



TOWN OF NEW LONDON, NEW HAMPSHIRE

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PLANNING BOARD APPROVED MEETING MINUTES August 9, 2011

PRESENT: Tom Cottrill (Chair), Tina Helm (Selectmen's Representative), Jeff Hollinger (Vice-Chair), Michele Holton, Paul Gorman (Secretary) and Peter Stanley (Planning & Zoning Board Administrator)

NOT PRESENT: John Tilley, Deirdre Sheerr-Gross (Alternate), Emma Crane (Conservation Commission Representative), Michael Doheny (Alternate)

Chair Cottrill called the meeting to order at 7:00pm.

Thomas Little Subdivision

Mr. Stanley showed a slide of the Little subdivision. State regulations now say a man-made ditch can be modified without notifying DES. New London still has its own regulations, however. He indicated that Mr. Little is proposing to maintain some of the original drainage, but wishes to create a new ditch which will drain into the same wetland that it was destined to travel to initially. It is just going in a different path. Mr. Stanley wondered if the Planning Board would consider this a minor change or if they would be required to amend the subdivision to show the new arrangement. Mr. Stanley and Mr. Lee (Public Works Director) have no problem at all with this new plan as the water is going in the same place. He said that the Littles will still need to go to the ZBA with regard to the ditches that will be needed. He thought they should require the necessary easements in place to the Town, and easements for access to the ditch for maintenance in the future.

It was noted that the Littles were the owners of the property down the hill from where this drainage would take place. Mr. Stanley said that if they don't consider this a minor change, the Littles would need an amended plan to be recorded. Chair Cottrill and the rest of the Planning Board felt that this seemed to be a very minor change and they would approve of their plans without amending the subdivision.

Wallula – Natural Woodland Buffer

Mr. Nathan Fogg, from Jesseman Associates was present to present their concerns regarding whether they were able to build within some of the building envelopes, which overlap with the Natural Woodland Buffer. There is a disagreement as to whether they can alter the natural woodland buffer along the lots along the road (lots 1, 2, 3 and 16). They would like some confirmation of the building envelopes from the approved subdivision of 2009. The following was read to the PB by Mr. Fogg:

9 August 2011

Camp Wallula - Natural Woodland Buffer Clarification

We are before you this evening to ask for your confirmation of the approved building envelopes from the Camp Wallula Subdivision, approved on May 26, 2009 and that the Natural Woodland Buffer area is alterable within the limits set forth in the Shoreland Overlay District of your Zoning Ordinance.

*Just as a quick recap of the Camp Wallula subdivision process.
The subdivision was a re-subdivision of a "Planned Unit Redevelopment" that*

was originally approved back in 1971. The camp existed for many years prior to the 1971 subdivision. One of the goals of the 2009 subdivision was to 'as close as reasonably possible' keep the new subdivision the same as the original 1971 subdivision. Some lots were reconfigured to create road frontage, provide perimeter buffer areas, and similar improvements. A clear goal of this subdivision was to NOT substantially change the buildable area of the lots. 10 of the 17 lots have the same, or smaller, buildable area.

Lots 1, 2, 3 & 16 have buildable area within the Natural Woodland Buffer section of the Shoreland Overlay District. The Undisturbed Natural Woodland Buffer was shown on Sheet C-7 as it existed at the time of re-subdivision in 2009 to provide an historical reference as of the date of subdivision. Our understanding at the time of the subdivision was that the Natural Woodland Buffer could be altered as long as the Shoreland Overlay District regulations were upheld. Lots under 1/2 acre must have 25% of the Natural Woodland Buffer left undisturbed. Lots over 1/2 acre in size must keep 50% of the Natural Woodland Buffer undisturbed.

The table shown in Note 4 on Sheet C-7 lists the buildable area as approved, the original buildable area, and for the lots within the Natural Woodland Buffer Zone, the existing percentage of Undisturbed Natural Woodland Buffer. The Subdivision's "Declaration of Restrictive Covenants" have restrictions in addition to the town regulations. No trees greater than 4" in diameter can be cut within 10 feet of the lot lines.

We believe that the building envelopes shown on Sheet C-4 can be utilized on lots 1, 2, 3, & 16, as approved by the Planning Board, provided that the Shoreland Overlay District regulations are not violated for the individual lot being re-developed.

The Undisturbed Natural Woodland Buffer was shown on Sheet C-7 to document the existing status of the buffer at the time of subdivision, not to 'lockin' the existing buffer. The plan allowed the planning board and building officials to have a record of what was existing at the time of subdivision.

Each lot should be evaluated on it's own merits. Lots 2, 3, & 16 exceed the current standards set forth in the Shoreland Overlay District. These lots should be allowed to remove trees as necessary for re-development, provided the Shoreland standards are not exceeded. Lots 1 and 17 [the common area] do not meet the minimum standards and cannot have further alteration of the Undisturbed Natural Woodland Buffer because they do not meet the minimum standard.

We ask that you confirm that the individual approved lots be judged on their own merits and not as a whole.

Mr. Stanley said when going through the subcommittee meetings for the 2009 subdivision, he made a particular point of requesting that the undisturbed areas be designated on the design so they would remain so. This was done. The rough calculations he came up with showed over 6,000 square feet of impervious surface, which shows that 52% of the area not devoted to impervious surface was undisturbed woodland buffer. The contention he has made is that if they wish to change this percentage, they need to come to the Planning Board. The question is whether different standards apply to individual lots versus the common land. Mr. Stanley asked for clarity from the Planning Board. If they cut as much as what they wish, they will have a narrow strip at the end of each lot which is not cleared. That wasn't what he thought they wanted to do from the beginning. This subdivision is a PUD and each lot does not stand alone. Each lot is part and parcel of the common land as that is how they satisfy the density requirement. Mr. Stanley was of the opinion that if the applicant wanted to change anything at all, that they would have to come before the Planning Board.

Mr. Fogg said that the main concern is with lots 2 and 3 and he added that they respectfully disagree with Mr. Stanley and felt that each lot stood alone and said that the plan shows the area as “undisturbed area” not “wooded area.”

Mr. Brad Cook, attorney representing Wallula, said he had no idea what the question was, based on what he has heard thus far. When the Planning Board approved the Wallula subdivision, they approved 17 units and 19 lots. For each lot, they approved a building envelope which is smaller than the lot. Mr. Cook said that the reasoning for this was in an effort to keep whatever constructed on the lot to be about the same size as what had been built in 1971. He understood that Mr. Bottinger was requesting confirmation about being able to build within the building envelope, as there were/would be potential customers who would want to know.

Mr. Bottinger said the building envelope goes right into the no-cut zone on lot 3. Mr. Cook said that the Planning Board approved a building envelope. The question is: did they mean it? Can they really build in the designated area? They went through a careful process to come up with these plans and wonders if it can be done.

Mr. Hollinger asked why this wasn't brought up when going through the approval process. He said that he thought it had been covered. Mr. Hollinger also wondered if a development like this would be allowed today had it not been started in 1971. Mr. Stanley said that it would not.

Mr. Stanley said the PB didn't approve just the building envelopes for each lot. They approved the entire subdivision with all the plans and all the issues. He reiterated that the plan that was approved is what he is going by and if someone wants to do something different than the plan, they would have to come back to the Planning Board. He believed that this area was the undisturbed natural area that helped to meet the zoning requirements at the time. It was perfectly acceptable to adjust the locations of the buffer, but he didn't think that they could take each lot out of the context of the plan. He wasn't comfortable changing anything that wasn't on the plan.

Mr. Fogg said that Mr. Stanley feels that this is what was approved as a natural woodland buffer, but he (Mr. Fogg) felt that what was approved was a documentation of what was in existence at the time of the subdivision so that a new owner could not come cut the trees and claim the trees weren't there in the first place. Mr. Stanley disagreed and said that the plan says that the area in question is to be “undisturbed” and in the agreed-to terms required for the subdivision, these areas were not to be just areas that “might” be undisturbed.

Mr. Bottinger said that the building envelope was in fact included in the buffer zone. Mr. Stanley said that there are other things they have to consider, and cannot take the building envelope on this one lot out of context. Mr. Bottinger said how the building envelope sits within the buffer zone, makes it nearly impossible to build on the property. Ms. Holton agreed and said that this could fall under the “hardship” rule for whoever buys the lot. It is so extremely wooded and she opined that it could even be considered “unkempt.” She thought something should be done to change it. Mr. Stanley said that he agreed entirely but the way it was put in the plan, as it was planned out, it satisfies the woodland buffer for the site. He suggested creating some more undisturbed area by planting and leaving it alone, to allow for building into that designated undisturbed area. If they take out the undisturbed area, the overall the site will no longer meet the requirement for 50% undisturbed area.

Mr. Jesseman said that in the mid 1970's a subdivision was approved and the Town's attorney upheld that it was a legitimate subdivision that existed. When it came before the Planning Board, they agreed to do

whatever they could to adjust the lots to make it a better subdivision and come as close to the regulations as possible. They provided the building envelopes in which they could work. It would have been worse if they took the subdivision as-is and did nothing. He doesn't see why the PB doesn't accept their agreed-upon plan. Mr. Hollinger asked why they would not agree to re-plant in certain areas to uphold the undisturbed area.

Mr. Cook said they've worked with New London to make the subdivision work. It has been successful and they have had a lot of sales. With regard to the lots in question, he did not believe that there had been any proposals thus far. If Mr. Stanley is saying to do some compensatory planting to make sure the building envelope can be used, they could all go home. They have no one who has made a proposal and were denied. Mr. Stanley said the Planning Board would still need to approve that compromise.

Mr. Bottinger said that the only land to plant on was the ball field or another space that was needed to keep snow in the winter. Mr. Stanley said he thought that if they only cut back the natural woodland buffer area to the setbacks and didn't go beyond it, there wouldn't be a lot of additional planting needed.

Mr. Stanley said that there is a legal issue here on how they interpret the law. He has to look at the regulations at face value. They have 50% undisturbed land now, which is the requirement for the overall subdivision. Mr. Stanley said if they plant somewhere to compensate, there wouldn't be a problem.

Mr. Stanley said that each lot came together to satisfy certain requirements; each lot is not seen as separate. The smaller lots cannot be taken out of context of the entire subdivision. His issue is that he has to follow the law and that is his responsibility. If they choose to go under the requirement, they will need to go to the ZBA. If they allow cutting in the smaller lots, then the common land lot will be under the 50% requirement for undisturbed area. Ms. Holton asked how they can explain the PB approval of a plan with building envelopes where those building envelopes are not buildable. Mr. Stanley said it is an overall approval. Most of the lots have envelopes that are totally buildable. In the Shoreland zone, they are subject to those specific regulations, and this was made obvious from the get-go.

Chair Cottrill said that he was not prepared to make a decision at this point as there had been no preparation for this issue. He would like a set of plans for everyone to review along with all pertinent minutes of meetings and suggested Town Counsel review this situation.

Mr. Cook said to wait on this idea; if someone comes in to purchase a lot and wants to remove a portion of the undisturbed woodland buffer, and if they can replace it someplace within the area with a compensating amount that meets the criteria so the percentages are the same, would it be OK? If a real problem comes to them, rather than a theoretical problem, they'll come and ask for a solution to it. If they can find a way to replace 35 sq' with 35 sq' somewhere else, they will. Mr. Stanley said that is what they do with individual parcel of land that comes before him with an application, they designate the natural woodland buffer on their plans. These areas can be moved as long as they are replanted and he considers this a minor change as long as the net change is the same.

It was decided to keep things as-is until a prospective buyer comes in with a plan showing the calculations and the location of plantings that can be made to compensate for what was requesting to be cut.

Hollinger/Paul Annexation

Mr. Stanley said that Mr. Hollinger has withdrawn his application so would not be going through with their annexation at this time.

Mr. Stanley said the Town has sent out abutters' notices, and spent time in the office to have the case ready to be discussed that night. They have paid \$75, the fee for an annexation, but have not paid their postage for the notices. There are no recording fees since they are not going through with the annexation. He asked if the fee should be returned or kept. Chair Cottrill and several other board members said that they should still have to pay the fee, as the work had been done.

Implementation Chapter – Mr. McCrory, Upper Valley Regional Planning Commission

Mr. McCrory had inserted the revised language from the Land Use chapter, into the recommendations portion of the Implementation chapter. The review went as follows:

#1 – the word “gravity” was removed.

#2 – “accessory apartments” are already addressed in the ordinance, so they would remove it from the list. Mr. Stanley said that regarding “rental units” there was nothing that precludes any real property from being rented by anyone.

#3 – Mr. Stanley said they only want to meet New London's needs and not Regional needs. Boundaries and...”remove the types of” and add “permitted commercial uses.” Remove “currently detailed in the Zoning Ordinance” and replace “expanding” with “future.”

#4 – “Consider opportunities to provide for clean...”

#5 – Consider site and building design guidelines for aesthetics.

Mr. Hollinger said that he has heard people say that they liked the way New London's gateway was not built up. Mr. Stanley noted that New London is a densely populated town but it doesn't look like it. They maintain the essence of rural character. It was determined that “State” should be removed.

#6 – remove “and incorporating it into the Zoning Ordinance.”

#7 – place a coma after “character” and remove the “and.”

#8 – use “water and service areas” instead of “utility.”

Mr. McCrory read the re-written beginning paragraphs and explained the table of chapters and recommendations. There was some talk about shuffling the order of the chapters as they would appear in the Master Plan. He tried to bundle the required chapters together. They provide the basis for how the Master Plan is functionally laid out. The following is how the chapters would be presented in the Master Plan:

Introduction

A Vision for the Future

A Vision for Land Use

Conservation & Open Space Lands

Watersheds & Water Resources

Historic Resources

Community Facilities & Services

Population

Housing

Economic Base

Utilities

Transportation

Energy

With regard to how the CIP relates to the Master Plan, Ms. Helm said that the Board of Selectmen said the Planning Board should come up with their own time table and allowing enough time to meet with the individual departments. Mr. Stanley felt the process should begin in October. He felt they should allow department heads to come up with their needs while using the Master Plan. That is the intent of the whole

process. If the Budget Committee doesn't want to fund what the department heads come up with for need, that would be up to them.

Tree-Cutting Requests

Hoover (Map 045, Lot 023-000)

Mr. Stanley explained that the Hoovers own some shorefront on Murray Pond and want to remove several trees close to the water. He convinced them to keep the deciduous trees and limbing the pine trees high to get a clearer view. He has helped her make some adjustments to keep more trees than she had originally requested. They will go from 98 points to 58 points in one section, and from 121 points to 116 points in another. Because it is so well vegetated, he had no issue with it.

IT WAS MOVED (Paul Gorman) AND SECONDED (Jeff Hollinger) to approve the tree-cutting request for the Hoovers on Murray Pond. THE MOTION WAS APPROVED UNANIMOUSLY.

Deb Perkins (Map , Lot)

Mr. Stanley noted that the tree in question is in her yard. The core through the center is rotted out and full of carpenter ants. The tree has a hard lean towards the house. Ms. Perkins has the points on the property, which will be at 54 after the cutting. Much of the lot is nothing but shrubs along the edge. He said the tree is clearly damaged and if it was leaning away from the house he'd suggest leaving it. Prevailing winds will take it towards the house.

IT WAS MOVED (Jeff Hollinger) AND SECONDED (Paul Gorman) to approve the tree cutting request for Ms. Perkins. THE MOTION WAS APPROVED UNANIMOUSLY.

Mr. Hollinger amended his motion by stating:

IT WAS MOVED (Jeff Hollinger) AND SECONDED (Tina Helm) to approve the tree cutting request by Deb Perkins contingent upon her planting a tree within the general vicinity of the area where the ailing tree is to be removed. THE MOTION WAS APPROVED UNANIMOUSLY.

Mylar for Bob Ewing Subdivision

Mr. Stanley explained that the subdivision was approved in 2007 and the language is unrecorded. He added that there were conditions that needed to be met. He has reviewed the four conditions in the final minutes, and they have been met. They are: Finalization of LID on the plan, addition of a note regarding 34' utility easement along the driveway, ZBA approval of special exception for wetlands crossing, and DES approval of wetlands crossings. Everything is done, bounds are in place and Richard Lee has signed off on it. The only problem is that the area immediately around paved surface of the hammerhead is holding water. It is supposed to drain water up the road to a catch basin. Mr. Stanley and Mr. Lee looked at the site and if there is always standing water there, there will be cat tails which are unsightly and hard to manage. They need to build up the soil in the bottom of the ditch and re-seed it around the corner and down so it flows where it needs to. They are willing to go through with the signing of the Mylar but will make correction to the grading issue a requirement before the Board of Selectmen accept the road. He suggested signing the Mylar as it had been four years since the subdivision was approved.

IT WAS MOVED (Jeff Hollinger) AND SECONDED (Tina Helm) to approve the signing of the Mylar for the Ewing Subdivision pending the repairing of the hammerhead to allow the drainage to flow to the catch basin. THE MOTION WAS APPROVED UNANIMOUSLY.

Minutes of the July 26th meeting could not be approved as there were not enough people present who were also at that meeting.

The next meeting is scheduled for September 13th.

IT WAS MOVED (Jeff Hollinger) AND SECONDED (Paul Gorman) to adjourn the meeting of August 9, 2011. THE MOTION WAS APPROVED UNANIMOUSLY.

The meeting adjourned at 8:55pm.

Respectfully submitted,

Kristy Heath, Recording Secretary
Town of New London