

**Town of Northwood
Planning Board Meeting
February 27, 2020**

Chair Strobel called the meeting to order at 6:35 PM.

PRESENT: Chair Bob Strobel, Selectmen's Representative Hal Kreider, Betty Smith, Joe McCaffrey, and Victoria Parmele.

TOWN STAFF PRESENT: Linda Smith and Susan Austin, Land Use Department. James Burdin, Town Planner.

VOTING DESIGNATION: Chair Bob Strobel, Selectmen's Representative Hal Kreider, Betty Smith, Joe McCaffrey, and Victoria Parmele.

MINUTES:

February 13, 2020

Tabled until the next meeting

CONTINUED CASES:

CASE: 18-20

68 Granite Street Properties, LLC. First NH Turnpike, and Old Turnpike Road, Map 108 Lot 102. Applicant seeks to create a Major Subdivision of 16 lots with a looped roadway of 2353' in length.

Chair Strobel stated that they have received a request to continue this case until the next meeting.

Mr. McCaffrey made a motion to continue Case 18-20 until March 26, 2020. Ms. B. Smith seconded. Motion carried 5/0.

CASE 19-6:

Joseph Carter/Fatherland Family Trust. First NH Turnpike and Harmony Hill Road. Map 222 Lot 54. Applicant proposes a minor site plan review to build a miniature golf course and refreshment service.

Chair Strobel stated that they have received a request to continue Case 19-6 until the next regular meeting.

Mr. McCaffrey made a motion to continue Case 19-6 until March 26, 2020. Ms. B. Smith seconded. Motion carried 5/0.

CASE 18-13 and 19-20

Millstone Realty Trust & Ledgestone Realty Trust 1070 First NH Turnpike Map 211 Lots 2,14,15,16,17 and Map 217 Lots 34,35,37 Applicant seeks a

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Minor Site Plan Review and is proposing an expansion of and existing gravel pit/quarry.

Millstone Realty Trust & Ledgewood Realty Trust 1070 First NH Turnpike Map 211 Lots 2,14,15,16,17 and Map 217 Lots 34,35,37. Applicant seeks an Excavation Permit.

Peter Holden was present to speak for the applicant. He stated that he wanted to discuss the development agreement tonight. They sent it over and got comments back from Mr. Burdin. He thinks Mr. Burdin is suggesting that they make a notice of decision. If they do that, he'd like to participate in the construction of the notice, so he can be sure that they include what is in the development agreement.

Mr. Burdin stated that he sent the board a staff report, as well as a draft notice of decision. Mr. Burdin stated that for him, it feels unusual for the town to be entering a development agreement that is essentially a civil contract into a permitting review process that is essentially a civic regulatory function. If they put this through legal review and counsel says that it's totally fine and to go ahead, he is totally fine to defer to legal. In his experience, it feels a bit unnatural. He tried reaching out to a few other planners to see if anyone else had experience with having a side by side development agreement that is mostly covering permit approval items. Most of the people he spoke with thought it seemed unusual. In his experience, the purpose of a development agreement between a private landowner and a municipality is for a project where the town is getting something out of that project, or they are an active participant in that project in some way. For example, the City of Dover is doing a waterfront development where they need to clear some bluff, so they entered into an agreement with an excavator to say "we own the city property on the riverfront and we want build things on it, and we need to prepare the site for construction, so we are going to enter into a contract with you to excavate this and you get to take all of the materials and sell them off of your pit someplace else and what we the town is getting out of this is a development ready site." That is separate from all of the site plan applications that the development of that site after that has to go through. As he was looking through the proposed agreement that Mr. Holden had prepared, the only thing that seems to be non-regulatory, is the future conservation of the land that the excavation will be operating on. Conservation practices are enforceable by the town anyway if the applicant stated on the record that conservation was their intent, and it was adopted as a condition of approval. What he would suggest, since the development agreement needs to be reviewed by legal anyway, is a multi-tiered review. If the applicant prefers that route and the board is open to it, they can send the document to legal, but he suggests that rather than having them review it line by line like a contract, they do a cursory review to consider it from

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an attorney's perspective, and if there is no harm in doing a developmental agreement alongside the review process, he would like some feed back about whether there were any legal complications by including regulatory requirements in that contractual document. Mr. Kreider stated that he felt that Mr. Burdin's suggestion made sense. In particular, he would like to know if there is any fundamental difference between calling it a draft notice of decision versus a developmental agreement. Mr. Burdin stated that the difference is that a notice of decision is what the board issues for every decision that they make. Once they grant a conditional approve, Mr. Burdin types up the NOD that uses that format. Mr. Kreider asked if the NOD would satisfy Mr. Docko's concerns. Mr. Burdin stated that the NOD and the official plan set are the documents that let people who want to know what was approved. The plan set is the visual, the NOD is the legal document that goes along with it that lays out the conditions of approval. Mr. Kreider stated that he thought the concern was if Mr. Docko didn't finish this in five years and the board wanted to say that this is the agreement that extends beyond that so he doesn't have to keep coming back every time he opened up a new phase. Mr. Burdin stated that RSA 155-E talks about the issuance of the permit itself and states that the permit shall state the date upon which it expires. But the RSA does not have a timeline for when the permit expires. If they are only relying on the state RSA for excavation, he has not found any standard expiration of that permit, and it is his understanding that communities typically include in their excavation regulations, and Northwood doesn't have any. Mr. Docko wishes to go through one permitting process that will last him through the entire phasing of the document. If they don't have an expiration on his excavation permit and they lay out clearly what his vesting milestones are for his site plan, and he hits those, that site plan is vested under the current regulations for as long as he is complying with the approved site plan. He feels that they would be in the same place, relying on the phasing plan laid out in the plan set to walk them through what is happening when, and what his rights to continue are. Mr. Holden stated that the reason they were proposing the development agreement is that usually a notice of decision, while fairly specific, they can have some unanswered questions in it. Fifteen years from now when they are all standing out there not agreeing about what the NOD says, what are they going to do then? They are trying to anticipate everything so that when that day came, they could take out the recorded agreement, and refer to it. He stated that he doesn't have a problem with a NOD, he would just like to be involved with the writing of it. Mr. Burdin stated that in his staff report he listed all of the things from the development agreement that he felt were regulatory items. The thing that concerned him about the legal status of a development agreement type of document in a regulatory setting are things like Clause 21. "No third-party rights." "It is the intent of the parties to this agreement that only they may sue to enforce the agreements term, this agreement confers no rights on third

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parties” For a contract, that makes sense. From a regulatory site plan approval process, that makes no sense whatsoever. Anybody who can show that they have standing, as an abutter or another affected party has the right to sue during an appeal period or if there are negative impacts because of failed compliance. It’s that unfamiliar territory and not knowing answers to questions like that concerns him about going through this without considerable input from town counsel.

Mr. Burdin walked the board through what he wrote up for a draft NOD.

Waivers.

Mr. Burdin stated this is a notice written as if the board has approved everything, this isn’t a recommendation that they approve all of the waivers.

Milestones.

Mr. Burdin stated that this section is one that they normally don’t have, but the applicant made it pretty clear that they wanted to discuss this, and that relates to vesting of the site plan. He is suggesting that they agree on the definition of the date of approval of three important milestones for the vesting statute:

1. “Date of approval” It should state clearly that the date of approval is the date that the chair signs the plan, because the other things are measured from that date.
2. “Active and substantial development or building” that allows the applicant 5 years to keep working on the project without having to comply with any changes in the regulations. If the applicant was required to come back for a new excavation permit within that 5-year period if they hit active and substantial completion, they are grandfathered under the regulations as they exist today. He stated that he phrased it differently, because it seemed to him that the vesting point at which they have hit active and substantial development is when the wetland crossings are actually completed. The applicant was proposing two years, to him it feels like the 8-month completion would be when they have hit it.
3. “Substantial Completion” The applicant has proposed completion and stabilization of the proposed hauling road. That would vest the site plan indefinitely.

Conditions of Approval

This should continue to be discussed as part of the review of this application. Mr. Burdin laid out a schedule for the board to consider.

Other conditions of approval

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These would be conditions subsequent to the excavation permit that would need to happen going forward. “Excavation, reclamation, and bond phasing will proceed according to the approved phasing plan.” Mr. Burdin stated that he would suggest that this be in the plan set and also included in the notice of decision and refer specifically to the page within the plan set. “The applicant will file an annual Notice of Intent to Excavate to the Town Assessor” Mr. Burdin stated that it was required by for taxation purposes anyway, but by having a curtesy duplicate sent to Land Use, that is a way to track the progress of the project. “The applicant will notify the Land Use Department in writing of the commencement and completion of each phase for the purpose of tracking project progress.” Mr. Burdin stated that this was another way to track the progress. “Within one year of completion of the final phase of reclamation, a conservation easement to the benefit of a bona fide conservation organization and/or the Town of Northwood.” He stated that he left some flexibility open, it could either be a conservation organization or the Town of Northwood depending upon who is available and taking on that easement 15 or 20 years down the road. Regardless of that is in a development agreement or a notice of decision, he would like some legal feedback of what paperwork related to any future easement they would need to get in now. Cost of the easement preparation will be the responsibility of the applicant. C and D are if the board has things that they want to prohibit or allow for now, they would want that to be recorded.

Ms. B. Smith left the meeting at 7:26 PM

VOTING DESIGNATION: *Chair Bob Strobel, Selectmen’s Representative Hal Kreider, Joe McCaffrey, and Victoria Parmele.*

Chair Strobel stated that all documents that are substantive to the process of working through this needs to be noted in the plan set or the notice of decision. Mr. Burdin stated that once the board agrees exactly where the references to all of the language that they want top have included, he will be happy to include cross references in several places in the notice of decision. Mr. Holden stated that it seemed like they were leaning more towards putting things on the notice of decision and the plans, rather than using a development agreement, if they are going to go that way, he would like to make modifications on the plan, and add notes on the plan and cross reference them. Mr. Burdin stated that the only thing he wants to resolve is “what is a now thing, and what is a when the excavation is done” as it relates to conservation. Having an easement recording in the future is definitely enforceable, but maybe having some guidance about what they best way to do that to make sure they don’t have to

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enforce it. They should be clear about what is happening with it, who is making what decisions and when. Ms. L. Smith stated that they could ask the Conservation Commission to comment if the board would like. They may have some input on how to proceed as far as an easement would be concerned.

Mr. McCaffrey made a motion to continue Case 18-13 & 19-20 until March 26, 2020. Mr. Kreider seconded. Motion carried 4/0

CASE 19-17

Cerebral Development LLC (Chris Meyers) 126/134 First NH Turnpike, 36 Bean Road and 24 Rochester Road. Applicant seeks to create a Major Subdivision and Lot Line Adjustment between five lots and to create five new lots fronting on a proposed town road. The proposed town road will be 300 feet in length and connect to Route 4. Four of the lots will be for commercial use and one will remain

Chris and Kim Meyer were present to discuss the application. Mr. Meyer stated that he wanted to give the board an update of where they were. He stated that they were not proposing a subdivision anymore, or a town road. They were only planning on lot line adjustments rather than creating new lots. They were also planning on reconfiguring the open space. It will remain intact with slightly more acreage. He distributed new plans to the board showing his changes. Mr. Burdin stated that he had several conversations between legal, the attorney general, Ms. L. Smith and Mr. Meyers, which he forwarded to the board. That came out of that was the distinction between a conservation restriction and a conservation easement. What they have been trying to deal with so far has been is the prior subdivision on this was approved with that open space as open space. That created an enforceable conservation restriction. The town has the right to enforce that that will remain as open space. Once the board approves that, they are supposed to follow up with some mechanism of codifying that restriction. That's what the easement is, the document that is recorded that lays out exactly what is restricted. However, they decide to do this, the board should send it to town legal counsel to read through it and suggest any changes.

Selectman Kreider made a motion to send the easement language to legal for review at the applicant's expense. Mr. McCaffrey seconded. Motion carried 4/0

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Mr. McCaffrey made a motion to continue Case 19-17 until March 26, 2020. Selectman Kreider seconded. Motion carried 4/0.

Adjournment

Mr. McCaffrey made a motion to adjourn at 9:10 pm. Selectman Kreider seconded. Motion carried 4/0.

***Respectfully Submitted,
Susan Austin, Land Use Assistant.***

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