

## PLANNING BOARD MINUTES

September 12, 2007

### ROLL CALL:

Ruth-Ellen Post, Chairman – Present	Ross McLeod, Vice Chairman – Excused
Nancy Prendergast, Secretary – Excused	Walter Kolodziej, Regular Member – Present
Phil LoChiatto, Regular Member – Present	Pam Skinner, Regular Member – Present
Neelima Gogumalla, Alternate – Excused	Rick Okerman, Alternate – Present
Alan Carpenter, Selectmen Member – Present	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 7:05 pm.*
- *Mr. Okerman replaced Ms. Prendergast*
- *The Board stood and recited the Pledge of Allegiance.*
- *Mr. McLeod joined the Board.*

### ROAD BONDS:

- Castle Reach III, release \$44,112 and retain the following: Ludlow, \$22,680; Leeds, \$4,752; Edinburg, \$23,406; Cardiff, \$5,976; and Cardiff Ext, \$11,538; for a total of \$68,352. Board discussion regarding if there are any vacant house lots, and developer is still responsible for any damages until it is accepted by the Town. Mr. McLeod motioned to approve the partial release. Mr. LoChiatto seconded. Passed 7-0;
- Castle Reach II, final release of \$13,920 for Dunraven Road. Mr. Okerman motioned to grant the release of the bond and to recommend that the Board of Selectmen schedule a public hearing to accept Dunraven Road as an official Town road. Mr. McLeod seconded. Passed 6-0-1. Mr. Carpenter abstained.

### SIGN PERMIT:

- Windham Barber Shop sign, 4 Cobbetts Pond Road. Ms. Post read the details of the sign from the application. Board discussion regarding it is the same location as Super Suppers, and meets the sign ordinance requirements. Mr. McLeod motioned to approve the sign permit application as submitted. Ms. Skinner seconded. Passed 7-0.

### CORRESPONDENCE:

- Letter from JM Gray and Associates regarding withdrawing an application for a Special Permit for lot 24-G-1279 Princeton Street and return of the plans. Mr. Turner stated that we are required by law to retain submitted plans for one year, the engineer did not want to repay the fees, he wants the plans returned to him, the plans need to be retained for one year, Attorney Campbell is being asked for his opinion, and a Special Permit and payment of the fees is required;
- Memo regarding the CTAP 2<sup>nd</sup> Annual Growth Management Training Conference;
- Flyer from Lowe's regarding Katrina Cottage Series types of small homes;
- Copy of a May 7, 2007 memo from the Historic District Commission regarding legislation of Town Master Plans. Board discussion that this is already in the Master Plan and should be considered for Site Plan and Subdivision Regulations.

### OLD/NEW BUSINESS:

- Board discussion regarding the Pawtucket Subdivision, it is for sale, staff will follow up to have the land restored, and has the bond been called? Mr. Turner will follow up.
- Board discussion of 2 Telo Road drainage in the Town right-of-way, and the highway agent is aware of this.

**LIAISON REPORT:**

- Mr. LoChiato, CIP Committee, stated that the Committee has organized and the meetings have been set to meet at the Planning and Development meeting room. Board discussion regarding adding CIP agenda to the Town website.
- Mr. Carpenter, Selectmen, stated that the police chief has been rehired.

**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**

Joseph Maynard, Benchmark Engineering, gave an update regarding the water system, the contamination has been found across the street from the Phase I subdivision, Spruce Pond I water system is fine, and he is in the permitting process for the water system for Phase II. Mr. LoChiato motioned to reopen Spruce Pond II for public hearing. Mr. Kolodziej seconded. Passed 7-0. Board discussion regarding the water drawn from the site will stay on the site for Phase I and/or Phase II.

Public comment from Chris Rossetti, 3 Mitchell Pond Road, stated that some residents in the Mitchell Pond development have water problems, community wells can effect the neighboring wells, the applicant is providing a new well for the Windham Animal Hospital, a new hydrological study should be done for this site, all the Spruce Pond II wells are in one location, the community well is cheaper for the developer, and measures should be taken regarding the irrigation systems. Mr. Maynard responded that the animal hospital ran out of water before the wells were installed, that is the well that is contaminated, it has always been agreed the H&B Homes would drill them a new well, a hydrological study is being done for the application of the community well system, the well locations were not chosen arbitrarily, they were chosen because of the hydrological study from the Mitchell Pond Extension Subdivision, the State of NH prefers community wells rather than 95 individual wells, the water system is not cheaper, and covenants will have a requirement for rain gages for the irrigation systems. Board discussion regarding restrictions on water systems for irrigation systems and individual land owners, and can the community well help the residents of Mitchell Pond Road. Mr. Maynard stated the Pennichuck does have restrictions on the usage of the system, the water system is for 100 homes, and the water system could tie in extra homes but at a cost. Mr. Maynard answered the Boards questions including stating that the well locations were chosen because of the hydrological study and spots have been reserved in the open space covenants for additional wells if need be.

Public comment from Mike Savastano, 20 Mitchell Pond Road, stated that he received a letter from Ground Water Associates who stated that he was in the 1000' radius, he called them three times with no return calls, his well gets 200 gallons per minute, documentation should be required regarding the water system, concerned with the volume and quality of water, what happens if his well goes dry or bad? And the 95 lots is a large draw. It was noted that the water system will be approved by the State. Mr. Maynard described the water testing for the community system, MBTEs in water can be treated, the 8-day pump test uses more water than would be used in normal usage, and a monitor can be placed on Mr. Savastano's well during the 8-day test.

Mr. Rossetti asked the Board to send a letter to the State DES asking that the homes on Mitchell Pond Road outside the 1000' radius be notified of the 8-day test, and by State law if the community well

affects other wells they are required to fix the problem. Mr. Maynard responded regarding the 1000' notification is a State law, and a third-party groundwater report will be completed, and the water system will take another 12-18 months for approval. Board discussion regarding a condition of approval be all State permits and approval must be received before construction, clock doesn't start until all the conditions of approval have been met, the Planning Board has the power to rescind a plan, a development agreement should be required, there are no restrictions if residents want to drill their own wells, the Board needs to decide what they want in the development agreement and then have it reviewed by Attorney Campbell, staff will distribute the draft development agreement to the Board before the next meeting and after Mr. Maynard updates it.

Wayne Morris, 12 Jordan Road, asked where does all the water from the 8-day water test go? Mr. Maynard responded that the test from Phase I pumped the water into the culvert, they pump around the wetland that they're trying to measure to get the draw, and they will recharge another wetland temporarily. Board discussion regarding that DES has guidelines that they need to follow. Mr. Morris asked about clearing the box culvert before the pump test. Mr. Maynard responded that the box culvert will be cleaned by hand before the 8-day pump test.

Ms. Post read a letter from Karen Pillets. Mr. Maynard responded that Derry has seen the exact same plans as this Planning Board, and they require a third connection.

Mr. Maynard stated that they've been working on the plan since 2001, he reviewed the road connections out of the subdivision and the history of the Hopkins Road connection. Mr. Maynard stated that according to the State the rail road corridor is in an active state, under the corridor is preferred rather than at grade, there were no stubs made in the Mitchell Pond subdivision or Mitchell Pond Extension and that the Town vote in March regarding crossing of the rail bed is advisory only. He then discussed his meeting with the Rail-Trail Alliance. He discussed the materials being used for the headwalls, ramp, and guardrails. He discussed the construction sequence for the box culvert, and the top of the box culvert will be pre-cast. Board discussion with Mr. Maynard included that 70 linear feet will be disturbed of the Rail-Trail corridor for approximately 30-45 days, the guardrails are 10' plank with 8" between the planks, there's 25' between the guardrails on each side, the switchback ramp is at 8% grade, access does not need to be ADA compliant because there is no parking lot, and should the ramp be temporary?

Public comments from Travis Blais, 47 Mitchell Pond Road, stated that Mallard Road is an encroachment to the existing Mitchell Pond Subdivision, and it is much more significant than the applicant is saying. Board discussion regarding putting a road into an existing neighborhood that doesn't have a stub or a temporary cul-de-sac. Mr. Turner responded that the Selectmen met with the Derry Selectmen to work out where the access points should be, the Selectmen voted for this access, and the neighbors have said it's against their covenants but no one has brought them to the attention of the staff so that the Town Attorney could review. Board discussion as to whether staff should look historically at developments for this type of situation? This is not a new issue, Board tried to reopen Hopkins Road which the Selectmen voted against, and fire and police want three points of access as did the Town of Derry.

Public comment from Mr. Rossetti stated that he has been attending the meetings and the discussion was always the Hopkins Road connection, the Mitchell Pond resident have brought the protective covenants to the Board and has been told that they have no merit before the Board and that it is a civil matter. Mr. Turner stated that the document was discussed and reviewed at several Planning Board meetings and the Town doesn't have authority to enforce the covenant, it has been a few years since this has been discussed but he didn't remember anything in the covenants restricting a new road. Public comment

from Mr. Savastano stated that the covenants are consistent for activities of a homeowner, homeowners don't usually put roads through their yards, he chose his lot because it didn't have an access points on either side of him, that will change with the approval of this plan, opposed the rail-trail crossing, people will park on the road to access the trail, and the clearing will be 300 ft. Mr. Maynard showed the area that will be cleared. Board discussion with Mr. Maynard regarding Mallard Road will be cut 120 ft at its widest, the location of the house is 120 ft from the trail, and re-vegetating disturbed areas.

Public comment from Mr. Morris asked about the grade of the temporary access point. Mr. Maynard responded that it is approximately 10% and is temporary. Board discussion regarding closing the trail for 30-45 days rather than making the temporary access and disturbing the natural landscape, and the continued connection is essential to the vitality of the trail, and fall is peak season. Mr. Morris stated they would like access from this neighborhood. Board discussion regarding whether to provide parking along this area, the Hopkins Road access is not easy to navigate, is it dangerous to park along the road? Could the construction happen during the winter months when there is less use? Mr. Maynard stated he could not guarantee 30-45 days during winter construction, the wetlands board stated it should be done during low water months, signs will be posted and advertised in the newspapers informing users of the disruption, Mallard Road is 26 ft wide, and staff recommended 28 ft wide.

Public comment from John Mangan, 1 Depot Road, stated the trail usage is growing and is used from dusk to dawn and he doesn't hear anything, closing it down for 45 days would be wrong, and the applicant has gone above and beyond so that the trail can be constantly used.

Public comment from Mr. Rossetti. He submitted the protective covenants from Mitchell Pond Estates to be part of the record. Rossetti stated that item #2 states that only the grantor can grant the right to new street construction, Dean Smith is the grantor and he has not spoken at the meetings, and this is a clear violation of the covenants. He stated that Article 35 was overwhelming supported by the Town residents and received 78% of votes on March 13, 2007. He then read Article 35, traverse means under, over, or across. He gave reasons why the people voted the way they did, he encouraged the Board to deny any plans by H&B Homes that propose to cross the rail trail, he submitted the voter results from the March 13 meeting.

Board discussion that the vote is non-binding, and the vote was for at grade level not under or over, and the warrant article doesn't have any bearing, the applicant is going to great lengths not to cross over the rail trail but going under it, the connection is in accordance with our Master Plan, this is not an afterthought, a secondary access has been discussed from day one, 78% is a distortion of the facts, and not all residents voted. Mr. Maynard stated that they've been honest and upfront all along, they were under design review before the vote, so even if the vote were binding it would not apply anyway.

Board discussion with Mr. Maynard regarding road slopes, the bottom of the culvert has some grade, the water is collected at the bottom and goes to a treatment swale, and staff should check and double check the water flows as we get 100 year storms every 6-18 months.

Mr. Maynard has met with Recreation Committee, there is a parcel of land that the Recreation Committee is interested in, the property has been rezoned to Rural, it is part of the open space, it is now a stockpile area, the applicant will level it off for a field, it may need a variance, no neighborhood directly abuts it, the access road is already built, the well will be deeded to recreation also for irrigation purposes, and the applicant has no problem deeding the land to Recreation. Board discussion with Mr. Maynard regarding the stockpile of materials, it is a relatively flat area, the topo is not indicative to what is there today. Mr. Maynard showed the tree line on the plan, will level, loam and seed an area but no

irrigation, the access is 20 ft wide graveled road, the property was a horse farm with an indoor riding arena. Board discussion can it be leveled with a sandy mix? Does this meet our open space ordinance? Mr. Maynard replied H&B does not have the materials to make a field to specifications, open space is owned by the homeowners association, two other parcels will be deeded to Conservation, and the land does not need to be removed from the density calculations. Mr. Turner read Sections 606.2 and 608.2 of the Subdivision Regulations. Mr. Maynard stated that this development is specifically discussed in the Master Plan.

Board discussion continued regarding liking that the crossing is under the rail trail rather than with a bridge over, applaud the efforts of the applicant for the recreation/conservation areas, and the developer is not required to make the fields on the parcel being deeded to Recreation. No public comment regarding recreation.

Board discussion with Mr. Maynard regarding a donation to the Rail-Trail, donations should not be discussed at this meeting, the item has been removed from the agenda, and an old document was being referred to. Board discussion that the Board would like to review in advance the homeowner association agreement, it is in the application package, and Mr. Maynard will forward an electronic copy to staff for distribution.

The Board reviewed the outstanding items to be discussed. Ms. Post read an email message from Adolphe Bernotas and Marguerite Orazi.

Mr. LoChiatto motioned to continue Spruce Pond II to September 19. Mr. McLeod seconded. Passed 7-0.

Mr. McLeod motioned to adjourn. Mr. Okerman seconded. Passed 7-0. Meeting adjourned at 10:00 pm.

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