

Planning Board Minutes 08/09/11

NEWMARKET PLANNING BOARD MEETING AUGUST 9, 2011 MINUTES

Present: John Badger (Chairman), Val Shelton (Vice Chairman), Eric Botterman (Town Council ex officio), Janice Rosa, Peter Roy, Justin Normand, Rick McMenimen (Alternate)

Absent: Elizabeth Dudley (excused), Adam Schroadter

Called to order: 7:01 p.m.

Adjourned: 8:10 p.m.

Agenda Item #1 – Pledge of Allegiance

After the Pledge of Allegiance, Chairman Badger appointed Rick McMenimen to fill in for Elizabeth Dudley.

Agenda Item #2 – Public Comments

None.

Agenda Item #3 – Review & Approval of Minutes: 07/12/11

Peter Roy made an amendment on line 9, page 3 to omit the extra word “it”.

Peter Roy stated he was confused by lines 35 & 36 on page 6, the sentence regarding the perception of negative impacts. This was reworded to state, “Some hurdles could be perceived as negative impacts by neighbors. They want to make sure they are sensitive to those and people understand what they are trying to achieve.”

Rick McMenimen, on page 2, lines 22 & 23, reworded a sentence, so that it did not end with a preposition to state, “...the custom bicycle manufacturer, in the building”.

He also amended the sentence following the above to state, “...installed sewing machines and they are ready to make bags.”

He also amended, page 5, line 25, at the very end of the line, “...the Newmarket/Newfields line” to “...the Newmarket/New town line.”

Val Shelton stated on page 3, the first sentence should read, “Val Shelton commented”, rather than “Val Shelton inquired”.

She also stated, on page 3, line 34, the word "Committee" should be added after "(TIF) District".

She also stated, on page 4, line 38, she would change "rezoning analysis" to "zoning ordinance analysis". She would also like to amend page 9, line 31, with the word "rezoning" being changed to "zoning changes".

Action

Motion: Eric Botterman made a motion to approve the minutes of July 12, 2011

Second: Peter Roy

Vote: Justin Normand abstained, as he was not present at the meeting

All others in favor

Agenda Item #4 – Regular Business

Work Session – Stormwater Regulations in Site Plan and Subdivision Regulations

Chairman Badger recognized Eric Botterman; George Willant, a former Planning Board member; and Jessica Veysey, from the Conservation Commission, who worked on the regulations with Bill Arcieri, the person who will be updating the Board tonight.

Bill Arcieri stated he works at Vanesse Hangen Brustlin (VHB), an environmental engineering firm. He was hired through the PREP (Piscataqua Region Estuarine Partnership) to be a community technical assistance provider to assist the Planning Board in updating the site plan and subdivision regulations, as they pertain to stormwater management. He stated he has twenty years in this business and deals with stormwater, drainage, flooding, and pollutant issues. This is his "wheelhouse" of expertise. He has done a similar update in Brentwood.

He handed out a summary of changes. Much of the information on which the changes are based is from the NH DES Model Stormwater Management Ordinance. It is a zoning ordinance, but it may be used in site plan and subdivision regulations. A lot of that information is now incorporated into the State alteration of terrain regulations that were updated two years ago. One aspect that is not in the alteration of terrain requirements is the one regarding redevelopment projects. Newington and Durham just updated their subdivision and site plan regulations and the subcommittee used their requirements, as well.

The subcommittee met at least four times starting in December, 2010. They went through several drafts. The last time they met was June 16, 2011. The draft given to the Planning Board tonight is the last draft updated from that meeting.

He outlined a summary of changes. A major change in site plan was new definitions, which includes what constitutes a disturbance, impervious surface, low impact development (LID), and redevelopment.

One of the key aspects is when these requirements are triggered. Obviously, it involves a project that requires site plan review. The new stormwater regulations apply to projects that would have at least a 20,000 square foot disturbance or would add more than 5,000 square feet of impervious area.

The 20,000 square foot disturbance threshold comes straight out of the DES model. The impervious area is more dependent on the local sentiment. Some people use 10,000 square feet, some 5,000 square feet, and some 20,000

square feet. The subcommittee decided to reduce the 10,000 square feet threshold to 5,000 square feet. He clarified this is not finalized and subject to change. The advantage of reducing the threshold is that it captures more of the smaller redevelopment projects.

There is the potential for confusion where the homeowner could add a 200' long driveway that is 25' wide and that would be 5,000 square feet, but site plan review would not be triggered. The first test is it has to meet site plan review requirements and then it has to meet these other thresholds.

There were sections in the site plan regulations pertaining to stormwater management. Section 1 and Section 3.02 did not require a lot of changes. We want to encourage the use of bioretention areas and traffic islands or medians to capture and treat runoff. This is happening everywhere and people are getting more accustomed to this concept. It is a great tool for small areas; however, you have to have the right soils. The other aspect is to encourage use of porous pavement, where appropriate.

The way the site plan and subdivision regulations are written, they are 1980 vintage. At that time, everyone was encouraged to tie into the municipal storm drain system. We don't want to do that anymore. The more you have tied into the municipal system, the more you have to deal with EPA regulations and MS4 permits, which Newmarket might have at some point. You may not have capacity to add more water to the system, too. Now, we're saying treat and capture runoff onsite, where possible, and infiltrate it into the groundwater.

If you are in a shoreland zone and you are disturbing a 50,000 square foot area, you need a State Alteration of Terrain permit. The threshold is 100,000 square feet for an Alteration of Terrain permit outside of the shoreland zone. The regulations for Newmarket will capture the smaller projects that are below that threshold. A lot of communities are doing this. They want to protect their own storm drain systems, avoid flooding, get ahead of the curve on compliance of EPA requirements, and help to address nitrogen, phosphorous, sediment and other water quality issues in the Great Bay.

Val Shelton wanted clarification that the DES model ordinance is 20,000 square feet of disturbance and the additional 5,000 square feet of impervious area is a number selected by the subcommittee. Bill Arcieri indicated that was correct. She asked how those two numbers compare to Durham and Newington. Bill Arcieri stated both towns had used 10,000 square feet. There was a lot of discussion within the subcommittee about what was developed in town already and what was left to be developed to help figure out which number to use.

Eric Botterman stated Massachusetts requires treatment for one square foot. He thought 5,000 square feet was a good compromise. 10,000 square feet is a lot of pavement to put down where you don't have to worry about where your water is going. The idea is to get a better handle on peak runoffs and eliminate some of the downstream flooding that Newmarket is subject to, because of what has been built. It is a fair compromise between making you do it from one square foot or doing 10,000 square feet. He stated, if you have a 5,000 square foot lot and 5,000 square feet of pavement, you have to handle it. It is not relative to the lot size at all. Bill Arcieri stated there was quite a bit of discussion about this as it pertains to redevelopment. Eric Botterman stated if you think you need to treat 5,000 square feet that is running off your site, it does not matter how big the lot is. He stated the premise is the runoff leaving your site after development is no greater than what was running off before development i.e. no net increase. Even if it doesn't go off the site, you still have to treat it.

Diane Hardy stated New Durham had one of the most restrictive ordinances she had ever seen. Eric Botterman stated Seabrook is also very strict.

Eric Botterman stated every site is unique. You used to want people to connect into Town drainage systems and now that is frowned upon. A big reason is if a site has an oil spill and it goes into the Town drainage system, it is the Town's responsibility. Most municipalities and State agencies are not allowing anyone to tie in anymore. There is the latitude where, if there is no other choice, the person may tie in. A piece of property could sit vacant forever, if you did not allow some latitude. The Board could still grant waivers for situations like those.

Bill Arcieri stated the key requirements are to control the peak flow "after development" from having no net increase from "before development" conditions given various storm events, consistent with the Alteration of Terrain rules. The two-year storm is important, because that is when streams get shaped and erode during the more frequent high-flow events. The 50-year is important for flooding. The NH DES does not go as far as to state no net increase for a 100 year storm,

although in Massachusetts they do. The reason is it requires a lot of space to detain a 100 year flood event. There is more leniency here. It is still part of the drainage analysis (to calculate the run-off for the 100 year storm), but you are not required to mitigate (design or build drainage structures to accommodate) the peak flow for the 100 year storm. The other key aspect is water quality treatment. This was right out of the model.

He stated, with best management practices, basins, and bioretention systems, you generally have a rate of efficiency of how much of the pollutants are removed. Even standard catch basins have a 5% removal efficiency rate. He stated vegetation (including vegetated swales) removes nitrogen.

He stated requiring the sampling of runoff of inflow and outflow would be tough. Testing is usually done during storm events through university level research. Diane Hardy stated the onus could be on the engineer who is doing the drainage plan to provide literature from UNH or some national organization that provides testing and standards. Eric Botterman stated DES has a spreadsheet that calculates theoretical amounts of removal depending upon the best management practice or drainage design that is selected.

Bill Arcieri commented on gravel wetlands. There was a suggestion to work that into the ordinance. Eric Botterman stated nitrogen removal is tough to meet. He has had DES give waivers to sites, because the standards are impossible to meet. Val Shelton stated that would be the case with the mill redevelopment. Bill Arcieri agreed. There is no space, it's tight. It's an example of how this applies.

Bill Arcieri stated there are things you can do in tight spaces with proprietary systems (such as a vortex separator). UNH is putting in tree wells (which filter sediments and pollutants) tied into catchbasins. The technology is advancing every day. Eric Botterman stated the subcommittee talked about nitrogen and phosphorus. They are very high hurdles to meet. He would envision a Planning Board would grant waivers on that. You are talking about a development where every house would have to have a rain garden in the backyard. It becomes a problem when there is a depression in the backyard, the property owner puts in a swingset, then fills it in and in five years there are issues because the drainage has nowhere to go. There are deed descriptions that need to go in. It is worthwhile, but difficult. Eric Botterman stated most subdivisions he has worked with trip the requirements for Alteration of Terrain permits. 100,000 square feet is not much for roads and parking lots. The State NHDES will be looking at it. Our regulations would catch some pollution and mitigate flooding associated with smaller storms.

Chairman Badger asked where we would go from here with this. Eric Botterman stated the Board should look the proposed regulation changes over. Bill Arcieri's memo lists some things that still need to be discussed. He suggested the Board come back with comments. This can get very technical, but we are at the point where the subcommittee could make some final changes and then, look toward having a public hearing. Diane Hardy stated we have to have something completed by November 30, 2011.

Chairman Badger stated they were looking for feedback from the Planning Board, another subcommittee meeting, then a finalized recommendation from the subcommittee to the Planning Board.

Diane Hardy stated the language regarding traffic islands and stormwater flow should be strengthened. Newington had some language we might want consider. The way our ordinance is written now, you would have to have raised traffic islands.

Bill Arcieri stated he would rather shoot to wrap this up for the September meeting.

Adoption of an update to Chapter 6 "Economic Development" as an amendment to the Town of Newmarket Master Plan

Rick McMenimen stated, on page 49, ED 6.5 there was a double "such as".

Diane Hardy made some minor formatting and proofreading changes.

Val Shelton stated, on page 31, the figure was wrong. It said 6.8 and it should be 6.9.

Action

Vote: Eric Botterman made a motion to adopt the revised Chapter 6 Economic Development Plan as amended

Second: Val Shelton

Vote: All in favor

Chairman Badger recognized the hard work by Diane Hardy. Diane Hardy wanted to recognize Elizabeth Dudley, who did the final editing and proofreading.

Update on the meeting with Bruce Mayberry regarding impact fees

Diane Hardy stated the subcommittee met on Tuesday, August 2. They had a positive discussion and got answers to many questions. There were some changes made in the RSAs in 2004 that changed laws relating to the vesting of properties for purposes of assessing impact fees. The list of Newmarket's impact fees that have been waived, it is in the order of 1.3 million dollars. Much of that represents lots that were vested properties and could not have impact fees assessed on them, according to our legal counsel at the time. In the changes to the RSAs, it takes impact fees out of the realm of zoning and vesting. It says there is a four year period for which projects are vested from being assessed impact fees and, after that, an impact fee can be charged. This could result in substantial resources to the Town. We are going to take a closer look at that. Clay Mitchell brought this to the attention of the Planning Board at the time of this change in 2004.

Bruce Mayberry's opinion was we have a well documented record keeping system for impact fees. He looked at impact fee reports and at resolutions passed by the Town Council to expend those fees. We are doing a good job in tracking them. We have not run into a situation where we have had to return any fees, because the six year period had elapsed. One of the big questions was with the school impact fee allocation made a couple of years ago for \$150,000 for engineering and architectural design for the new school. If the Town does not move forward with the construction of a new school or rehabilitated school facilities, those fees may have to be recouped by the Town. You have to have development of facilities that result from the impact fee amounts. We can't expend impact fees for studies that do not result in an increase in capacity through a new or improved capital facility. We need to be mindful of that.

Another recommendation may come as good news to the Town Council as they grapple with funding water and sewer improvements. Right now we have water and sewer impact fees. Bruce Mayberry recommended that, instead of having those fees tied to impact fees, they should become system development charges, which would be authorized, not under the impact fee statute, but under general authorization to have water and sewer fees. That would be a more flexible way for the Town to help recoup some of the existing costs or future costs. This would be in the form of a water and sewer ordinance. It would be a more reliable source of financing with fewer strings attached. These fees can be used for operational or capital facility development.

Chairman Badger stated they had discussed the whole concept of impact fees. He asked if Bruce Mayberry was suggesting we continue with this ordinance. Diane Hardy stated that is a policy decision. She would be interested in hearing the reaction of committee members based on what Bruce Mayberry has presented and the information we have. Bruce Mayberry will put this information into a report with some recommendations.

Peter Roy stated the simplification of the program by taking the water and sewer on a fee basis is a good idea.

Val Shelton stated we have to look at whether we have the right to collect impact fees, if they are not relative to building a larger school based on projected increased capacity. Eric Botterman stated he is on the facilities committee he knows

the discussions so far have been for increased capacity. Not anything like the school that was discussed previously a couple of years ago. It won't be 1200 students. This would be based on projected 1% a year growth or something like that, based on enrollment projections.

Val Shelton stated Bruce Mayberry had advised us to be cautious with the impact fee ordinance relative to why we are having the ordinance and whether we have a use for it.

Chairman Badger stated the Board could get an update from the committee in September. The goal would be to get a recommendation from the committee, if possible.

Agenda Item #5 – New/Old Business

None.

Agenda Item #6 – Adjourn

Action

Motion: Rick McMenimen made a motion to adjourn at 8:10 p.m.

Second: Janice Rosa

Vote: All in favor