

PLANNING BOARD MINUTES

September 19, 2007

ROLL CALL:

Ruth-Ellen Post, Chairman – Excused	Ross McLeod, Vice Chairman – Present
Nancy Prendergast, Secretary – Present	Walter Kolodziej, Regular Member – Present
Phil LoChiatto, Regular Member – Present	Pam Skinner, Regular Member – Present
Neelima Gogumalla, Alternate – Present	Rick Okerman, Alternate – Excused
Alan Carpenter, Selectmen Member – Present	Margaret Crisler, Selectmen Alternate – Excused

STAFF:

Al Turner, Director of Planning and Development – Present
Shaun Logue, Town Planner – Present

- *Mr. McLeod opened the meeting at 7:05 pm.*
- *Ms. Gogumalla replaced Ms. Post*
- *The Board stood and recited the Pledge of Allegiance.*

MINUTES:

- Mr. Carpenter motioned to approve the September 5 minutes. Ms. Prendergast seconded. Passed 7-0;
- Mr. Kolodziej motioned to approve the September 12 minutes. Ms. Prendergast seconded. Passed 6-0-1. Ms. Gogumalla abstained.

SITE BONDS:

- Granite State Animal Hospital, partial release \$4,900 and retain \$1,500. Mr. LoChiatto motioned to release and retain. Ms. Skinner seconded. Passed 7-0.

CORRESPONDENCE:

- Advertisement for a part-time code enforcement officer;
- Updated Capital Improvements Chapter of the “Planning Board in NH: A Handbook for Local Officials” from the NH Office of Energy and Planning;
- Copy of a newspaper article from the Nashua Telegraph title “Nashua elderly housing proposal rejected again”;
- Workshop flyer titled “Junkyard Licensing and Enforcement”;
- Save-the-date flyer and a brochures and for the Local Government 66th Annual Conference;
- Town and City publication.

LIAISON REPORT:

- Ms. Skinner, Conservation Committee, the Committee met regarding Spruce Pond.

OLD/NEW BUSINESS:

- Katherine Hamilton, owner of 20 Rockingham Road, has formerly withdrawn the building permit application for the property and the building permit has been revoked;
- The Board and staff reviewed the evening’s agenda and future agendas.

PUBLIC MATTERS:

Spruce Pond II Open Space Subdivision – 95 lots – Public Hearing Continued

Rt 28 / Rockingham Road, lots 3-A-565, 1000, 3-B-600, 601, 800, 860, 890, 900 and 1001

Mr. LoChiatto motioned to limit Spruce Pond to a time period of 9:00 pm and move Pike Assisted

Living and Deluca Lot Line Adjustment to October 3. Ms. Skinner seconded. Failed 2-5. Ms. Gogumalla, Ms. Prendergast, Mr. McLeod, Ms. Skinner, and Mr. Kolodziej opposed.

Mr. Kolodziej motioned to move Pike Assisted Living and Deluca Lot Line Adjustment to October 3. Ms. Prendergast seconded. Board discussion to move all items off the agenda. Passed 5-2. Ms. Gogumalla and Mr. McLeod opposed.

Mr. Kolodziej motion to reconsider the prior motion. Mr. LoChiatto seconded. Passed 6-1. Ms. Prendergast opposed.

Mr. Kolodziej motioned to move Clarke Farm, Heights of West Windham, Pike Assisted Living and Deluca Lot Line Adjustments to October 3. Mr. LoChiatto seconded. Passed 7-0.

Public comment from Janice Koch, 541 Mammoth Road, Pelham, stated she was confused about the application for the assisted living and the lot line adjustment. The Board explained that the discussions have not been opened as yet, staff can assist during regular business hours, and the lot line adjustment is for the Deluca application.

Mr. Kolodziej motioned to reopen the public hearing for Spruce Pond II Open Space Subdivision. Mr. LoChiatto seconded. Passed 7-0. Board discussion regarding what happens if there is an extension of the clock or not.

Joseph Maynard, Benchmark Engineering, distributed an agenda for the evening. He stated that the first item for discussion is the Special Permit requests, the Conservation Commission reviewed and there is a motion from them for each Special Permit, the Conservation Commission did not have a problem with the Special Permits but had two comments regarding a buffer and public access to an area that has a view to the pond, a letter is in the file, the other request for a well has been removed. Mr. McLeod noted that the Conservation Commission made motions noted as A-U with T being withdrawn, and all motions passed. Board discussion regarding Special Permit request D - a large disturbance, drainage and removal of trees, and drainage onto the next property.

Jack Szemplinski, Benchmark Engineer, discussed the watershed including the location, the wetland is surrounded by steep slopes, the large detention pond is needed, without the pond there would be an increase of runoff to the neighboring property where 0% increase is allowed, and he explained drainage and runoff. Board discussion with Mr. Szemplinski and Mr. Maynard regarding runoff percentage, the water passes through the detention pond to a wetland, the wetland crosses from this development through a neighboring property and ends at Spruce Pond Phase I, the applicant could allow an increase in flow to his Phase I property but not to the neighboring property per the regulations. Board discussion continued regarding <1 CFS vs. the acres of woods cut down for the basin, is the detention pond needed?, treatment swale could be used instead, concerned with the cut being so close to the wetland, the pond is a ½ acre, there is a 50-year storm requirement, should this be re-engineered and brought back to the Board, and sediment is filtered out in either scenario. Mr. Turner stated that the change requires certification, Mr. Szemplinski is certified, and what happens if it fails. Board discussion that it would be a tricky condition of approval. Mr. Szemplinski stated that the existing drainage system in Phase I could handle the increase in runoff, he would love to get rid of the detention pond, and he would certify any changes.

Board discussion continued regarding Special Permit item #S regarding the elevation for the pump house (#13 of the project review sheet). Mr. Maynard answered the Board's question regarding the

location of the pump house, keeping all the WWPD impacts in one area, above ground storage tanks would be stored in a building approximately 100' x 200', where it is now would have a 24' x 24' building with the storage underground, the size of the disturbance in the WWPD, it is an allowed use in the WWPD by Special Permit, the construction sequence is part of the plan set, the area will be loamed with a gravel driveway to the pump house with some evergreens around it. Board discussion continued will there be any contamination if the pumps, or any other equipment fails? Mr. Maynard replied that there are pumps and a back up generator in the building, the pumps are chlorinated and flushed the first time only, the generator in the pump house will be run by propane, the propane will be outside the WWPD, , propane is better than diesel fuel because it evaporates immediately and police and fire will review. Board discussion regarding what if the system needs to be flushed in the future like what happened at the West Shore pump house?, the West Shore Road pump is very old and prior to the State permitting process, a condition of approval should include any removed or flushed materials are trucked off site, add to development agreement and covenants also, and the lower the water table the salt content increases. If the propane tank is located near the street it will need a barrier, the grading around the pump house is steep, there is a retaining wall behind pump house, the back side of the pump house is approximately 24', the building is not designed as yet, it's highly visible from the road, it will be an attractive building, Mr. Maynard will check the discrepancy on the height of the tank, the tanks have not been ordered yet and won't be until the approval is received, the tanks are pre-cast.

Board discussion regarding Special Permit item J, the road to the pump house will not be paved, other access for Pennichuck in Town are paved, the Conservation Commission motion states that the path should remain as it is, the grade will not change, and add that the trail will not be paved to the conditions of approval.

Board discussion regarding Special Permit items Q & R, should there be shared driveways for lots 3-B-854 and 855. Mr. Maynard stated that if the driveways are combined the fire department will want a wider driveway, usually 18' wide with gravel shoulders, the driveways beside each other lessen the impact, Conservation Commission motioned to allow it without comments. Board discussion continued that only the beginning of the driveways are crossing the WWPD, most people want their own driveways, and problems occur with shared driveways. No public comment on the Special Permits.

Mr. Maynard discussed the open space parcels which are being deeded to the Conservation Commission, he showed the locations on the map, they're a significant wildlife area, there is also a parcel that will be deeded to Recreation, he showed that parcel on the map, the open space documents are standard, it is the same document that was reviewed and approved for Phase I. Mr. Maynard reviewed the document including ownership, homeowners association, easements, and water system. Attorney Bronstein stated there was some confusion with the homeowners association with Phase I, there will be an association for both phases, it will be a voluntary non-profit organization, and usually become a non-entity. Mr. Maynard further described the open space documents such as no-cutting, home owners will have common interest in the open space. Board discussion with Mr. Turner regarding giving all the open space land to Conservation, if Conservation owns it the use could change with a vote at Town meeting, Conservation land needs to be audited every year, and a homeowners association can deal with problems with less bureaucracy. Board discussion continued regarding homeowners associations are usually a non-entity, the level of concern is higher with a homeowner association, any changes to the covenants would need to come to the Planning Board, there is no density exchange for open space, and Attorney Campbell will review and approve the covenants as part of the subdivision approval.

Mr. Maynard answered the Board's questions about the development agreement, the Town Attorney has not reviewed the document as yet, this document covers 95 homes plus 2 home from Phase I, the word

“division” be removed after “Town Engineer”. Attorney Bronstein stated this document is borrowed from the Town of Hudson, only two paragraphs specifically for Windham, and this is a starting point. Mr. Turner stated that the development agreement is needed because it will be a ten year build out especially for timelines such as substantial completion, and this allows for new technologies to be incorporated in the future. The Board discussion continued regarding looking out for the law of unintended consequences, not want to tie the hands for future Boards and staff, this is to ensure that the development phases happen as approved, the document should be ours not applicant written, and staff should write up the issues and send to the Town attorney.

Board discussion with Mr. Turner regarding the items to be included are: phasing, bonding and vesting, completion of the roads, procedures for changing the phasing, cumulative building permits, so many per years, impact fee paragraph should be omitted, substantial completion needs to be defined, substantial start of construction needs to be defined, and substantial needs to be defined for each phase. Mr. Maynard discussed the phasing of the subdivision. Board discussion continued regarding the subdivision is under the old ordinance which did not define substantially completed, the courts now require that the Planning Board’s define substantial completion, is the Board the correct entity to define substantial development?, how do you enforce a regulation that wasn’t in place when the application was submitted? and if not defined then the first shovel could be called substantial completed. Mr. Turner offered to share some court cases regarding this.

Board discussion continued regarding staff should review the development agreement with the Town Attorney for bonding, sequencing/timing, what would be the procedures for changes to the agreement, definition of substantial completion, definition of substantially started. If the phases are sequential and one phase takes longer does that allow the other phases to get bumped out? can phases overlap? we cannot ask the Town Attorney to write the document, Mr. Turner should draft a few paragraphs to bring back to the Board and then write the document, could the document be a condition of approval, the applicants engineer should write up the document based on the Board’s comments from this evening, and the document needs to be finished before approval of the subdivision.

Attorney Bronstein stated it sounds like a phasing agreement is needed which mentions bonding, and he will work with Mr. Maynard on the document incorporating the Board’s concerns. Board discussion regarding vesting and bonding should be incorporated, remove items that are dealt with in other documents, current impact fees should be mentioned, impact fees are paid at the same time as the building permit fees. Board discussion continued regarding the recreation field, the loam and seeding of the recreation field will need to be ripped up and redone, Selectmen have not heard anything about recreation donations, setting aside recreation land is part of the regulations, the improvements will be a donation, and the conversation should be between the developer and the Recreation Committee. Mr. Maynard stated that the Recreation Committee is interested in the land, it is currently the stockpile area, willing to pay a recreation impact fee but would then remove the fill from the stockpile area and use it in the development, and there is \$75,000 worth of fill on the lot.

Board discussion continued regarding a development agreement cannot discuss donations or the forgiveness of impact fees, open space should be in a natural state, the stockpile area was zoned Neighborhood Business District, the development agreement needs to include when the land will be deeded to the Town and what condition the land will be in, it is in the regulations that land can be deeded to the Town for recreation, should it require the Selectmen’s signature? and the Planning Board should have input on sequence changes. Mr. Maynard stated the connection to Derry will be first and then the connection to Mitchell Pond, the cul-de-sacs will be last and are the only phases that may change order.

Board discussion with Mr. Maynard regarding changing when Mallard Road is constructed, dredge and fill permits are good for five years, there is a Special Permit for the stockpile area, and does the Special Permit change with the changing of the zoning of the parcel? Mr. Turner stated that the Special Permit would not change.

Mr. LoChiatto motioned to continue to October 3. Mr. Kolodziej seconded. Passed 7-0.

Mr. Kolodziej motioned to adjourn. Mr. LoChiatto seconded. Passed 7-0. Meeting adjourned at 9:45 pm.

These minutes are in draft form and have not yet been reviewed and approved.
Respectfully submitted, Nancy Charland