

PLANNING BOARD MINUTES
October 3, 2007

ROLL CALL:

Ruth-Ellen Post, Chairman – Present	Ross McLeod, Vice Chairman – Excused
Nancy Prendergast, Secretary – Present	Walter Kolodziej, Regular Member – Present
Phil LoChiatto, Regular Member – Present	Pam Skinner, Regular Member – Present
Neelima Gogumalla, Alternate – Not Seated	Rick Okerman, Alternate – Present
Alan Carpenter, Selectmen Member – Excused	Margaret Crisler, Selectmen Alternate – Excused

STAFF:

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

- *Ms. Post opened the meeting at 7:00 pm.*
- *Mr. Okerman replaced Mr. McLeod.*
- *The Board stood and recited the Pledge of Allegiance. Mr. Carpenter joined the Board.*

MINUTES:

- Mr. Kolodziej motioned to approve the September 19 minutes. Ms. Prendergast seconded. Passed 4-0-3. Mr. Okerman, Mr. LoChiatto, and Ms. Post abstained.

CORRESPONDENCE:

- Letter from Frederick Ford regarding Windham Meadows dirt and rock processing and Mr. Turner's response letter;
- Flyer titled Global Warming and Energy Solutions.

BOND:

- Revised Sheffield Street and Lancelot Road final release of \$31,474. Mr. Turner explained the station numbers, and the release has been revised to have the correct station numbers. Mr. LoChiatto motioned to correct the station numbers for Sheffield Street and a portion of Lancelot Road referenced by the Herbert and Associates plan dated September 2007, to approved the release of \$31,474 as follows: Sheffield Road, Class V, Station: 20+20 to Station: 48+22; Sheffield Road, Class VI, Station: 48+22 to Station: 50+09.15; Lancelot Road, Class V Station: 00+00 to Station: 04+63.92. Ms. Prendergast seconded. Passed 7-0.

LIAISON REPORTS:

- Mr. LoChiatto, CIP, stated that CIP Committee will meet tomorrow evening.

Mr. Okerman stepped down and Mr. McLeod joined the Board.

The Board reviewed the evening's agenda. Mr. LoChiatto motioned to move the Heights of West Windham Amendment, Pike Assisted Living Site Plan, DeLuca Lot Line Adjustment, The Commons Special Permit, Butler Subdivision, and Forty Acres Land Transfer to October 10 at 7:00 pm. Mr. Kolodziej seconded. Attorney Mason stated he was there for #2, #4, #5, and # 8, and #3 the Heights of West Windham would not take much time. Mr. LoChiatto amended his motion to include Clarke Farm North to be continued to October 10 and leave the Heights of West Windham to this evening's agenda. Mr. Kolodziej seconded. Board discussion to only continue two of the items to the 10th, zoning ordinance is on the agenda for next week. Passed 5-2. Mr. McLeod and Ms. Post opposed.

Board discussion regarding adding an extra meeting next week to discuss potential zoning ordinance changes. Mr. Kolodziej motioned to have a workshop meeting on October 11 regarding zoning. Mr. LoChiatto seconded. Passed 5-1-1. Mr. McLeod opposed, Mr. Skinner abstained.

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. McLeod motioned to reopen for public hearing. Mr. LoChiatto seconded. Passed 7-0.

Mr. Turner reviewed the evening's topics regarding Spruce Pond II. Joseph Maynard, Benchmark Engineering, discussed the pump house WWPDP area has been revised, 3-B-819 lot line has been adjusted, and there is a waiver request for a treatment swale instead of a detention pond. The Board decided to review each of Mr. Maynard's items individually on the "Additional Recommendations" list he provided to the Board. #1) Revised lot lines of map 8-B-819. The Board is okay with the revised lot line of 3-B-819. Mr. Turner stated that the plan approval would need this information included; 2) Revise detention pond to a treatment swale near tax map 3-B-896 and 897, and there is a waiver request for this. Ms. Post read the waiver request. The Board discussed this at a previous meeting; 3) Action on the additional waiver. Mr. McLeod motioned to approve the waiver request dated September 20, 2007 of Section 702.9 of the subdivision regulations in light of prior testimony and a letter in the record tonight that this increase will not affect any of the downstream drainage structures associated with Northland Road within Spruce Pond Phase I. Mr. LoChiatto seconded. Passed 6-0-1. Ms. Post abstained; 4) H&B Homes to deed parcel 3-B-601 to Recreation. Fill materials being stockpiled on lot will be removed and area will be restored prior to deeding land in fee to the Town. Board discussion with Mr. Turner regarding the Board's involvement with donations, and the subdivision regulations allow recreational set aside which is not a donation; 5) Parcels 3-A-1000 and 3-B-1001 will be deeded to the Conservation Commission. Mr. Turner stated it is open space that is being deeded to the Conservation Commission; 6) A no-cut buffer to be installed along the northerly side of lot 3-A-565 along the rail corridor per the Conservation Commission Comments.

Mr. Turner discussed Section 608.2 of the subdivision regulations in regards to the land for recreation (#4) needs to be certified from the Recreation Committee, the homes are taxed based on the fact that open space is attached to it, what will the recreation land look like as restored, it will be loamed 6" and graded and grass, and the letter from the Recreation Committee should include suitable and appropriate use. Mr. Maynard stated that the Recreation Committee approached them about the lot, the applicant will be paying recreational impact fees, and that money could be used to fix the field. Board discussion that the lot is in compliance with the subdivision regulations, and in compliance with the open space regulations, don't need a letter from the Recreation Committee, and the lot needs to be restored. Mr. Turner read the regulations for non-buildable lots and open space. Board discussion that the applicant is giving open space land for recreation.

7) Add pedestrian easement to drainage easement (for treatment swale #15 only) per the Conservation Commission request. Mr. Maynard showed the area on the map. No questions from the Board. 8) Revision of WWPDP cross-sections near pump house along Taninger Road. No questions from the Board.

The Board returned to item #6. Discussion with Mr. Maynard regarding the no-cut buffer will be along the WWPDP, the access trail will be within the rail corridor, and no additional trees will be cut. Mr.

Turner stated the no-cut zone needs be shown on the plan and a note included allowing cutting for maintenance, forestry, and health and safety purposes.

The Board discussed #7 and the easement be provided in recordable form, and the easement falls in the open space. Mr. Turner stated that the trail needs to be developed before the homes are occupied, and other developments we have required 4' granite posts. Mr. Maynard stated they could add signage. The Board reviewed #8. Mr. Maynard explained the pump house area.

9) Review and acceptance of open space documents by Town Counsel. Mr. Turner stated that Planning Board accepts the documents, and Town Counsel reviews the documents for legality after the plan is approved. Board discussion regarding what if the documents are not okayed by Town Counsel, all the lots are covered in the document, should recreation parcel be mentioned, and who has enforcement rights; 10) Review and acceptance of homeowners association documents by Town Counsel. No Board comments. Number 9 and 10 overlap each other; 11) For the water system to remain on-site within the Spruce Pond I or Spruce Pond II Subdivisions. Board discussion regarding it appears in article 5, page 7. Mr. Turner suggested additional language for the water system. Attorney Bronstein agreed to the change. Board discussion that this should be noted on the plan and in the covenants, and the water company is bound by this; 12) Construct ramp from Mallard Road to Rail Trails (switchback ramp). Mr. Maynard stated that he met with the Rail-Trail Alliance and this is a request from them for permanent access. Board discussion with Mr. Maynard regarding the height of the guardrail, this is part of phase IV within five years, there's no parking and why is the switchback needed, takes away from the beauty of the trail, the neighborhood would have access, it will also help with safety, it will be a 8% ramp, the trail will be out of commission for 35-45 days, it can be used up to that point from both ends of the trail, the Rail-Trail Alliance would not like the trail to be interrupted for 35-45 days, it does not have to be ADA compliant according to the DOT because there is no parking, and this has been discussed at other meetings; 13) No more than 60 Certificate of Occupancy (total between Phases I & II) to be allowed until the improvements to Rt 28 are constructed at Northland Road. Mr. Maynard stated that would be until the 12th CO has been asked for in Phase II, he distributed a letter from Ms. Rausseo regarding the left turn lane would not be required until 130 homes, it will be constructed by the 60th home, and it is a \$400,000 improvement. Board discussion regarding the timing, and it's a dangerous portion of the road. Mr. Maynard discussed the dredge and fill would not be approved unless it is required, a motion at a prior meeting that it would be reconsidered for Phase II, and would like to stagger the off-site improvements. Mr. Turner stated that the Board needs to consider the health, safety and welfare of the residents and it is a dangerous part of the road. The Board discussed the Clarke Farm South required the left turn lane for 30 houses, Spruce Pond Phase I has 48 homes, no more than 60 cumulative homes (48 homes in Phase I and 12 homes in Phase II), and Rt 28 has a 50 mph speed limit and the second highest fatality road in Town; 14) Review and acceptance of Development Agreement by Town Counsel. Mr. Turner stated this development in under the old regulations and it will have a long build out, substantial completion needs to be defined for this development, water system needs to be completed, and a pavement binder required. Mr. Maynard discussed substantial completion includes the three major road connections are complete including the water system with 48 months, the small cul-de-sacs do not have connectivity, hoping to have all the roads built within 10 years of the signing of the plans. Board discussion with Mr. Turner and Mr. Maynard included there should be a penalty clause, penalties are not needed because there will be a bond in place, inflation needs to be included in the bond, there's a 25% inflation factor with current bonds, each phase will be bonded separately, and up to 18 months to satisfy all the conditions of approval. Attorney Bronstein discussed the 180 days. Board discussion of the wording of sections II and III of the development agreement, the definition of substantial completion, cut the last sentence of section III, phrasing should include "no later than" and "no sooner than", limit the number of permits per year, all the homes being built too quickly would put a burden on the community

for schools, police, and fire, will take three years to build the road, restricting the permits would mean a growth ordinance which would have to be reviewed by Attorney Campbell, if this development is restricted then all others will need to be restrict too, the development agreement can be shaped the way the Board wants, what happens without the development agreement, the applicant and staff should figure out how many building permits per year, this should be done for all very large developments but not for all developments, and the Board should figure out the number of permits.

Brian Harvey, H&B Homes, stated that limiting fewer than 20 homes per year is not fair. He would agree to 20 per year and they would accumulate. Board discussion regarding the language, the permits should not be limited, the market will set the demands, and the issue is better addressed with a global development ordinance.

Mr. Kolodziej motioned to continue the Heights of West Windham to October 10 at 7:00 pm and that the Heights of West Windham will retain its current order on the agenda following Clarke Farm. Mr. McLeod seconded. Passed 7-0.

The Board continued the discussion regarding the development agreement, the justification is that it is a unique situation, the developer has agreed to a limit of 20 homes per year, the applicant is asking for a concession and we're asking for something in exchange, we need to protect the community for a spike in building permits, the development could be sold, and the Board asked for the property to be master planned. Ms. Post asked for a consensus, the response was that the answer will come out with the conditions of approval. Mr. Maynard stated they would like no restrictions, another developer could come before the Board for a 30-lot subdivision and they would not have any restrictions, and there is a 99 percent chance that they would not flip the project.

15) Rock crushing operations and activities must be located no closer than 500 feet of all abutters. Noise, dust, odors, and protection of natural features will be taken into consideration and mitigated as necessary. Mr. Maynard stated that it is typical to have a rock crushing operation at subdivisions, 500' ft from abutting property may not be possible, prefer to have 250'. Board discussion that the Ledge Road residents are 1000' ft away and are having problems with the blasting, it is a quality of life issue during the processing of the rock, this would be grandfathered if there were a warrant article on the ballot in March that bans the processing of rock in Windham. Mr. Maynard stated it would be difficult to be that far away. Mr. Turner discussed the location of a crushing operation, should be away from residents and abutters, there should be a mound of dirt higher than the machinery for a sound barrier to the abutters, and all rock crushing should be attached to a water system. Board discussion that noise, dust, odor and mitigation is not defined, there should be a better way than a berm, it's a different situation than Ledge Road, and crushing operations don't usually move throughout the subdivision. Mark Harvey, H&B Homes, stated that the portable rock crushing operations are quieter, and they try to use a portable unit to move it though the subdivision as it's being built. Board discussion regarding the portable crushers have water attachment for dust control, and we're getting a lot of complaints.

16) Note on recordable plans about approval. Mr. Maynard explained he prefers the language "not yet buildable" as to "not yet approved" which may confuse future boards. Board discussion regarding Attorney Campbell's comments after the Board hashes it out, the former wording has worked out fine, not yet buildable means something is missing, the wording is fine, and cannot issue a building permit until it is bonded.

Mr. Maynard stated he was fine with the staff's recommended conditions of approval except for #11 in regards to the hours of road construction noise.

Mr. McLeod motioned to approve the Special Permit requests as shown on sheet 3 of 89 noting the Conservation Commission endorsement of each permit by vote of 4-0-1 and noting that request "T" was pulled and request "D" was amended tonight. Board discussion that the Board discussed these a couple of weeks ago and have the Conservation Commissions endorsement. Mr. Kolodziej seconded. Passed 7-0.

Mr. McLeod motioned to approve the subdivision with the following conditions of approval: 1) All property bounds that are adjacent to town property or rights-of-way shall be marked with granite (4" Sq. x 36" Long) and shall be installed level with the final grade. All other corners shall be marked with permanent boundary markers (stone or iron); 2) Stone walls should either be retained in place, relocated or stockpiled for future use; 3) All state, federal and local approvals shall be received prior to the start of construction and recording of the plans; 4) The house address numbers and parcel numbers shall be approved by the Town Assessor prior to recording the plans; 5) Applicant shall provide to the Town, prior to the start of construction, a plan illustrating the proposed location of the utilities within the public-right-of-way or utility easements; 6) All disturbed areas shall be loamed and seeded with grass or other approved vegetation. A minimum of six (6) inches of loam shall be installed to all disturbed areas; 7) Landscape plantings should be native and not consist of invasive species; 8) Applicant shall provide to the Town, prior to the start of construction, evidence that adequate utilities including water are available to service the proposed development and a plan shall be submitted illustrating the proposed location of the utilities within the public-right-of-way or utility easements; 9) Applicant is to supply a warranty deed for the roads, which shall be reviewed by Town Council. All legal fees for the Town Attorney will be paid by the Applicant; 10) The Groundwater Resource Impact Assessment recommends that individual homeowners' within the subdivision who install irrigation systems be required to install rain sensors and timers to prevent over-watering; 11) No road construction noise before 7:00 am or after 6:00 pm, Monday - Friday. No road construction noise before 8:00 am or after 5:00 pm on Saturday. No road construction noise on Sunday or holidays. Noise to be defined as noise audible from abutting properties; 12) To establish a Subdivision Development Agreement with the Town of Windham to cover construction, bonding and phasing of the development. This agreement shall be approved by the Planning Board and reviewed as to the legalities by the Town Attorney and agreed upon by all involved parties regarding the granting by the Windham Planning Board of subdivision approval for the 95-lot open space residential development; 13) The Declaration of Open Space Covenants, Restrictions and Easements shall be approved by the Planning Board and reviewed by the Town Attorney; 14) The Applicant shall be responsible for any off-site problems, which arise from construction activities. This includes, but not limited to erosion, runoff, sedimentation, drainage, and property damage by construction equipment, including damage to existing streets, sewers and drainage systems. Upon notification by the Town in writing, the developer must submit a plan within one week to remedy the problem; 15) Revise lot lines on map 3-B-819 as requested by the Board; 16) Revise detention pond to a treatment swale near tax map 3-B-896 and 897; 17) H&B Homes to deed parcel 3-B-601 to Recreation. Fill material stockpiled on lot will be removed and area will be restored prior to deeding land in fee to town. Deeded parcel to be included on the recordable plans; 18) Deed parcels 3-A-1000 and 3-B-1001 to the Town of Windham Conservation Commission. Deeded parcels to be included on the recordable plans; 19) A no-cut buffer to be installed along the northerly side of lot 3-A-565 along the rail corridor per the Conservation Commission comments, except for maintenance, conservation, health or safety purposes; 20) Add pedestrian easement to drainage easement (for treatment swale #15 only) per the Conservation Commission request. Install two 4' x 4' x 36" granite trail marker posts (such as at Canterbury and Candlewood) at the entrance from the road; 21) Include the revision of the WWPD cross sections near the pump house along Taninger Road as provided at the October 3, 2007 meeting; 22) Water for the water system to remain on-site within Spruce Pond I or Spruce Pond II subdivision. May

not be extended off-site or be used for additional development without permission of the Planning Board; 23) Construct a ramp from Mallard Road to Rail-Trail (switchback ramp) as noted on separate handout "Rail Trail Ramp" dated June 18, 2007; 24) No more than 60 Certificates of Occupancy (total between Phases I & II) to be allowed until the improvements to NH Route 28 are constructed at Northland Road; 25) Within the Covenants, references to 97 lots are to be changed to 95 lots; 26) Propane tank associated with the pump house to be installed out of the WWP; 27) Any removed contaminant from the pump house operation are to be taken off site; 28) Development agreement as amended for Section II, III, and IV. Section II amendment is to include "up to" 18 months. Section III amendment is to remove the last sentence, striking "and 4. Section IV amendment is to change "construction to binder stage" to "construction of pavement binder" in two places; 29) Rock crushing operations and activities must be located no closer than 500 feet of all abutting and neighboring residences. Noise dust, odors and protection of all natural features will be taken into consideration and mitigated as necessary. All machinery to be portable and attached to a water system; 30) Labeling of the lots which have been approved but for which the improvements have not been bonded, each lot be labeled "Conditionally approved, but not yet buildable". Mr. Kolodziej seconded.

Board discussion regarding removing #23, let the Rail-Trail Alliance decide, it is hazardous for children on bicycles, the Board should not give up the final design of the ramp, it should come back to the Board for final design review, it's not the Board's jurisdiction, and it is in the DOT right-of-way. Mr. McLeod amended his motion to include "Ramp to be constructed, if at all, per the review of the Windham Rail-Trail Alliance." Board discussion that it is not under the Board's jurisdiction, the State will look for guidance from the Planning Board, and under what standards will the ramp be built, and would like a note that there is a split on the Board. Ms. Post polled the Board. Mr. McLeod offered to add "recognizing there is a split on the Board in the design". Mr. Kolodziej seconded the amendment.

Board discussion regarding #14 should be more specific, "from the site or required by the approved plan" should be added. Mr. McLeod agreed to the amendment. Mr. Kolodziej seconded.

Board discussion regarding #29 needs to be more defined for enforcement reasons, Mr. McLeod agreed to strike the "Noise dust, odors and protection of all natural features will be taken into consideration and mitigated as necessary." Mr. Kolodziej seconded.

Board discussion regarding #11 for enforcement reasons that there is no one on staff on Sundays or holidays, Board is considering a noise ordinance, the Board currently identifies start and end times for construction noise, Mr. McLeod agreed to strike the sentence "Noise to be defined as noise audible from abutting properties." Mr. Kolodziej seconded. Board discussion regarding length of disturbance to the Rail Trail, disruption time frame, Rail-Trail disturbance will not exceed 60 days, and should be 90 days. Mr. McLeod and Mr. Kolodziej agreed to amend the motion to include condition #31 Rail-Trail disturbance will not exceed 90 days.

Board discussion regarding restricting construction vehicles from using Mitchell Pond Road because it is an existing established neighborhood, hard to enforce, that portion won't be built for some time, Morrison Road could not handle it, "no construction vehicle" sign would be annoying also, it's unenforceable, and make it a requirement during road construction only. Ms. Post polled the Board. Majority to not include this.

Board discussion regarding #17 as to when the land will be deeded to Recreation. Mr. Maynard stated that the deeding of the land could occur at the completion of Buckland Road to the connection to Derry.

Mr. McLeod and Mr. Kolodziej agreed to amend #17 to include that the land be deeded at the completion of the connection to Derry.

Board discussion regarding #8 should the elevations of the pump house be included, and the document provided tonight is included in the motion. Mr. Maynard stated the water system has not been approved as yet, and there may be some modifications. The letter from Mr. Szemplinski and his stamp should be included in the record. Ms. Post initialed both the updated pump house elevations and the drainage certification for the record.

Ms. Post called for the vote. Passed 6-1. Mr. Carpenter opposed.

Mr. Carpenter motioned to adjourn. Mr. McLeod seconded. Passed 7-0. Meeting adjourned at 11:10 pm.

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