

## PLANNING BOARD MINUTES

March 4, 2009

### ROLL CALL:

Phil LoChiatto, Chairman – Present	Nancy Prendergast, Vice Chairman – Present
Rick Okerman, Secretary – Excused	Walter Kolodziej, Regular Member – Excused
Ruth-Ellen Post, Regular Member – Present	Pam Skinner, Regular Member – Present
Louis Hersch, Alternate Member – Excused	Kristi St. Laurent, Alt Member – Present
Sy Wrenn, Alternate Member – Seated 7:15 pm	Bruce Breton, Selectmen Member – Present
Galen Stearns, Selectmen Alternate – Excused	

Mr. LoChiatto opened the meeting at 7:00 pm. The Board stood and recited the Pledge of Allegiance. *Ms. St. Laurent replaced Mr. Okerman.*

Attorney Bernard Campbell discussed a problem with amendment #9 relative to Home Occupations, the Board voted to make a change to the language of the amendment, the change was not put forward to the warrant or ballot, and the amendment must be considered void because the ballot language was not what was adopted by the Board. Board discussion with Attorney Campbell as to whether the Board could ratify if it, it was to change the language from “entirely in the dwelling” to “primarily on the premise”, it appears two places in the ordinance and was only changed in one place, and it can be address in the upcoming year. *Mr. Wrenn joined the Board and replaced Mr. Kolodziej.*

### CORRESPONDENCE:

- Email from Robert Pruyne from RPC regarding completing the Windham build out project. Board discussion regarding holding off on setting a meeting as a new Planner will be on staff Monday;
- Notice of Decision from the Derry Planning Board regarding regional impact for a 4-lot subdivision (part of Spruce Pond);
- Letter from Rockingham Economic Development Corporation regarding priority project list for Rockingham County;
- Letter from NH Arborist Association regarding community beautification awards program;
- Plan NH merit awards flyer;
- Flyer for the 16<sup>th</sup> Annual Spring Planning and Zoning conference;
- Postcard regarding CTAP Workshops;
- Town and City Magazine.

### SIGN PERMIT:

- Heritage Baptist Church, 108 Rockingham Road. Gabe Marinelli, church member, stated they were granted ZBA approval for the sign, he further discussed the sign design and distributed drawings to the Board. Board discussion with Mr. Marinelli regarding the size and location of the sign, the sign is where a previous sign was placed, and the sign application and variance request do not match. Mr. Breton motioned to approve the sign graphic as proposed and in compliance with the variance granted on January 13, 2009. Ms. Prendergast seconded. Passed 7-0.

### PUBLIC MATTERS:

#### **Heavy Hitters Golf Course Building – Discussion with building inspector and ZBA chairman 57 Range Road, lot 18-L-303**

Attorney Bernie Campbell suggested that the Board go into non-public discussion for this because reputations other than the body come into question and claims or litigations that may involved. Mr. Breton motioned to go into non-public due to implications to reputation and/or claims based on RSA 91A:3 Iic reputations and 91A:3 Iie legal. Ms. Skinner seconded. Roll call all yes. Non-public session:

The topics of discussion were regarding reputation and legal matters. Besides the Board members seated, Attorney Bernard Campbell, Zoning Board of Adjustment Chairman Mark Samsel and Town Building Inspector Michael McGuire were in attendance for the discussion.

Attorney Campbell presented a history of decisions and appeals from the Planning Department and the Zoning Board of Adjustment from June of 2005 to the present. Variances were requested and received. However, new plans were submitted which constituted a “replacement of a pre-existing non-conforming structure” which is permitted under Section 405 of the Zoning Ordinance, and which therefore did not require variances. Currently there is a stop-work-order on the site due to discrepancies between the plans presented for permit application and the construction underway. Mr. McGuire is in communication with the owner to correct the issues.

Discussion of Site Plan review requirements and that the Planning Board has authority regarding Site Plan Regulations, Zoning Ordinance and Subdivision Control Regulations whereas the Zoning Board of Adjustment has authority regarding the Zoning Ordinance. Mr. Samsel pointed out that the reference to site plan review requirements in Section 503 of the Zoning Ordinance arguably could put the decision in ZBA authority in that limited set of circumstances. Attorney Campbell recommended that the Planning Board consider eliminating Section 503 from the Zoning Ordinance entirely, and placing it or something similar into the Site Plan Regulations. This would eliminate any grey area. Mr. Samsel concurred. The Mr. LoChiatto noted that this would be a good item to consider for the next zoning season.

Discussion of the need for better communication between the Boards (Selectmen, Zoning Board and Planning Board) given the 30-day window to file an appeal on behalf of the Town (or other citizens). Mr. McGuire will ask staff to send notice of decisions by the Zoning Board to be considered during review of correspondence by the Planning Board. This will give the Board the opportunity to know where and how variances are being granted around Town, and if need be, to consider changes to the Zoning Ordinance during the zoning season. It will also help the Planning Board to be aware of variances to buildings or lots of interest to the Board, and if need be, to recommend that the Board of Selectmen consider filing an appeal. Mr. Breton motion to come out of non-public. Ms. Skinner seconded. Passed 7-0

Mr. LoChiatto reminded people to vote next Tuesday, Ms. Prendergast has met with Mrs. Griffin to discuss the warrant articles and will be broadcast on Channel 20, and Ms. Post is also doing a presentation tomorrow night at the library.

### **Spruce Pond II Development Agreement**

Joseph Maynard, representing H&B Homes, discussed the 8-phase approval of the Spruce Pond development, Attorney Campbell has reviewed the development agreement, before Mr. Turner left he reviewed the plan and conditions of approval, the plans are all set, legal documents are being reviewed, he discussed the town of Derry approval process and the regrating of their approval of this development, and all of the state permits have been received for the Windham side. Mr. LoChiatto read some of the Derry conditions of approval. Board discussion with Mr. Maynard regarding the roundabout or through connection to Windham Depot Road, and road improvements notes. Mr. Maynard discussed the there are eight separate phases, looking to get phase I to the Registry of Deeds, he is working with the Conservation Commission regarding some legal documents, the development agreement is before the Board tonight, and it has been rewritten by Attorney Campbell.

Attorney Campbell asked how much input the Board has had regarding the rewrite of the agreement and his communication regarding the rewrite, Attorney Bronstein also had written comments, there was a

change from a community well to individual wells, Attorney Bronstein and Attorney Campbell have met regarding changes, he read portions of his January 2, 2009 letter, the agreement incorporated most of the Board's various votes, the phasing sequence was changed and didn't know if that was a problem for the Board, and the agreement is ready if the phasing dates are okay. Attorney Campbell also wrote a comment letter regarding Middleridge Road, there may be safety issues regarding the connection to Derry such as what happens if there's a car fire in the turnaround before the Windham roads are built, this issue stands alone, and he discussed the start date or reset date of the agreement.

Mr. Maynard discussed the reset of the date, there was a full public hearing in August, he discussed the two changes to the phasing of the subdivision, he discussed the sequence of the building of the roads, he gave the Board a copy of Exhibit E which is the construction phasing, and would like to get through the development agreement tonight. Board discussion regarding they went through the construction sequence at a previous meeting, they reviewed the two changes, and Board members do not have a copy of the exhibit which makes the changes hard to follow.

Attorney Campbell stated that he wrote the development agreement, but Attorney Bronstein does have comments, the open space covenants are also ready, could review his notes regarding rain sensors though it was noted they are on the cover sheets of the plans, and the development agreement is not normally recorded at the Registry, and he is satisfied with the documents and has no issue with Attorney Bronstein's handwritten changes.

Board discussion with Attorney Campbell regarding the rain-sensor requirements as part of the approval, the requirement should be part of the covenants, the effective date should be August 20, 2008 because that was the public hearing approval they are working under, and the plan was accepted for consideration before the impact fees were changed.

Mr. Maynard reviewed the bonding for each phase, phase I is bonded or already built, phase II is for 4280 ft of road to be bonded, phase III has no additional road, the developer can either build a road or bond the road, a plan cannot go to the Registry until it is built or bonded, phase III monumentation may need to be bonded if it's not already done, phase IV connects to Mitchell Pond, phase II is built within 12 months of the plans being signed, two years from that will be phase III, only asking for ½ the homes for phase II and the other ½ for phase III, has 10 years from the signing of the plan to finish the cul-de-sacs, phases V, VI, VII, VIII can be interchanged because the infrastructure is done, Mr. Turner has reviewed all the phasing plans, the fire chief still needs to sign off on the cisterns, and cistern requirements and fire protection notes are on the plans.

Board discussion regarding it is either built or bonded, how is the Town protected, there is a construction window if something is not built by the schedule then it needs to be bonded, and a final document needs to be completed by adding the handwritten notes and the change in rain sensors.

Mr. Breton motioned to approve the Spruce Pond Development Agreement as amended by written notations by Attorney Bronstein and to also authorize the Chairman and Town Counsel to sign on behalf of the Town. Ms. Skinner seconded. Passed 7-0.

Ms. Prendergast motioned to adjourn. Ms. Skinner seconded. Passed 7-0. Meeting adjourned at 9:50 pm.

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