

**Town of New London  
Planning Board Subcommittee  
Meeting Minutes - August 1, 2007**

**Present:** Karen Ebel (Chairman-New London Planning Board), Ken McWilliams (Town Planner), Harry Snow (Owner/Developer), Peter Blakeman (Blakeman Engineering), Jay Lyon (New London Fire Department Chief), Dale Conly (Planning Board member), Bob Crane (representing Messer Pond Protective Association), Peter Stanley (New London Zoning Administrator).

Karen Ebel opened the meeting at 9 a.m., and Peter Blakeman distributed sets of the revised plans with the additional and/or corrected notes. Those are:

- o Conservation Note 7 encourages LID methods to be implemented.

Per request from the Fire Chief, the notes for the Fire Pond include:

- o Note stipulating that the Fire Prevention Pond be a minimum of six feet to the top of the pond.
- o Note that the detail of the strainer now provides aluminum slats at the end.
- o Note referencing the Town's right to assume responsibility for maintenance of the Fire Prevention Pond, should the Association fail to do so. (Covenant 10-b).
- o Note referencing placement of a sign: "Fire Lane."

Per Richard Lee's request:

- o A note will stipulate that the first culvert off Bog Road (handles the runoff that comes from that road into the Fire Prevention Pond) will be 30" rather than 24".
- o Sheet 5-2 shows the Settling Basin above that Fire Prevention Pond will be 10' x 20'.

Under Construction Sequence:

- o Note 8 stipulates that the loam will contain no rocks larger than 3" and no woody material.
- o Note 9 stipulates that there will be no construction after frost.
- o Note 12 stipulates that erosion control devices will be removed after inspection by the Town.
- o Notes were added stipulating that there will be pre-construction meetings with the Town Fire and Highway Departments.
- o A note was added limiting tree cutting beyond five feet, primarily softwoods.

Otherwise, the only changes to the notes between the previous meeting and today were corrections of typos.

Ken McWilliams asked Jay Lyon if the specs for the Fire Prevention Pond look okay. Jay Lyon confirmed that they do.

The balance of this meeting comprised review and revision of the three documents:

1. Declaration of Covenants and Restrictions by Rocky Ridge at New London Association.
2. Agreement to Convey Easements and Roadway System and Responsibility for Maintenance
3. Bylaws of Rocky Ridge at New London Association

1. Declaration of Covenants and Restrictions by Rocky Ridge at New London Association.

Peter Stanley asked if the settling basin is included as part of the Fire Prevention Pond, with respect to the maintenance responsibility as spelled out in covenant 10-b. Peter Blakeman said there are easements conveyed to the Town for maintaining the ditches that will carry the runoff from Bog Road, and the settling basin is within the easement. Peter Stanley again asked, who will be responsible

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for maintaining it. Peter Blakeman and Harry Snow agreed that the settling basin is part of the Fire Prevention Pond, and the Association will maintain it until the Town takes it over.

Karen Ebel observed that there is no provision for maintenance of the ditches and culverts planned for handling storm water outside the easement areas for the road and the fire prevention pond.

Jay Lyon asked if there will be adequate water in the area of the Fire Prevention Pond even during dry season. Peter Blakeman confirmed that that is a wet area, and there will be.

Ken McWilliams asked if there are any other drainage facilities for this subdivision that are outside the road right-of-way. Peter Blakeman pointed those out, saying they are not an extensive system, just swales and a level spreader. He also pointed out that they are all within the easements that will be conveyed. Ken McWilliams said the covenants should identify who will be responsible for maintaining those. Karen Ebel reminded everyone that the general provisions for Snowcrest specifically authorized the Town to come into the subdivision and enforce maintenance, if necessary, for the pond and storm water management structures. Also, she wondered if there should be something prohibiting private owners from interfering with the drainage system.

She asked what parts of the drainage system fall within the Fire Prevention Pond and road easements, and what goes with the private landowner. Peter Blakeman pointed out the area under discussion on the map, and suggested that "Fire Prevention Pond" includes the hydrant, the outlet culvert, the overflow, the swale and level spreader below it. On the other side, the inlet culvert is part of the Town's road responsibility. (This is the culvert that Richard Lee requested be increased in size. It carries the runoff from Bog Road.)

Karen Ebel asked if an all-inclusive definition of Fire Prevention Pond should be included in Section 1 of the Declaration of Covenants and Restrictions. Or, she asked, should it be spelled out in every location that "Fire Prevention Pond" is mentioned in the document, a Section 10-b and Section 11-c(i). (She noted that "Fire Prevention Pond" is not mentioned in 13-d "Enforcement." Rather that paragraph just refers to "Common Properties.") Peter Blakeman opined that it would be easier to just include a definition in the first section. Ken McWilliams said on the other hand, they would really only have to spell it out in two spots. Peter Blakeman said he is in favor of minimizing language. That is the intent of including the section with definitions. He noted that the parts spelled out above (hydrant, outlet culvert, overflow, swale and level spreader) are all part of the Pond easement. It would be easier to just include a comprehensive definition. Harry Snow agreed with Peter Blakeman that just including a comprehensive definition would be better. Karen Ebel said that would be preferable because the easement really only affects the owner of Lot 1. Ken McWilliams disagreed saying that all the owners must share the expense of any failure that occurs.

In the end, the subcommittee agreed to go with the single, comprehensive definition. A definition for Fire Prevention Pond will be inserted in Section 1, and will note the pond includes its hydrant, outlet culvert, and drainage system as shown on the plan.

Karen Ebel expressed concern about the brevity of the definition for the Road in Section 1 in that it didn't include the drainage system, etc. Ken McWilliams agreed, noting that that should be clarified particularly in Section 5 on Dedication. After some discussion, subcommittee members agreed to add the following sentence to that section: "At such time as the Town accepts the Road, the Town will

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also accept maintenance responsibility for the related slope and drainage easement areas, and slope and drainage facilities within these areas."

Bob Crane asked that ". . .and Storm Water Management" be deleted from the title for Section 10.

Karen Ebel asked what is to prevent landowners from interfering with the drainage system on their properties, as when they are landscaping, for example. Peter Blakeman pointed out that none of the house sites are adjacent to the drainage areas; they are all pretty far removed from drainage areas. But, he said, he cannot state that no one will ever unknowingly do that. That's endemic to everything in Town. He does not feel that it needs something spelled out in the Covenants. He noted the only real potential for that happening might be on Lot 3, where the swale is. Harry Snow said even that is a good 250-feet from the drainage area. Karen Ebel said that is okay if it is within the easement areas. Confirmed.

Chairman Ebel returned to the Declaration of Covenants, and pointed out that in Section 2 (d), Common Property is really only the road. Ken McWilliams asked if they should add the wording ". . . until such time as the road is conveyed to the Town . . . "

Chairman Ebel opened discussion on Section 3 (b), uses of the lot, and questioned whether the applicant wants Home Occupations or Home Businesses to be allowed. Harry Snow said he wants this paragraph to conform to the zoning ordinance. Ken McWilliams referred to Article II-15 of the Zoning Ordinance. Briefly: a Home Occupation does not have clients, signage, parking issues, etc. and does not require Planning Board approval. A Home Business is allowed two employees, a sign, an average of ten customers per day, and must be limited to 25% or less of the residence's square footage. Planning Board approval is required for a Home Business.

Harry Snow said he would like to allow both here. Ken McWilliams suggested not listing the allowed businesses individually, but simply saying "All commercial uses are strictly prohibited except Home Occupations and Home Businesses as defined in Article III of the New London Zoning Ordinance. Home Businesses are subject to approval by the New London Planning Board."

He went on to refer to paragraph (d), and said that if the applicant wants to allow RVs, Article II 11-(a) of the New London Zoning Ordinance should be referenced. The ordinance includes RVs in its definition of Trailer. Harry Snow said his intention is to conform to the ordinance, and to allow those to be parked on a lot for no more than 30 days. Year round storage would have to be inside, or screened. Chairman Ebel suggested he talk to his attorney about rewording this paragraph, and assuring that it tracks the definitions in the ordinance.

She went on to open discussion of paragraph (f) referring to docks and piers, noting that the Planning Board does not have purview over floating rafts. Those are subject to State law. She noted for the record, that it is not that the Planning Board is stepping back from its responsibility, but that State law prohibits the Town from ruling on floating rafts. She noted that abutter Gerald Rogoff had asked the town to prohibit floating rafts. Peter Blakeman stated that this was not a PB matter and that it should be left to the property owners to work out. Subcommittee members agreed and no one was able to conclude that the Kellner covenants clearly prohibited rafts. Mr. Rogoff asked for a prohibition regarding the removal of rafts over his property by e-mail. Karen Ebel stated that this was not within the jurisdiction of the PB under the circumstances. Subcommittee members agreed.

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Regarding the first sentence of that paragraph referring to the prohibition of seasonal or permanent docks or piers attached to the Covenant Buffer, she said she would add the language referring to "other structures . . ." so that it conforms to the Kellner documents. She suggested the restriction could be on "waterfront lots" instead of the "Covenant Buffer" which she had included in her mark-up. Harry Snow agreed to have his attorney take a look at that.

Ken McWilliams referred to Section 13 (a) that describes the Duration of the stipulated covenants and restrictions, and he asked if "in perpetuity" could be substituted for the term of 20 years. Peter Blakeman wondered if there was a legal reason for using 20 years instead of "in perpetuity." He pointed out that the limited duration stated is the reason they added the last sentence prohibiting termination of Covenants 3,4,6,9 or 10 at any time, unless agreed to by the New London Planning Board. Chairman Ebel suggested they check with the attorney on whether or not "in perpetuity" can be used instead of 20-years.

She emphasized that the Town's concern is only with Covenants 3,4,6,9 and 10, and noted that they do not want those to disappear. She agreed that the requirement for termination of any of those is a 2/3 vote by the Association members and Planning Board approval.

She went on to open discussion of paragraph (d) Enforcement, and observed that it limits the Town's ability to inspect the covenants to only when a written complaint has been received. Ken McWilliams said that is the purpose of the additional sentence to clarify that "The Town of New London shall have the authority to enforce Covenants 3,4,6,9,10. With prior notice to the owner, the Town of New London shall have the right to enter and inspect lots for the purpose of enforcing said covenants. "

Chairman Ebel reminded members that the right to inspect and enforce covenants is written into the Snowcrest documents. She does not feel that the Town can wait to inspect and enforce until a written complaint is received from someone else. Harry Snow said there is a mechanism for enforcement in the zoning ordinance. Both Chairman Ebel and Ken McWilliams pointed out that this is not the zoning ordinance; these are covenants.

Chairman Ebel recommended leaving it with Ken McWilliams' addition there. The paragraph should not limit the power of the town to inspect the covenants to only when a written complaint is submitted. Harry Snow objected to that additional wording stating that in that case, the Town need only submit written notification to the owner before it can enter the property and inspect the covenants. It says nothing about requiring agreement from the owner, before inspecting. Peter Blakeman agreed, noting that the Town cannot do that for zoning.

Ken McWilliams suggested re-phrasing to allow the Town to inspect the covenants upon receipt of a legitimate written complaint or a complaint from a Town official or member of the public. Harry Snow said he would not have a problem with spelling that out.

Karen Ebel referred to Mr. Rogoff's e-mail requesting that Section 3 (c) expand the list of those who must abide by the buffer covenants from "owners of lots" to include the owners, their guests, invitees, approved lessees and tenants, employees, agents and licensees of the Association (in other words all the parties mentioned in Section V of the By-laws that stipulates who can use the road). Peter Blakeman pointed out that Section V of the By-laws pertains to the road; this clause pertains to the buffer-two different things. Harry Snow agreed, saying that the buffer restriction is on the property

itself. Ken McWilliams said that this additional language would just be clarifying things. Subcommittee members agreed, and applicants will tell their attorney to add that language.

2. Agreement to Convey Easements and Roadway System and Responsibility for Maintenance

Karen Ebel recommended that in paragraph four, the components of the Fire Prevention Pond be spelled out as discussed above. Peter Blakeman said this paragraph matches 10-b in the Declaration of Covenants. Karen Ebel agreed, but said there is no section for definitions in this document. She suggested applicants tell their attorney to assure that all language in this document conforms to that in the Covenants. She added that wherever the document refers to easement areas, it should include a reference to drainage facilities within those easement areas, as shown on the plan. She asked if all the easements for the Fire Prevention Pond are on lot 1. Yes.

3. Bylaws of Rocky Ridge at New London Association.

Karen Ebel asked why not use "Association" instead of "Entity." Peter Blakeman said using "Entity" does not change the document's legal status.

Karen Ebel asked if when the document refers to "Entity Property" it is only talking about the road. Applicants confirmed that, and added that is only temporarily. (At some point, the road will be conveyed to the Town.)

Chairman Ebel referred to Article V, limiting use of the Entity Property (the road) to members, their guests, invitees, approved lessees and tenants, employees, agents and licensees of the Entity. She observed that this document seems to have been built from a boiler plate from one intended to be used by a Club, and she asked why they don't just use the Snowcrest By-laws. That document would have been a better model.

She went on to say that roads in developments aren't usually limited in this way, and she suggested that it is not a good inclusion from the Town's perspective. Peter Blakeman asked if they can just delete that whole section. Harry Snow said he thought it was included to assure that the owners will be able to use that road, but he agreed that it could be deleted. Ken McWilliams suggested that if Article V of the By-laws is deleted, then they should amend Section 5 of the Declaration of Covenants and Restrictions to make clear that until such time as the road is conveyed to the Town, property owners as well as emergency response vehicles have the right to use that road. Karen Ebel agreed and also suggested adding the wording, "their guests, invitees, approved lessees and tenants, employees, agents and licensees of the Association."

Subcommittee members agreed to add the above-described wording to Section 5 of the Declaration of Covenants and Restrictions, but to delete Article V from the By-laws. Chairman Ebel suggested applicant leave it up to his attorney to come up with the specific re-wording of all that.

Minutes - July 19, 2007. Chairman Ebel suggested striking the line that states that the "Shoreland Protection Act does not allow . . . structures." The minutes were approved with that amendment.

Harry Snow asked if they may expect that the subdivision will be considered for final approval at the next regular Planning Board meeting. Subcommittee members said yes, though Ken McWilliams said

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they should come that night with an estimated cost for the road, fire pond and drainage. The estimate should be reviewed by Richard Lee.

Meeting adjourned at 10:50 a.m.

Respectfully submitted,  
Sarah A. Denz  
Recorder

DATE APPROVED \_\_\_\_\_

CHAIRMAN \_\_\_\_\_