

DEERFIELD PLANNING BOARD
DEERFIELD, NEW HAMPSHIRE
AUGUST 25, 2010

MINUTES OF MEETING

PRESENT: Board members Fred McGarry, Kate Hartnett, Fran Menard. Planning Consultant Gerald Coogan. Secretary Jane Boucher.

7:05PM Chair Fred McGarry called the meeting to order.

APPROVAL OF MINUTES

Fran Menard moved and Kate Hartnett seconded to approve the minutes of August 11, 2010.

The following corrections were made to the minutes:
Page 1 Paragraph 9: Correct spelling: " Tom Foulkes"
Page 2 Paragraph 6: Correct to read:"...creation of a Trail Plan for which..."

Chair McGarry called for a vote on the motion. Motion carries with Fred McGarry abstaining.

APPROVAL OF INVOICES

Fran Menard moved to approve the manifest in the amount of \$370.19 and a time sheet for Jane Boucher. Kate Hartnett seconded. (KNA \$300.00 McCarron Phase III; Upton & Hatfield \$51.00; Jane Boucher mileage \$19.19; time sheet 19 hours.) Voted in favor.

STRIPING/CHURCH STREET

Board members reviewed an e-mail from Leslie Boswak, Town Administrator, advising that there is \$2000.00 in the budget to have two nine foot lines striped on Church Street.

Gerald Coogan noted that the \$2000.00 for striping is in the Police Department Budget. He will check with Jim Marshall, DOT, to see if the striping can be done by mid October . If not, the money can be encumbered .

7:15PM APPLICATION FOR PUBLIC HEARING; BURTON AND JUDITH BUSH AND CHARLES SARGENT; LOT LINE ADJUSTMENT, MOUNT DELIGHT ROAD
Burton Bush and James Franklin were present.

Chair McGarry read the notice of public hearing by which Burton and Judith Bush and Charles Sargent are making application for a Lot Line Adjustment for property located on Mount Delight road identified as Map 410 Lot 54 and 55 The intent is to convey 0.059 acres from Lot 54 owned by Charles Sargent to Lot 55 owned by Burton and Judith Bush.

Board members reviewed the plans. Fran Menard moved to accept the application. Kate Hartnett seconded. Voted in favor.

Mr. Franklin explained that the intent of the application is to convey 0.059 acres from Lot 54 to Lot 55. He commented that they have surveying the frontage and physical features of the property.

Chair McGarry questioned the area of Lot 54. Mr. Franklin replied that he did not know as there is no recorded plan for Lot 54. Upon checking the tax map it was noted that Lot 54 consists of 4.1 acres. Chair McGarry said that information should be on the plan.

Gerald Coogan provided a memo re: the lot line adjustment noting that the agent should request waivers for the boundary survey and topographical survey.

Mr. Franklin submitted a request for waivers from a full perimeter survey (30.A5) and a full topographic survey (30.A12).

Fran Menard moved to grant the request for waivers from Section 30.A5 and 30.A12. Kate Hartnett seconded. Voted in favor.

Fran Menard moved to grant conditional approval to Burton and Judith Bush and Charles Sargent for a Lot Line Adjustment for property located on Mount Delight Road with the following conditions.

1. Locus map to show distance from Haynes Road.
2. Acreage to be added to Map 54
3. Pins to be set
4. Add pre and post Lot Lines to plan.

Conditional approval to lapse in 30 days. (September 25, 2010)

7:30PM PUBLIC HEARING ADOPTION OF REVISED SUBDIVISION REGULATIONS

Chair McGarry read the Notice of Public Hearing to consider the adoption of revised Subdivision Regulations for the Town of Deerfield. Copies of the revised regulations were posted on the Town's web-site and also available in the Town Clerks Office during normal business hours.

No one was present and no comments were received.

Gerald Coogan noted that he has asked Attorney James Raymond to review the proposed regulations and Attorney Raymond sent a letter reflecting his review. He noted that he did not closely

scrutinize the design and construction standards and other engineering matters. Instead he looked for general concerns, glaring errors, and areas of possible improvement. A copy of Attorney Raymond's letter is attached to these minutes. Mr. Coogan reviewed the letter with the Board.

Kate Hartnett commented that she felt the regulations need improvement. She referred to Norwich Vermont's regulations and suggested that Tables be added. She also noted that the format needed to be changed.

Gerald Coogan said perhaps tables could be part of the Appendices.

Kate Hartnett did not agreed with Table IV-1 "Geometric Roadway Design Standards" Local Street 1 should be 16 feet.

Chair McGarry did not agree.

Gerald Coogan said that if the applicant requested a waiver the Board could consider lesser width.

Kate Hartnett voiced concern about the process around site design and felt that could be better addressed. She asked the Board to continue this hearing in order that she and Gerald Coogan could review it further and make necessary changes.

Fran Menard moved to close the public hearing at 8:15PM. Fred McGarry seconded. Voted in favor.

Gerald Coogan will check with James Raymond to determine what changes can be made without having another public hearing. It was agreed that James Raymond's comments be incorporated into the regulations.

2011 BUDGET

Copies of the proposed 2011 Budget were provided by Gerald Coogan who noted that the 2010 budget totaled \$51,614 and the proposed 2011 budget totaled \$48,868. This reflects a 5% cut.

Fran Menard moved and Kate Hartnett seconded to approve the proposed 2011 Budget in the amount of \$48,868. Voted in favor.

COTTONWOOD ESTATES

Fred McGarry advised that Rick Pelletier had discussed infractions on the Open Space Land at Cottonwood Estates. There is a Conservation Easement in place but no Homeowners Association exists to enforce it. One possibility is for the Town to take the property as eminent domain. This would, however, require notification of 35 homeowners.

PLANNING BD 8/25/10 UNAPPROVED

POSSIBLE WETLAND VIOLATION

Gerald Coogan referred to Section 210.5 B2 of the Ordinance and will write to owners of property on North Road asking them to meet with the Planning Board.

The meeting was adjourned at 8:56PM.

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



**Upton
& Hatfield** ^{LLP}
ATTORNEYS AT LAW

Concord Office
10 Centre Street
PO Box 1090
Concord, NH
03302-1090
603-224-7791
1-800-640-7790
Fax 603-224-0320

Please respond to the Concord office

August 20, 2010

Attorneys At Law
Gary B. Richardson
John F. Teague
James F. Raymond
Barton L. Mayer
Charles W. Grau
Bridget C. Ferns
Heather M. Burns
Lauren Simon Irwin
Matthew R. Serge
Michael S. McGrath*
Lisa M. Hall
James A. O'Shaughnessy

Of Counsel
Frederic K. Upton
Marilyn Billings McNamara
Maureen Soraghan*

Frederick J. McGarry, Chair
Deerfield Planning Board
Town of Deerfield
9 Raymond Road
Deerfield, NH 03037-0159

Re: Deerfield Planning Board - Revised Subdivision Regulations

Dear Fred:

At Jerry Coogan's request, I reviewed the draft revised subdivision regulations dated July 14, 2010. In my review, I did not closely scrutinize the design and construction standards and other engineering matters, as they are not particularly within my area of expertise, and I, frankly, did not parse through every word, of which there are many. Instead, I looked for general concerns, glaring errors, and areas of possible improvement.

In general, the regulations are a significant improvement, and are acceptable. I understand there was concern on the Board about their length. Length in itself is not a negative, if the document is both complete and usable. That is, if sections are properly labeled and indexed and provisions can be easily found, a longer document can be more useful. Therefore, the length in itself is not necessarily a problem. Having said that, shorter is generally better, and it may be possible, through editing, as with any written work, to tighten the wording. The Board can determine whether that effort is worth the time.

I have a few comments, no one of which is substantial:

1. Section I-2, Authority. The regulations spell out procedures that are in the statute. Since the procedures are statutory, the regulations do not have to repeat them; you have to follow them anyway. It may be useful for informational purposes, though, to set out the statutory procedure, which the draft does, for example, in Section I-2. If those statutes are amended, you need to make sure you make the corresponding changes to the regulations. I generally, however, do not

Hillsborough Office
8 School Street
PO Box 13
Hillsborough, NH
03244-0013
603-464-5578
1-800-672-1326
Fax 603-464-3269

Attorneys At Law
Douglas S. Hatfield
Margaret-Ann Moran
Steven J. Venezia*

North Conway Office
23 Seavey Street
PO Box 2242
North Conway, NH
03860-2242
603-356-3332
Fax 603-356-3932

Attorney At Law
Robert Upton, II

Portsmouth Office
159 Middle Street
Portsmouth, NH 03801
603-435-7046
1-877-435-6206
Fax 603-431-7304

Attorneys At Law
Russell F. Hilliard
Justin C. Richardson

www.upton-hatfield.com
law@upton-hatfield.com

*Also admitted in MA

want to regulations to limit the slippage that RSA 674:4 allows on the time to review and decide on applications, by adopting those time lines as hard and fast rules. See section III-6 at 23.

2. Section I-3 at 1, Purposes. The draft contains an appropriate expansion of the purposes from your earlier regulations, to pick up innovative land use controls and other changes. The court seems to increasingly look to the purposes clause when reviewing planning board decisions, so this often overlooked section does deserve attention.

3. Section I-11 at 5, Scenic Roads. Not to pick on this section, but the first sentence illustrates how the wording can be tightened, by using the similar words "recognition" and "recognized" twice in the same sentence. Bear in mind, though, that in a distant prior life I was a high school teacher, and I still use my red pen liberally.

4. Section II-2, Definitions of Irrevocable Letter of Credit, at 8. The definition of letter of credit refers to Article 5 of the Uniform Commercial Code. You are not compelled to adopt the Uniform Commercial Code provisions on letters of credit. Having done so, be aware that RSA 382-A:5-106 imposes expiration dates, including one year after issuance, if it contains no stated expiration date or other provision determining its duration, and a letter of credit that states it is perpetual expires in five years. That can be a trap if you have a letter of credit issued on a project that goes on for some time, as you may erroneously conclude that the lack of a time limit in the letter of credit means that it extends for the length of the project. Under section 5-106, it does not. In other words, the letter of credit must state a duration, or, as referred to later in your regulations, have a self calling provision. Similarly, Section 5-115 poses a one year statute of limitations on expiration or accrual of a cause of action on a letter of credit, so do not tarry in chasing the issuing bank.

5. Section III, at 13, Plans. This section described in considerable detail the required contents of plans, by type of application. There is some repetition, particularly between minor subdivisions and major subdivisions. The way they are set forth is not wrong. An alternative would be to show the common requirements of each, and then the additional requirements of a major subdivision, to save a few trees.

6. Section III-5, Voluntary Mergers. Subsection B requires that requests for all voluntary mergers be approved unless the merger would cause a violation of the zoning ordinance. RSA 674:39-A imposes as an additional condition that there be no violation of current regulations. I interpret that provision as authorizing subdivision regulations to impose additional standards. A question arises of whether a merger can or should be granted when the two lots to be merged have mortgages held by different mortgagees. Our analysis, although we have found no cases yet, is that, since New Hampshire is a "title" state (that is, the grant of a mortgage is a conveyance of title), lots with different mortgage holders are not owned by a single owner, as required by Section III-5A, and therefore are not eligible for voluntary merger. If you do merge those lots, good luck standing between the banks as they fight over who has a right to foreclose the merged lot or what happens to any development on the lot as merged. It might be appropriate to define "single owners" as including single mortgagees.

7. Section IV-6 at 37, Reference Standards. The regulations occasionally refer to other standards, particularly those published by DES. It might be useful to define these references as

August 20, 2010

Page 3

referring to the latest version of the standard, particularly if they are frequently changed, and you do not want to have to amend your regulations each time DES revises its regulations.

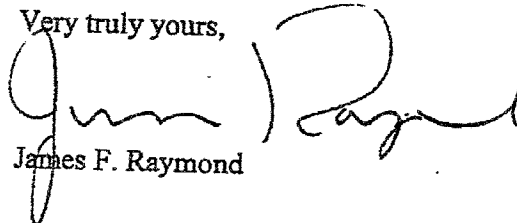
8. Section IV-8 at 38, Fire Protection. This section requires the fire department to take certain actions, using the word "shall" in the sentences. The planning board does not have jurisdiction over the fire department, much as we might like to think so, and your regulations cannot compel the fire department to take these actions. I see nothing wrong with trying, but recognize that this provision, and any similar provisions involving other boards or town agencies, are not self executing and the planning board may not be able to compel adherence.

9. Section V-2 at 40, Performance Guaranties. You may want to limit letters of credit to New Hampshire banks or other banks acceptable to the Town. Banks like to throw up obstacles to presentation, and you do not want to have to deal with a distant bank. Similarly, a bond should be from an insurer acceptable to the Town, as well as in a form acceptable to the Town. We have sometimes adopted the so-called Treasury list of bonding companies (Department of Treasury's Listing of Approved Securities, previously Department Circular 570) approved for federal projects as a standard, or some similar list. Having had collection challenges, particularly with off-shore bonding companies, we recommend that you have some control over what issuers you will accept.

10. Appendices. Jerry reported that Steve Keach had some concerns about putting substantive requirements in appendices, rather than in the text of the regulations. As long as the appendices are adopted as part of the regulations, substantive requirements can be in appendices, and in fact that can shorten the text and allow easier amendment to design and technical specifications. Planning boards get in trouble if they do not adopt the appendices as a formal part of their subdivision regulations, as they will then not have gone through the statutory adoption process. As long as the appendices are adopted as part of the regulations, the long lists that Kate was concerned about can be moved to appendices, if you want to shorten the length of the text.

In summary, subject to the comments and limitations described in this letter, we find that the draft subdivision regulations are appropriate for their purpose. Many boards hesitate to revise their regulations because of the scope of the project. We commend you for undertaking this effort.

Very truly yours,



James F. Raymond

JFR/cmd

cc: Gerald Coogan