Mr. Keach "If one works in wetlands in Sandown, is a CUP needed?
93 Mr. Keach replied "absolutely".

94

95 Ed Mencis stated that the planning board should let the Board of Selectmen handle this.

96

97 Marilyn Cormier stated that the selectmen did put in that a CUP is needed because they
98 cited the whole article. She suggested that counsel be contacted to ask for clarification of
99 the cease and desist order.

100

101 MOTION: Marilyn Cormier made a motion that the planning board authorize Chairman
102 Green to contact counsel regarding the CUP and if it is required by the cease and desist
103 order. **NO SECOND. MOTION FAILS.**

104

105 Matt Russell addressed Mr. Rheume stating that "you stated it's been a long time. We
106 have a lot of projects that have been going on for a long time. Is that any reason to
107 change the rules?"

108

109 Nelson Rheume stated that maybe it's a good idea to contact Attorney Ratigan and have
110 him clarify the cease and desist order for the planning board.

111

112 Matt Russell stated that the planning board is not asking for something that is unique.
113 The board is following our own zoning ordinance. When the recreation building was
114 built a CUP was required and approved for that project.

115

116 Mark Traeger stated that it's taken so long because the bridge has not been done. He
117 agreed that the zoning ordinance clearly spells out the requirement for a CUP.

118

119 Nelson Rheume stated that the selectmen will not release the cease and desist order until
120 everything is completed.

121

122 Donna Green stated that she did catch the board of selectmen's review of the planning
123 board letter and she felt her argument for a CUP was not expressed at the selectmen's
124 meeting. She requested that in the future when reviewing correspondence at a meeting
125 that the selectmen review and discuss it as well. She stated that she did not appreciate the
126 way the planning board letter was reviewed.

127

128 Nelson Rheume stated that each selectmen had a copy of the planning Board letter and

129 gave it due consideration. No member of the planning board was present at the
130 selectmen's meeting to speak to this letter.

131
132 Matt Russell stated that it was not listed as a discussion on the selectmen's agenda. It
133 was only on the agenda under correspondence.

134
135 • **Keach-Nordstrom Associates, Inc. - Recommendation to release surety for Mill Pine**
136 **Village/Woodbury Lane** Steve Keach stated that all roadway improvements have been
137 completed in accordance with plans approved by the Sandown Planning Board. The
138 Board of Selectmen have accepted Woodbury Lane as a Class V public way. He
139 recommended that the surety held by the town of Sandown in the amount of \$15,829.00
140 be released. MOTION: Ed Mencis made a motion to release the surety for Mill Pine
141 Village/Woodbury Lane in the amount of \$15,829.00 leaving a balance of \$0.00. Mark
142 Traeger seconded. Voted unanimously in the affirmative.

143
144 • **Letter from Marie J. Buckley, Treasurer/Town of Sandown -** *Please note a copy of*
145 *this letter is attached to the original set of minutes on file in the Town Clerk's Office.*
146 The letter was in regards to the process used to release sureties. Chairman Green read the
147 letter to the board and recommended that this subject be placed on a future agenda of the
148 planning board when more time is available to discuss it. The board agreed and
149 requested the Administrative Assistant to send a thank you note to Ms. Buckley for her
150 suggestions and to let her know that this will be an agenda item at the next planning
151 board meeting. Chairman Green stated that she has called New Hampshire Municipal
152 Association regarding questions she had about sureties but has not received a response as
153 yet.

154
155
156 **Robert Vilella – Discussion Riverbend and Glastombury Continued discussion re: Sarkozy**
157 **property in Riverbend Estates (Map 14, Lot 19- 70) remediation and discussion of**
158 **Conditional Use Permit.**

159
160 Mr. Vilella met with the board to request that Glastombury Drive be accepted as a Class V
161 public way.

162
163 Steve Keach stated that KNA has inspected the road and there are no outstanding issues. The
164 road is complete and KNA will be sending a hard copy of the inspection report with the
165 recommendation to release the bond and recommend road acceptance.

166
167 MOTION: Ed Mencis made a motion to recommend to the Board of Selectmen that the 2,035
168 foot section of Glastombury Drive owned by Montana Realty Trust be accepted as a Class V
169 public way. Mark Traeger seconded. DISCUSSION: Marilyn Cormier stated that she would
170 like the board have a copy of the KNA reports and Mr. Keach assured her that it was
171 forthcoming. Chairman Green stated that when the board recommends accepting a road that a

172 reminder should be made to the selectmen that they do have an option of waiting a year before
173 official acceptance which gives the town time to make sure that the road holds up. Chairman
174 Green stated she would like to amend this motion to recommend that the selectman not accept
175 Glastombury Road for one year. Mr. Keach stated that the binder course on this road has been in
176 place since 2005. The road has been through five winters and KNA has inspected it several
177 times and the road is fine. VOTE ON THE MOTION ONLY, NO AMENDMENT: Voted
178 unanimously in the affirmative.

179
180 MOTION: Ed Mencis made a motion to release the remaining surety for Glastombury Drive
181 owned by Montana Realty Trust. Ernie Brown seconded. DISCUSSION: Chairman Green
182 stated she would rather wait for the report from KNA prior to releasing the surety. Mr. Mencis
183 stated that the plan is recorded and Mr. Keach has confirmed that the work is completed. VOTE
184 ON THE MOTION: Donna Green voted against the motion. Matt Russell, Mark Traeger,
185 Marilyn Cormier, Nelson Rheume, Ed Mencis and Alternate Ernie Brown voted in favor of
186 the motion. MOTION PASSED.

187
188 Mr. Villella requested that the roadways in Riverbend Estates be accepted as a Class V public
189 ways.

190
191 Mr. Keach stated that the phasing was completed. Steve Chabot of KNA has done a walk
192 through and the three items remaining on the punch list (as viewed at the last planning board
193 meeting) have been done. This project is fully completed through Phase III. Public Works
194 Director Arthur Genuardo has inspected the road as well. KNA has no opposition to accepting
195 this road. There are no sureties remaining on this project.

196
197 MOTION: Ed Mencis made a motion to recommend to the board of Selectmen accept Wood
198 Duck Circle, Riverbend Drive, Montana Drive, Pheasant Run and Mallard Lane, all roadways as
199 they exist to the end Phase III of Riverbend Estates as Class V public ways. Ernie Brown
200 seconded. DISCUSSION: Marilyn Cormier asked if the road shoulder had been taken care of
201 and Mr. Keach replied that it had been completed. VOTE ON THE MOTION: Donna Green
202 voted against the motion. Matt Russell, Mark Traeger, Marilyn Cormier, Nelson Rheume, Ed
203 Mencis and Alternate Ernie Brown voted in favor of the motion. MOTION PASSED

204
205 **Sarkozy property in Riverbend Estates (Map 14, Lot 19-70) remediation and discussion of**
206 **Conditional Use Permit.**

207
208 Mr. Villella stated that this has nothing to do with the recreation center which Matt Russell brought up
209 earlier in the meeting.

210
211 Matt Russell stated that he made a comparison with the need for a CUP with the recreation building and
212 he was only making a parallel. The cease and desist specifically talks about Article I, Part B.

213
214 Mr. Villella stated that there was no cease and desist order on the recreation building.

215

216 Matt Russell agreed, however, there is still a process involved when the wetlands are disturbed.

217

218 Chairman Green stated that at the last planning board meeting, Mr. Villella had stated that he was going
219 to talk to the conservation commission. She asked Mr. Villella if he had done that yet.

220

221 Mr. Villella replied that after talking to his attorney, he was advised that he should not have been talking
222 to the planning board or the conservation commission concerning of the cease and desist order.

223

224 Matt Russell stated that he disagrees with the board of selectmen and this does need a CUP.

225

226 Steve Keach stated that the cease and desist trumps everything.

227

228 Matt Russell stated that a building permit was pulled prior to the cease and desist order so if the selectmen
229 lift the cease and desist order then the town could hold the building permit until there is a CUP.

230

231 Steve Keach stated if the planning board wants to do something other than what the selectmen are doing,
232 the board needs to seek advice from counsel.

233

234 Matt Russell referred to the DES letter which states approval of an after the fact dredge and fill permit
235 which does not preclude the applicant from local and federal requirements.

236

237 Steve Keach stated that the selectmen could modify the cease and desist, however, they did not. Mr.
238 Keach suggested that the board request input from Attorney Ratigan since he was the attorney that wrote
239 the cease and desist.

240

241 MOTION: Marilyn Cormier made a motion that the Planning Board authorize Chairman Green to contact
242 Attorney Ratigan regarding the cease and desist order. Mark Traeger seconded. DISCUSSION:
243 Ed Mencis stated that the advice from counsel should be based on what the board has discussed
244 and it is a good idea to seek this advice. VOTE ON THE MOTION: Ernie Brown and Matt
245 Russell voted against the motion. Donna Green, Ed Mencis, Steve Meisner, Marilyn Cormier,
246 Nelson Rheaume and Mark Traeger voted in favor of the motion. MOTION PASSED.

247

248 *Chairman Green stated that the next two agenda items are Preliminary Conceptual*
249 *Consultations and therefore any recommendations or comments are considered to be non-*
250 *binding.*

251

252 **Points North Design Group/Joshua Manning Nicolaisen – Preliminary Conceptual**
253 **Consultation Map 20 Lot 10**

254

255 The proposal is to do a lot line adjustment and a two lot subdivision for 33 acres resulting in a
256 total of 4 lots, one existing and 3 new lots.

257

258 Steve Keach suggested that HISS mapping be done along the river and that the base flood
259 elevation be defined.

260

261 Josh Manning, Surveyor, stated that there are buffers provided on the property. Water sheds off
262 the hill and works its way to the river.

263

264 Mr. Keach requested that there be a road easement along Fremont Road, 25 feet from the center
265 line for road improvements.

266

267 Mark Traeger suggested that the applicant may want to use some type of easement to protect the
268 land.

269

270 Donna Green stated that stone walls should be retained.

271

272 Hans Nicolaisen, property owner, stated he does not intend to rebuild stone walls.

273

274 Marilyn Cormier stated that the planning board has requested the re-building of stone walls in
275 the past.

276

277 Steve Keach stated that this application is considered be a minor subdivision application.

278

279 Mr. Manning and Mr. Nicolaisen thanked the planning board for their suggestions.

280

281 **KLC Land Planning – Kevin Camm KDRM LLC- Preliminary Conceptual Consultation**
282 **Map 5 Lot 28**

283

284 David Drowne and Robert Meaney, property owners, met with the board to review their
285 proposal. Mr. Meaney explained that they received conditional approval for 13 lots and showed
286 the plan to the board. Due to the economy, they did not get the project started. They are
287 proposing to eliminate the road and rebuild Wilkele Road. They are now proposing 22 units, 5
288 buildings with each building to have its own septic system. These would be two bedroom units,
289 condominiums which would qualify as workforce housing.

290

291 Mr. Keach noted that the proposal would be done under the open space development which did
292 not exist at the time of the original proposed project. This new proposal does appear to conform
293 to the zoning ordinance.

294

295 Chairman Green stated that the new cul de sac seems to have a lot of pavement and she asked if
296 that could be reduced.

297

298 Steve Keach suggested that the cul de sac could be reduced into a teardrop shape. He also
299 recommended that this proposal be taken to the Fire Chief to get his opinion on the layout of the
300 buildings and the road access for the project.

301

302 *Please note the Planning Board took a 10 minutes break at 9:20 p.m. and returned to session at*
303 *9:30 p.m.*

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Planning Board Budget 2011

Mark Traeger stated that the board should put in money for the services Mr. Keach provides when he attends our meetings.

Mr. Keach stated that historically he has been paid by the people that come before the board. He has had a working relationship with the Town of Sandown for 15 years and would like it to be another 15. He stated he does not mind coming here and is fine with the way he is compensated. He added that he appreciates Mr. Traeger’s recommendation.

Chairman Green stated that due to the lateness of the hour, the board would place the 2010 budget on the next meeting agenda.

Other Business:

- **Review of Employee Evaluation – Non-Public Session in accordance with NH RSA 91A:3II(A) Employee Matters.** Ed Mencis stated he requested that this be placed on the agenda since there were three members that were not present when the evaluation was done.

Chairman Green stated there was a deadline and it needed to be submitted.

Mr. Mencis stated that he just wanted to say that our Administrative Assistant has done a fantastic job and the board is lucky to have someone with so much planning experience.

- **Tax Maps** – Chairman Green announced that the planning board now has a small version of the tax maps and it will be available in the office and at all the planning board’s meetings.

Adjournment

MOTION: Ed Mencis made a motion to adjourn. Matt Russell seconded. Voted unanimously in the affirmative. MEETING ADJOURNED AT 10:00 p.m.

Respectfully submitted,

Bette Patterson, Administrative Assistant