

DEERFIELD PLANNING BOARD
DEERFIELD, NEW HAMPSHIRE
JUNE 22, 2016

MINUTES OF MEETING

PRESENT: Board members Peter Schibbelhute, Kate Hartnett,
William Perron. Secretary Jane Boucher.

Chair Peter Schibbelhute called the meeting to order at 7PM.

It was noted that Planning Board meetings are video recorded.

APPROVAL OF MINUTES

William Perron moved and Kate Hartnett seconded to approve the minutes of June 8, 2016.

The following corrections were made to the minutes:

Page 4 Last Paragraph : Add #4. Continue to screen site for visual needs.

Page 5 "Complete Streets": Correct to read "Gerald Coogan asked Board members to the information on the draft for the grant request application for SNHPC."

Add "Kate Hartnett complemented Mr. Coogan on his work."

Chair Schibbelhute asked for a vote on the motion. Voted in favor.

APPROVAL OF MANIFEST

William Perron moved to approve the manifest in the amount of \$492.80 and a time sheet for Jane Boucher (Upton & Hatfield \$492.80, Time Sheet 23 Hours.)

Voted in favor.

7:15PM CONCEPTUAL DISCUSSION; YIELD PLAN; 4NH HOMES; MOUNT DELIGHT ROAD

Eric Mitchell and Mike Gallo were present.

Board members were given copies of a letter from Attorney James Raymond dated May 25, 2016 and a letter from Eric Mitchell dated June 21, 2016. Copies are attached to these minutes.

Mr. Mitchell said that at their last meeting they spoke about the possibility of doing an Open Space Subdivision with three houses off of a common access driveway. Mr. Mitchell provided plans depicting this. He added that since the last meeting there was a site visit by the Board and correspondence from Attorney James Raymond.

Mr. Mitchell noted that he had responded to Gerald Coogan re: Attorney Raymond's letter of May 25 noting that he believed that 3 homes on a common driveway is appropriate for an Open

Space Subdivision." At this time no response has been received from Attorney Raymond.

Mr. Mitchell continued saying that each home will have its own septic and well, such that the primary reason for an homeowner's agreement is for the common driveway. He added that one of the benefits to doing this is that there will be three units rather than six which would be sufficiently behind the tree lines on Mount Delight Road which would maintain existing buffers as well as 20 acres of Open Space.

Kate Hartnett questioned if test pits had been done. Mr. Mitchell replied that no test pits have been done, they are waiting for location of homes to be determined.

William Perron questioned the length of the driveway and how much road frontage there would be. Mr. Mitchell replied the driveway would be 200- 250 feet long and there is less than 200 feet of road frontage.

Mr. Mitchell noted that he felt the Open Space Requirements have been met by using a common driveway for three homes.

Kate Hartnett referred to Mr. Mitchell's letter of June 21 and noted that it does not address the issues stated by Attorney Raymond in his letter of May 25.

It was noted by Mr. Mitchell, that when Attorney Raymond wrote his letter of May 25 he did not have access to a plan depicting the proposal. Since then, Gerald Coogan has sent him a copy and at this time no response has been received from Attorney Raymond.

The Board agreed that , until comments are received from Attorney Raymond, they cannot take any action.

Kate Hartnett mentioned three avenues of concern; condominiums, Smith Ordinance and Open Space.

Mr. Mitchell will check with Gerald Coogan and review Attorney Raymond's response before continuing.

NHMA/FLOOR POLICES/ POLICY CONFERENCE

Board members were given copies of a memorandum from NHMA. Town Administrator Jan Foisy asked for input by July 6, 2016.

It was noted that the Planning Board will not meet again until July 13. The secretary was instructed to ask the Town Administrator if input could be submitted after the June 6 date.

8PM CONTINUATION PUBLIC HEARING; EVERSOURCE; CUTTING OF TREES ON SCENIC ROADS

Robert Berner, Eversource, was present.

Mr. Berner said that Eversource is here to get the Planning Board's permission to remove seven trees, six from Coffeetown Road and one from Perry Road.

Mr. Berner confirmed that he had visited the site with David Doran and Jo-anne Bradbury and identified the trees.

Kate Hartnett referred to an e-mail from Jo-Anne Bradbury noting the visit to Coffeetown Road on May 26. She agreed that four trees should be cut as they are dyeing. She noted that one tree is doing quite well.

Mr. Berner said that once the Planning Board gives it's approval, Eversource will acquire permission from land owners.

Kate Hartnett referred to another e-mail from Jo-Anne Bradbury saying that she could not attend this meeting . Ms. Bradbury said, in her e-mail to Kate Hartnett that she respectfully asks that the Planning Board take up the issue of trees being cut on Perry Road by Eversource in violation of RSA 231 158. This statute requires written permission by the Planning Board, after a public hearing prior to cutting trees on a scenic road. There is nothing in the statute that allows cutting with permission by any Road Agent or town employee. The citizens of Deerfield have been deprived of their right to participate in a public hearing prior to the cutting of trees on a scenic road. She suggested that Eversource plant trees in the area where trees have been cut. She included a copy of RSA 231 158.

Kate Hartnett asked Mr. Berner if he was involved in the cutting of trees on property owned by Harley Stevens. Mr. Berner replied that he did not know Harley Stevens.

Peter Schibbelhute said that Eversource had cut some trees to access a lot owned by Harley Stevens.

Mr. Berner said that they believed they were working on the authority of the Road Agent. They met the Road Agent on site as well as a property owner.

Kate Hartnett agreed with Jo-Anne Bradbury saying that Eversource should have knowledge of scenic roads. She said the RSA is crystal clear that it is not the job of the Road Agent or any Town Administrator to authorize cutting of trees on a scenic road. Ms. Hartnett said that it is Mr. Berner's "Day Job" to know that cutting on scenic roads had to have permission from the Planning Board.

Mr. Berner said that he deals with fifty one towns and this seems to be interpreted differently. He felt that this issue should be discussed with the Board of Selectmen and the Road Agent before throwing Eversource under the bus.

Bill Von Hassel, a resident, said that this issue should be reviewed by the the Board of Selectmen.

William Perron moved to authorize Eversource to cut designated trees on Coffeetown Road and Perry Road. Peter Schibbelhute seconded. Voted in favor.

Kate Hartnett said it would be helpful to see a copy of Eversources policy on cutting trees for line extensions. Mr. Berner said he would look for one and provide a copy.

EXCAVATION PERMIT

Peter Schibbelhute said he has spoken to Gerald Coogan regarding an Excavation Permit and Board members should be receiving a draft.

BILL VONHASSEL

Mr. Vonhassel was present and provided pictures of the site of David Pelletier's Subdivision on Middle Road.

Mr. Von Hassell noted that the site was a mess and definitely an eye sore. He said that it was now left with no work being done.

Peter Schibbelhute said that Mr. Pelletier had requested a six month extension, which was granted. The plan has been conditionally approved with the condition remaining that a bond be put in place.

Mr. Von Hassel said he knows the property is for sale and questioned why the Board does not require a bond.

Peter Schibbelhute said the Board does not require bonding for a conditional approval and the owner has the right to cut brush and trees on his property.

Mr. Schibbelhute will drive by the site to verify the conditions.

The meeting was adjourned at 9PM.

Recorded and transcribed by Jane Boucher
Pending Approval by the Planning Board

To: Deerfield Planning Board
From James Raymond
Re: 4 NH Homes – condominium development
Date: May 25, 2016

You requested our comments on a proposed condominium development with three units served by a common driveway. We have not seen a plan for the project, so our comments do not address any specific features for the development. As you described, though, the development will consist of three dwelling units in a condominium form of development.

1. Zoning. The zoning ordinance only permits one dwelling on a lot, §304. Dwellings are defined in §602 as either “dwellings, single-family” or “dwellings, two-family,” with a third definition for “dwelling unit.” As the permitted uses in §204 include both single and two family dwellings, the reference to a “dwelling” in § 304, to be consistent, should be interpreted to refer to the use, but not the number of units in the dwelling. The ordinance contains two exceptions to the limit on number of units, for multifamily dwellings that are converted from existing residential buildings, §310, and senior housing, §213.4. It is not clear how the condominium form of ownership will be organized, but if all of the units are located on one lot, they may not comply with section 304, and may not fit within the exceptions that allow limited multifamily. Alternatively, if the units are created on separate lots, although in a condominium form of ownership, the project may comply.

2. Access Road. As described, one access road will serve the three units. If the individual lots do not have frontage on a town road, this proposal may still fall within the so-called Smith Ordinance in §207 of the ordinance, which allows up to four dwelling units with frontage on a private road. Section 207.1, subsection 4, requires that the arrangements for maintenance and repair be stated in instruments referred to in the deeds to the lots. Even if the lots have frontage on a town road and do not need to rely on the Smith Ordinance, the planning board should require provisions in the condominium documents for maintenance of the common road.

That maintenance obligation can be met in the condominium form of ownership by identifying the road as common area in the condominium declaration and requiring that the condominium association maintain the road. The association has statutory lien rights that entitle it to collect assessments, but associations are sometimes slow to exercise those rights. We

therefore suggest that the town be given the right to enter onto the property and maintain and lien the units, similar to the provision we inserted into the declaration for a recent development on a private road.

3. Condominium Ownership and Planning Board Review. The definition of subdivision in the Subdivision Regulations includes division of land for condominium conveyance. Therefore, whether or not the proposal creates separate lots, the condominium form of ownership should come before the board for approval. The board should require submission of the condominium documents, including the declaration and bylaws, to allow the board to confirm the arrangements for maintenance of the access road.

We can expand on our recommendations after we review the plan and description of the proposed condominium form of ownership.

ECM

Eric C. Mitchell & Associates, Inc.
Planning, Site Design, Surveying, Environmental

June 21, 2016

Gerald Coogan, Town Planner
Town of Deerfield
8 Raymond Road
Deerfield, NH 03037

Re: Open Space Subdivision
Tax Map 413, Lot 62
Mount Delight Road, Allenstown, New Hampshire
ECM Job No. 14-61

Dear Gerry:

This letter is in response to the May 25, 2016 letter from Attorney James Raymond. The proposal is to create an open space subdivision with 3 single family houses sharing a common driveway off of Mount Delight Road. The maintenance of the shared drive would be split between the 3 homeowners by a homeowner's agreement. The form of ownership would be either a condominium or 3 separate lots with limited frontage on Mount Delight Road. It is proposed that each home will have its own septic and well, such that the primary reason for an homeowner's agreement is for the common driveway.

I believe that 3 homes on a common driveway is appropriate for an Open Space Subdivision. Our yield plan is for 6 lots. We will be providing about 28 acres of open space where 15 is required and all of the required setbacks and buffers will be met. Although it may not have come up yet before the Board, common drives will be used in the future for multifamily, senior housing or workforce housing. Provided that the necessary documents are filed for the shared maintenance of the common drive, the proposed project fits in well with the intent and objectives of the Open Space Ordinance.

I've enclosed a copy of the layout for 3 houses, shown as one lot. As stated above, we may be putting each home on a separate lot with frontage on Mount Delight Road if required.

Sincerely,



Eric C. Mitchell
President

Enclosure