

Sandown Planning Board  
Minutes  
December 14th, 2010

**Date:** December 14, 2010

**Place:** Sandown Town Hall

**Members Present:** Donna Green, Chairman, Mark Traeger, Vice Chairman, Matt Russell, Ed Mencis, Steven Meisner and Alternate Ernie Brown.

**Also present:** Town Engineer Steve Keach

**Absent:** Marilyn Cormier, Tom Tombarello, Ex- Officio, Alternate Fred Daley and Bette Patterson, Administrative Assistant

**Opening: Acting** Chairman Green opened the meeting at 7:02 p.m. Chairman Green announced that Alternate Ernie Brown would be serving on the board in Mrs. Cormier's absence.

**Approval of Minutes**

MOTION: Mark Traeger made a motion to approve the minutes of December 7th, 2010 as amended. Ed Mencis seconded. Donna Green and Steve Meisner abstained. Mark Traeger, Matt Russell, Ed Mencis, and Ernie Brown voted in favor of the motion. MOTION PASSED.

**Correspondence**

**Citizen Petitioned Warrant Article** - Chairman Green read the following Petition Warrant Article submitted to the Town on December 7<sup>th</sup>, 2010. The 25 signatures have been verified by the selectmen office.

*Shall the Town vote to require the Sandown Planning board to notify in writing through the U.S. Mail all property owners impacted by a proposed Zoning Ordinance that would affect 45% or less of the property parcels in the town. The notice would be required to include a detailed summary of the proposed Zoning Ordinance, the date, time and location of any public hearing on the proposed Zoning Ordinance and, references to any written materials regarding the proposed Zoning Ordinance. The notice must be sent at least fourteen days before any public hearing on the proposed Zoning Ordinance.*

Chairman Green stated that in accordance with the NH RSA the planning board must hold a public hearing which she recommended it be placed on the January 4<sup>th</sup>, 2011 agenda.

Matt Russell stated he is going to assume that Mr. Daley is the author of this petition. He stated he has questions about this and he hoped that Mr. Daley would be at the public hearing to answer them.

Chairman Green stated that the selectmen have forwarded the petitioned article to Town Counsel and read the following reply dated December 9, 2010 from Attorney Diane Garrow to the selectmen:

*On December 8, 2010, you e-mailed to me a petition warrant article that would require the Planning Board to notify through the U.S. Mail all property owners impacted by a proposed Zoning Ordinance affecting 45% or less of the property parcels in the town. The petition warrant article describes the*

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48 *contents of the notice and when the notice must be sent. Even if passed, that petition warrant article*  
49 *would be advisory only because RSA 675:7 sets forth the notice requirements for proposed Zoning*  
50 *Ordinances. The proposed article exceeds the notice set forth in the statute.*

51  
52 Steve Keach stated this particular petitioned article seeks to amend the way the Town of Sandown  
53 performs business outside of the zoning ordinance. This is a statutory problem and, while Mr. Keach  
54 agrees with Attorney Garrow that it is advisory only, he questions the legality of the petition. The statute  
55 enables the town to modify the enactment and adoption process. The town has flexibility in adoption and  
56 putting forth zoning ordinances, however, this particular warrant article deals with the **notification** process  
57 which is covered under NH RSA Chapter 675 and is absolute. He stated he was disappointed that  
58 Attorney Garrow did not raise this issue before the public hearing is held. The larger question relative to  
59 the legality is whether or not municipalities have the right to amend their zoning ordinance to deal with  
60 something that is not in the purview of the zoning ordinance.

61  
62 Matt Russell asked if this petition would require the town to do additional notice to abutters over and  
63 above what is required by state statute.

64  
65 Steve Keach replied yes. Mr. Keach stated he is not sure a process which is enacted by an amendment  
66 belongs within the context of the zoning ordinance. He did not think this is enabling legislation that  
67 allows a municipality to veer from the requirements of RSA 675. There is also a question as to where this  
68 particular wording would be inserted in the zoning ordinance if this article were to pass.

69  
70 Mark Traeger stated that New Hampshire is not a home rule state and we cannot make our own rules that  
71 are more stringent than every other municipality in the state.

72  
73 Steve Keach suggested that the board send this petitioned article to someone such as Bernie Waugh who  
74 is an expert on New Hampshire Land Use Law. If this were to pass and the Town followed it, the  
75 planning board may be setting the town up for litigation because of the fact it is outside of the state  
76 mandated notification process. The other issue is where to insert the wording in the zoning ordinance.

77  
78 Chairman Green stated that she will try to obtain a legal opinion from the Local Government Center on  
79 this issue.

80

81 **Request from Skipper Land & Development for release of bond for Little Mill Woods**

82 Chairman Green read the following letter from Skipper Land & Development:

83

84 *12-9-10*

85 *Skipper is requesting release of bond on Little Mill Woods as per inspection and new figures on Keach-*  
86 *Nordstrom letter of 12-6-10. Thank you, Dean Howard*

87

88 Chairman Green stated that a copy of the Keach-Nordstrom Associates, Inc. Report for Mill Woods is in  
89 each member's package. *Please note: A copy of this report is attached to the original set of minutes on*  
90 *file in the Town Clerk's Office and available for review during regular business hours.*

91

92 Steve Keach stated this surety was posted a number of years ago and it was a condition of approval that  
93 any site work that remained to be done would be covered by this surety. The surety was posted in the  
94 form of cash by Howard Company. At this time all but one or two units are done and outside of placing  
95 the top coat on some pavement, the project is 100% done. The Site Inspection was completed on

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96 November 17, 2010. Improvements have been satisfactorily completed. The report recommends bond  
97 release #1 in the amount of \$61,138.80, leaving a balance of \$40,727.32 to complete remaining  
98 improvements.

99  
100 Chairman Green asked if the recommended retained amount of the surety has been adjusted, due to  
101 inflation, to cover the cost of materials to complete the remaining improvements.

102  
103 Steve Keach reviewed the summary sheet attached to the KNA report which show that the numbers  
104 include an inflation factor which is approximately 130% of the cost of materials.

105  
106 MOTION: Ed Mencis made a motion to release the surety for Little Mill Woods in the amount of  
107 \$61,138.80, leaving a balance of \$40,727.32 to cover costs to complete the remaining improvements as  
108 per the Keach Nordstrom report. Mark Traeger seconded. Voted unanimously in the affirmative.  
109 MOTION PASSED.

110  
111 **Public Hearing for Design Review of a three lot Subdivision Application as well as a 22 unit open**  
112 **space development for KDRM, LLC. The property is shown on Map 5, Lot 28 on the Sandown**  
113 **Tax Map and located on 115 Hampstead Road. The property is owned by KDRM, LLC.**

114  
115 Chairman Green stated the Design Review Process gives the applicant and the board an opportunity to  
116 discuss the application in much more detail than in the conceptual consultation phase. The applicant  
117 previously met with this board for the conceptual consultation phase which is a non binding discussion.  
118 The design review meeting allows the discussion to go into greater detail that the conceptual consultation  
119 phase. The objective of design review is to provide the board with an opportunity to understand what is  
120 being proposed and for the abutters and general public to understand as well. The local regulations are  
121 reviewed and understood before the final plan is prepared and gives the planning board an opportunity to  
122 determine whether or not the development has the potential to have regional impact. If the applicant has  
123 any problem that can be resolved, before the final plan is prepared, corrections and or modifications can  
124 be made.

125  
126 Chairman Green stated the public hearing process is as follows:

- 127
- 128 1. Open the public hearing and the reason for the hearing.
  - 129 2. Reading of the legal notice.
  - 130 3. Presentation by the applicant.
  - 131 4. Board member questions and comments.
  - 132 5. Public comment and questions. Chairman Green requested that when addressing the board,  
133 people need to identify themselves with their name and address for the record.
  - 134 6. Any written comment is read into the record.
  - 135 7. At the end of the public session the board will summarize and give an opportunity for any  
136 clarification that may be needed. Public Hearing Closed.
- 137

138 Chairman Green stated in preparation for this public hearing Administrative Assistant Patterson noticed  
139 this meeting in the Eagle Tribune and certified notices were sent to abutters. When the planning board  
140 formally accepts the application, the abutters will be notified again.

141  
142 Kevin Cam, representing KDRM, explained that about five years ago KDRM received  
143 conditional approval for a 13 lot subdivision. Due to the economy, they did not get the project

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144 started. Recently the Town adopted an Open Space Development ordinance. The lot is over 20  
145 acres and the proposal is to have two project lots with 15.5 acres developed into an Open Space  
146 Development cluster project. ( The lot being subdivided, Map 5, Lot 28, is 20.10 acres. The  
147 proposed plan is to subdivide Lot 28 into 3 residential lots. Use of the proposed lots will be :  
148 Lot 28-Existing Single Family Dwelling, Lot 28-1-Single Family Units, Lot 28-2-Open Space  
149 Development) The proposal includes a cul de sac designed as per town regulations. Mr. Cam  
150 stated the yield plan, as required by the ordinance, is determined by the previous plan for the 13  
151 lot subdivision that had a possibility of 26 units. To determine the yield based on this plan, 2 lots  
152 were taken out which leaves 11 lots. The 11 lots multiplied by 2 gives a total of 22 which is the  
153 proposed number of units for this project.

154

155 Mr. Cam described the plan to the board and public. Access to the units will be from the top of  
156 Wilkele Road. The plan shows 22 units, 5 buildings with each building to have its own septic  
157 system. These would be two bedroom units.

158

159 Mr. Cam reviewed the Keach Nordstrom report which addressed procedural issue and some  
160 engineering requirements and state permits that are required. All of these items will be  
161 addressed as the process moves forward. There are three waiver that are being requested. 1.  
162 Width of roadway 2. Grading 3. Length of Cul-de-sac. Things like erosion and sediment  
163 control and storm water management will need some direction and granting of the waivers will  
164 allow the applicant to prepare a more detailed plan.

165

166 Mark Traeger asked if the radius of the cul-de-sac was designed to get the 200 feet of frontage or  
167 could the cul de sac be shrunk down a little more.

168

169 Steve Keach stated the cited Sections limit the length and population served by a dead-end street  
170 to not more than 1,000-feet and 25-homes respectively. As currently constructed, Wilkele Road,  
171 which provides frontage and access for approximately one-dozen homes, extends westerly from  
172 Hampstead Road for a length of approximately 1,100-feet before abruptly ending without benefit  
173 of a suitable turn-around. Both the Public Works Director and I embrace the applicant's  
174 proposal to design and construct the proposed cul-de-sac from both a public safety and  
175 convenience perspective. The Public Works Director has indicated construction of the proposed  
176 cul-de-sac would benefit his Department's maintenance operations significantly in that "full-  
177 sized" maintenance vehicles would then be able to negotiate turning maneuvers at the westerly  
178 end of this dead-end street. Further, it is presumed the same lack of a suitable turn-around that  
179 plagues the Highway Department's operations also serves to frustrate the ability of emergency  
180 response vehicles to safely operate on this street during circumstances requiring their action.  
181 Given the Town's inability to remedy the current deficiency without benefit of the supplemental  
182 right-of-way to be dedicated by this applicant, we support the issuance of waivers required for  
183 the short extension of Wilkele Road currently planned.

184

185 Mr. Keach also addressed the waiver request for paved street width. Appendix A requires a  
186 pavement width of 24-feet. Currently, Wilkele Road enjoys a nominal paved width of 20± feet.  
187 The applicant seeks a waiver to maintain a similar width over the short segment of incremental

188 road length required to construct a proper cul-de-sac. Both the Public Works Director and I  
189 support this request given the low volume of traffic to be served by Wilkele Road; the lack of  
190 potential for further roadway extension; and the desire to have the width of the short extension  
191 planned under this application match the prevailing width of this existing street.

192  
193 Mr. Keach stated that Mr. Cam will bring more detailed plans as the process moves forward.  
194 The design review plan presented this evening is very good. The original plan for the 13 lot  
195 subdivision is being used as the yield plan which determines the density of this proposal. Mr.  
196 Keach reviewed his report. *Note: A copy of the KNA report dated 12/14/10 is attached to the*  
197 *original set of minutes on file in the Town Clerk's Office and available for review during regular*  
198 *business hours.*

199  
200 Mr. Keach stated that in regards to regional impact, the check list the applicant provided has  
201 been reviewed and it's his opinion this proposal does not involve a development of regional  
202 impact.

203  
204 Chairman Green asked Mr. Keach about the waiver request for the maximum grade of streets.

205  
206 Mr. Keach replied that Sections 9.13 and 9.13.1 limit the slope of streets to 6 and 8-percent  
207 respectively. Survey data provided by the applicant's consultant suggests the existing slope of  
208 grade of the westerly end of Wilkele Road is approximately 12-percent. As shown on the road  
209 profile provided on Sheet 3 of the project plans, all "new" roadway construction planned by the  
210 applicant will conform to the cited requirements. The only proposed construction that will not is  
211 the reconstruction of approximately 180-feet of substandard existing roadway to which the  
212 proposed construction is to match. Since this applicant does not propose any "new"  
213 construction that does not conform to the requirements of the cited Sections, it is Mr. Keach's  
214 opinion that a waiver from the requirements of Sections 9.13 and/or 9.13.1 is simply not needed  
215 under this application.

216  
217 Mr. Keach stated in addition, this application will involve cul-de-sac construction at the westerly  
218 end of Wilkele Road. In order to satisfy the requirements of Section 9.20 of the Land  
219 Subdivision Control Regulations, approval of any application for final subdivision approval  
220 should be conditional upon the applicant providing a performance guarantee, in an amount and  
221 form acceptable to your Board, for successful completion of all public improvements. The  
222 Public Works Director and Steven Keach performed an on-site evaluation of the current  
223 condition of Wilkele Road. In addition to completing those improvements specified on Sheet 3  
224 of the current project plans, it is their collective recommendation that this applicant complete the  
225 following to mitigate off-site improvements at Wilkele Road as part of this project: (a) excavate  
226 and remove what appears to be 8 to 10 large rocks or boulders situated beneath the existing  
227 paved roadway surface in the vicinity of No. 5 Wilkele Road; (b) shim and overlay the full  
228 length/width of Wilkele Road with hot bituminous pavement to a depth of not less than 1 1/2-  
229 inches; and (c) raise existing graded gravel shoulders along both sides of Wilkele Road to match  
230 the finish pavement surface resulting from installation of additional pavement.

231

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232 Prior to submitting an application for final approval, Mr. Keach recommended the applicant meet  
233 with the Sandown Fire Department in order to review the subject proposal and to gain input in  
234 regard to matters within that Department's purview that could affect final design and  
235 construction.

236

237 Mark Traeger stated that the Fire Chief should be asked to comment regarding regional impact  
238 for this development.

239

240 Steve Keach agreed stating the Fire Chief should be asked to determine if emergency response  
241 could be handled by the Sandown fire department alone or would another town's services be  
242 required.

243

244 Steve Keach recommended notes be added to the final subdivision plat and multi-family site  
245 plan, as applicable, for the purposes of acknowledging the existence of impact fees to be  
246 assessed and paid pursuant to the requirements of Article VIII of the Zoning Ordinance and  
247 Section 9.26 of the Land Subdivision Control Regulations. As identified in Section 9.26 of the  
248 Land Subdivision Control Regulations, it appears public school impact fees in the following  
249 amounts will be assessed at the time of final approval and collected at the time of issuance of  
250 building permits: Lot 28-1 - \$4,511; Buildings 1, 2 & 5 - \$2,842 per unit; and Buildings 3 & 4 -  
251 \$1,619 per unit.

252

253 Mr. Keach stated a detailed review of preliminary plans for the planned 22-unit multi-family  
254 Open Space Development suggests that this proposal substantially conforms to applicable  
255 requirements of Article II-Part D of the Zoning Ordinance. However, in advancing a subsequent  
256 application for final approval of this proposal it is recommended: A note be added to the final  
257 project plans for the purposes of acknowledging the basis of the 22-units of residential density  
258 within the planned Open Space Development. Specifically, given the fact that your Board  
259 previously approved a platted 13-lot "conventional" subdivision of the subject parcel, the  
260 applicants intend to rely on the same as a "yield plan" under the current application. After  
261 withdrawing platted conventional Lots 28 & 28-1, a residual density of 11-yield plans lots  
262 remains available for assignment to the planned Open Space Development. Under Article II-Part  
263 D-Section 5 of the Zoning Ordinance, a maximum density of two multi-family dwelling units per  
264 yield plan lot is permitted; hence, the density of 22-multi-family dwelling units proposed under  
265 this application. This series of facts should be documented on the final project plans.

266

267 Article II-Part D-Section 5 of the Zoning Ordinance enables up to fifty-percent of those multi-  
268 family dwelling units proposed under this application to contain 3-bedrooms, with the balance  
269 containing 2-bedrooms. Mr. Keach recommended the final project plans identify which units, if  
270 any, are intended to be 3-bedroom dwelling units.

271

272 Steve Keach stated that Article II-Part D-Section 7 of the Zoning Ordinance includes a  
273 requirement for the creation of a homeowners association for on-going governance and  
274 maintenance of Open Space Developments. In order to demonstrate the intent to fulfill the  
275 requirements of this Section, it is recommended any final application submittal include a draft

276 copy of the proposed articles of association or incorporation for the creation of a homeowners  
277 association satisfying the requirements of Article II-Part D-Section 7.

278

279 Steve Keach stated there are a number of technical recommendations in the report. Keach Nordstrom will  
280 be reviewing the plan with the applicant as this proposal moves forward.

281

282 Mr. Cam discussed the storm water control and drainage with the board. The storm water management  
283 will conform to the applicable requirements of Section 9.18 of the Land Subdivision control Regulations.

284

285 Steve Keach also recommended the applicant address the requirements of Section 9.23 of the  
286 Land Subdivision Control Regulations pertaining to recreational facilities. Given the extent of  
287 open space available at the subject site, it would appear that the requirements of this Section  
288 could easily be accommodated.

289

290 Steve Keach reviewed the final recommendations on the report pertaining to the final site plan. He stated  
291 that what the applicant has given the board is a reasonable development in a good location and there will  
292 be a benefit to upgrading Wilkele Road.

293

294 Mr. Meaney, one of the developers, stated the one new lot being created will be a single family house lot.  
295 The units themselves are shown as 2 bedroom units and no three bedroom units are planned at this time.  
296 There will be a one car garage and one parking space outside each unit.

297

298 Chairman Green stated that the fire department likes to get truck around buildings and the plan doesn't  
299 show accommodations for that. Fire Chief Tapley was unable to attend this evening's meeting, however,  
300 he would like to meet with the applicant to review the plan.

301

302 Mr. Meaney stated that he would be happy to meet with the Fire Chief and discuss the proposal with him.

303

304 Chairman Green asked if the cul-de-sac could be made into a teardrop shape and Mr. Cam responded that  
305 he would look into this.

306

307 There was a brief discussion regarding wells and septic. Capacities for utilities will be determined as the  
308 plan moves forward.

309

310 Chairman Green asked if the applicant was anticipating phasing this project and if they will be  
311 condominiums.

312

313 Mr. Meaney stated there is no time table for building these units. At this time we do not know if the units  
314 will be condominiums or rental units.

315

316 Chairman Green stated that we do need lower income housing and these would be very nice. Chairman  
317 Green asked if the board needs to have the original plan withdrawn before moving forward with the new  
318 proposal.

319

320 Steve Keach replied that the new proposal supersedes the original plan which was not officially approved  
321 to begin with.

322

323 Chairman Green opened the hearing to public comment.

*Note: These minutes were transcribed from an electronic recording.*

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Abutter Comments:

Richard Funai, 4 Rowell Lane, stated the open space area is growing back and he would like to know if it will stay that way or be developed.

Steve Keach replied that once the land becomes open space it will remain that way.

Richard Funai stated there is natural drainage across some of the property in the open space area and he wanted to know if it would stay that way.

Mr. Cam replied that the only thing that may be put on that property would be something for recreation such as a playing field.

Richard Funai stated in the previous plan there was a culvert planned and drainage. In this proposal how far down is the last unit going to be built?

Mr. Cam replied that they are trying to create better grading where the units are to be built and this question can be answer better as the plan moves forward.

Fred Murray, 3 Rowell Lane, asked who owns the open space.

Steve Keach stated if it's condominiums all the people are the owners of it. If there is rental unit the covenant owners are responsible for the open space.

Chairman Green asked if there was only one small area of wetland on the property.

Mr. Cam replied that there is no wetland impact with this proposal.

Chairman Green reviewed the three waiver requests stated that Mr. Keach has advised the third waiver request is not necessary. With that advisory in mind, Chairman Green asked the board if they agreed with the waiver requests. Each member of the board responded that they would be in favor of the waivers.

There was a brief discussion regarding whether to continue this meeting as design review or wait for final application. It was agreed to leave the design review on the agenda for January 18<sup>th</sup>, 2011 unless a formal application is submitted.

*The board members took a five minute break.*

**Phillips Pond Surety**

Chairman Green read an e-mail from J.H. Chase, a Robert Vilella Company, stating that the surety will remain in place for Phillips Pond.

Steve Keach stated the surety does not expire until next year and Mr. Vilella will send a copy of the new letter of credit in the correct name as soon as possible.

**Surety Spreadsheet Review**

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372  
373 Vantage Point - Steve Keach did not yet receive the NOD for this project. The permits have expired,  
374 however he is not sure that the vesting applies because it was approved quite some time ago. He will  
375 update the board on this at the next meeting.

376  
377 **New Business**

378  
379 **LGC Conference** – Chairman Green attended this conference which included an excellent seminar on  
380 bonding. She brought back handouts for the members.

381  
382 **Adjournment**

383  
384 MOTION: Ed Mencis made a motion to adjourn. Matt Russell seconded. Voted unanimously in the  
385 affirmative. MEETING ADJOURNED AT 9:47 p.m.

386  
387 Respectfully submitted,

388  
389  
390 Bette Patterson, Administrative Assistant